

December 28, 2023

VIA ELECTRONIC MAIL TO: carlinconner@imtt.com

Mr. Carlin Conner
President and Chief Executive Officer
IMTT-Bayonne
400 Poydras Street, Suite 3000
New Orleans, Louisiana 77002

CPF No. 1-2022-017-NOPV

Dear Mr. Conner:

Enclosed please find a Consent Order incorporating the terms of the Consent Agreement between the Pipeline and Hazardous Materials Safety Administration (PHMSA) and IMTT-Bayonne, which was executed on December 13, 2023. Service of the Consent Order and Consent Agreement by electronic mail is deemed effective upon the date of transmission and acknowledgement of receipt, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosures: Order and Consent Agreement

cc: Mr. Robert Burrough, Director, Eastern Region, Office of Pipeline Safety, PHMSA
Mr. Richard Jurisich, Esq., Secretary and General Counsel, IMTT-Bayonne,
richardjurisich@imtt.com
Mr. Shaun Revere, Chief Operating Officer, IMTT-Bayonne, shaunrevere@imtt.com
Ms. Susan Olenchuk, Esq., Van Ness Feldman LLP, Outside Counsel to IMTT-Bayonne,
sam@vnf.com

CONFIRMATION OF RECEIPT REQUESTED

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

In the Matter of)	
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IMTT-Bayonne,)	CPF No. 1-2022-017-NOPV
)	
Respondent.)	

CONSENT ORDER

By letter dated July 1, 2022, the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), issued a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice) to IMTT-Bayonne (IMTT or Respondent).

In response to the Notice, Respondent contested Items 2, 8, and 13 of the alleged violations and the associated proposed civil penalties, and requested a hearing in this matter. Respondent also asked for the opportunity to meet informally with PHMSA to discuss the issues raised in its response. Respondent and PHMSA (The Parties) subsequently met to discuss the issues raised in the Response. As a result of those discussions, as explained in more detail below PHMSA agreed to withdraw one alleged violation, and the Parties agreed the proposed compliance order action has already been completed. Respondent agreed to certain findings of violation without admission, and subject to the agreed terms of the Parties, to pay a reduced civil penalty.

Accordingly, the Consent Agreement is hereby approved and incorporated by reference into this Consent Order. IMTT is hereby ordered to comply with the terms of the Consent Agreement pursuant to its terms.

Pursuant to 49 U.S.C. § 60101, *et seq.*, failure to comply with this Consent Order may result in the assessment of civil penalties as set forth in 49 U.S.C. § 60122 and 49 C.F.R. § 190.223.

The terms and conditions of this Consent Order are effective upon service in accordance with 49 C.F.R. § 190.5.

December 28, 2023

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued

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

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In the Matter of)		
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IMTT-Bayonne,)	CPF No. 1-2022-017-NOPV	
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Respondent.)		
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CONSENT AGREEMENT

From May 10 through May 24, 2021, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), pursuant to Chapter 601 of 49 United States Code (U.S.C.), conducted an integrated inspection of the facilities and records of International-Matex Tank Terminals (IMTT)-Bayonne (IMTT or Respondent) and IMTT-Pipeline’s records and facilities in Bayonne, New Jersey.¹ IMTT is an interstate hazardous liquid pipeline with approximately 40 miles of pipeline and 117 breakout tanks.

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated July 1, 2022, a Notice of Probable Violation, Proposed Compliance Order, and Proposed Civil Penalty (Notice), which also included warning items pursuant to 49 C.F.R. § 190.205. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that IMTT committed violations of provisions of 49 C.F.R. Part 195, proposed ordering Respondent to take certain measures to correct an alleged violation, and proposed a civil penalty of \$643,100. Nine alleged violations (Items 3, 4, 5, 7, 8, 9, and 13) were brought as warnings, advising Respondent to correct the probable violations or face potential future enforcement action.

IMTT timely responded to the Notice (after a request for extension was requested and granted by the Director) on September 27, 2023 (Response).² Respondent requested a hearing and contested Items 2 and 8, Item 13 in part, and the proposed civil penalty. IMTT stated that it was electing not to contest Items 11 and 14, and that Items 1, 3, 4, 5, 6, 7, 9, 10, and 12 were warning items. Respondent also requested to meet informally with PHMSA to discuss the issues raised in the Response.

¹ IMTT is comprised of two PHMSA Operator Identifications (OPIDs) – IMTT-Bayonne and IMTT-Pipeline. This integrated inspection included a review of IMTT-Pipeline’s records and facilities; the companion case is CPF 1-2022-016-NOPV.

² IMTT also provided an additional supplemental response to the Notice on February 6, 2023.

PHMSA and Respondent (the Parties) subsequently met to discuss the issues raised in the Response. As a result of those discussions, and as explained in more detail below for Item 11, the Parties have agreed that the proposed compliance item has already been completed. For Items 8, 13, and 14, the parties have agreed to a reduced total civil penalty assessment of \$541,600. PHMSA has agreed to withdraw the alleged violation in Item 2. IMTT withdrew its hearing request on February 2, 2023.

Having agreed that settlement of this proceeding will avoid further administrative proceedings or litigation and will serve the public interest by promoting safety and protection of the environment, pursuant to 49 C.F.R. Part 190, and upon consent and agreement, the Parties hereby agree as follows:

I. General Provisions

1. Respondent acknowledges that as the operator of the pipeline facilities subject to the Notice, Respondent and its referenced pipeline facilities are subject to the jurisdiction of the Federal pipeline safety laws, 49 U.S.C. § 60101, et seq., and the regulations and administrative orders issued thereunder. For purposes of this Agreement, Respondent acknowledges that it received proper notice of PHMSA's action in this proceeding and that the Notice states claims upon which relief may be granted pursuant to 49 U.S.C. § 60101, et seq., and the regulations and orders issued thereunder.

2. After Respondent returns this signed Agreement to PHMSA, the Agency's representative will present it to the Associate Administrator for Pipeline Safety, recommending that the Associate Administrator adopt the terms of this Consent Agreement by issuing an administrative order (Consent Order) incorporating the terms of this Agreement. The terms of this Agreement constitute an offer of settlement until accepted by the Associate Administrator. Once accepted, the Associate Administrator will issue a Consent Order incorporating the terms of this Agreement.

3. Respondent consents to the issuance of the Consent Order, and hereby waives any further procedural requirements with respect to its issuance. Respondent waives all rights to contest the adequacy of notice, or the validity of the Consent Order or this Agreement, including all rights to administrative or judicial hearings or appeals, except as set forth herein.

4. This Agreement shall apply to and be binding upon PHMSA and Respondent, its officers, directors, and employees, and its successors, assigns, or other entities or persons otherwise bound by law. Respondent agrees to provide a copy of this Agreement and any incorporated work plans and schedules to all of Respondent's officers, employees, and agents whose duties might reasonably include compliance with this Agreement.

5. This Agreement constitutes the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating

to settlement other than those expressly contained in this Agreement, except that the terms of this Agreement may be construed by reference to the Notice.

6. Nothing in this Agreement affects or relieves Respondent of its responsibility to comply with all applicable requirements of the Federal pipeline safety laws, 49 U.S.C. § 60101, *et seq.*, and the regulations and orders issued thereunder. Nothing in this Agreement alters PHMSA's right of access, entry, inspection, and information gathering or PHMSA's authority to bring enforcement actions against Respondent pursuant to the Federal pipeline safety laws, the regulations and orders issued thereunder, or any other provision of Federal or State law.

7. For all transfers of ownership or operating responsibility of Respondent's pipeline system referenced herein, Respondent will provide a copy of this Agreement to the prospective transferee at least 30 days prior to such transfer. Respondent will provide written notice of the transfer to the PHMSA Eastern Regional Director no later than 60 days after the transfer occurs.

8. This Agreement does not waive or modify any Federal, State, or local laws or regulations that are applicable to Respondent's pipeline systems. This Agreement is not a permit, or a modification of any permit, under any Federal, State, or local laws or regulations. Respondent remains responsible for achieving and maintaining compliance with all applicable Federal, State, and local laws, regulations and permits.

9. This Agreement does not create rights in, or grant any cause of action to, any third party not party to this Agreement. The U.S. Department of Transportation is not liable for any injuries or damages to persons or property arising from acts or omissions of Respondent or its officers, employees, or agents carrying out the work required by this Agreement. Respondent agrees to hold harmless the U.S. Department of Transportation, its officers, employees, agents, and representatives from any and all causes of action arising from any acts or omissions of Respondent or its contractors in carrying out any work required by this Agreement.

10. Except as otherwise specified herein, This Agreement does not constitute a finding of violation of any other federal law or regulation and may not be used in any civil proceeding of any kind as evidence or proof of any fact, fault or liability, or as evidence of a violation of any law, rule, regulation, or requirement, except in a proceeding to enforce the provisions of this agreement or in future PHMSA enforcement actions. Respondent neither admits nor denies any allegation or conclusion in the Notice or this Agreement, but agrees for purposes of this Agreement to comply with the terms of this Agreement.

11. Upon issuance of the Consent Order, the Parties agree to the following terms.

II. **Findings of Violation:**

12. **Item 8- 49 C.F.R. § 195.432(b):** The Notice alleged Respondent failed to inspect the physical integrity of in-service atmospheric and low-pressure steel aboveground breakout tanks according to API 653. Specifically, IMTT did not perform external visual (monthly) breakout tank inspections for all of its tanks for February through December 2019, as specified under Section 6.3.1.3 of API 653. Respondent contested Item 8 and requested that the proposed

civil penalty be withdrawn. IMTT submitted work order sheets and monthly checklist records for each terminal yard for the subject months in the Notice. However, the documents only establish that a work order to inspect each terminal yard was generated (which alone is not compliant with API 653), and the monthly checklist attached to the work order references tanks out of service at the time of inspection. PHMSA finds violations of § 195.432(b).

13. Item 11- 49 C.F.R. § 195.452(l)(1): The Notice alleged Respondent failed to maintain records that demonstrate compliance with the requirements of Subpart F of Part 195. Specifically, IMTT failed to maintain documents of the evaluation of the capability of its leak detection required by § 195.452(i)(3). IMTT did not contest the alleged violation and stated it was submitting additional information showing its compliance with the proposed compliance order, and requested the Director find that the compliance action had already been completed. PHMSA finds a violation of § 195.452(l)(1).

14. Item 13- 49 C.F.R. § 195.573(d): The Notice alleged Respondent failed to inspect each cathodic protection system used to control corrosion on the bottom of an aboveground breakout tank to ensure that operation and maintenance of the system are in accordance with API RP 651, and did not note in its corrosion control procedures why complying with all or certain operation and maintenance provisions of API RP 651 is not necessary for the safety of the tank. Specifically, the Notice alleged IMTT failed to inspect 66 of its breakout tank cathodic protection systems during calendar years 2019 and 2020. Respondent contested Item 8, stating the alleged violations should be withdrawn with respect to the tanks for which it provided inspection records and that the proposed civil penalty be reduced. During settlement discussions, Respondent provided additional tank inspection records (cathodic protection survey records for 2019 and 2020). Upon review of the additional documents, the Parties agree to a reduced civil penalty assessment for this violation on the basis of failure to inspect 36 breakout tanks in 2019 and 2020. PHMSA finds violations of § 195.573(d).

15. Item 14- 49 C.F.R. § 195.589(a)(2): The Notice alleged Respondent failed to maintain records or maps showing the location of its cathodic protection facilities, including galvanic anodes, installed after January 28, 2002, in accordance with § 195.589(a)(2). IMTT did not contest the alleged violation or the proposed civil penalty. PHMSA finds a violation of § 195.589(a)(2).

III. Warning Items:

16. Item 1- 49 C.F.R. § 195.264(b)(1)(i): The Notice alleged Respondent failed to provide adequate records demonstrating that its eight breakout tanks, built post-October 2, 2000, have adequate impoundments in accordance with section 22.11.2 of NFPA-30.

17. Item 3- 49 C.F.R. § 195.402(a): The Notice alleged Respondent failed to conduct a review of its operations, maintenance, and emergency manual, at intervals not exceeding 15 months, but at least once each calendar year, and make appropriate changes as necessary to ensure that the manual is effective.

18. Item 4- 49 C.F.R. § 195.402(c)(13): The Notice alleged Respondent failed to conduct periodic reviews of the work done by operator personnel to determine the effectiveness of the procedures used in normal operation and maintenance and taking corrective action where deficiencies are found.

19. Item 5- 49 C.F.R. § 195.404(c)(3): The Notice alleged Respondent failed to maintain adequate records of each inspection or test required by Part 195 for at least two years or until the next inspection or test is performed, whichever is longer. Specifically, IMTT failed to maintain adequate external visual (monthly) breakout tank inspection records for 115 of its tanks for calendar year 2020.

20. Item 6- 49 C.F.R. § 195.404(c)(3): The Notice alleged Respondent failed to maintain adequate records of each inspection or test required by Part 195 for at least two years or until the next inspection or test is performed, whichever is longer. Specifically, IMTT failed to maintain adequate records in calendar years 2019 and 2020 for conducting mainline valve inspections required by § 195.420(b).

21. Item 7- 49 C.F.R. § 195.405(a): The Notice alleged Respondent failed to maintain records demonstrating that protection provided against ignitions arising out of static electricity, lighting, and stray currents during operation and maintenance activities involving aboveground breakout tanks was done in accordance with API RP 2003, and failed to note in its procedural manual why compliance with all or certain provisions of API RP 2003 were not necessary for safety of a particular breakout tank.

22. Item 9- 49 C.F.R. § 195.452(b)(5): The Notice alleged Respondent failed to implement and follow its Integrity Management program. Specifically, IMTT failed to follow its Liquid Integrity Management Program Procedure, Version 1, dated June 2018 (IMP), Section 8.4, regarding performance metrics for calendar year 2020.

23. Item 10- 49 C.F.R. § 195.452(i)(1): The Notice alleged Respondent failed to take measures to prevent and mitigate the consequences of a pipeline failure that could affect a high consequence area. Specifically, during calendar years 2019 and 2020, IMTT failed to implement required preventive and mitigative actions.

24. Item 12- 49 C.F.R. § 195.555: The Notice alleged Respondent failed to 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.

25. For Warning Items 1, 3, 4, 5, 6, 7, 9, 10, and 12, if OPS finds a violation of these provisions in a subsequent inspection, Respondent may be subject to future enforcement action.

IV. Civil Penalty:

26. **Item 8:** The Notice proposed a civil penalty of \$310,000 for the alleged violations. Respondent contested Item 8 and requested that the allegation and the proposed civil penalty be withdrawn. IMTT provided work order sheets and monthly checklist records for each terminal yard for the subject months in the Notice. However, the documents only establish a work order to inspect each terminal yard was generated which alone is not compliant with API 653, and the monthly checklist attached to the work order references tanks out of service at the time of inspection. Respondent agrees, without admission, to pay a civil penalty in the amount of **\$310,000** for the violations in Item 8.

27. **Item 13:** The Notice proposed a civil penalty of \$263,000 for the alleged violations. IMTT requested that the proposed civil penalty be reduced. Upon review of additional inspection records described above that Respondent provided during settlement discussions, the Parties agree to a reduced civil penalty assessment (reduced gravity consideration for number of occurrences) for this violation, on the basis of failure to inspect 36 breakout tanks in 2019 and 2020, rather than 66 as alleged in the Notice. Respondent agrees, without admission, to pay a reduced civil penalty in the amount of **\$211,600** for the violations in Item 13.

28. **Item 14:** The Notice proposed a civil penalty of \$20,000 for this alleged violation. Respondent agrees, without admission, to pay the proposed civil penalty in the amount of **\$20,000** for the violation in Item 14.

29. Respondent shall pay a total civil penalty in the amount of **\$541,600**, pursuant to the payment instructions at 49 C.F.R. § 190.227(a), to be paid in full no later than 20 days from the *Effective Date* of this Agreement.

V. Compliance Order:

30. **Item 11:** The Notice proposed certain compliance order actions to address the non-compliance alleged in Item 11. The proposed compliance order would have required IMTT to complete a leak detection evaluation on its associated pipeline system, in accordance with § 195.452(i)(3), within 90 days of receipt of a Final Order in this matter. As discussed above, based on additional records submitted by IMTT during settlement discussions, namely a September 8, 2021, leak detection evaluation report, the Parties agreed that the proposed compliance order for this Item 11 has already been completed.

VI. Item Withdrawn:

31. **Item 2- 49 C.F.R. § 195.402(a):** The Notice alleged Respondent failed to follow its corrosion control procedures, and specifically that it failed to follow its Corrosion Manual, dated April 1, 2021, for conducting its atmospheric corrosion monitoring inspections.

Respondent contested Item 2, stating the Notice relies on records of inspections conducted in 2017 through 2020 to support a violation of a corrosion control manual that was not adopted until April 2021. IMTT requested that PHMSA withdraw the alleged violation and the associated proposed civil penalty. After engaging in additional discussions, the Parties agree this alleged violation in Item 2 should be withdrawn. Because this Item 2 will be withdrawn, it will not constitute a finding of violation for any purpose, and no further action by Respondent is necessary to achieve compliance. The allegation of violation for Item 2 is and the associated proposed civil penalty are withdrawn.

VII. Enforcement:

32. This Agreement is subject to all enforcement authorities available to PHMSA under 49 U.S.C. § 60101, *et seq.*, and 49 C.F.R. Part 190, including administrative civil penalties under 49 U.S.C. § 60122, of up to \$257,664 per violation for each day the violation continues and referral of the case to the Attorney General for judicial enforcement, if PHMSA determines that Respondent is not complying with the terms of this Agreement in accordance with the determinations made by the Director, or if appealed, in accordance with decisions of the Associate Administrator. The maximum civil penalty amounts are adjusted annually for inflation. *See* 49 C.F.R. § 190.223.

VIII. Dispute Resolution:

33. The Director and Respondent will informally attempt to resolve any disputes arising under this Agreement, including but not limited to any decision of the Director. If Respondent and the Director are unable to informally resolve the dispute within 15 calendar days after the dispute is first raised, in writing, to the Director, Respondent may submit a written request for a determination resolving the dispute from the Associate Administrator for Pipeline Safety, PHMSA. Such request must be made in writing and provided to the Director, counsel for the Eastern Region, and to the Associate Administrator for Pipeline Safety, no later than 10 calendar days from the 15-day deadline for informal resolution referenced in this paragraph. Along with its request, Respondent must provide the Associate Administrator with all information Respondent believes is relevant to the dispute. Decisions of the Associate Administrator under this paragraph will constitute final agency action. The existence of a dispute and PHMSA's consideration of matters placed in dispute will not excuse, toll, or suspend any term or timeframe for completion of any work to be performed under this Agreement during the pendency of the dispute resolution process, except as agreed by the Director or the Associate Administrator in writing, or ordered by a court of competent jurisdiction.

IX. Effective Date:

34. The term "Effective Date," as used herein, is the date on which the Consent Order is issued by the Associate Administrator, PHMSA, incorporating the terms of this Agreement.

X. Recordkeeping and Information Disclosure:

35. Unless otherwise required in this Agreement, Respondent agrees to maintain records demonstrating compliance with all requirements of this Agreement for a period of at

least five (5) years following completion of all work to be performed. For any reports, plans, or other deliverables required to be submitted to PHMSA pursuant to this Agreement, Respondent may assert a claim of business confidentiality or other protections applicable to the release of information by PHMSA, covering part or all of the information required to be submitted to PHMSA pursuant to this Agreement in accordance with 49 C.F.R. Part 7. Respondent must mark the claim of confidentiality in writing on each page, and include a statement specifying the grounds for each claim of confidentiality. PHMSA determines release of any information submitted pursuant to this Agreement in accordance with 49 C.F.R. Part 7, the Freedom of Information Act, 5 U.S.C. § 552, DOT and PHMSA policies, and other applicable regulations and Executive Orders.

XI. Modification:

36. The terms of this Agreement may be modified by mutual agreement of the Parties. Such modifications must be in writing and signed by both parties.

XII. Ratification:

37. The Parties' undersigned representatives certify that they are fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such party to this document.

38. The Parties hereby agree to all conditions and terms of this Agreement.

For IMTT-Bayonne:

Date

For PHMSA:

Director, Eastern Region, Office of Pipeline Safety

Date