

**NOTICE OF PROBABLE VIOLATION
PROPOSED CIVIL PENALTY
and
PROPOSED COMPLIANCE ORDER**

OVERNIGHT EXPRESS DELIVERY

December 21, 2017

Mr. James Hooke
Chief Executive Officer
Macquarie Infrastructure Corporation, LLC
125 West 55th Street
New York, NY 10019

CPF 1-2017-5004

Dear Mr. Hooke:

On February 26, 2016 and August 16, 2016, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), pursuant to Chapter 601 of 49 United States Code, responded to and conducted an investigation into an incident involving International-Matex Tank Terminals¹ (IMTT) 16-inch Packards to Curries pipeline within the Halecky-IMTT Park in Bayonne, NJ.

On February 22, 2016, at approximately 17:30 Eastern Standard Time (EST), IMTT was notified of a potential release of product in the vicinity of their facilities located at Halecky-IMTT Park in Hudson County, Bayonne, NJ.

Over the next 24 hours, IMTT's investigation into the notification, and subsequent excavation within the park, revealed a release of Ultra Low Sulfur Diesel from IMTT's 16-inch Packards to Curries pipeline (the Pipeline). IMTT estimated 359 barrels of product were released, and approximately 300 barrels of the commodity were recovered.

¹ International-Matex Tank Terminals is a wholly-owned subsidiary of Macquarie Infrastructure Company, LLC.

The National Response Center was notified of the release at 16:07 EST on February 23, 2016. Halecky-IMTT Park was closed to the public from February 22, 2016, until March 10, 2016. There were no fires or injuries reported as a result of this accident.

Excavation at the release site revealed that the Pipeline, which was partially replaced in September 2015, was resting directly on a section of steel sheet piling (SSP) that was used in the construction process. IMTT submitted Form PHMSA F 7000.1 Accident Reports to PHMSA on March 22 (Initial), August 16 (Supplemental), and September 8, 2016 (Final). The Final Accident Report filed by IMTT identified the point that was resting on the SSP as the failure location, stating in part that "Over time and movements, the pipe failed from the stress and the puncture." IMTT determined the apparent cause of the release was a "Material Failure of Pipe or Weld with a sub-cause of Construction, Installation, or Fabrication-related."

As a result of the investigation, it appears that you have committed a probable violation of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations. The item inspected and probable violation is:

1. §195.250 Clearance between pipe and underground structures.

Any pipe installed underground must have at least 12 inches (305 millimeters) of clearance between the outside of the pipe and the extremity of any other underground structure, except that for drainage tile the minimum clearance may be less than 12 inches (305 millimeters) but not less than 2 inches (51 millimeters). However, where 12 inches (305 millimeters) of clearance is impracticable, the clearance may be reduced if adequate provisions are made for corrosion control.

IMTT failed to maintain at least 12 inches of clearance between the outside of the pipe and extremity of any other underground structure. Specifically, IMTT replaced a segment of the Pipeline and failed to maintain at least 12 inches of clearance between the outside of the Pipeline and a section of SSP that was used during the construction process.

During the investigation, the PHMSA inspector reviewed documentation for the replacement of approximately 1,125 feet of the 16-inch Pipeline (the "Project").

During the Project, SSP was utilized as shoring in a jack and bore pit located in Halecky-IMTT Park. Segments of this SSP were removed by torch cutting, creating "windows" to allow for installation of the carrier pipe and casing.

In an email dated 11/14/2016, the Project Superintendent for the pipeline contractor described the window cutting process as follows:

The "window" cutting process is a pipe location (field) driven event that allows for pipe egress (launching pit) and entry (receiving pit) and is not in the realm of responsibility of the sheet pile contractor, this is performed by the pipe contractor, The Napp-Grecco Company in this instance. The casing pipe jack/bore would require "windows" to be torch cut through the sheet piling near the base of the excavation (short wall), while the carrier pipe would exit the excavation at a point

most sensible for a tie-in line up (job specific). In this case it was the east (long wall) of the excavation.

The "window" cutting event would be consistent in practice, varying only in size required to accommodate whatever size infrastructure is being installed and location of the "window" The standard field practice is to cut out the required amount of sheet pile to accommodate the pipe being installed and then to continue the cut along the base to include the inter-locks on the adjoining sheet piles to create a disconnect from the sheet piles below the infrastructure and the sheet piles directly adjacent to them on both sides. This creates what are called "sacrificial" sheets, those remaining in place below the installed infrastructure and allows for removal and recovery of the sheet piles outside of the "window" area. The cuts into the adjacent sheet piles interlock are to prevent the "sacrificial" sheets from "hitchhiking", being pulled upward, as the recoverable sheets are removed.

During the investigation, the PHMSA inspector established that:

1. Excavation of the leak site by IMTT uncovered the Pipeline sitting on top of a remaining piece of SSP, which had penetrated the Pipeline over time as the Pipeline shifted during cycles of operation. Eventually this led to the release of product during a product transfer initiated on February 21, 2016 to Tank number 5605, located in the Packards Yard.
2. The torch cutting of the window on the east end of the jack and bore pit resulted in fusion to the adjacent, interlocking piece of SSP. This fusion led to unintended lifting of the SSP under the Pipeline during the extraction of the SSP next to the windowed sheet.
3. The section of SSP under the Pipeline lifted up, contacting the bottom of the Pipeline.
4. The lifting went unnoticed during the extraction of the SSP, the project was completed, and the Pipeline was returned to service.
5. Damage to the Pipeline due to contact with the piece of SSP led to failure of the Pipeline on February 22, 2016.

Based on the above facts, the Investigator found that IMTT failed to maintain at least 12 inches of clearance between the outside of the pipe and extremity of any other underground structure.

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$209,002 per violation per day the violation persists, up to a maximum of \$2,090,022 for a related series of violations. For violations occurring prior to November 2, 2015, the maximum penalty may not exceed \$200,000 per violation per day, with a maximum penalty not to exceed \$2,000,000 for a related series of violations. The Compliance Officer has reviewed the circumstances and supporting documentation involved in the above probable violation(s) and has recommended that you be preliminarily assessed a civil penalty of \$144,000 as follows:

<u>Item number</u>	<u>PENALTY</u>
1	\$144,000

Proposed Compliance Order

With respect to Item 1 pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to IMTT. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Compliance Proceedings*. Please refer to this document and note the response options. All material you submit in response to this enforcement action may be made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b). If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order.

Please submit all correspondence in this matter to Robert Burrough, Director, PHMSA Eastern Region, 820 Bear Tavern Road, Suite 103, West Trenton, NJ 08628. Please refer to **CPF 1-2017-5004** on each document you submit, and whenever possible provide a signed PDF copy in electronic format. Smaller files may be emailed to robert.burrough@dot.gov. Larger files should be sent on a CD accompanied by the original paper copy to the Eastern Region Office.

Sincerely,

Robert Burrough
Director, Eastern Region
Pipeline and Hazardous Materials Safety Administration

Enclosures: *Proposed Compliance Order*
Response Options for Pipeline Operators in Compliance Proceedings

PROPOSED COMPLIANCE ORDER

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to IMTT a Compliance Order incorporating the following remedial requirements to ensure the compliance of IMTT with the pipeline safety regulations:

1. In regard to Item Number 1 of the Notice pertaining to IMTT's failure to maintain at least 12 inches of clearance between the outside of the pipe and extremity of any other underground structure, IMTT must develop construction procedures to ensure that the requirements of §195.250, Clearance between pipe and underground structures, are met.
2. All documentation demonstrating compliance with each of the items outlined in this Compliance Order must be submitted to Robert Burrough, Director, Eastern Region, PHMSA, 820 Bear Tavern Road, Suite 103, West Trenton, NJ 08628, within 60 days of receipt of the Final Order. Documentation and recordkeeping must be consistent with appropriate regulations in 49 C.F.R. Part 195.
3. It is requested (not mandated) that IMTT maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Robert Burrough, 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 plans, procedures, studies and analyses, and 2) total cost associated with replacements, additions and other changes to pipeline infrastructure.