



U.S. Department  
of Transportation  
**Pipeline and Hazardous  
Materials Safety  
Administration**

1200 New Jersey Avenue, SE  
Washington, DC 20590

December 26, 2023

**VIA ELECTRONIC MAIL TO: [dwortman@urc.com](mailto:dwortman@urc.com)**

Mr. Dave Wortman  
Vice President, Supply and Transportation  
Kiantone Pipeline Corporation  
15 Bradley Street, P.O. Box 780  
Warren, PA 16365

**Re: CPF No. 1-2022-050-NOPV**

Dear Mr. Wortman:

Enclosed please find the Final Order issued in the above-referenced case. It withdraws one allegation of violation, makes findings of violation, and assesses a civil penalty of \$450,268. 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 by e-mail is effective upon the date of transmission and acknowledgement of receipt as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

ALAN KRAMER  
MAYBERRY

Digitally signed by ALAN  
KRAMER MAYBERRY  
Date: 2023.12.20  
10:28:51 -05'00'

Alan K. Mayberry  
Associate Administrator  
for Pipeline Safety

Enclosure

cc: Mr. Robert Burrough, Director, Eastern Region, Office of Pipeline Safety, PHMSA  
Mr. John Wagner, Vice President, General Counsel and Corporate Secretary, Kiantone Pipeline Corp., [jwagner@urc.com](mailto:jwagner@urc.com)  
Mr. George C. Hopkins, Counsel for Kiantone Pipeline Corp., Vinson & Elkins, LLP, [ghopkins@velaw.com](mailto:ghopkins@velaw.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** )

**Kiantone Pipeline Corporation,** )

**Respondent.** )  
\_\_\_\_\_ )

**CPF No. 1-2022-050-NOPV**

**FINAL ORDER**

From July 8, 2021 through July 9, 2021, pursuant to 49 U.S.C. § 60117, representatives of 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) in connection with investigating a release of crude oil in Warren, Pennsylvania. Kiantone's parent company, United Refining Company (URC), is an independent refiner and marketer of petroleum products in Pennsylvania and portions of New York and Ohio. Kiantone Pipeline Corporation manages the 78-mile-long Kiantone Pipeline from West Seneca, New York to URC's refinery in Warren, Pennsylvania including a tank farm for storage located on Cobham Park Road in Warren, Pennsylvania (Cobham Tank Farm).<sup>1</sup>

On July 8, 2021, at approximately 12:20 a.m. Eastern Daylight Time (EDT), Kiantone Pipeline experienced an overflow of Tank 652 at the Cobham Tank Farm. The overflow resulted in a release of 2,672 barrels (bbl) of crude oil into secondary containment, which exited an open dike drain valve and flowed downhill to a firewater retention pond. Following notification of the incident to the National Response Center (NRC), PHMSA deployed accident investigation personnel to the release site, along with the Pennsylvania Public Utility Commission.<sup>2</sup>

As a result of the inspection and investigation, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated October 6, 2022, 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 committed three violations of 49 C.F.R. Part 195 and proposed assessing a total civil penalty of \$675,402 for the alleged violations. The Notice also included an

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<sup>1</sup> United Refining Company website, Pipeline Operations, *available at* <https://www.urc.com/pipelines> (last accessed Nov. 5, 2023).

<sup>2</sup> *Failure Investigation Report – Kiantone Pipeline Corporation – Incorrect Operation Aboveground Storage Tank Overflow* (Dec. 21, 2021), Executive Summary.

additional three warning items pursuant to 49 C.F.R. § 190.205, which warned the operator to correct these probable violations or face possible future enforcement action

Kiantone responded to the Notice by letter dated November 21, 2022 (Response), as supplemented by material submitted on April 10, 2023 (Pre-hearing submission). Kiantone contested the allegations and requested an informal hearing. A hearing was subsequently held on April 20, 2023, in West Trenton, New Jersey, before a Presiding Official from the Office of Chief Counsel, PHMSA. At the hearing, Respondent was represented by counsel. After the hearing, Respondent provided additional written material for the record, by letter dated May 22, 2023 (Post-hearing submission) and the Director provided a recommendation on June 21, 2023 (Recommendation).

### FINDINGS OF VIOLATION

The Notice alleged that Respondent 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:

**§ 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 follow its written procedure for operations, maintenance & emergencies (OM&E Procedure) 11.6.3 – Activities During Receipt of Crude Oil at Tank Farm (Product Receipt Procedure). Specifically, the Notice alleged that Kiantone did not verify that tanks not scheduled to receive product at the Cobham Tank Farm did not show an unexpected loss or gain of inventory, nor did Kiantone obtain level gauge readings from each tank within the active manifolded system according to its procedures and as a result, when Tank 652 started receiving product due to a partially opened inlet valve, it went undetected until the tank overflowed.

The material facts of the incident are not in dispute. A heavy storm caused a loss of power at the Cobham Tank farm on July 7, 2021, at approximately 6:49 p.m. EDT. The power loss initiated the uninterruptible power supply (UPS) to maintain communications with the facility's control center, but all other electrical equipment at the Cobham Tank Farm was inoperable, including lights, pumps, and motor-operated valves. Kiantone's UPS system, which powered the communications at the facility, operated for nearly two hours before being depleted at approximately 8:36 p.m. Commercial power was temporarily restored at approximately 9:22

p.m. for 32 seconds. The restoration of power caused the remotely operated inlet valves to Tanks 650, 651, and 652 to begin to open, but the valve operation ceased when power was subsequently lost again. Tanks 650, 651, and 652 were all connected to the same manifold. Tank 651 was in the process of receiving product at this time. Because Tank 652 now had a partially opened inlet valve, Tank 652 also started to receive product. However, as the UPS was depleted and thus the facility had no communications, Kiantone's control center failed to detect Tank 652's valve operation. Therefore, the receiving of product by Tank 652 and its resulting overflow was not detected by Kiantone until at or around approximately either 12:50 or 12:55 a.m. on July 8, 2021. The release was discovered when Kiantone's pump house blender visually noticed oil coming from the vents of the tank via illumination from his headlights as he drove within the facility and after being notified of a heavy smell of petroleum in the air by other personnel at the facility.<sup>3</sup>

In its Response and at the hearing, Kiantone contested Item 1, arguing that OPS's allegation was flawed because it was based "on the wrong O&M procedure" and as a result OPS was enforcing requirements that did not apply.<sup>4</sup> While Item 1 in the Notice was based on an alleged failure to follow Product Receipt Procedure 11.6.3, Respondent contended that during an unplanned communications failure such as the power outage that occurred during the incident, its personnel were not required to follow the Product Receipt Procedure. Respondent argued that instead, its Control Room Management (CRM) Procedure 2.3.4 – Unplanned Communications Failure-Tank Farm (CRM 2.3.4) applied.<sup>5</sup>

Kiantone stated that: During the outage and unplanned communications failure on July 8th, Kiantone followed the requirements of CRM 2.3.4 then in effect. First, the facility was "fully attended" because Kiantone had as many as four personnel present at the Tank Farm Facility at various times while Tank 651 was receiving crude oil product: the Pump House Operator; the incoming and outgoing Shift Supervisors; and the Maintenance Laborer, who stayed on the premises all night and took readings of Tank 651 during the operations to move product to Tank 651. To Kiantone's knowledge at the time, Tank 651 was the only active tank, and thus the only tank subject to CRM 2.3.4's requirement to take manual readings every hour. The chart provided in Exhibit 6 shows the hourly tank level readings taken at Tank 651 during receipt, including the first and last hour. The record thus demonstrates that Kiantone followed the applicable written procedure—i.e., CRM 2.3.4, not Procedure 11.6.3—and there is therefore no factual basis for PHMSA's alleged violation of 49C.F.R. § 195.402(a) for failure to follow the relevant O&M procedure.<sup>6</sup>

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<sup>3</sup> Recommendation, at 2-3.

<sup>4</sup> Pre-hearing submission, at 2.

<sup>5</sup> Under CRM 2.3.4, as it was written then, that procedure required that if the active tank lost power, communications, or radar/ laser, that the facility must be fully attended, that the tank must be attended during first and last hour of receipt, and that readings must be obtained from the tank gauge each hour during receipt.

<sup>6</sup> Pre-hearing submission, at 8.

As part of its argument that only CRM 2.3.4 applied, Kiantone also expressed the view that the tasks in Product Receipt Procedure 11.6.3 that OPS maintained Kiantone should have performed, such as monitoring tank product levels in all crude tanks hourly and verifying that tanks not scheduled to receive product do not show an unexpected loss or gain of inventory, could only be performed when the Control Center has normal communications.<sup>7</sup>

However, OPS emphasized that Product Receipt Procedure 11.6.3 includes a Table that defines a “Category 1” situation as occurring when power is lost, communications are lost, or radar/laser on an active tank is lost. The “or” in the procedure indicates that if any of those three conditions applied, that the hourly reading and tank monitoring and facility attendance requirements applied. Thus, the existence of Category 1 in the Table of this procedure meant that Product Receipt Procedure 11.6.3 encompassed either a loss of power scenario or a loss of communication scenario such as occurred in this incident. With regard to Respondent’s argument that the CRM 2.3.4 Procedure applied to the exclusion of the Product Receipt Procedure 11.6.3, OPS noted:

Section 11.6.3 as it existed at the time of the Accident references CRM 2.3.4, and instructs that the pump house blender must “[f]ollow additional manning requirements as listed in the table below for situations where the facility or tank may change from Category 3 to a Category 1 or 2 (see Control Room Management procedures CRM 2.3.4, & CRM 2.3.5 for communications failures)”. Nowhere does 11.6.3 say that it no longer applies at a certain point or upon a facility moving to a “Category 1” situation.<sup>8</sup>

In other words, a loss of power scenario or a loss of communications scenario are expressly encompassed within the Product Receipt Procedure 11.6.3. In such a scenario, the Product Receipt Procedure requires verification that tanks not scheduled to receive product do not show unexpected loss or gain of inventory, and that hourly tank readings must be taken. Based on the manner in which Product Receipt Procedure 11.6.3 and the included table apply to either a loss of power scenario or a loss of communications scenario, Kiantone’s argument that its procedures called for following CRM 2.3.4 to the exclusion of the Product Receipt Procedure 11.6.3 is unpersuasive. In fact, the procedures instruct the opposite, that “additional manning requirements as listed in the table below” are to be followed in situations where the facility or tank farm may change to a Category 1 situation, in addition to also referring the reader to procedures governing its control rooms at CRM 2.3.4 and 2.3.5 when communications are lost.<sup>9</sup> Therefore, OPS met its burden of establishing that the facility was in a “Category 1” situation on the night of the incident and the tank monitoring and reading procedures set forth in the Product Receipt Procedure 11.6.3 and its included table clearly applied. When the back-up power failed at approximately 8:36 p.m., the facility was then without communications. Thus, the tank

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<sup>7</sup> Post-hearing submission, at 4.

<sup>8</sup> Recommendation, at 6-7.

<sup>9</sup> Recommendation, at 7. It should also be noted that even if Respondent had taken actions fully consistent with CRM 2.3.4, doing so would not have made following Product Receipt Procedure 11.6.3 an impossibility.



monitoring and hourly reading and manning requirements described in 11.6.3 applied, to include the “Facility Category” table requirement in a “Category 1” situation. These readings may be taken remotely under 11.6.3 (when a facility has power and the control center systems are working properly), or “locally” per the “current Facility Category” listed in the table in 11.6.3. Per that table, during a “Category 1” situation, the facility must be fully attended and the tanks at the facility must be monitored to ensure they do not show unexpected loss or gain of inventory, and hourly tank readings must be taken.

However, there is no dispute that no tank readings at all occurred until approximately 10:15 p.m. at the earliest, according Kiantone. When the monitoring of tanks did begin sometime around 10:15 p.m., readings were only taken for Tank 651, and not for “all crude tanks” as required under 11.6.3, nor to verify that “tanks not scheduled to receive product do not show an unexpected loss or gain of inventory” as also required by the plain language of that procedure despite Tanks 651 and 652 sharing a common manifold.

Finally, while there was some discussion at the hearing concerning the extent to which Respondent’s actions were consistent with CRM 2.3.4 when the subject was raised by Kiantone in its defense, OPS did not take a position on whether Respondent complied with CRM 2.3.4 or ever allege that it failed to do so. Throughout this proceeding, OPS consistently maintained that Kiantone failed to follow its Product Receipt Procedure 11.6.3 as alleged in the Notice. Therefore, Respondent’s contention that OPS “continually moved further afield from the violations and legal theories it initially alleged in the NOPV”<sup>10</sup> or otherwise raised new claims that were not alleged in the Notice is unfounded.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(a) by failing to follow OM&E Procedure 11.6.3 – Activities During Receipt of Crude Oil at Tank Farm.

**Item 2:** The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a), which states:

**§ 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 follow its OM&E Procedure 5.7.10 – Tank Farm Dike Drain Operations (Dike Drain Procedure).

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<sup>10</sup> Post-hearing submission, at 1, 15-16.

This procedure requires, in pertinent part, that Kiantone personnel:

4. Logs the valve open in the dike drain log and periodically monitors discharge. KPL/URC personnel must be present at the Tank Farm Facility while any dike drain is manually open for draining.
5. Returns valve to closed position when draining is complete and documents in the dike drain log.

Specifically, the Notice alleged that Kiantone failed to have personnel present while the Tank 652 dike drain was manually opened for draining and required returning the valve to the closed position when draining is complete.

In its Response and at the hearing, Kiantone contested Item 2. Respondent acknowledged that neither the opening of the drain valve nor any monitoring was logged, but argued that: (1) the observation of oil escaping from Tank 652 by the Pump House Operator on his drive through the facility approximately three hours after the dike drain was opened constituted the periodic monitoring required by the procedure; and (2) that a three hour interval was appropriate under the circumstances.<sup>11</sup>

Specifically, Respondent contended that:

PHMSA's entire claim is premised on reading a precise time limit into the term "periodically" so that it incorporates a set frequency for monitoring. PHMSA has offered no support either in the Kiantone manual itself or based on a legal or programmatic position that "periodic" requires a specific time period. The use of the term "periodically" means that Kiantone has the flexibility to determine what frequency is appropriate under a particular set of circumstances. Rather than pursuing a claim against Kiantone for having failed to comply with its manual of written procedure, PHMSA is trying to enforce a limitation that is not in Kiantone's manual. Moreover, PHMSA presented no evidence that the circumstances surrounding the amount of rainfall the Tank Farm Facility received on July 7th and 8th warranted a shorter timeframe for inspections.<sup>12</sup>

Respondent's arguments, however, are unpersuasive. First, there is no dispute that the dike drain valve was not logged open (nor later logged closed after the Accident) as required under Kiantone's Dike Drain Procedure.<sup>13</sup> The evidence shows those logs being updated in days following the Accident (July 9, 2021) rather than when those actions were conducted as required

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<sup>11</sup> Post-hearing submission, at 7.

<sup>12</sup> Post-hearing submission, at 6.

<sup>13</sup> *See, e.g.*, Tr. at 96-104 and Kiantone Post-Hearing Brief, at 8.

by Kiantone's procedures.<sup>14</sup>

Kiantone's argument that observing the oil spill via the illumination of vehicle headlights while driving within the facility three hours after the drain was opened constituted an attempt to periodically monitor the dike drain discharge for Tank 652, is not consistent with the evidence. As OPS noted, the pump house blender's drive through the facility occurred approximately 20 minutes after a call to him from the personnel "sitting at 651 tank" indicating there was a strong smell in the air. He stated that he "[w]ent back to the Farm around 12:50 AM to check on [ ] sitting at 651 tank. After a brief conversation I proceeded to check the rest of area. While driving out of 651 dike I saw the that the vents on 652 were flowing oil."<sup>15</sup> In short, he does not even assert that he was conducting the periodic monitoring of the water discharge from the dike drain required by the procedure.

Respondent's argument is also inconsistent with the purpose of the monitoring required by the procedure which is to monitor the water discharge from the dike drain for Tank 652 for oil. While Kiantone may not have defined "periodically" in its procedures, no showing was made that monitoring of the type required by the procedure was conducted at all. Rather, the oil spill was fortunately discovered via happenstance. OPS met its burden of showing that Kiantone's assertion that discovery of the ongoing oil spill via car headlights hitting Tank 652 constituted "periodic" monitoring of the water flowing from a dike drain valve is not a method contemplated by its procedures and lacks any merit.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(a) by failing to follow its OM&E Procedure Section 5.7.10 – Tank Farm Dike Drain Operations.

**Item 3:** The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a), which states:

**§ 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.

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<sup>14</sup> Tr. at 109: 23-35; 110 1-10. See also Exhibit 21-217159 B-2 and Kiantone Exhibit No. 4 (labeled in Kiantone's Pre-Hearing Brief electronic exhibits as (#24) 652 Dike Drain Log).

<sup>15</sup> During the hearing, Kiantone's representative opined that the pump house blender was on his way to check the "dike drain valve that's marked there at 652", but the pump house blender's actual statement contains no such assertion and there was no testimony given to suggest that the witness had personal knowledge of the pump house blender's motivations.



The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a) by failing to follow its OM&E Procedure section 18.1 - Abnormal Operations (AO Procedures). Specifically, the Notice alleged that Kiantone failed to conduct a proper review of a prior abnormal operation on June 30, 2021 (eight days earlier) to determine and correct all the deficiencies in procedures, safety equipment, and monitoring or control systems prior to the incident, resulting in recurrence of the malfunction and the release of product. On June 30, 2021, the facility lost commercial power, prompting the UPS to take over. Once the UPS was depleted about two hours later, communications between the facility and the control center were lost. When power was fully restored shortly thereafter, communications were reestablished with the tanks. At that point, the valve for only Tank 651 was supposed to be open, but the control center observed that the inlet valves for Tanks 650 and 652 had been inadvertently opened. At the same time, the high-level alarm for Tank 651 was triggered—despite the fact that the high-level point had not been reached—prompting the pipeline to shut down. The control center remotely closed the inlet valve for Tank 652, but the valve for Tank 650 had to be manually closed. Respondent recorded these abnormal operations and initiated the process of conducting a root cause analysis.<sup>16</sup>

In its Response and at the hearing, Kiantone contested Item 3. Respondent explained that only 8 days had elapsed since the June 30, 2021 incident and it was not reasonable for OPS to expect that the process of identifying and correcting the deficiencies that caused the incident to be resolved. Respondent's applicable Procedure 18.1 for reviewing and resolving such an issue states:

Once abnormal operations have ended, operators at the Pipeline Control Center and/or the Pipeline Manager will monitor pipeline operations to be sure the abnormal condition has been corrected and the pipeline is operating safely.

The Pipeline Manager is responsible to review the actions of personnel who responded to an abnormal operation to determine:

- Whether the response was timely and appropriate, to ensure protection of persons and property.
- Whether employee actions followed company-approved procedures.
- Whether any deficiencies exist in Kiantone O&M procedures, safety equipment, or pipeline monitoring and/or control systems.

Kiantone pointed out that neither OPS regulations nor its applicable procedure contained a time requirement for completing these reviews and correcting any deficiency. Respondent pointed to OPS' own pre-hearing brief in which OPS stated, "eight days after a power loss, when the Accident occurred, Kiantone was still not monitoring all tanks connected to the same manifold during the Power Loss." Kiantone argued this proved that in its Item 3 citation, OPS was really just repackaging the allegation in Item 1. Kiantone argued that Item 3 should be struck as

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<sup>16</sup> Pre-hearing submission, at 12.

duplicative of Item 1.<sup>17</sup>

For its part, OPS acknowledged that the requirement in Respondent's procedure to identify and correct all deficiencies did not have a time requirement, but stated that Respondent had a general obligation not to operate the facility until such operation could be done safely. During the hearing, OPS acknowledged that Respondent had begun the process of analyzing the root cause of the June 30, 2021 incident, but expressed its opinion that there were preventative and mitigative measures that could have been identified and completed by Respondent during the eight-day period.<sup>18</sup>

While OPS is correct that operators are obligated to operate its facilities safely at all times, in the absence of an applicable regulation that has a deadline, OPS is seeking to enforce Respondent's existing procedures, but it did not call for the closure of the tanks. Moreover, I agree with Respondent that identifying and correcting the root causes of the deficiency at the storage facility in this case—for example procuring additional UPS equipment to increase the capacity during power outages to be much longer than two hours—would reasonably take longer than eight days to plan and complete. Therefore, the only actions that Respondent could reasonably be expected to take in the eight-day period would have been effective monitoring to verify that the tanks within the shared manifold system did not show an unexpected loss or gain of inventory. In this particular case, however, these are precisely the actions or lack thereof for which Kiantone was already cited in Item 1 of the Notice and found to be in violation of in Item 1 of this Order. Therefore, Respondent is correct that due to the period between the incidents only being eight days and it only being realistically possible that the same measures to ensure effective monitoring as required by Item 1 could be accomplished in less than eight days, the alleged failure to take such actions in Items 1 and 3 in the Notice are effectively duplicative.<sup>19</sup> However, I emphasize that nothing in this Order should be construed to diminish the obligation of pipeline operators to implement fully effective corrective actions as soon as they reasonably could be accomplished following a failure or accident as required.

Accordingly, after considering all of the evidence, I find that under the particular circumstances of this case, the conduct or lack thereof that constituted alleged noncompliance in Item 3 of the Notice is materially the same conduct or lack thereof that was alleged to constitute noncompliance in Item 1, such that in this case Item 3 is effectively duplicative of Item 1. Based upon the foregoing, I hereby order that Item 3 be withdrawn.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

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<sup>17</sup> Post-hearing submission, at 10.

<sup>18</sup> For example, OPS stated that Respondent could have closed off its tanks entirely.

<sup>19</sup> This does not mean that steps to address the cause of an accident need not be taken immediately. If there had been sufficient time for the operator to complete the analysis and complete the installation of new equipment, etc., or if Item 1 did not exist to make it duplicative, this item would likely have been upheld.

### 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.<sup>20</sup>

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; the good faith of Respondent in attempting to comply with the pipeline safety regulations; and self-disclosure or actions to correct a violation prior to discovery by PHMSA. 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 \$675,402 for the violations cited above.

**Item 1:** The Notice proposed a civil penalty of \$225,134 for Respondent's violation of 49 C.F.R. § 195.402(a), for failing to follow its OM&E Procedure 11.6.3 – Activities During Receipt of Crude Oil at Tank Farm.

Respondent argued that the proposed civil penalty amount in the Notice for Item 1 should be reduced or eliminated. With respect to the nature and circumstances of this violation, properly monitoring oil storage tank levels connected to the same manifold during product delivery is a critical part of safe operations and must be accomplished locally in the event of power or communications failures. With respect to the gravity of this violation, 2,672 bbl of crude oil were in fact spilled from the tank requiring clean-up operations. With respect to culpability, the proposed penalty amount in the Notice was at the low end of the range (two points) and did not reflect any heightened level of egregiousness or deliberate decision not to comply. As to good faith, while the storm itself was beyond Respondent's control, it presented no circumstances beyond its control that would have prevented it from accomplishing the required local monitoring during the outage incident and Respondent was aware of the potential for power failures to occur. Therefore, there is no justification for a good faith or other matters as justice may require credit. I find that the record supports the civil penalty amount proposed in the Notice. Respondent presented no information that would warrant a reduction in the civil penalty proposed in the Notice for this item.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$225,134 for this violation of 49 C.F.R. § 195.402(a).

**Item 2:** The Notice proposed a civil penalty of \$225,134 for Respondent's violation of 49 C.F.R. § 195.402(a), for failing to follow its OM&E Procedure 5.7.10 – Tank Farm Dike Drain Operations

Respondent argued that the proposed civil penalty amount in the Notice for Item 2 should be

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<sup>20</sup> These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223 for adjusted amounts.

reduced or eliminated. With respect to the nature and circumstances of this violation, properly logging and monitoring a dike drain water discharge for oil after a drain valve is opened is a critical part of safe operations. With respect to the gravity of this violation, 2,672 bbl of crude oil were in fact spilled from the tank requiring clean-up operations. With respect to culpability, the proposed penalty amount in the Notice was at the low end of the range (two points) and did not reflect any heightened level of egregiousness or deliberate decision not to comply. As to good faith, while the storm itself was beyond Respondent's control, it presented no circumstances beyond its control that would have prevented it from properly logging and monitoring the dike drain water discharge after the valve was opened. Therefore, there is no justification for a good faith or other matters as justice may require credit. I find that the record supports the civil penalty amount proposed in the Notice. Respondent presented no information that would warrant a reduction in the civil penalty proposed in the Notice for this item.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$225,134 for this violation of 49 C.F.R. § 195.402(a).

**Item 3:** The Notice proposed a civil penalty of \$225,134 for Respondent's violation of 49 C.F.R. § 195.402(a), for failing to follow its OM&E Procedure section 18.1 - Abnormal Operations. Since this alleged violation has been withdrawn, the proposed penalty is not assessed.

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$450,268**.

Payment of the civil penalty must be made within 20 days after receipt of this Final Order. 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 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.

### **WARNING ITEMS**

With respect to Items 4, 5 and 6, the Notice alleged probable violations of Part 195, but identified them as warning items pursuant to § 190.205. The warnings were for:



49 C.F.R. § 195.402(a) **(Item 4)** — Respondent's alleged failure to follow its Abnormal Operation Procedure 18.1.2 and associated form for reporting of abnormal operations;

49 C.F.R. § 195.52(a) **(Item 5)** — Respondent's alleged failure to give notice of a September 15, 2018 tank fire to the National Response Center; and

49 C.F.R. § 195.54(a) **(Item 6)** — Respondent's alleged failure to file an accident report on DOT Form 7000-1 after discovery of the September 15, 2018 tank fire.

Kiantone presented information in its Response showing that it had taken certain actions to address the cited items. If OPS finds a violation of any of these items in a subsequent inspection, Respondent may be subject to future enforcement action.

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, 2<sup>nd</sup> Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. The written petition must be received no later than 20 days after receipt 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.

**ALAN KRAMER** Digitally signed by ALAN  
KRAMER MAYBERRY  
**MAYBERRY** Date: 2023.12.20 10:28:03  
-05'00'

Alan K. Mayberry  
Associate Administrator  
for Pipeline Safety

December 26, 2023

Date Issued