

**November 20, 2015**

Mr. James Hooke  
Chief Executive Officer  
Macquarie Infrastructure Corporation  
125 West 55<sup>th</sup> St, Level 15  
New York, NY 10019

**Re: CPF No. 1-2014-5008**

Dear Mr. Hooke:

Enclosed please find the Final Order issued in the above-referenced case to your subsidiary, IMTT-Bayonne. It makes findings of violation and specifies actions that need to be taken by IMTT-Bayonne to comply with the pipeline safety regulations. When the terms of the compliance order have been completed, as determined by Mr. Byron Coy, Director, Eastern Region, this enforcement action will be closed. Service of the Final Order by certified mail is deemed effective upon the date of mailing, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

Enclosure

cc: Mr. Byron Coy, P.E., Director, Eastern Region, Office of Pipeline Safety  
Mr. Richard Fisette, Terminal Manager, International-Matex Tank Terminals (IMTT)-  
Bayonne, 250 East 22nd Street, Bayonne, NJ 07002

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

**U.S. DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION  
OFFICE OF PIPELINE SAFETY  
WASHINGTON, D.C. 20590**

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**In the Matter of** )  
 )  
**IMTT-Bayonne,** ) **CPF No. 1-2014-5008**  
**a subsidiary of Macquarie Infrastructure Corporation,**)  
 )  
**Respondent.** )  

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**FINAL ORDER**

On April 29, 2014, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted a meeting with representatives of IMTT-Bayonne (IMTT-Bayonne or Respondent) in Bayonne, New Jersey (Facilities). IMTT-Bayonne is a subsidiary of Macquarie Infrastructure Corporation, which owns and operates 12 bulk liquid storage facilities in North America, including its 600-acre facility in Bayonne, NJ.<sup>1</sup>

As a result of the April 29, 2014 meeting, by letter dated December 22, 2014, the Director, Eastern Region, OPS (Director), issued a Notice of Probable Violation and Proposed Compliance Order (Notice) to Respondent.<sup>2</sup> In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that IMTT-Bayonne had violated 49 C.F.R. §§ 195.402, 195.404, and 195.505, and ordered Respondent to take certain measures to correct the alleged violations.

IMTT-Bayonne responded to the Notice by letter dated January 15, 2015 (Response). The company did not contest the allegations of violation, but requested changes to the proposed compliance order. Respondent did not request a hearing and therefore has waived its right to one.

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<sup>1</sup> *About IMTT*, <http://www.imtt.com/index.php?page=About-IMTT> (last visited July 8, 2015); *see also IMTT – New York Harbor/New Jersey*, <http://www.imtt.com/index.php?page=bayonne> (last visited July 8, 2015).

<sup>2</sup> *See Notice* at 1. Prior to 2013, it appears that the Facilities had not been inspected by PHMSA. In 2013, upon the request of a PHMSA representative, a series of meetings were held between PHMSA and IMTT for the purpose of determining the jurisdictional status of the Facilities. Respondent thereupon undertook an analysis to ascertain whether its Facilities were regulated pipeline facilities under PHMSA jurisdiction. On April 29, 2014, IMTT informed PHMSA that it had determined that several of its pipeline segments and breakout tanks, including the Facilities, were indeed under PHMSA jurisdiction.

## **FINDINGS OF VIOLATION**

In its Response, IMTT-Bayonne did not contest the allegations in the Notice that it violated 49 C.F.R. Part 195, as follows:

**Item 1:** The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a), which states:

**§ 195.402 Procedural manual for operations, maintenance, and emergencies.**

(a) *General.* Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to insure that the manual is effective. This manual shall be prepared before initial operations of a pipeline system commence, and appropriate parts shall be kept at locations where operations and maintenance activities are conducted.

The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a) by failing to prepare and follow written procedures for conducting normal operations, maintenance activities, abnormal operations, and emergencies. Specifically, the Notice alleged that during the April 29, 2014 meeting, IMTT-Bayonne could not demonstrate it had developed or followed procedures as required under § 195.402(a) for the Facilities. On this date, IMTT-Bayonne only produced a Power Point presentation that included information on its preliminary jurisdictional analysis results, but did not show it had prepared or followed procedures for the Facilities, as required by § 195.402(a).

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(a) by failing to develop or follow a manual of written procedures for the Facilities.

**Item 2:** The Notice alleged that Respondent violated 49 C.F.R. § 195.404(a)(3), which states:

**§ 195.404 Maps and records.**

(a) Each operator shall maintain current maps and records of its pipeline systems that include at least the following information...

(3) The maximum operating pressure of each pipeline....

The Notice alleged that Respondent violated 49 C.F.R. § 195.404(a)(3) by failing to maintain current records demonstrating how the maximum operating pressure (MOP) of its jurisdictional pipeline segments had been determined. Specifically, Respondent allegedly failed to provide current documentation that validated the process for calculating the MOP for its jurisdictional pipeline segments.

IMTT-Bayonne did not contest this allegation of violation. Accordingly, based upon a review of

all of the evidence, I find that Respondent violated 49 C.F.R. § 195.404(a)(3) by failing to maintain current records of its pipeline system that include the MOP of each pipeline.

**Item 3:** The Notice alleged that Respondent violated 49 C.F.R. § 195.505, which states:

**§ 195.505 Qualification program.**

Each operator shall have and follow a written qualification program.  
The program shall include provisions to...

The Notice alleged that Respondent violated 49 C.F.R. § 195.505 by failing to maintain and follow a written qualification program. Specifically, the Notice alleged that IMTT-Bayonne could not demonstrate that it either had, or followed, a written qualification program for personnel performing covered tasks on its pipeline system.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.505 by failing to maintain and follow a written qualification program.

These findings of a violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

### **COMPLIANCE ORDER**

The Notice proposed a compliance order with respect to Items 1, 2, and 3 in the Notice for violations of 49 C.F.R. §§ 195.402(a), 195.404(a)(3), and 195.505, respectively. While Respondent did not contest the allegations of violation as stated in the Notice, the company did request changes to the proposed compliance order. IMTT-Bayonne requested altering four of the deadlines listed in the compliance order, as well as clarifying actions it was required to take in providing a map of its jurisdictional pipeline system. IMTT-Bayonne did not state a rationale as to why PHMSA should incorporate these suggested changes, but submitted information showing it had taken steps to meet the requirements set forth in the proposed compliance order.

Upon review of Respondent's request, I find that the compliance order should be issued as proposed in the Notice. While IMTT-Bayonne has already taken certain steps to comply with the proposed order, it has not asserted any reason as to why PHMSA should modify it or why the deadlines set forth therein should be modified. If necessary, Respondent may request extensions to comply with the requirements set forth below. Further, if necessary, PHMSA may request clarification of the jurisdictional pipeline system map that IMTT-Bayonne is required to provide under the compliance order.

Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas, hazardous liquids, or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to Item Number 1 of the Notice pertaining to IMTT-Bayonne's failure to prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities, and handling abnormal operations and emergencies, IMTT-Bayonne shall complete at a minimum, the following actions:
  - a. Provide a current map of the jurisdictional pipeline system that includes information on the location and identification of all assets, within 30 days of issuance of the Final Order;
  - b. Provide current piping and instrumentation diagrams showing the jurisdictional components of the pipeline system, within 30 days of issuance of the Final Order;
  - c. Provide an updated "Break-out Tank Listing" of all jurisdictional breakout tanks, within 30 days of issuance of the Final Order;
  - d. Establish and implement a manual of written procedures that fulfills the requirements of § 195.402 in its entirety (e.g., Emergency Response Training Program, Public Awareness Program, Damage Prevention Program, Control Management Procedures, Integrity Management Program, Corrosion Control Procedures, etc.) within 180 days of issuance of the Final Order.
2. With respect to Item Number 2 of the Notice pertaining to IMTT-Bayonne's failure to maintain detailed records that validate the MOP of its jurisdictional pipeline segments, IMTT-Bayonne shall:
  - a. Provide records that detail the existing MOP of all jurisdictional pipeline segments within 90 days of the issuance of the Final Order;
  - b. For those pipeline segments that do not have detailed MOP records, develop a plan to establish MOP in accordance with applicable standards set forth in Part § 195. Within 120 days of issuance of the Final Order, the plan must be submitted to the Region Director for possible modification and approval.

The plan must include the following:

- i. A list of jurisdictional pipe segments;
- ii. Delineate those segments needing pressure testing from any not needing pressure tests;
- iii. Pressure tests in accordance with Subpart E in 49 C. F. R. Part 195;
- iv. Safety measures that should be taken pre- and post-pressure testing;
- v. Documentation showing completion of any associated repairs

- identified during the pressure tests in accordance with appropriate procedures and federal pipeline safety regulations;
- vi. Documentation and recordkeeping that is consistent with appropriate regulations in 49 C. F. R. Part 195;
  - vii. Submission of quarterly reports describing all work performed to date and forecasting scheduled work;
  - viii. A plan to detail the sequence of any pressure testing, where higher risk segments are tested before lower-risk segments;
  - ix. Actual pressure testing to begin within 180 days of issuance of the Final Order;
  - x. All pressure testing to be successfully completed and incorporated into records, within 720 days of the issuance of the Final Order.
- c. Upon approval from the Region Director, IMTT-Bayonne must execute the plan.
  - d. IMTT-Bayonne must make any and all associated records, and their related procedures, available for review.
3. With respect to Item Number 3 of the Notice pertaining to IMTT-Bayonne's failure to have and follow a written qualification program (OQ), IMTT-Bayonne shall complete, at a minimum, the following actions:
- a. Establish and implement a written OQ program, for all tasks that meet the four-part test in § 195.501. The OQ program must be consistent with § 195.501. Within 180 days of the issuance of the Final Order, IMTT-Bayonne must:
    - i. Provide a copy of the completed OQ program;
    - ii. Provide a listing of all tasks that are required to be performed by qualified individuals;
    - iii. Provide a listing of all qualified individuals, and the tasks and dates for which they were qualified.
4. All documentation demonstrating compliance with each of the items outlined in this Compliance Order must be submitted to Mr. Byron Coy, P.E., Director, Eastern Region, PHMSA, Bear Tavern Road, Suite 103, West Trenton, NJ 08628.
5. It is requested (not mandated) that IMTT-Bayonne maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Byron Coy, PE, Director, Eastern Region, Pipeline and Hazardous Materials Safety Administration. It is requested that these costs be reported in two categories: 1) total cost associated with preparation/revision of the plans, procedures, studies, and analyses; and 2) total cost associated with replacements, additions and other changes to pipeline infrastructure.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent and demonstrating good cause for an extension.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$200,000 for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

Under 49 C.F.R. § 190.243, Respondent has a right to submit a Petition for Reconsideration of this Final Order. The petition must be sent to: Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2<sup>nd</sup> Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. PHMSA will accept petitions received no later than 20 days after receipt of service of this Final Order by the Respondent, provided they contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. Unless the Associate Administrator, upon request, grants a stay, the terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

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Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

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Date Issued