

**U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY**

In the Matter of

IMTT-Pipeline,

Respondent.

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CPF No. 1-2022-016-NOPV

**Response of IMTT-Pipeline
To Notice of Probable Violation, Proposed Civil Penalty,
and Proposed Compliance Order**

International-Matex Tank Terminals Pipeline (IMTT-Pipeline) submits its Response to the Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice) issued on July 1, 2022, following an inspection performed by the Office of Pipeline Safety (OPS) in May 2021. On July 14, 2022, the Pipeline and Hazardous Materials Safety Administration (PHMSA) approved an extension of time until September 29, 2022, to respond to the Notice. This Response is timely.

IMTT-Pipeline is committed to public safety and operating its pipeline facilities in accordance with PHMSA's regulations. IMTT-Pipeline takes PHMSA's allegations of violation seriously, however, certain allegations in the Notice are legally and factually unsupported and must be withdrawn. As discussed below, IMTT-Pipeline contests the alleged violations contained in Item 1, Item 2, Item 6, Item 11, and Item 12.

IMTT-Pipeline does not contest Item 10¹ and is submitting under separate cover information that complies with the compliance order proposed for that Item. IMTT-Pipeline also does not contest Item 14 and requests that PHMSA find that IMTT-Pipeline has provided the notification required under § 195.64 in compliance with the proposed compliance order.

Item 3, Item 4, Item 5, Item 7, Item 8, Item 9, and Item 13 are warning items.

Concurrently with this written Response, IMTT-Pipeline submits a Request for a Hearing, a Preliminary Statement of Issues and Request for Settlement Meeting pursuant to 49 C.F.R. § 190.208(a)(4) and § 190.211,² and as permitted under 49 U.S.C. § 60117(b)(1).³

¹ Note that the Violation Report for CPF No. 1-2022-016-NOPV reverses the order of Item 10 and Item 11, identifying Item 11 as Item 10 and vice versa. This numbering is different from how the items are numbered in the Notice posted on PHMSA's website which is the version relied on in this Response. The Item numbers in the proposed Civil Penalty Worksheet also correspond with Item 10 and Item 11 as they appear in the Notice.

² 49 C.F.R. §§ 190.208, 190.211 (2020).

³ 49 U.S.C. § 60117(b)(1) (2018), as amended by The Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2020, Pub. L. No. 116-260, div. R, title I, § 108(a)(2), 134 Stat. 2221, 2223 (Dec. 27, 2020).

IMTT-Pipeline requests a settlement meeting to discuss resolving the contested allegations. IMTT-Pipeline also requests that the presiding official delay scheduling a hearing for 60 days to allow the parties sufficient time to convene a meeting to resolve issues through a settlement.

IMTT-Pipeline also notes that on July 1, 2022, PHMSA issued a separate Notice of Probable Violation to IMTT-Bayonne in CPF No. 1-2022-017-NOPV. The facilities of IMTT-Pipeline and IMTT-Bayonne have different OPID numbers, but are integrally related and are operated by the same personnel using the same procedures. Several allegations in both Notices are the same or similar. To conserve resources, IMTT-Pipeline requests that PHMSA convene a single settlement meeting, and any hearing if necessary, for both Notices so that they can be addressed together.

I. Executive Summary

Item 1 § 195.106 Internal design pressure. IMTT-Pipeline contests the allegation that IMTT-Pipeline failed to determine the internal design pressure of certain pipeline segments in accordance with § 195.106 and requests that the allegation be withdrawn. First, the 12IN Linden-Bergen Point pipeline segment was constructed in 1952 and PHMSA has long held that it does not have the authority to retroactively apply § 195.106 to segments constructed before Part 195 became effective in 1970. In addition, OPS has not met its burden of proving that IMTT-Pipeline calculated internal design pressures of any of the pipeline segments using assumed values for wall thickness and yield strength.

If PHMSA does not withdraw the violation, IMTT-Pipeline requests that the proposed compliance order be amended so that it accurately reflects the regulations and is appropriately tailored to the allegation raised in the Notice.

Item 2 § 195.402(a) Procedural manual for operations, maintenance, and emergencies. IMTT-Pipeline contests this allegation as factually unsupported. Contrary to the allegation in the Notice, the revision logs in IMTT-Pipeline's procedural manuals indicate that annual reviews were conducted, who conducted them, their dates, and what revisions were made. An operator is not required to describe the reasons for revisions. The allegation is factually unsupported and must be withdrawn, along with the proposed civil penalty.

Item 6 § 195.405(a) Protection against ignitions and safe access/egress involving floating roofs. IMTT-Pipeline contests the allegation that it lacks records showing that its protection of Tank #7640 against the risk of ignition associated with static electricity, lightning and stray currents does not comply with American Petroleum Institute Recommended Practice (API RP) 2003. Tank #7640 rests on a grade-level foundation and, therefore, is protected from the risk of static electricity in accordance with API RP 2003. The tank also is grounded consistent with National Fire Protection Association (NFPA) 780 and is protected from lightning, as provided in API RP 2003. API RP 2003 does not address the protection of tanks from stray currents. Other operations and maintenance policies reflect reasonable measures and practices to protect against the risk of ignition consistent with API RP 2003. IMTT-Pipeline requests that this allegation and the associated proposed civil penalty be withdrawn.

If the allegation is not withdrawn, the civil penalty should be eliminated or substantially reduced. Recurring inspections are not necessary or required to document that Tank # 7640 sits on a grade-level foundation or is grounded to protect against ignition caused by lightning strikes. Moreover, Job Safety Assessments and Work Permits are generated only on an as-needed basis when a particular activity requires them. Given the nature of the compliance requirement, applying an annual multiplier to the calculation of the civil penalty is excessive and inappropriate. The proposed civil penalty should be withdrawn.

Item 11 § 195.452(i)(1) Pipeline integrity management in high consequence areas. IMTT-Pipeline contests this allegation because, contrary to assertions in the Notice, IMTT-Pipeline provided records demonstrating implementation of preventive and mitigative (P&M) measures during the audit. Those records include two risk analysis reports, which the inspector seemed to find acceptable, a “Preventive and Mitigative Measures Tracking List” that identifies numerous P&M measures and other information, and documentation regarding the Grasselli Road 12-inch Pipeline Relocation Project under which IMTT-Pipeline replaced a 1700-foot-long segment of high-risk pipe. PHMSA has not satisfied its burden of proving that IMTT-Pipeline did not provide any records of its P&M measures or implement P&M measures. IMTT-Pipeline requests that the allegation and the proposed civil penalty be withdrawn.

Item 12 § 195.555 What are the qualifications for supervisors? IMTT-Pipeline contests Item 12 because OPS does not explain why the documented qualifications of IMTT-Pipeline’s corrosion control specialist does not establish that he “maintains a thorough knowledge of that portion of the corrosion control procedures . . . for which they are responsible for ensuring compliance.”⁴ The corrosion control specialist has earned a National Association of Corrosion Engineers (NACE) certificate for CP2-Cathodic Protection – Technician, a CP1-Cathodic Protection Tester NACE Certificate. He is qualified under multiple corrosion control-related tasks, and his college degree in Applied Physics qualifies as a concentration in “the physical sciences or engineering,” a recommended prerequisite for taking NACE Certificate training courses. IMTT-Pipeline requests that the allegation and the proposed civil penalty be withdrawn.

II. Response of IMTT-Pipeline

A. Overview of IMTT-Pipeline Facilities.

IMTT owns and operates pipeline and terminal facilities in and near Bayonne, New Jersey. The facilities operated under IMTT-Bayonne OPID 39149 include 115 aboveground storage tanks containing petroleum products and related pipeline facilities. Facilities operated under IMTT-Pipeline OPID 32162 consists of pipeline that transports refined petroleum products and a single aboveground breakout tank (Tank # 7640). This Notice involves only the facilities that operate under the IMTT-Pipeline OPID.

The IMTT-Pipeline extends approximately 9.6 miles between Linden, New Jersey, and Bayonne, New Jersey, via Staten Island, New York. The pipeline operates bidirectionally and receives and delivers #2 diesel or gasoline, interconnecting with several major refined products

⁴ 49 C.F.R. § 195.555.

pipelines and IMTT's terminals in Bayonne. The pipeline serves as an essential mid-stream pipeline link between those pipelines and the Bayonne Terminal.

The IMTT-Pipeline is comprised of 12-inch and 16-inch diameter pipe. Originally constructed in 1952, large segments of the pipeline have been replaced over time. In particular, the segments located under the Arthur Kill Strait and Newark Bay were replaced in 2003 with heavy-walled (0.500-inch wall thickness) pipe. The maximum operating pressure (MOP) of the IMTT-Pipeline is 475 pounds per square inch gauge (psig). The MOP of the segment located in Staten Island is restricted to 400 psig through an agreement with the New York Fire Department. The purpose of Tank #7640 is to receive product from the pipeline if an overpressurization of the pipeline were to occur. The IMTT-Pipeline facilities are subject to PHMSA's hazardous liquid pipeline integrity management regulations.

B. PHMSA Has the Burden of Proving the Alleged Violations.

PHMSA has the burden of proving that IMTT-Pipeline violated the pipeline safety regulations.⁵ PHMSA has the “burden of production,” *i.e.*, . . . the obligation to come forward with the evidence at different points in the proceeding,” and the “burden of persuasion,” *i.e.*, which party loses if the evidence is closely balanced.”⁶ PHMSA “bears the burden of proof as to all elements of the proposed violation.”⁷ To meet its burden of production, PHMSA must present sufficient evidence to sustain an allegation of violation. Where PHMSA does not

⁵ 49 U.S.C. § 60117(b)(1)(F) (2018), as amended by the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2020, Pub. L. No. 116-260, div. R, title I, § 108(a)(2), 134 Stat. 2221, 2223 (Dec. 27, 2020). *See* 49 C.F.R. § 190.213(a)(1) (2021). *ExxonMobil Pipeline Co.*, Final Order, CPF No. 4-2017-5027, 2019 WL 3734516, **4, 5 (Apr. 3, 2019) (withdrawing allegation because PHMSA's evidence did not establish a violation); *Inland Corp.*, Final Order, CPF No. 1-2017-5003, 2018 WL 2229407, *3 (Mar. 7, 2018) (withdrawing alleged violation where testimony was contradictory and factual evidence provided by respondent did not support OPS's claim); *Air Prods. & Chems., Inc.*, Final Order, CPF No. 4-2013-1001, 2015 WL 6758819, *3 (Aug. 10, 2015) (withdrawing alleged violation because PHMSA did not produce “any evidence to support its position” and thereby did not meet its burden of proof); *ExxonMobil Pipeline Co.*, Final Order, CPF No. 5-2013-5007, 2015 WL 780721, *12 (Jan. 23, 2015) (finding that PHMSA failed to meet burden of proving that certain measures were required under the regulations); *So. Star Cent. Gas Pipeline, Inc.*, Final Order, CPF No. 3-2008-1005, 2011 WL 7006614, *4 (Oct. 21, 2011) (finding the evidence insufficient to sustain the allegation); *Golden Pass Pipeline, LLC*, Final Order, CPF No. 4-2008-1017, 2011 WL 1919517, *5 (Mar. 22, 2011) (finding that PHMSA did not meet its burden of proving that its interpretation of regulatory language was correct).

⁶ *Schaffer v. Weast*, 546 U.S. 49, 56 (2005) (quoting *Dir., Office of Workers' Comp. Programs, Dep't of Labor v. Greenwich Collieries*, 512 U.S. 267, 272 (1994)); *see also Butte Pipeline Co.*, Final Order, CPF No. 5-2007-5008, 2009 WL 3190794, *1 (Aug. 17, 2009) (“PHMSA carries the burden of proving the allegations set forth in the Notice, meaning that a violation may be found only if the evidence supporting the allegation outweighs the evidence and reasoning presented by Respondent in its defense.”) (internal citation omitted).

⁷ *ANR Pipeline Co.*, Final Order, CPF No. 3-2011-1011, 2012 WL 7177134, *3 (Dec. 31, 2012) (finding that evidence in violation report was insufficient); *see also CITGO Pipeline Co.*, Decision on Reconsideration, CPF No. 4-2007-5010, 2011 WL 7517716, *5 (Dec. 29, 2011) (finding lack of evidence demonstrating all elements of the alleged violation).

produce such evidence, the allegation of violation must be withdrawn.⁸ If the cited regulatory provision does not relate to the alleged problem, the alleged violation must be withdrawn.⁹

To meet its burden of persuasion, PHMSA “must prove, by a preponderance of the evidence, that the facts necessary to sustain a probable violation actually occurred.”¹⁰ This burden is carried “only if the evidence supporting the allegation outweighs the evidence and reasoning presented by Respondent in its defense.”¹¹ A respondent will prevail under this standard not by conclusively proving compliance, but where its rebuttal evidence is more persuasive than the evidence provided by PHMSA.¹² If “the evidence is closely balanced,” PHMSA has not met its burden of persuasion and the allegation of violation must be withdrawn.¹³

C. Response of IMTT-Pipeline.

Item 1 § 195.106. PHMSA Has Not Demonstrated That IMTT-Pipeline Used Assumed Values in Determining Internal Design Pressure.

Item 1 of the Notice alleges that when calculating the internal design pressure for three jurisdictional pipeline segments, IMTT-Pipeline “failed to use conservative yield strength and wall thickness values” set forth in §§ 195.106(b) and 195.106(c) and has, therefore, violated § 195.106.¹⁴ OPS alleges that the MOP records provided by IMTT-Pipeline during the inspection show that internal design pressure for these three segments was calculated using assumed values when information for yield strength and nominal wall thickness was unknown instead of using the conservative default values set forth in the regulations. To support its allegation, OPS points to the following statement in the MOP Calculation Worksheet for each segment: “[d]rawings are incomplete & inconclusive; assumptions were made for minimum pipe,

⁸ See, e.g., *ExxonMobil*, 2019 WL 3734516 at **4, 5 (ordering withdrawal of allegations where OPS failed to prove that Respondent engaged in conduct that would constitute a violation); *Plains Pipeline, L.P.*, Final Order, CPF No. 4-2009-5009, 2011 WL 1919520, **4, 5 (Mar. 15, 2011) (ordering withdrawal of allegation when limited evidence in the record was not conclusive); *EQT Corp.*, Final Order, CPF No. 1-2006-1006, 2010 WL 2228558, **6, 7 (May 13, 2010) (finding that OPS did not present evidence or analysis proving that Respondent’s actions were inadequate under the regulation); *Bridger Pipeline Co.*, Decision on Reconsideration, CPF No. 5-2007-5003, 2009 WL 2336991, **5, 6 (June 16, 2009) (finding evidence introduced by PHMSA insufficient to establish a violation).

⁹ *Rocky Mountain Pipeline Sys.*, Final Order, CPF No. 5-2004-5001, 2006 WL 4488857, **6, 8 (Dec. 11, 2006) (withdrawing alleged violations where the cited regulations did not relate to alleged violation).

¹⁰ *Alyeska Pipeline Serv. Co.*, Decision on Petition for Reconsideration, CPF No. 5-2005-5023, 2009 WL 5538655, *3 (Dec. 16, 2009) (citing *Butte Pipeline*, 2009 WL 3190794 at *1, n.3; *Schaffer*, 546 U.S. at 56-58).

¹¹ *Butte Pipeline*, 2009 WL 3190794 at *1 (internal citation omitted).

¹² See *ANR Pipeline*, 2012 WL 7177134 at *3. In *ANR Pipeline*, PHMSA found that ANR’s “plausible” explanation regarding the discovery of a reportable condition on its pipeline was sufficient to warrant withdrawal of the allegation of violation because the “Violation Report contain[ed] no evidence which would rebut ANR’s argument.” *Id.* See also *City of Richmond, VA*, Final Order, CPF No. 1-2004-0006, 2006 WL 3825337, *4 (Jan. 12, 2006) (stating that the Respondent does not have the burden of proving compliance, rather OPS has the burden of proving the violation).

¹³ *Alyeska Pipeline*, 2009 WL 5538655 at *3 (quoting *Schaffer*, 546 U.S. at 56). Cf. *Buckeye Partners, LP*, Final Order, CPF No. 1-2009-5002, 2012 WL 3144486, *7 (May 30, 2012) (where neither party “present[s] sufficient proof to prove its position,” the violation must be withdrawn because PHMSA bears the burden).

¹⁴ 49 C.F.R. § 195.106. The three pipeline segments are: 12IN Bergen Point – 5th St. Terminal segment, the 12IN Linden – Bergen Point segment, and the 16IN 5th St. Terminal segment.

flange & fittings.”¹⁵ The Notice alleges, therefore, that IMTT-Pipeline did not calculate the internal design pressure of these three pipeline segments in accordance with § 195.106(a).¹⁶

The Notice’s proposed compliance order would require that IMTT-Pipeline “provide records justifying its calculation of [MOP] for these segments in accordance with § 195.106(a).” In addition, if IMTT-Pipeline cannot provide adequate records “to support an internal design calculation that complies with § 195.106(a)-(c),” then IMTT-Pipeline must “develop and submit a work plan for gathering adequate data to verify any unknown properties on these pipelines, for Region Director review and approval.”¹⁷

IMTT-Pipeline contests the allegation that IMTT-Pipeline did not determine the internal design pressure of these pipeline segments in accordance with § 195.106 and the proposed compliance order.

First, IMTT-Pipeline contests the allegation as it relates to the 12IN Linden-Bergen Point pipeline segment because, as indicated on the MOP calculation worksheet provided in the Violation Report, this segment was constructed in 1952, decades before the adoption of Part 195 in 1970. PHMSA does not have the authority to retroactively apply § 195.106 to this segment. Section 60104(b) of the Pipeline Safety states that a “design, installation, initial inspection, or initial testing standard does not apply to a pipeline facility existing when the standard is adopted.”¹⁸ PHMSA’s predecessor agency, the Materials Transportation Bureau, stated that § 195.106 applies only to pipelines “constructed, replaced, relocated, or otherwise changed on or after April 1, 1970.”¹⁹ In 2009, PHMSA reaffirmed this interpretation when it held that § 195.406(a)(1) does not apply to a pipeline constructed before April 1, 1970 because § 195.406(a)(1) “applies to pipelines to which § 195.106 applies.”²⁰ IMTT-Pipeline requests that Item 1 be withdrawn with respect to the 12IN Linden-Bergen Point pipeline segment.

In addition, OPS appears to be interpreting the MOP Calculation Worksheets for these pipeline segments to mean that all yield strength and wall thickness values are unknown and assumed. OPS’s interpretation is incorrect. First, even though § 195.106 does not apply to the 12IN Linden-Bergen Point pipeline because it was constructed before 1970, the MOP Calculation Worksheet plainly shows that IMTT-Pipeline used the default value of 24,000 for pipe grade (SMYS) in calculating internal design pressure, consistent with § 195.106. None of the wall thickness values for this pipeline were assumed and the MOP calculation worksheets do not indicate otherwise or support the allegation.

For the 12IN Bergen Point-5th St. Terminal segment, wall thickness values were known. For yield strength, IMTT-Pipeline’s documentation indicated a yield strength of 35,000, so that

¹⁵ Notice at 2, Violation Report Exh-A-19, Exh-A-20, and Exh-A-21.

¹⁶ Notice at 3.

¹⁷ *Id.* at 14.

¹⁸ 49 U.S.C. § 60104(b).

¹⁹ Letter of James T. Curtis, Jr., Dir., Materials Transportation Bureau, Transportation of Liquids by Pipeline, Operating Pressure for Platform Piping Interpretation, PI-76-068 (Oct. 15, 1976). Attached hereto as Attachment 1, also available on PHMSA’s website at <https://www.phmsa.dot.gov/regulations/title49/interp/PI-76-068>.

²⁰ *Belle Fourche Pipeline Co.*, Decision on Petition for Reconsideration, CPF No. 5-2004-5010, 2009 WL 7810536, **3-4 (July 15, 2009).

value was used. In 2021, IMTT-Pipeline confirmed a yield strength value of 35,000. Similarly, for the 16IN 5th Street Terminal segment, wall thickness values were known, and the MOP Calculation Worksheets do not indicate otherwise. For yield strength, IMTT-Pipeline's documentation indicated a yield strength of 42,000. In 2021, IMTT-Pipeline confirmed yield strength to be 42,000.²¹

Importantly, even if IMTT-Pipeline had used the default yield strength value of 24,000 for the 12IN Bergen Point-5th St. Terminal and the 16IN 5th St. Terminal segment, the established 475 psig MOP would not have been affected because internal design pressure is not the limiting factor for establishing MOP.

OPS has not demonstrated that IMTT-Pipeline calculated internal design pressure using assumed values for wall thickness and yield strength and, therefore, has not met its burden of proving the alleged violation.²² IMTT-Pipeline requests that Item 1 and the associated proposed compliance order be withdrawn.

If PHMSA does not withdraw the alleged violation, IMTT-Pipeline requests that the proposed compliance order be amended because it does not accurately reflect the regulations. The proposed compliance order also is overbroad because it would impose a remedy to address an issue not raised in the alleged violation. In addition, the proposed compliance order does not apply to the 12IN Linden-Bergen Point pipeline segment because it was constructed in 1952 and PHMSA does not have authority under the Pipeline Safety Act to retroactively apply § 195.106 to pipelines that already existed when the regulation was adopted.²³

The proposed compliance order would require that IMTT-Pipeline "provide records justifying its calculation of Maximum Operating Pressure" for the three pipeline segments "in accordance with § 195.106(a)." MOP, however, is not calculated under § 195.106. MOP is calculated under § 195.406. The proposed compliance order does not accurately reflect the regulations.

The proposed compliance order is overbroad because the Notice does not allege a violation of § 195.406 or that MOP of the three pipeline segments is incorrect. The alleged violation is focused solely on the values IMTT-Pipeline used to calculate internal design pressure under § 195.106. Internal design pressure is not the limiting factor for the MOP of any of the three pipeline segments identified in the Notice. To the extent that the proposed compliance order would require that IMTT-Pipeline "provide records justifying its calculation of" MOP for the three pipeline segments, it exceeds the scope of the alleged violation in Item 1. The proposed

²¹ See IMTT-Pipeline – Internal DP - complete listing of all pipe types for IMTT-Pipeline and MOP calculations. IMTT-Pipeline also attaches MOP Calculation Worksheets, dated May 17, 2021 and September 7, 2022. These are attached hereto as Attachment 2.

²² *ExxonMobil*, 2019 WL 3734516 at **4, 5 (withdrawing allegation because PHMSA's evidence did not establish a violation); *Butte Pipeline*, 2009 WL 3190794 at *1 ("PHMSA carries the burden of proving the allegations set forth in the Notice, meaning that a violation may be found only if the evidence supporting the allegation outweighs the evidence and reasoning presented by Respondent in its defense.") (internal citation omitted).

²³ 49 U.S.C. § 60104(b). See also Interpretation PI-76-068 (Attachment 1); *Belle Fourche*, 2009 WL 7810536 at **3-4.

compliance order must be amended so that it is tailored to address the scope of the alleged violation, *i.e.*, the determination of internal design pressure.

The proposed compliance order also is overbroad because it would require that, if IMTT-Pipeline cannot provide adequate records supporting the calculation of internal design pressure, IMTT-Pipeline must submit a work plan for gathering adequate data to verify “any unknown properties on the pipeline.” The Notice does not explain the scope of “any unknown properties of the pipeline” or the factual or legal basis for such a sweeping records verification measure. This proposed compliance order also exceeds Part 195 which contains no such requirement.

OPS bears the burden of proving that a proposed remedy is appropriate.²⁴ OPS provides no explanation for such a broad compliance order that exceeds the scope of the alleged violation and has no basis in the regulations.

IMTT-Pipeline requests that, if not withdrawn, the proposed compliance order be amended as shown below. Deleted text is shown as stricken, and added text is shown with double underlining.

In regard to Item 1 of the Notice pertaining to the failure to determine the internal design pressure of the pipeline, IMTT-Pipeline must provide records justifying its determination of internal design pressure ~~calculation of Maximum Operating Pressure (MOP)~~ for the following segments in accordance with § 195.106(a):

1. 12IN Bergen Point – 5th Street Terminal
- ~~2. 12IN Linden – Bergen Point~~
- 2.3. 16IN 5th Street Terminal

If IMTT-Pipeline is unable to provide adequate records to support an internal design calculation that complies with § 195.106(a)-(c), IMTT-Pipeline must instead develop and submit a work plan for gathering adequate data to verify any unknown ~~properties~~ values for wall thickness and yield strength for the 12IN Bergen Point – 5th Street Terminal segments and the 16IN 5th Street Terminal segment of these pipelines, for Region Director review and approval. IMTT-Pipeline must complete this within 90 days of receipt of the Final Order.

²⁴ See, e.g., *Slusser v. Commodity Futures Trading Comm’n*, 210 F.3d 783, 787-88 (7th Cir. 2000); see also *Gimbel v. Commodity Futures Trading Comm’n*, 872 F.2d 196, 201 (7th Cir. 1989); *Premex, Inc. v. Commodity Futures Trading Comm’n*, 785 F.2d 1403, 1408-09 (9th Cir. 1986); *Bosma v. U.S. Dep’t. of Agriculture*, 754 F.2d 804, 810 (9th Cir. 1985).

Item 2 § 195.402(a). Evidence Demonstrates That IMTT-Pipeline Conducted Annual Review of Its Operations, Maintenance, and Emergency Manuals in Compliance with § 195.402(a).

Section 195.402(a) requires that an operator prepare and follow a manual of written procedures for conducting normal operations and maintenance activities and for handling abnormal operations and emergencies. The operator must review the manual each calendar year at intervals not exceeding 15 months to make any appropriate and necessary changes and ensure the manual remains effective.²⁵

The Notice states that during the inspection, OPS reviewed the following IMTT-Pipeline manuals:

- Operations, Maintenance and Emergency Manual Version 3, dated May 6, 2019 (2019 OME),
- Operations, Maintenance and Emergency Manual Version 1, dated August 2020 (2020 OME), and
- Facility Response Plan Version 6, dated January 2021 (FRP).

The Notice states that during the inspection, IMTT-Pipeline indicated that Appendix E of the OME contained revision logs for 2019 and 2020 and that Appendix T of the FRP contained revision logs. The Notice alleges that these Revisions Logs “failed to indicate that an annual review was conducted, who conducted the annual review, the dates of annual review, and why changes were made.”²⁶ The Notice alleges that, for calendar years 2019 and 2020, IMTT-Pipeline failed to conduct an annual review of its operations, maintenance, and emergency manuals at intervals not to exceed 15 months in violation of § 195.402(a) and proposes to assess a civil penalty of \$31,400.²⁷

IMTT-Pipeline contests this alleged violation as factually and legally unsupported. PHMSA should withdraw the allegation and the proposed civil penalty.

First, the assertion in the Notice that the revision logs in 2019 OME, 2020 OME and the 2021 FRP do not “indicate that an annual review was conducted, who conducted the annual review, the dates of annual review, and why changes were made,” is unsupported. The revision log contained in Appendix E of the 2019 OME states that the log was revised in May 2016, June 2017, June 2018, and April-May 2019. The Revision Log also identifies each person involved in each revision and which section was revised, and provides a brief description of the change made.²⁸ The revision log contained in the 2020 OME indicates that IMTT-Pipeline combined and reorganized the content from previous OME manuals of both IMTT-Pipeline and IMTT-Bayonne and “update[d] references to forms, policies, procedures, and ISO specifications.”²⁹ The revision log contained in Appendix T of the FRP shows that the manual was updated in

²⁵ 49 C.F.R. § 195.402(a).

²⁶ Notice at 3.

²⁷ *Id.*

²⁸ Attachment 3 hereto. Revision Log from Appendix E of IMTT-Pipeline’s May 6, 2019, Operations, Maintenance and Emergency Manual Version 3 (2019 OME), *See* Violation Report, Exh-A-18-IMTT OME dated 05062019.

²⁹ *Id.* Revision Log from IMTT-Pipeline’s August 2020 Operations, Maintenance and Emergency Manual Version 1 at 136 (2020 OME), *See* Violation Report, Exh-A-02-IMTT OME dated 08012020.

November 2016, June 2017, July 2018, July 2019, December 2019, November 2020, and January 2021. Like the revision logs for the other manuals, the FRP revision log reflects who was responsible for revisions, which sections were revised, and the type of change made.³⁰ The allegation in the Notice is plainly factually incorrect.

The allegation also lacks legal support. Neither the language of § 195.402(a) nor its history suggests that an operator must explain in a revision log why changes to a procedural manual were made. PHMSA's Hazardous Liquid IA Question Set also does not suggest that an operator must explain why a procedural manual was revised.

Because the alleged violation in Item 2 is not supported factually or legally, OPS has failed to satisfy its burden of proof. The allegation and the proposed civil penalty must be withdrawn.³¹

Item 6 § 195.405(a). IMTT-Pipeline's Protection of Tank #7640 Against the Risk of Ignition Associated with Static Electricity, Lightning, and Stray Currents Complies with API RP 2003.

Under § 195.405(a), an operator's protection against ignitions arising out of static electricity, lightning, and stray currents during operation and maintenance activities involving aboveground breakout tanks must be in accordance with API RP 2003,³² unless the operator notes in its procedural manual "why compliance with all or certain provisions of API RP 2003 is not necessary for the safety of a particular breakout tank."³³

The Notice states that, during the inspection, IMTT-Pipeline "failed to provide any records or other substantiating evidence demonstrating that in 2019 and 2020" it complied with this requirement.³⁴ The Notice states that, although IMTT-Pipeline indicated that the "information may be located on the breakout tank external inspection reports," these records did not "include any information regarding protection against ignitions arising out of static electricity."³⁵ OPS also asserts that IMTT-Pipeline did not note in its procedural manual why compliance with all or certain provisions of API RP 2003 was not necessary for safety of a particular breakout tank. The Notice proposes to assess a civil penalty of \$64,600.

IMTT-Pipeline contests the alleged violation and the proposed civil penalty and requests that PHMSA withdraw them because OPS has not satisfied its burden of demonstrating a

³⁰ *Id.* Revision Log from Appendix T of IMTT-Pipeline's January 2021 Facility Response Plan Version 6 (2021 FRP). The FRP was not included in the Violation Report for CPF No. 1-2022-016-NOPV.

³¹ *ExxonMobil*, 2019 WL 3734516 at **4, 5 (withdrawing allegation because PHMSA's evidence did not establish a violation); *Air Prods. & Chems.*, 2015 WL 6758819 at *3 (withdrawing alleged violation because PHMSA did not produce "any evidence to support its position" and thereby did not meet its burden of proof); *ExxonMobil*, 2015 WL 780721 at *12 (finding that PHMSA failed to meet burden of proving that certain measures were required under the regulations); *Golden Pass*, 2011 WL 1919517 at *5 (finding that PHMSA did not meet its burden of proving that its interpretation of regulatory language was correct).

³² API RP 2003, "Protection Against Ignitions Arising Out of Static, Lightning, and Stray Currents," (7th ed. Jan. 2008), incorporated by reference into Part 195. 49 C.F.R. § 195.3.

³³ 49 C.F.R. § 195.405(a).

³⁴ Notice at 6.

³⁵ *Id.*

violation. Even if PHMSA does not withdraw this allegation, the proposed civil penalty should be withdrawn because OPS has not demonstrated that it is appropriate.

As an initial matter, IMTT-Pipeline clarifies that “the particular breakout tank” referenced in the Notice is Tank #7640. This is the only tank operated under IMTT-Pipeline’s OPID. The purpose of this tank is to receive surge from the pipeline if the pipeline were to experience an overpressurization.

API RP 2003 “presents the current state of knowledge and technology in the fields of static electricity, lightning, and stray currents applicable to the prevention of hydrocarbon ignition in the petroleum industry.”³⁶ Section 4.5 of API RP 2003 addresses the risk of static discharge incidents at atmospheric storage tanks. Section 4.5.3 states that “[s]torage tanks on grade-level foundations are considered inherently grounded for dissipation of electrostatic charges, regardless of the type of foundation (*i.e.*, concrete, sand, asphalt).”³⁷ Tank #7640 sits on a grade-level foundation and therefore is “inherently grounded,” minimizing the risk of ignition caused by static electricity, in accordance with API RP 2003. Photographs of Tank #7640 showing that it rests on a grade-level foundation are attached to this Response.³⁸

In addition, when operations and maintenance activities are performed on a tank, IMTT-Pipeline employs several measures to minimize the risk of ignition associated with static electricity. For example, IMTT-Pipeline uses conductive metal gauging tapes and requires safe work permits for all contract tank maintenance work. Representative samples of a Job Safety Analysis Worksheet (JSA) and a Work Permit also reflect awareness of electrical hazards. Specifically, the JSA’s warning states, “Electrical – The presence and flow of an electric charge. Examples: powerlines, transformers, static charges, lightning, energized equipment, wiring and batteries.”³⁹ The associated Hot Work Permit required atmospheric monitoring because the job involved welding. The monitoring of the atmosphere to prevent a flammable mixture (which API RP 2003 states is necessary for ignition) and the permit’s documented atmospheric readings, demonstrates protection against the hazard of ignition.⁴⁰

With respect to protecting Tank #7640 from lightning, API RP 2003 Section 5.4 states that “[m]etallic tanks, equipment and structures commonly found in the petroleum industry that are in direct contact with the ground (*i.e.* no nonconducting membranes) have proved to be sufficiently well grounded to provide for safe propagation to ground of lightning strokes.”⁴¹ API RP 2003 states further that “[m]etallic tanks, equipment, and structures that are insulated from ground should be adequately grounded and bonded. Such connections, when properly designed, provide a means of propagating the discharge to ground without causing damage to insulating

³⁶ API RP 2003 at 1.

³⁷ *Id.* at 31. Grounding is defined as “the process of bonding one or more conductive objects to the ground, so that all objects are at zero (0) electrical potential.” *Id.* at 4.

³⁸ Attachment 4, *hereto*.

³⁹ IMTT’s Job Safety Analysis Worksheet and Safe Work Permit for Tank 1161 at 1 (Apr. 23, 2021). Attached *hereto* as Attachment 5.

⁴⁰ *Id.* at 11.

⁴¹ API RP 2003 at 47.

materials that may be in the direct path of the stroke.”⁴² API RP 2003 refers to NFPA 70 and NFPA 780 “for more information on grounding practices for lightning protection.”⁴³

Tank # 7640 is grounded in accordance with NFPA 780, and therefore its protection from ignition caused by lightning strikes is consistent with API RP 2003.⁴⁴ In addition, IMTT-Pipeline follows a lightning policy, developed by IMTT-Bayonne which owns terminals that have 115 aboveground storage tanks, that minimizes lightning-related hazards to individuals and ancillary outdoor operations.⁴⁵

Importantly, API RP 2003 does not address preventing ignition associated with stray currents at aboveground petroleum storage tanks. API RP 2003’s discussion of stray currents is focused on buried infrastructure, such as pipelines.

As provided by API RP 2003, Tank #7640 rests on a grade-level foundation and therefore is protected from the risk of static electricity. The tank is grounded in accordance with NFPA 780 and is protected from ignition caused by lightning. Other maintenance policies and practices (i.e., the use of conductive metal gauging tape, the requirement for a JSA and, when necessary, a hot work permit that requires atmospheric monitoring during work on a tank) demonstrate reasonable measures and practices to protect against the risk of ignition consistent with API RP 2003. OPS has identified no activity in 2019 or 2020 for which IMTT-Pipeline failed to provide records demonstrating that its protection from ignitions did not comply with API RP 2003. OPS has failed to satisfy its burden of proving that IMTT-Pipeline lacks records showing how it protects against the risk of ignition associated with static electricity, and lightning or has otherwise failed to protect Tank #7640 from such risks.⁴⁶ For these reasons, this allegation and the associated proposed civil penalty should be withdrawn.

If PHMSA does not withdraw the allegation, IMTT-Pipeline requests that the proposed civil penalty be withdrawn because OPS has not demonstrated that it is appropriate.⁴⁷ The allegation for this item is that IMTT-Pipeline did not provide records or “other substantiating evidence” for 2019 and 2020 demonstrating that the protection IMTT-Pipeline “provide[s] against ignitions arising out of static electricity, lightning, and stray currents during operation and maintenance activities involving aboveground breakout tanks was [performed] in accordance with API RP 2003.”⁴⁸ The Proposed Civil Penalty Calculation Worksheet reflects two instances of a violation, presumably one violation for each year.

⁴² *Id.*

⁴³ *Id.* (internal citation omitted). NFPA 70 is the *National Electrical Code*. NFPA 780 is the *Standard for the Installation of Lightning Protection Systems*. Both are published by the National Fire Protection Association (NFPA).

⁴⁴ Photographs of Tank #7640 showing that it is grounded are attached to this Response as Attachment 6.

⁴⁵ IMTT’s Lightning Policy for Terminal Operations at 1 (Aug. 11, 2015). Attached hereto as Attachment 7.

⁴⁶ *EQT Corp.*, 2010 WL 2228558 at **6, 7 (finding that OPS did not present evidence or analysis proving that Respondent’s actions were inadequate under the regulation); *Bridger Pipeline*, 2009 WL 2336991 at **5, 6 (finding evidence introduced by PHMSA insufficient to establish a violation).

⁴⁷ See e.g., *Slusser*, 210 F.3d at 787-88; see also *Gimbel*, 872 F.2d at 201; *Premex*, 785 F.2d at 1408-09; *Bosma*, 754 F.2d at 810.

⁴⁸ Notice at 6.

Unlike Part 195's inspection and testing regulations, compliance with § 195.405(a) and API RP 2003, does not entail a recurring compliance obligation. Inspections are not needed to annually determine that Tank # 7640 is still set on a grade-level foundation (which provides the grounding needed to dissipate electrostatic charges) or that the tank is grounded to protect against lightning. JSAs and Work Permits are not generated unless they are required for a specific activity or project. OPS has identified no activity in 2019 or 2020 for which IMTT-Pipeline failed to provide records demonstrating that its protection from ignitions did not comply with API RP 2003. Therefore, given the nature of the compliance requirement, calculating a civil penalty by using an annual multiplier is inappropriate and the proposed civil penalty should be withdrawn.⁴⁹

Item 11 § 195.452(i)(1).⁵⁰ IMTT-Pipeline Implements and Adequately Documents P&M Measures.

Section 195.452(i)(1) of the integrity management regulations requires that IMTT-Pipeline “take measures to prevent and mitigate the consequences of a pipeline failure that could affect” a high consequence area.⁵¹ The Notice states that, during the inspection, PHMSA reviewed Appendix A of IMTT-Pipeline's Liquid Integrity Management Program (IMP) which states, in part, that IMTT-Pipeline “uses form IMP-701B: Preventive and Mitigative Measures Tracking List” “to track, measure implementation, and monitor implemented measures for effectiveness” of the P&M measures. The Notice alleges that “IMTT-Pipeline did not provide any records for calendar years 2019 and 2020” to demonstrate implementation of IMP P&M actions, in violation of § 195.452(i)(1).⁵² The Notice proposes to assess a civil penalty of \$31,400.

To support the allegation, the Violation Report provides IMTT-Pipeline's IMP (dated June 2018), a document entitled “IMP Annual Meeting Roster,” and a document entitled “IMTT Liquids IMP Effectiveness Review – Year 2019.”⁵³

IMTT-Pipeline contests Item 11 and requests that it be withdrawn, along with the proposed civil penalty. IMTT-Pipeline acknowledges that it did not provide completed copies of Form IMP-701B during the audit. IMTT-Pipeline contests, however, the Notice's assertion that IMTT-Pipeline did not provide “any” records demonstrating implementation of P&M measures.

First, during the audit, IMTT-Pipeline provided two Risk Analysis Reports, dated April 2020 and April 22, 2021, which recommended P&M measures for the pipeline system. The inspector seemed to accept that these Risk Analysis Reports satisfy the requirement § 195.452(i)(1).⁵⁴ In addition, although IMTT-Pipeline did not use form IMP-701B, IMTT-

⁴⁹ See e.g., *Slusser*, 210 F.3d at 787-88; see also *Gimbel*, 872 F.2d at 201; *Premex*, 785 F.2d at 1408-09; *Bosma*, 754 F.2d at 810.

⁵⁰ This Item appears as Item 10 in the Violation Report. This Response uses the numbering reflected in the Notice as it was posted on PHMSA's website.

⁵¹ 49 C.F.R. § 195.542(i)(1).

⁵² Notice at 9.

⁵³ Violation Report at 45 (Exh-A-15 and Exh-A-17).

⁵⁴ 2019 Risk Analysis Report of International-Matex Tank Terminals' IMTT Pipeline System, prepared by Integrity Solutions, April 6, 2020, and 2020 Risk Analysis Report of International-Matex Tank Terminals' IMTT Pipeline

Pipeline produced a “Preventive and Mitigative Measures Tracking List” that identifies numerous P&M measures, and other information, including the threat to be addressed, the original threat score, original risk score and current status.⁵⁵ None of these documents are mentioned in the Notice.

During the audit, IMTT-Pipeline also provided information and documentation regarding the Grasselli Road 12-inch Pipeline Relocation Project under which IMTT-Pipeline has replaced a 1700-foot-long pipeline segment in Linden, New Jersey, that had been identified as a higher risk section of the IMTT-Pipeline system. While not acknowledged in the Notice, replacing this pipeline segment was identified as a recommended P&M measure in the 2019 Risk Analysis Report because the pipe contained a number of anomalies. The replacement of this pipeline segment dramatically reduced its risk score in IMTT-Pipeline’s risk model and has improved the safety of this portion of the IMTT-Pipeline system.

IMTT-Pipeline’s two risk analyses, IMTT-Pipeline’s P&M Measures Tracking list, and documentation related to the Grasselli Road Pipe replacement Project demonstrate compliance with § 195.452(i)(1). IMTT-Pipeline requests that PHMSA withdraw Item 11 because PHMSA has not satisfied its burden of proving that IMTT-Pipeline did not provide any records of its P&M measures or implement P&M measures.⁵⁶ The proposed civil penalty also should be withdrawn.

Item 12 § 195.555. IMTT-Pipeline’s Corrosion Control Specialist Maintains Thorough Knowledge of Corrosion Control Procedures.

Section 195.555 requires that an operator “require and verify that supervisors maintain a thorough knowledge of that portion of the corrosion control procedures established under § 195.402(c)(3) for which they are responsible for ensuring compliance.”⁵⁷ The Notice asserts that, during the inspection, OPS requested IMTT-Pipeline’s corrosion control supervisor training records for 2019 and 2020. According to the Notice, IMTT-Pipeline stated that it has a corrosion control specialist, but not a corrosion control supervisor. The Notice acknowledges that IMTT-Pipeline provided the specialist’s transcript from the New Jersey Institute of Technology (NJIT), the specialist’s CP2-Cathodic Protection Technician NACE Training Certificate, and an Operator Qualification (OQ) Report for the specialist. The Violation Report includes these documents, except that pages 2 and 3 of the NJIT transcript are omitted.

System, prepared by Integrity Solutions, April 22, 2021. See Attachment 8. These Risk Analysis Reports contain critical energy infrastructure information as well as proprietary and commercially sensitive information. IMTT-Pipeline requests that they be treated as “Confidential.” Pursuant to § 190.208(e), IMTT-Pipeline has provided public and non-public versions of the attachments for this Response.

⁵⁵ Attached hereto as Attachment 9.

⁵⁶ See, e.g., *ExxonMobil*, 2019 WL 3734516 at **4, 5 (ordering withdrawal of allegations where OPS failed to prove that Respondent engaged in conduct that would constitute a violation); *Bridger Pipeline*, 2009 WL 2336991 at **5, 6 (finding that evidence introduced by PHMSA was insufficient to establish a violation); *Butte Pipeline*, 2009 WL 3190794 at *1 (“PHMSA carries the burden of proving the allegations set forth in the Notice, meaning that a violation may be found only if the evidence supporting the allegation outweighs the evidence and reasoning presented by Respondent in its defense.”) (internal citation omitted).

⁵⁷ 49 C.F.R. § 195.555.

The Notice asserts that these records did not demonstrate compliance with the regulatory requirement and alleges that IMTT-Pipeline “failed to require and verify that is [*sic*] supervisors maintain a thorough knowledge of that portion of the corrosion control procedures established under § 195.402(c)(3) for which they are responsible for insuring compliance,” in violation of § 195.555.⁵⁸ The Notice proposes to assess a civil penalty of \$31,400.

IMTT-Pipeline contests the alleged violation and the proposed civil penalty. The purpose of § 195.555 is to ensure that individuals who direct others to carry out corrosion control procedures have sufficient knowledge of the corrosion control procedures so they understand what they are directing.⁵⁹ PHMSA has stated that we “expect that individuals who qualify as a supervisor . . . will have appropriate technical training or experience in corrosion control.”⁶⁰

IMTT-Pipeline relies on a third-party corrosion control contractor to perform corrosion control activities on its pipeline facilities. IMTT explained during the inspection that, at that time, it did not have an employee with the title corrosion control “supervisor,” but did have a corrosion control specialist who was being trained and groomed for the role of supervisor, and who works with the third-party contractor.

As part of his training to become a corrosion control supervisor, IMTT-Pipeline’s corrosion control specialist has earned his NACE certificate for CP2-Cathodic Protection – Technician.⁶¹ The Cathodic Protection Technician course “provides intermediate-level training in both theoretical knowledge and practice techniques for testing and evaluating data to determine the effectiveness of both galvanic and impressed current CP systems and to gather design data.”⁶² Obtaining a CP2 Certificate requires completion of rigorous course work in cathodic protection and passage of both written and practical examinations. Prerequisites for this course include the successful completion of the CP1 – Cathodic Protection Tester NACE Certificate, which IMTT-Pipeline’s corrosion control specialist also successfully completed, and a degree in physical sciences or engineering or related work experience that demonstrates experience in these areas.⁶³ The NJIT course transcript of IMTT-Pipeline’s corrosion control specialist demonstrates that background.

In addition, the OQ Report identified in the Notice, and attached hereto, demonstrates that IMTT-Pipeline’s specialist is qualified on the following corrosion control-related tasks: Inspect Cathodic Protection Rectifiers (for both skills and knowledge), Inspect Internal Pipe Surfaces (knowledge), Prevention of Atmospheric Corrosion (knowledge). He completed all of these courses in 2019 and 2020, *before* the May 2021 inspection of the IMTT-Pipeline.

⁵⁸ Notice at 10.

⁵⁹ Controlling Corrosion on Hazardous Liquid and Carbon Dioxide Pipelines, Notice of Proposed Rulemaking, 65 Fed. Reg. 76968, 76975 (Dec. 8, 2000).

⁶⁰ Controlling Corrosion on Hazardous Liquid and Carbon Dioxide Pipelines, Final Rule, 66 Fed. Reg. 66994, 66995 (Dec. 27, 2001).

⁶¹ In early 2021, NACE International, the Corrosion Society and the Society for Protective Coatings merged to form the Association for Materials Protection and Performance (AMPP). AMPP consists of two governance structures. The focus of the AMPP Global Center is on, among other things, education and training.

⁶² Cathodic Protection Course, <https://www.ampp.org/education/education-resources/courses-by-program/cathodic-protection/cp-technician> (last visited Sept. 7, 2022).

⁶³ Attachment 10 hereto includes documentation of the specialist’s corrosion control credentials.

The Notice does not explain why these records do not adequately demonstrate that IMTT-Pipeline's corrosion control specialist possesses a thorough knowledge of the IMTT-Pipeline's corrosion control procedures requisite of a supervisor. The Notice also does not identify any instance where the specialist failed to demonstrate knowledge of the corrosion control procedures. This allegation should be withdrawn because the information provided in the Violation Report does not establish a violation of § 195.555.⁶⁴

If PHMSA does not withdraw this allegation, IMTT-Pipeline requests that OPS eliminate or substantially reduce the proposed civil penalty as unwarranted and not appropriate under the circumstances.⁶⁵ IMTT-Pipeline is undertaking good faith actions to train and groom the corrosion control specialist to become a corrosion control supervisor in title.

III. CONCLUSION

Based on the foregoing, IMTT-Pipeline requests that PHMSA withdraw Item 1, Item 2, Item 6, Item 11, and Item 12, and find that IMTT-Pipeline has satisfied the provisions of the proposed compliance orders in Item 10 and Item 14.

Respectfully submitted,

Shaun Revere
Chief Operating Officer
International-Matex Tank Terminals

September 27, 2022

⁶⁴ *ExxonMobil*, 2019 WL 3734516 at **4, 5 (ordering withdrawal of allegations where OPS failed to prove that Respondent engaged in conduct that would constitute a violation); *EQT Corp.*, 2010 WL 2228558 at **6, 7 (withdrawing allegation after finding that OPS did not present evidence or analysis proving that Respondent's actions were inadequate under the regulation).

⁶⁵ See e.g., *Slusser*, 210 F.3d at 787-88; see also *Gimbel*, 872 F.2d at 201; *Premex*, 785 F.2d at 1408-09; *Bosma*, 754 F.2d at 810.