

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

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

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

International-Matex Tank Terminals Bayonne (IMTT-Bayonne) supplements the 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-Bayonne 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 Supplemental Written Response, which incorporates by reference the Written Response submitted on September 27, 2022, is submitted in lieu of the prehearing materials.

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

IMTT-Bayonne 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-Bayonne reserves the right to respond to the Region Recommendation.

IMTT-Bayonne is committed to public safety and operating its facilities in accordance with PHMSA’s regulations. IMTT-Bayonne takes PHMSA’s allegations of violation seriously, however, certain allegations in the Notice are legally and factually unsupported and IMTT-Bayonne requests that they be withdrawn.

I. Executive Summary

The Notice in this proceeding contains 14 items. Nine of those items, Item 1, Item 3, Item 4, Item 5, Item 6, Item 7, Item 9, Item 10, and Item 12, are warning items and are not addressed in IMTT-Bayonne’s written responses. In its initial Written Response, IMTT-

¹ 49 C.F.R. § 190.209(b)(7) (2021).

Bayonne did not contest the allegation in Item 11 and submitted information that complies with the compliance order proposed for that Item. IMTT-Bayonne also did not contest Item 14 and will remit the proposed civil penalty.

In addition, Warning Item 3 and Warning Item 12 share the same facts as the allegations contained in Item 2 and Item 12 of the companion Notice issued to IMTT-Pipeline in CPF No. 1-2022-016-NOPV. If either Item 2 or Item 12 in CPF No. 1-2022-016-NOPV are withdrawn, IMTT-Bayonne requests that the corresponding warning items in this Notice also be withdrawn.

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

Item 2 § 195.402(a) Procedural manual for operations, maintenance, and emergencies. In its initial Written Response, IMTT-Bayonne contested this alleged violation because the Notice relies on inspection records from 2017 through 2020 to support a violation of a corrosion control manual that was not adopted until April 2021. IMTT-Bayonne requests that PHMSA withdraw the allegation and the associated proposed civil penalty. This Supplemental Response does not further address this item.

Item 8 § 195.432(b) Inspection of in-service breakout tanks. IMTT-Bayonne contests this allegation. In this Supplemental Response, IMTT-Bayonne is providing the Work Order Sheets and the Monthly Required Checklist records that, taken together, document the monthly visual inspections of the exterior surfaces of the 115 tanks during the months of February – December 2019. IMTT-Bayonne requests that the allegation and the proposed civil penalty be withdrawn.

Item 13 § 195.573(d) What must I do to monitor external corrosion control? IMTT-Bayonne contests this alleged violation in part. IMTT-Bayonne first notes that the correct number of breakout tanks with cathodic protection used to control corrosion on the bottom of aboveground breakout tanks is 53, not 66. IMTT-Bayonne is not contesting this item with respect to the 35 breakout tanks with sacrificial galvanic anodes. For the 18 breakout tanks that are cathodically protected with impressed current systems, IMTT-Bayonne provided Annual Cathodic Protection Inspection Surveys in its initial Written Response, and is providing cathodic protection rectifier maintenance records in this response. These records demonstrate that IMTT-Bayonne “inspect[s] 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,” as required under §195.573(d). IMTT-Bayonne requests that the alleged violation be withdrawn with respect to these 18 tanks and that the proposed civil penalty be reduced by a proportionate amount.

II. Supplemental Responses of IMTT-Bayonne

Item 2 § 195.402(a). PHMSA Has Not Proven That IMTT-Bayonne Violated Its 2021 Corrosion Control Procedures.

IMTT-Bayonne incorporates by reference its initial Written Response with respect to Item 2 and does not provide a supplemental response.

Item 8 § 195.432(b). PHMSA Has Not Proven That IMTT-Bayonne Failed to Visually Inspect the Exterior Surfaces of In-Service Breakout Tanks.

Section 195.432(b) requires, among other things, that an operator inspect the physical integrity of in-service atmospheric and low-pressure steel above-ground breakout tanks in accordance with API Standard 653.² Section 6.3.1.3 of API Standard 653 states in part:

This routine in-service inspection shall include a visual inspection of the tank's exterior surfaces. Evidence of leaks; shell distortions; signs of settlement; corrosion; and condition of the foundation, paint coatings, insulation systems, and appurtenances should be documented for follow-up action by an authorized inspector.³

The Notice alleges that IMTT-Bayonne's Monthly Breakout Tank Records "failed to include February through December of calendar year 2019."⁴ Therefore, the Notice alleges that IMTT-Bayonne "failed to inspect all 115 of its steel atmospheric or low-pressure breakout tanks for their routine in-service inspections during February through December 2019," in violation of § 195.432(b).⁵ The Notice proposes to assess a \$310,000 civil penalty.⁶

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

IMTT-Bayonne's 115 breakout tanks are located in the following ten terminal yards: Yard 1, Yard 4, Yard 5, Yard 6, Yard 8, Yard 9, 5th Street, Curries Yard, Bergen Point, and Packards Yard. As described in its initial Written Response, during 2019, the records that IMTT-Bayonne generated to document monthly visual inspections of the exterior surfaces of each breakout tank consisted of a Monthly Breakout Tank Work Order sheet (Work Order Sheet) and a Monthly Required Checklists (Monthly Required Checklists).⁷

Every month, IMTT-Bayonne generated a Work Order Sheet for each yard listing all the breakout tanks to be visually inspected in that yard. When the visual inspections of the tanks each yard were completed, the Work Order was marked "closed" in IMTT-Bayonne's asset

² Notice at 5.

³ *Id.* citing API Standard 653.

⁴ *Id.* at 7.

⁵ *Id.* at 8.

⁶ *Id.* at 12.

⁷ By way of example, the April 2019 Monthly Work Order Sheet and Monthly Breakout Tank Checklist for the tanks in Yard 5 was included as Attachment 1 to IMTT-Bayonne's initial Written Response.

management system, called Hexagon. Occasionally, the employee inspecting the tanks would write the word “pass” on a physical copy of the Work Order Sheet, but that was not required. The absence of handwritten notations did not mean tanks were not inspected.

In addition to a Work Order Sheet, the employee inspecting the tanks completed a companion Monthly Required Checklist that was signed by the inspector and a supervisor.⁸ The Monthly Required Checklist recorded in the aggregate the condition of the tanks located in a specific yard. If any issues requiring further investigation were identified, the inspector noted them on the Monthly Required Checklist form so that a further work order could be generated for follow-up investigation. Taken together, the Work Order Sheet and Monthly Required Checklist for each yard constituted documentation that the exterior surfaces of each tank in each yard had been visually inspected.

IMTT-Bayonne did not fail to inspect the 115 breakout tanks during the period February 2019-December 2019. To demonstrate that these tanks were visually inspected, IMTT-Bayonne is providing, for each yard, the closed Work Order Sheets and Monthly Required Checklists for February 2019 – December 2019.⁹

IMTT-Bayonne notes the following with respect to these records.

- Each closed Work Order Sheet has a data field called “Date Completed.” This is the date that the administrative staff entered the information from the Monthly Required Checklists into the data base. The “Date Completed” is not the date the inspection was performed. The date the inspection was performed is noted on the Monthly Required Checklist.
- A few of the Monthly Required Checklist forms were either not available or were incomplete. In those instances, IMTT- Bayonne is providing a copy of the printed Work Order Sheet used by the employee to note that individual tanks “passed” the visual inspection and the date on which the inspection was performed.

These records demonstrate that IMTT-Bayonne performed the monthly visual inspections of the 115 breakout tanks in all ten yards.

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.”¹⁰ PHMSA also bears the burden of persuasion and “must prove, by a preponderance of the

⁸ *Id.*

⁹ See Attachment 1 hereto. Given the large size of the files in Attachment 1, IMTT-Bayonne is providing them via a SharePoint Link.

<https://vnf0.sharepoint.com/:f/s/DiscoveryDocuments/EnIV0yRqxAFPiLc60hh4wUBeHedzPOumVYDaq4oj1Zxf?e=UlhCLA>

¹⁰ *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).

evidence, that the facts necessary to sustain a probable violation actually occurred.”¹¹ A respondent prevails not by conclusively proving compliance, but where its rebuttal evidence is more persuasive than the evidence provided by PHMSA.¹²

In this case, IMTT-Bayonne has provided evidence documenting that it visually inspected the 115 breakout tanks from February 2019 and December 2019 and PHMSA has not met its burden of proving otherwise. IMTT-Bayonne requests that the allegation and proposed civil penalty be withdrawn.

Item 13 § 195.573(d). IMTT-Bayonne Requests Partial Withdrawal With Respect to Tanks Cathodically Protected by Impressed Current.

Section 195.573(d) requires that an operator “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 (incorporated by reference, *see* § 195.3).”¹³ The Notice alleges that IMTT-Bayonne “failed to inspect each cathodic protection system used to control corrosion on the bottom of its aboveground breakout tanks to ensure that operation and maintenance of the system are in accordance with API RP 651 in 66 instances.”¹⁴

IMTT-Bayonne contests this alleged violation in part. First, as noted in the initial Written Response, the correct number of breakout tanks with cathodic protection used to control corrosion on the bottom of aboveground breakout tanks is 53, not 66. Of those 53 tanks, 35 have tank bottoms that are cathodically protected with sacrificial galvanic anodes.¹⁵ IMTT-Bayonne has acknowledged that it does not have records of cathodic protection inspections for these 35 breakout tanks.

At the time of the May 2021 inspection, 18 breakout tanks were cathodically protected by impressed current systems.¹⁶ In its initial Written Response, IMTT-Bayonne provided the annual cathodic protection inspection surveys for 2019 and 2020 for these tanks.¹⁷ In this Supplemental Written Response, IMTT-Bayonne is providing Cathodic Protection Rectifier

¹¹ *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 *ANR Pipeline Co.*, Final Order, CPF No. 3-2011-1011, 2012 WL 7177134, *3 (Dec. 31, 2012) (withdrawing allegation because evidence in violation report was insufficient to rebut respondent’s argument).

¹³ 49 C.F.R. § 195.573(d).

¹⁴ Notice at 11.

¹⁵ A list of aboveground storage tanks protected with galvanic anodes is attached hereto as Attachment 2.

¹⁶ During 2019, the number of breakout tanks cathodically protected by impressed current was six. During 2020, IMTT-Bayonne installed impressed current systems on an additional 12 breakout tanks, for a total of 18. IMTT-Bayonne also installed impressed current cathodic protection on another breakout tank (Tank 6008) in November 2022. During the 2021 inspection, inspection records would not have existed for this tank. A list of tanks cathodically protected with impressed current is attached hereto as Attachment 3.

¹⁷ “Annual Cathodic Protection Survey of the Fuel Storage Tanks at the IMTT Bayonne, New Jersey Facility,” prepared by MESA Corrosion Control & Integrity (Dec. 28, 2020). “IMTT Bayonne, Bayonne, NJ, Annual CP Inspection – 6 Tanks,” prepared by PCA Engineering (Jan. 2020). Both reports are included as Attachment 2 to IMTT-Bayonne’s initial Written Response.

Maintenance reports for each rectifier.¹⁸ The annual inspection surveys demonstrate that operation and maintenance of the cathodic protection systems for the tanks are in accordance with API RP 651. For example, these surveys demonstrate that, in accordance with section 11.3.1.1 of API RP 651, the cathodic protection systems are effective and the tanks are adequately protected and in good condition.¹⁹ Consistent with 11.3.2.3, these surveys document that all impressed current protective facilities are inspected annually. In addition, in accordance with API RP 651 section 11.3.2.2, these surveys and the rectifier maintenance reports show that all sources of impressed current were checked at intervals not exceeding two months.

This documentation demonstrates that IMTT-Bayonne “inspect[s] 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,” as required under §195.573(d).

With respect to these 18 tanks, the reasoning and evidence presented by IMTT-Bayonne outweighs the evidence presented in the allegation.²⁰ IMTT-Bayonne requests that the allegations in Item 13 be withdrawn with respect to the 18 aboveground breakout tanks that are cathodically protected with impressed current.

IMTT-Bayonne also requests that the proposed \$263,000 civil penalty be proportionately reduced by \$123,535 to \$139,475 to reflect a violation for 35, not 66, tanks.²¹

Warning Items 3 and 12.

IMTT-Bayonne recognizes that PHMSA does not adjudicate warning items.²² IMTT-Bayonne notes, however, that the warning items in Item 3 and Item 12 of the Notice are identical to the allegations in Item 2 and Item 12 in the companion Notice issued to IMTT-Pipeline in CPF No. 1-2022-016-NOPV. The facilities of IMTT-Bayonne and IMTT-Pipeline are integrally connected and are operated by the same personnel pursuant to the same procedures. If PHMSA withdraws either Item 2 or Item 12 in CPF No. 1-2022-016-NOPV, IMTT-Bayonne requests that the corresponding warning item in this proceeding (Item 3 and Item 12) also be withdrawn.

¹⁸ Attached hereto as Attachment 4.

¹⁹ MESA, Annual Cathodic Protection Survey of the Fuel Storage Tanks at the IMTT Bayonne, New Jersey Facility, December 2020, Secs. 5 & 7 (Dec. 28, 2020); PCA Engineering, IMTT Bayonne, Bayonne, NJ, Annual CP Inspection, Sec. 6 (Nov. 19, 2019). These Annual Surveys were provided in Attachment 2 of IMTT-Bayonne’s September 27, 2022 initial Written Response.

²⁰ *Butte Pipeline Co.*, 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.”).

²¹ IMTT-Bayonne calculated the reduced civil penalty amount as follows. $\$263,000/66 \text{ tanks} = \3985 per tank . $\$3985 \times 35 \text{ galvanic tanks} = \$139,475$. The $\$123,585$ reduction is calculated as follows: $\$3985 \times 18 \text{ impressed current tanks} = \$71,730$ and $\$3985 \times 13 \text{ overcounted tanks} = \$51,805$. $\$71,730 + \$51,805 = \$123,535$.

²² 49 C.F.R. § 190.205.

III. CONCLUSION

Based on the foregoing, IMTT-Bayonne requests that PHMSA (1) withdraw Item 2 and Item 8 and their associated proposed civil penalties, (2) partially withdraw Item 13 and reduce the proposed civil penalty; and (3) withdraw Item 3 and Item 12 if PHMSA withdraws Item 2 and Item 12 in the corresponding Notice in CPF No. 1-2022-016-NOPV.

Respectfully submitted,

Shaun Revere
Chief Operating Officer
International-Matex Tank Terminals

February 6, 2023