April 12, 2019

Mr. Myron Turfitt
President and Chief Operating Officer
United Refining Company
15 Bradley Street
Warren, PA 16365

Re: CPF No. 1-2018-5022

Dear Mr. Turfitt:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation and assesses a civil penalty of $23,100 to Kiantone Pipeline Corporation, a subsidiary of United Refining Company. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. Service of the Final Order is effective as 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

Enclosure

cc: Mr. Robert Burrough, Director, Eastern Region, Office of Pipeline Safety, PHMSA
Mr. Daniel Sobina, Regulatory Compliance Manager, United Refining Company
Mr. David Wortman, Vice President, Supply and Transportation, Kiantone Pipeline Corporation, 814 Lexington Avenue, Warren, PA 16365

CERTIFIED MAIL - RETURN 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	)	
	)	
Kiantone Pipeline Corporation,	)	**CPF No. 1-2018-5022**
a subsidiary of United Refining Company,	)	
	)	
Respondent.	)	

FINAL ORDER

From June 26 through August 14, 2017, pursuant to 49 U.S.C. § 60117, an inspector from the New York State Department of Public Service, acting as an agent for the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the facilities and records of Kiantone Pipeline Corporation (Kiantone or Respondent), a subsidiary of United Refining Company, in West Seneca, New York. The Kiantone Pipeline is approximately 78 miles-long, and transports crude oil from Buffalo, New York to Warren, Pennsylvania, to United Refining Company's refinery.[1]

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated May 14, 2018, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Kiantone had violated 49 C.F.R. § 195.402, and proposed assessing a civil penalty of $23,100 for the alleged violation.

United Refining Company responded to the Notice by letter dated June 12, 2018 (Response) on behalf of Kiantone Pipeline Company. The company did not contest the allegation of violation but provided an explanation of its actions and requested that the proposed civil penalty be reduced. Respondent did not request a hearing and therefore has waived its right to one.

FINDING OF VIOLATION

In its Response, Respondent did not contest the allegation in the Notice that it violated 49 C.F.R. Part 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a), which states:

[1] http://www.pipelinesafetyinfo.com/user/file/Pennsylvania/Kiantone_Pipeline_Corp_United_Refining_Company.pdf (last accessed November 29, 2018).

> **§ 195.402 Procedural manual for operations, maintenance, and emergencies.**
> (a) *General*. Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to insure that the manual is effective. This manual shall be prepared before initial operations of a pipeline system commence, and appropriate parts shall be kept at locations where operations and maintenance activities are conducted.

The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a) by failing to prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. Specifically, the Notice alleged that Kiantone did not follow its procedure titled, "Annual Cathodic Protection and New Cathodic Protection Systems Survey Procedure," dated May 28, 2012. This procedure specified that cathodic protection surveys of breakout tanks must be conducted once per calendar year, not to exceed 15 months. Records reviewed during the inspection showed that cathodic protection testing was performed on February 1, 2016 and June 20, 2017 for three breakout tanks at Kiantone's West Seneca Terminal. The interval between testing of the three breakout tanks exceeded the 15-month maximum specified in Kiantone's procedure.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(a) by failing to prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies.

This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed $200,000 per violation for each day of the violation, up to a maximum of $2,000,000 for any related series of violations.[2] In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must consider the following criteria: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; any effect that the penalty may have on its ability to continue doing business; and the good faith of Respondent in attempting to comply with the pipeline safety regulations. In addition, I may consider the economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require. The Notice proposed a total civil penalty of $23,100 for the violation cited above.

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[2] These amounts are adjusted annually for inflation. *See, 49 C.F.R. § 190.223;* Revisions to Civil Penalty Amounts, 83 Fed. Reg. 60732, 60744 (Nov. 27, 2018).

Item 1: The Notice proposed a civil penalty of $23,100 for Respondent's violation of 49 C.F.R. § 195.402(a), for failing to prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. In the Response, Respondent explained that Kiantone employs one cathodic protection (CP) technician because the pipeline is a "smaller pipeline."[3] Respondent further explained that its sole CP technician has been employed by Kiantone for 27 years and "has always been able to comply with all cathodic protection system monitoring and evaluation requirements."[4] However, the CP technician was unable to meet the deadline required by Kiantone's procedures because he was on medical leave at the time the tanks at the terminal were due for annual cathodic protection testing.[5] Respondent also stated that the company is now in the process of training another employee to act as a back-up for the cathodic protection system requirements if this same situation arises again in the future.

With respect to the nature, circumstances and gravity of the violation, the Violation Report alleged that a State Partner discovered the violation, that the violation concerned a failure to perform an activity, that pipeline safety was "minimally affected," and that there were three instances of the violation.[6] Respondent argued the violation was a "single non-compliance event."[7] I have reviewed the Violation Report and find that it appropriately classified the gravity as three instances of the violation because three separate tanks were not tested in accordance with Respondent's procedures, thus resulting in a separate violation for each tank. I agree that this violation had a minimal impact on safety, but no reduction in the penalty is warranted because the calculation of the proposed penalty already accounted for this level of gravity. Therefore, no reduction is warranted under these factors.

With respect to culpability, the Violation Report alleged that Respondent failed to take appropriate action to comply with a requirement that was clearly applicable.[8] When evaluating an operator's culpability, PHMSA considers the extent to which the operator was responsible for the violation that occurred. An operator is expected to be cognizant of the regulatory requirements applicable to its operations and is held responsible for complying with those requirements. An operator will generally be considered culpable for any failure to comply with the requirements absent some justification for the failure, such as an unforeseeable event outside of its control. Here, Respondent was on notice of the leave of its only CP technician as well as the impending deadlines of the testing that the employee regularly performed. The violation was foreseeable and, therefore, the proposed penalty is appropriate based on the degree of Respondent's culpability.

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[3] Response, at 1.

[4] *Id*.

[5] *Id*.

[6] Violation Report, at 6-8.

[7] Response, at 1.

[8] Violation Report, at 9.

With respect to good faith, Respondent argued that the company is training new personnel in order to provide additional support in meeting the regulatory requirements in the future. When considering good faith, PHMSA looks at the attempt by an operator to comply with the cited regulation prior to the occurrence of the violation. If an operator made a clear, demonstrable effort to comply with the cited regulation when the violation occurred, PHMSA may find it appropriate to reduce the civil penalty. Here, Respondent did not provide information regarding anticipatory efforts made by the company to comply with the regulations before the deadline for the cathodic protection tests had passed. Therefore, no reduction is warranted based on the good faith penalty criterion.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of **$23,100** for violation of 49 C.F.R. § 195.402(a).

Payment of the civil penalty of $23,100 must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require such payment to be made by wire transfer through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMK-325), Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 S MacArthur Blvd, Oklahoma City, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the $23,100 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a district court of the United States.

Under 49 C.F.R. § 190.243, Respondent may submit a Petition for Reconsideration of this Final Order to the Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address, no later than 20 days after receipt of service of the Final Order by Respondent. Any petition submitted must contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed. The other terms of the order, including any corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay. If Respondent submits payment of the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived.

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

April 12, 2019

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Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued