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

1200 New Jersey Avenue, SE
Washington, DC 20590

April 26, 2023

VIA ELECTRONIC MAIL TO: jwagner@urc.com

Mr. John Wagner
Vice President, General Counsel and Secretary
Kiantone Pipeline Corporation
15 Bradley Street, PO Box 780
Warren, Pennsylvania 16365

Re: CPF No. 1-2022-076-NOPV

Dear Mr. Wagner:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and finds that the civil penalty amount of $44,800 has been paid in full. This case is now closed. Service of the Final Order by certified mail is effective upon the date of mailing as provided under 49 C.F.R. § 190.5. 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: 2023.04.25 16:44:26 -04'00'

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosures (Final Order and NOPV)

cc: Mr. Robert Burrough, Director, Eastern Region, Office of Pipeline Safety, PHMSA
Mr. Dave Wortman, Vice President, Support and Transportation, Kiantone Pipeline Corporation, dwortman@urc.com
Mr. George C. Hopkins, Outside Counsel for Kiantone Pipeline Corporation, Vinson & Elkins LLP, 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,	)	**CPF No. 1-2022-076-NOPV**
Respondent.	)	

FINAL ORDER

On December 8, 2022, pursuant to 49 C.F.R. § 190.207, the Director, Eastern Region, Office of Pipeline Safety (OPS), issued a Notice of Probable Violation and Proposed Civil Penalty (Notice) to Kiantone Pipeline Corporation (Respondent). The Notice proposed finding that Respondent had violated the pipeline safety regulations in 49 C.F.R. Part 199 and proposed a civil penalty of $44,800. On January 20, 2023, Respondent contested the allegations and requested a hearing. On April 4, Respondent withdrew its hearing request. Respondent paid the proposed civil penalty on April 6. In accordance with § 190.208(a)(1), such payment authorizes the entry of this final order.

Based upon a review of all of the evidence, pursuant to § 190.213, I find Respondent violated the pipeline safety regulations listed below, as more fully described in the enclosed Notice, which is incorporated by reference:

> 49 C.F.R. § 40.25(a) **(Item 1)** ─ Respondent failed to obtain employees' written consent or request the drug and alcohol testing records of the employees it intended to use to perform safety-sensitive duties in calendar years 2020 and 2021.
>
> 49 C.F.R. § 199.105(c)(6) **(Item 2)** ─ Respondent failed to randomly select and drug test a sufficient number of covered employees during calendar year 2021 to meet the minimum annual rate for random drug testing determined by the Administrator, which was 50 percent for calendar year 2021.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent. In accordance with 49 C.F.R. § 190.223, Respondent is assessed the proposed civil penalty amount of $44,800, which Respondent has already paid in full.

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

ALAN KRAMER MAYBERRY Digitally signed by ALAN KRAMER MAYBERRY Date: 2023.04.25 16:43:29 -04'00'

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

April 26, 2023

Date Issued

U.S. Department
of Transportation

**Pipeline and
Hazardous Materials
Safety Administration**

840 Bear Tavern Road, Suite 300
West Trenton, NJ 08628
609.771.7800

NOTICE OF PROBABLE VIOLATION
and
PROPOSED CIVIL PENALTY

OVERNIGHT EXPRESS DELIVERY

December 8, 2022

Mr. Dave Wortman
Vice President Supply and Transportation
Kiantone Pipeline Corp.
15 Bradley Street, PO Box 780
Warren, Pennsylvania 16365

CPF 1-2022-076-NOPV

Dear Mr. Wortman:

From July 1, 2022, to August 8, 2022, 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.) inspected the Kiantone Pipeline Corp. (Kiantone) PHMSA drug and alcohol (D&A) program in Warren, Pennsylvania.

As a result of the inspection, it is alleged that Kiantone has committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (CFR). The items inspected and the probable violations are as follows:

1. § 40.25 Must an employer check on the drug and alcohol testing record of employees it is intending to use to perform safety-sensitive duties? [1]

(a) Yes, as an employer, you must, after obtaining an employee's written consent, request the information about the employee listed in paragraph (b) of this section. This requirement applies only to employees seeking to begin performing safety-sensitive duties for you for the first time (i.e., a new hire, an employee transfers into a safety-sensitive position). If the employee refuses to provide this written

[1] The PHMSA regulations in § 199.5 state that violations of the DOT Procedures in 49 CFR Part 40 are violations of 49 CFR Part 199 with respect to the anti-drug and alcohol programs required by Part 199.

> **consent, you must not permit the employee to perform safety-sensitive functions.**

Kiantone did not obtain employees' written consent or request the D&A testing records of the employees it intended to use to perform safety-sensitive duties in calendar years 2020 and 2021. The D&A testing background information required in paragraph § 40.25(b) must be requested from all DOT employers who have employed an employee during the two years prior to the date of the employee's application or transfer. This requirement applies only to employees seeking to begin performing safety-sensitive duties (i.e. covered employees) for the first time (i.e., a new hire, an employee transfers into a safety-sensitive position).

During the inspection, PHMSA inspectors requested the D&A background information[2] from the D&A testing records of prior employers for the covered employees Kiantone hired in calendar years 2020 and 2021. Kiantone's Designated Employer Representative (DER) stated that the responsibility for conducting the background inquiries for new covered employees falls within the human resources department and that Kiantone did not conduct any such inquiries.

Kiantone's D&A Management Information System (MIS) submittals to PHMSA for calendar years 2020 and 2021 show 52 and 58 pre-employment drug tests, respectively, indicating that 52 employees[3] in 2020 and 58 employees in 2021 were seeking to perform safety-sensitive (i.e. covered) functions for the first time for Kiantone in those calendar years.

2. § 199.105 Drug tests required.

> **Each operator shall conduct the following drug tests for the presence of a prohibited drug:**
>
> **(a) ...**
>
> **(c) Random testing.**
>
> **(1) ...**
>
> **(6) The operator shall randomly select a sufficient number of covered employees for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random drug testing determined by the Administrator. If the operator conducts random drug testing through a consortium, the number of employees to be tested may be calculated for each individual operator or may be based on the total number of covered employees covered by the consortium who are subject to random drug testing at the same minimum annual percentage rate under this subpart or any DOT drug testing rule.**

Kiantone did not randomly select and drug test a sufficient number of covered employees during calendar year 2021 to meet the minimum annual rate for random drug testing determined by the Administrator, which was 50 percent for calendar year 2021.[4]

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[2] The DOT regulations in § 40.25(i) and § 40.333(a)(2) require employers to keep records of information obtained from previous employers under §40.25 for three years.

[3] The definition of employee in § 40.3 includes applicants for employment subject to pre-employment testing.

[4] Federal Register Notice December 12, 2020 (85 FR 78931).

The Kiantone D&A MIS report for calendar year 2021 showed 338 covered employees, but only 56 random drug tests were conducted; a rate of 17 percent. Kiantone managed its own PHMSA random drug testing pool and did not use a consortium or third-party administrator in calendar year 2021.

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, Kiantone is subject to a civil penalty not to exceed $239,142 per violation per day the violation persists, up to a maximum of $2,391,412 for a related series of violations. For violation occurring on or after May 3, 2021, and before March 21, 2022, the maximum penalty may not exceed $225,134 per violation per day the violation persists, up to a maximum of $2,251,334 for a related series of violations. For violation occurring on or after January 11, 2021, and before May 3, 2021, the maximum penalty may not exceed $222,504 per violation per day the violation persists, up to a maximum of $2,225,034 for a related series of violations. For violation occurring on or after July 31, 2019, and before January 11, 2021, the maximum penalty may not exceed $218,647 per violation per day the violation persists, up to a maximum of $2,186,465 for a related series of violations. For violation occurring on or after November 27, 2018, and before July 31, 2019, the maximum penalty may not exceed $213,268 per violation per day, with a maximum penalty not to exceed $2,132,679. For violation occurring on or after November 2, 2015, and before November 27, 2018, the maximum penalty may not exceed $209,002 per violation per day, with a maximum penalty not to exceed $2,090,022.

We have reviewed the circumstances and supporting documentation involved for the above probable violations and recommend that Kiantone be preliminarily assessed a civil penalty of $44,800 as follows:

Item number	PENALTY
1	$22,400
2	$22,400

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Enforcement Proceedings*. Please refer to this document and note the response options. All material you submit in response to this enforcement action may be made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. § 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. § 552(b).

Following the receipt of this Notice, you have 30 days to submit written comments, or request a hearing under 49 CFR § 190.211. If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order. If you are responding to this Notice, we propose that you submit your correspondence to my office within 30 days from receipt of this Notice. This period may be extended by written request for good cause.

In your correspondence on this matter, please refer to **CPF 1-2022-076-NOPV** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Robert Burrough
Director, Eastern Region, Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration

Enclosure: *Response Options for Pipeline Operators in Enforcement Proceedings*