



By Email Only

February 6, 2023

Mr. Robert Burrough
Director, Eastern Region
Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration
840 Bear Tavern Road, Suite 300
West Trenton, New Jersey 08628

**Re: IMTT-Pipeline, CPF No. 1-2022-016-NOPV
Amended and Supplemental Written Response to Notice of Probable Violation,
Proposed Civil Penalty and Proposed Compliance Order**

Dear Mr. Burrough,

International-Matex Tank Terminals Pipeline (IMTT-Pipeline) respectfully submits an Amended and Supplemental Response (Response) to the Notice of Probable Violation, Proposed Civil Penalty and Proposed Compliance Order (Notice) issued on July 1, 2022. This case previously had been set for a hearing on February 15, 2023, with pre-hearing submissions due on February 6, 2023. On February 2, 2023, IMTT-Pipeline withdrew its request for a hearing. This Response, which incorporates by reference the initial Written Response submitted on September 27, 2022, is submitted in lieu of prehearing materials.

Since IMTT-Pipeline submitted its initial Written Response, IMTT-Pipeline and the Region have engaged in settlement meetings. If those discussions result in a consent agreement, IMTT-Pipeline will amend its Written Responses accordingly.

IMTT-Pipeline reiterates its request for all documents or communications from the Office of Pipeline Safety pertaining to the case or the case file, including the Region Director's "written evaluation of response material submitted by the respondent and recommendation for final action, if one is prepared."¹ IMTT-Pipeline reserves the right to respond to the Region Recommendation.

IMTT- Pipeline is committed to public safety and operating its 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of violation seriously, however, certain allegations in the Notice are legally and factually unsupported and must be withdrawn.

¹ 49 C.F.R. § 190.209(b)(7) (2021).

IMTT- Pipeline looks forward to working with you and your staff to resolve the issues raised in the Notice. Please do not hesitate to contact the undersigned if you have any questions.

Respectfully submitted,



Shaun Revere
Chief Operating Officer
International-Matex Tank Terminals

CC (by email):

Kathleen Maitland, Esq., Attorney Advisor, Office of Chief Counsel, PHMSA
Joseph St. Peter, Esq., Attorney Advisor, Office of Chief Counsel, PHMSA
Robert Burrough, Director, Eastern Region, PHMSA
Richard Jurisich, Esq., Secretary and General Counsel, IMTT
Susan Olenchuk, Attorney, Van Ness Feldman, LLP

**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

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

International-Matex Tank Terminals Pipeline (IMTT-Pipeline) amends and supplements the Written Response (initial Written Response) submitted on September 27, 2022 regarding the Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice) issued on July 1, 2022. On September 27, 2022, IMTT-Pipeline also submitted a request for hearing and a preliminary statement of issues. The hearing was scheduled for February 15, 2023, with pre-hearing submissions due on February 6, 2023. On February 2, 2023, IMTT withdrew its request for a hearing. This Amended and Supplemental Written Response, which incorporates by reference the initial Written Response submitted on September 27, 2022, is submitted in lieu of the prehearing materials.

IMTT-Pipeline and the Region have engaged in settlement meetings. If those discussions result in a consent agreement, IMTT-Pipeline will amend its Written Responses accordingly.

IMTT-Pipeline reiterates its request for all documents or communications from the Office of Pipeline Safety (OPS) pertaining to the case or the case file, including the Region Director's "written evaluation of response material submitted by the respondent and recommendation for final action, if one is prepared."¹ IMTT-Pipeline reserves the right to respond to the Region Recommendation.

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.

¹ 49 C.F.R. § 190.209(b)(7) (2021).

I. Executive Summary

The Notice in this proceeding contains 14 items. Seven of those items, Item 3, Item 4, Item 5, Item 7, Item 8, Item 9, and Item 13, are warning items and are not addressed in IMTT-Pipeline's written responses.

In its initial Written Response, IMTT-Pipeline did not contest Item 10 and provided the Region with information complying with the compliance order proposed for that Item. IMTT-Pipeline also did not contest Item 14 and requested that PHMSA find that IMTT-Pipeline had provided the notification required under § 195.64 in compliance with the proposed compliance order for that item.

Below is an overview of IMTT-Pipeline's response to the remaining items as reflected in the initial Written Response and this Amended and Supplemental Response.

Item 1 § 195.106 Internal design pressure. IMTT-Pipeline amends the information previously provided regarding the physical characteristics of one of the pipelines at issue in this item. IMTT-Pipeline requests that this item be withdrawn for failure to prove that IMTT-Pipeline used assumed values for wall thickness and pipe design in calculating internal design pressure for the three identified pipeline segments. If not withdrawn, IMTT-Pipeline requests that the proposed compliance order be revised so that it accurately reflects the regulations and is appropriately tailored to the allegation.

Item 2 § 195.402(a) Procedural manual for operations, maintenance, and emergencies. IMTT-Pipeline contests this allegation and requests that this item and the proposed civil penalty be withdrawn. The allegation related to the 2020 Operations, Maintenance and Emergency (OME) Manual is unsupported because this manual was created in August 2020 to consolidate the OME Manuals for both IMTT-Pipeline and IMTT-Bayonne. At the time of the May 2021 inspection, the deadline for performing an annual review for this manual was still months away. The revision logs in the 2019 OME demonstrate the performance of annual reviews, who conducted them, their dates, and the revisions made. The information contained in the revision logs is consistent with PHMSA's Part 195 Operations and Maintenance Enforcement Guidance and a previous PHMSA enforcement decision. IMTT-Pipeline's review of its Facilities Response Plan is governed by § 194.121, which requires a review only every five years. This manual is not subject to § 195.402(a).

Item 6 § 195.405(a) Protection against ignitions and safe access/egress involving floating roofs. IMTT-Pipeline contests this allegation and requests that this item and the proposed civil penalty be withdrawn. Consistent 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 addition, as provided in API RP 2003, the tank is grounded consistent with National Fire Protection Association (NFPA) 780 and is protected from ignition caused lightning. API RP 2003 does not address the protection of aboveground tanks from ignition caused by stray currents because the risk presented by stray currents is relevant to buried pipelines, not to aboveground storage tanks. Other operations and

maintenance policies reflect reasonable measures and practices to protect against the risk of ignition consistent with API RP 2003.

If the allegation is not withdrawn, IMTT-Pipeline requests that the proposed civil penalty be eliminated or substantially reduced. Photographs showing that Tank # 7640 rests on a grade-level foundation and is grounded are adequate proof that the tank is protected against ignition caused by static electricity and lightning strikes. Monthly visual inspections of the external surfaces of these tanks would identify any issues requiring follow-up. Recurring inspections are not necessary or required for compliance. Moreover, Job Safety Assessments and Work Permits for various tasks performed at the tanks are generated only 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 and requests that the allegation and proposed civil penalty be withdrawn. The documented credentials of IMTT-Pipeline’s corrosion control specialist verify that he “maintains a thorough knowledge of that portion of the corrosion control procedures . . . for which they are responsible for ensuring compliance.”² The corrosion control specialist has earned National Association of Corrosion Engineers (NACE, now Association for Materials Protection and Performance (AMPP)) certificates for CP2-Cathodic Protection – Technician, and CP1-Cathodic Protection Tester. He is qualified under multiple corrosion control-related tasks that are contained in IMTT-Pipeline’s corrosion control manual, 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. This documentation is consistent with the records identified in PHMSA’s Part 195 Corrosion Enforcement Guidance as appropriate for demonstrating compliance with this regulation.

² 49 C.F.R. § 195.555.

II. Amended and Supplemental 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, therefore, violated § 195.106.³ The proposed compliance order would require that IMTT-Pipeline “provide records justifying its calculation of Maximum Operating Pressure (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.”⁴

IMTT-Pipeline amends and supplements its initial Written Response as set forth below.

IMTT-Pipeline amends its prior description of the 12IN Linden-Bergen Point pipeline segment. In the initial Written Response, IMTT-Pipeline stated that all of the pipeline in this segment was constructed in 1952. After further review of the records, IMTT-Pipeline has determined that most of the 1952 vintage pipe in this segment has been replaced. Replacement pipe was installed in 2020, 2003, 1980, and 1975. Approximately 21% of the original 1952 pipeline remains.

In its initial Written Response, IMTT-Pipeline requested that the proposed compliance order be modified in several respects. IMTT-Pipeline continues to request that the proposed compliance order be modified, but in light of the above amended description of the pipelines comprising the 12IN Linden-Bergen Point pipeline segment, now requests that the proposed compliance order for Item 1 be modified as follows:

Remove the reference to MOP so that the proposed compliance order is focused on internal design pressure. 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. It is calculated under § 195.406. The proposed compliance order does not accurately reflect the regulations.

Moreover, the Notice does not allege either a violation of § 195.406 or that the 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. 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

³ 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.

⁴ Notice at 14.

violation. OPS bears the burden of proving that a proposed remedy is appropriate.⁵ The Notice contains 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 also notes that the MOP of the three pipeline segments identified in the Notice is not limited by internal design pressure. Rather, IMTT-Pipeline has established MOP at 475 psig to reflect the settings on a shut-off pump located on the Colonial Pipeline which is connected to IMTT-Pipeline. It is this shut-off pump setting, not internal design pressure, that limits the MOP of the IMTT-Pipeline. The internal design pressures of all of the pipeline segments identified in this item are higher than the established MOP.

Remove the reference to “unknown properties on the pipeline” so that the proposed compliance order is limited to wall thickness and pipe grade. The proposed compliance order 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 and vague records verification measure. This proposed compliance order also exceeds Part 195 which contains no such requirement.

Narrow the scope of the proposed compliance order to apply only to pipe constructed after 1970. Section 195.106 is a design regulation which does not apply retroactively to pipeline segments constructed before 1970.⁶ 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.”⁷ 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.”⁸

⁵ 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).

⁶ 49 U.S.C. § 60104(b) (“design, installation, initial inspection, or initial testing standard does not apply to a pipeline facility existing when the standard is adopted.”).

⁷ 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 to IMTT-Pipeline’s initial Written Response as Attachment 1, also available on PHMSA’s website at <https://www.phmsa.dot.gov/regulations/title49/interp/PI-76-068>.

⁸ *Belle Fourche Pipeline Co.*, Decision on Petition for Reconsideration, CPF No. 5-2004-5010, 2009 WL 7810536, **3-4 (July 15, 2009).

IMTT-Pipeline requests that the language of the proposed compliance order be amended as shown below. Text proposed to be deleted 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 (for segments constructed after 1970)
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 segment and the 16IN 5th Street Terminal segment and the portions of the 12IN Linden – Bergen Point segment constructed after 1970 ~~of these pipelines~~, for Region Director review and approval. IMTT-Pipeline must complete this within 90 days of receipt of the Final Order.

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.⁹ During the inspection, OPS reviewed the following IMTT-Pipeline manuals:

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

The Notice alleges that the Revision Logs contained in these manuals “failed to indicate that an annual review was conducted, who conducted the annual review, the dates of annual review, and why changes were made.”¹⁰ Therefore, the Notice alleges that for calendar years

⁹ 49 C.F.R. § 195.402(a).

¹⁰ Notice at 3.

2019 and 2020, IMTT-Pipeline failed to conduct the required annual reviews at intervals not to exceed 15 months in violation of § 195.402(a). The Notice proposes a civil penalty of \$31,400.¹¹

IMTT-Pipeline supplements its initial Written Response as set forth below.

The allegation regarding the 2020 OME should be withdrawn because this manual did not exist until August 2020 when IMTT consolidated and reorganized the content of the previously separate operations, maintenance, and emergency procedures of IMTT-Pipeline and IMTT-Bayonne. This consolidation is reflected in the title of the 2020 OME and in its Revision Log.¹² The deadline for completing the first annual review of this manual was November 2021, months after the May 2021 inspection. The allegation that IMTT-Pipeline failed to perform an annual review of the 2020 OME within the required 15-month window is not supported and IMTT-Pipeline requests that the allegation with respect to this manual be withdrawn.

Similarly, because the 2019 OME was superseded and replaced by the 2020 OME in August 2020, the allegation that IMTT-Pipeline failed to review the 2019 OME in 2020 lacks factual support. By August 2020, the 2019 OME was no longer in effect and IMTT-Pipeline was no longer required to annually review it.

The allegation regarding the 2020 FRP also is not supported. IMTT-Pipeline maintains and implements the FRP pursuant to Part 194 of PHMSA's regulations.¹³ Section 194.121 requires that FRPs be reviewed and updated every 5 years.¹⁴ The 15-month annual review requirement contained in § 195.402(a) does not apply to the FRP. IMTT-Pipeline requests that the allegation regarding the FRP be withdrawn.

IMTT-Pipeline also requests withdrawal of this item because, not only do the revision logs in these manuals contain the information that the Notice alleges is missing, but the logs contain the information which PHMSA's Part 195 Operation & Maintenance (O&M) Enforcement Guidance states is expected for demonstrating compliance. PHMSA's Part 195 O&M Enforcement Guidance states that the record an operator "maintains of its annual O&M review, as required by §§ 192.605(a) and 195.402(a) . . . should include the name of reviewer and date(s) of review."¹⁵ The Guidance states further that an operator's review should indicate "Who did it and when."¹⁶ IMTT-Pipeline's revision logs contain this information. In addition, in a 2012 enforcement decision, PHMSA accepted "revision dates in [operator's] O&M" as evidence that the operator had performed annual reviews of its O&M Manual.¹⁷

¹¹ *Id.*

¹² The Revision Log states "Initial publish of new manual combining content from previous IMTT-Pipeline and IMTT-Terminals manuals." Violation Report, Exh.-A-02. The revision log for the 2020 OME was provided in Attachment 3 of IMTT-Pipeline's initial Written Response.

¹³ 49 C.F.R. Part 194.

¹⁴ 49 C.F.R. § 194.121(a).

¹⁵ PHMSA, Operations and Maintenance Enforcement Guidance, Part 195 Subpart F at p. 11 (July 21, 2017) <https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/regulatory-compliance/pipeline/enforcement/5781/o-m-enforcement-guidance-part-195-7-21-2017.pdf>.

¹⁶ *Id.*

¹⁷ *Bridger Pipeline, LLC*, CPF No. 5-2009-5034, 2012 WL 4846351, *6 (Aug. 30, 2012).

IMTT-Pipeline's revision logs are *prima facie* evidence of timely annual reviews performed under § 195.402(a). The revision log, which specifies who performed the annual reviews, the date of each review, the sections updated, and the revisions made, contains the information PHMSA's enforcement guidance states is necessary to demonstrate compliance.¹⁸ The Notice does not explain the basis for alleging that this information is insufficient to demonstrate compliance.

Nevertheless, as additional evidence of compliance, IMTT-Pipeline is providing a printout of a log from its compliance management software, called Intalex.¹⁹ The log documents IMTT-Pipeline's "Annual O&M Review" and makes clear that IMTT-Pipeline completed the "Annual Review of content" of the 2019 OME on May 6, 2019.

PHMSA can prevail in an enforcement proceeding "only if the evidence supporting the allegation outweighs the evidence and reasoning presented by Respondent in its defense."²⁰ Otherwise, PHMSA has not satisfied its burden of proof. Here, IMTT-Pipeline has demonstrated that the facts do not support the allegations regarding any of the manuals identified in the Notice. In fact, with respect to the 2019 OME, IMTT-Pipeline has demonstrated that it annually reviewed the manual in compliance with the regulation. IMTT-Pipeline requests that the alleged violation in Item 2 and proposed civil penalty be withdrawn because OPS has failed to satisfy its burden of proof.

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.

IMTT-Pipeline's initial Written Response, including attachments which includes photographs of Tank #7640, demonstrates compliance with API RP 2003. Tank #7640 is protected from the risk of ignition caused by static electricity because it rests on a grade level foundation. The tank is protected from ignition caused by lightning because the tank is grounded as provided by API RP 2003. IMTT-Pipeline's monthly "Required Checklist" forms which are used to document monthly visual inspections of breakout tanks, provide a place for the employee to note any problems with grounding.

API RP 2003 does not address stray currents for aboveground tanks because the risk of stray currents is relevant to buried piping, not to aboveground storage tanks.

IMTT-Pipeline complies with API RP 2003 and is not required to note in its procedural manual why compliance with this industry standard is not necessary for the safety of Tank #7640. IMTT-Pipeline requests that this item be withdrawn.

¹⁸ 2019 OME Revision Log (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 (Attachment 3 of initial Written Response).

¹⁹ Attached as Attachment 1 hereto.

²⁰ *Butte Pipeline Co.*, 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).

Item 11 § 195.452(i)(1).²¹ IMTT-Pipeline Implements and Adequately Documents P&M Measures.

IMTT-Pipeline incorporates by reference its initial Written Response with respect to Item 11 and does not provide a supplemental response.

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.”²² The Notice acknowledges the records that demonstrate the credentials of IMTT-Pipeline’s corrosion control specialist (*i.e.*, transcript showing an Applied Physics degree from the New Jersey Institute of Technology (NJIT), CP2-Cathodic Protection Technician NACE (now AMPP) Training Certificate, and Operator Qualifications in corrosion control procedures),²³ but asserts without explanation that these records do not demonstrate compliance.²⁴

IMTT-Pipeline incorporates and supplements its initial Written Response contesting this item.

The Notice is inconsistent with PHMSA’s Part 195 Corrosion Enforcement Guidance which provides the following guidance for demonstrating compliance with § 195.555:

“1. These persons shall have knowledge of the physical sciences and principles of engineering and mathematics, acquired by education and related practical experience, and shall be qualified to engage in the practice of corrosion control for external, internal, and atmospheric corrosion.

2. A qualified person may be a registered professional engineer whose professional activities include suitable experience in corrosion or a person recognized as a corrosion specialist or cathodic protection specialist by NACE, or a person with practical experience and training equivalent to the applicable NACE requirements.”²⁵

Consistent with PHMSA’s Part 195 Corrosion Enforcement Guidance, IMTT-Pipeline’s corrosion control specialist possesses an applied physics degree which demonstrates knowledge

²¹ 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.

²² 49 C.F.R. § 195.555.

²³ These documents were included in IMTT-Pipeline’s initial Written Response at Attachment 10.

²⁴ Notice at 10.

²⁵ PHMSA, Part 195 Corrosion Enforcement Guidance at 8 (June 22, 2016),

https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/Corrosion_Enforcement_Guidance_Part195_6_22_2016.pdf.

of the physical sciences and principles of engineering and mathematics, acquired by education.²⁶ In addition, the specialist's two NACE certifications show that he is "recognized as a corrosion specialist or cathodic protection specialist by NACE."²⁷

IMTT-Pipeline's corrosion control specialist has two NACE (now AMPP) certifications, Cathodic Protection Technician CP2 Certification and CP1 Cathodic Protection Tester. By successfully completing the Cathodic Protection Technician CP2 Certification, the specialist demonstrated proficiency in the following: testing and troubleshooting rectifier component parts; performing simulated CP related field tests and evaluating the results; performing tests to verify the presence of stray current interference (primarily related to underground pipelines) and recommending methods to mitigate the interference; conducting and interpreting different current measurements; interpreting voltage (IR) free readings, polarization formation and decay tests; maintaining records; summarizing induced AC voltage on pipelines and the methods of mitigation; and understanding the purpose and uses of corrosion coupon test stations. Successful completion of a practical examination is required to obtain certification.²⁸

To obtain a CP1 Cathodic Protection Tester certification, the IMTT-Pipeline corrosion control specialist was required to demonstrate a proficiency in a number of areas, including the basics of electricity, electrical laws, electrochemistry, corrosion and cathodic protection theory; defining how polarity is related to current flow and metal corrosion activity; conducting tests to identify shorts and continuity tests in CP systems; using test instruments to perform a variety of field tests such as structure-to-soil potentials, voltage and current measurements, soil resistivity, pipe/cable locating, and rectifier readings; defining CP components including impressed current systems, galvanic anodes, and test stations; reading shunts and recognizing their use in rectifiers, bonds, and anodes; performing periodic surveys to confirm the effectiveness of a CP system; recalling the use, maintenance and precautions for reference cells; using basic location mapping, report preparation, and recordkeeping; recognizing safety issues specific to CP; and recalling code requirements related to CP. Obtaining a CP1 certification required course attendance and passage of each learning assessment, including a practical exam.²⁹

The Notice also is inconsistent with an October 2022 enforcement decision³⁰ involving an alleged violation of § 192.453. Section 192.453 reflects a requirement similar to § 195.555, and requires that "[t]he corrosion control procedures required by § 192.605(b)(2), including those for the design, installation, operation, and maintenance of cathodic protection systems, must be carried out by, or under the direction of, a person qualified in pipeline corrosion control methods."³¹ In that decision, PHMSA faulted the operator for not providing sufficient OQ records "demonstrating that individuals overseeing and performing OQ covered tasks related to

²⁶ PHMSA, Part 195 Corrosion Enforcement Guidance at 8. The corrosion control specialist's transcript is included as Attachment 10 to IMTT-Pipeline's initial Written Response.

²⁷ PHMSA, Part 195 Corrosion Enforcement Guidance at 8.

²⁸ The Association for Materials Protection and Performance, Cathodic Protection Technician (CP2) Certification, <https://www.ampp.org/education/education-resources/courses-by-program/cathodic-protection/cp-technician#course>

²⁹ AMPP, Cathodic Protection Tester (CP1) Certification, , <https://www.ampp.org/education/education-resources/courses-by-program/cathodic-protection/cp-tester#course>

³⁰ *Neptune LNG, LLC*, CPF No. 1-2022-049-NOPV, 2022 WL 16900261, *2 (Oct. 11, 2022).

³¹ 49 C.F.R. § 192.453.

corrosion control were qualified to do so” and records of training by an industry-sponsored organization such as NACE.³²

The types of records identified in this enforcement decision are the same as those that IMTT-Pipeline has provided to demonstrate that its corrosion control specialist has a thorough knowledge in corrosion control procedures for which he is responsible. For example, IMTT-Pipeline’s corrosion control specialist has earned OQ certifications in the following tasks: Inspection of Cathodic Protection Rectifiers (for both skills and knowledge), Inspection of Internal Pipe Surfaces (knowledge), and Prevention of Atmospheric Corrosion (knowledge). IMTT-Pipeline’s Corrosion Control Manual contains a procedure for each of these tasks. These OQ certifications are required to perform the following specific procedures contained in IMTT-Pipeline’s corrosion control procedure: Rectifier Inspections and Rectifier Troubleshooting,³³ Inspection of Internal Surfaces,³⁴ and Atmospheric Corrosion Control Monitoring.³⁵

The qualifications described in PHMSA’s Corrosion Enforcement Guidance and the records identified in the October 2022 enforcement decision are more than adequate to verify that IMTT-Pipeline’s corrosion control specialist maintains a thorough knowledge of the procedures for which he is responsible for ensuring compliance. The Notice does not explain why documentation of these credentials falls short of demonstrating compliance.

PHMSA can prevail in an enforcement proceeding “only if the evidence supporting the allegation outweighs the evidence and reasoning presented by Respondent in its defense.”³⁶ PHMSA also bears the burden of persuasion and “must prove, by a preponderance of the evidence, that the facts necessary to sustain a probable violation actually occurred.”³⁷ This burden is carried “only if the evidence supporting the allegation outweighs the evidence and reasoning presented by Respondent in its defense.”³⁸ Here, the evidence verifies that IMTT-Pipeline’s corrosion control specialist possesses a thorough knowledge of the corrosion control procedures for which he is responsible for ensuring compliance. IMTT Pipeline requests that the alleged violation and the proposed civil penalty be withdrawn.

³² *Neptune LNG*, 2022 WL 16900261 at * 2.

³³ IMTT Corrosion Manual, Section 16 and Section 17 (April 2021). See Violation Report for 1-2022-017-NOPV, Exh.-A-03.

³⁴ IMTT Corrosion Manual, Section 4.3. See Violation Report for 1-2022-017-NOPV, Exh.-A-03.

³⁵ IMTT Corrosion Manual, Section 3 and Section 9. See Violation Report for 1-2022-017-NOPV, Exh.-A-03.

³⁶ *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.”).

³⁷ *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).

³⁸ *Butte Pipeline*, 2009 WL 3190794 at *1 (internal citation omitted).

³⁸ *Id.*

III. CONCLUSION

Based on the foregoing, IMTT-Pipeline requests that PHMSA withdraw Item 1, Item 2, Item 6, Item 11, and Item 12. If Item 1 is not withdrawn, IMTT-Pipeline requests that the proposed compliance order be amended as described in this Amended and Supplemental Response.

IMTT-Pipeline also requests that PHMSA find that IMTT-Pipeline has satisfied the provisions of the proposed compliance orders in Item 10 and Item 14.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Shaun Revere', is placed over a light yellow rectangular background.

Shaun Revere
Chief Operating Officer
International-Matex Tank Terminals

February 6, 2023

**In the Matter of IMTT-Pipeline
CPF No. 1-2022-016-NOPV**

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

List of Attachments

Attachment 1	Log Printout from Intelex Compliance Management Software Documenting the 2019 Annual Review of IMTT-Pipeline, 2019 Operations, Maintenance and Emergency Manual
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Attachment 1

Log Printout from Intalex Compliance Management Software Documenting the 2019
Annual Review of IMTT-Pipeline, 2019 Operations, Maintenance and Emergency Manual

Annual O&M Review

Amended and Supplemental Response of IMTT-Pipeline
CPF No. 1-2022-016-NOPV

Workflow Stage: Open Workflow Status: Open Person Responsible: Jason Sluzynski Due Date: Saturday, May 01, 2021

Permit Details

Location	Bayonne Pipeline
Record No.	396
Category	PHMSA
Description	
Permit Number	

Permit Activity Details

Activity No.	1463
Activity Description	Annual O&M Review
Person Responsible	Jason Sluzynski
Frequency	Annually
Next Scheduled Date	Saturday, May 01, 2021 12:00:00 AM
Date Not Required	

Notes

Activity Cost

Amended and Supplemental Response of IMTT-Pipeline
CPF No. 1-2022-016-NOPV

Samples

Sample Id	Sample Description	Date/Time	Comments

Permit Activity History

History No.	Date Completed	Completed By	Completion Notes
2866	Thursday, May 16, 2019	Jason Sluzynski	Final content review and effectiveness review completed 5/15/2019 with main department personnel and SMEs. Content was added from 04/01 - 05/06/2019 (Completed by Briana Ferguson)
2867	Friday, May 01, 2020	Jason Sluzynski	O&M review started in January, 2020. Significant overhaul on the structure and content was recommended to included removing the CRM from the

History No.	Date Completed	Completed By	Completion Notes
Amended and Supplemental Response of IMTT-Pipeline CPF No. 1-2022-016-NOPV			document and having a stand alone document. This process is ongoing and is expected to be completed in June, 2020.
2865	Monday, May 06, 2019	Jason Sluzynski	Sections 1.2.1.2., 2.3.3.2.1., 9.4.1, 9.4.5, 9.4.12.2, 9.4.13.2., 9.4.14, 33.4. & Appendices A & B. Annual Review of content, clarification on responsibilities in the Intro; Added content for: line breaking (separating) procedure for un-bolting and repairing pipelines; tubing procedures; update old Durg & Alcohol Program to eScreen & Assurint; New Factory Talk SCADA & backup SCADA Lookout. (completed by Briana Ferguson)

Private Document Attachment

Attachment Name	URL

Workflow Comments

Stage	Date Submitted	Comment	Submitted By
		Amended and Supplemental Response of IMTT-Pipeline CPF No. 1-2022-016-NOPV	