

December 5, 2023

VIA ELECTRONIC MAIL TO: dwortman@urc.com

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

CPF No. 1-2023-013-NOPV

Dear Mr. Wortman:

Enclosed please find a Consent Order incorporating the terms of the Consent Agreement between the Pipeline and Hazardous Materials Safety Administration (PHMSA) and Kiantone Pipeline Corporation, which was executed on December 1, 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. George C. Hopkins, Esq., Vinson & Elkins LLP, Outside Counsel to Kiantone Pipeline Corporation, 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. 1-2023-013-NOPV
)	
Respondent.)	
_____)	

CONSENT ORDER

By letter dated May 5, 2023, 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 Kiantone Pipeline Corporation (Kiantone or Respondent).

In response to the Notice, Kiantone contested the alleged violations, associated proposed civil penalty, and the associated proposed compliance order, 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, Respondent agreed to certain findings of violation without admission and subject to the agreed terms of the Parties, and to pay a reduced civil penalty and take corrective actions that have already been completed.

Accordingly, the Consent Agreement is hereby approved and incorporated by reference into this Consent Order. Kiantone 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 5, 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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Kiantone Pipeline Corp.,)	CPF No. 1-2023-013-NOPV
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Respondent.)	
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CONSENT AGREEMENT

From April 25 through May 20, 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.), conducted field observations and an inspection of the facilities and records of Kiantone Pipeline Corp. (Kiantone or Respondent) in Warren, Pennsylvania (the Inspection). Kiantone operates an approximately 80-mile interstate hazardous liquid pipeline facility in Pennsylvania and New York.

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated May 5, 2023, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (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 findings that Kiantone committed violations of provisions of 49 C.F.R. Parts 194 and 195, proposed ordering Respondent to take certain measures to correct alleged violations, and proposed a civil penalty of \$167,600. Four alleged violations (Items 2, 4, 6 and 7) were brought as warnings, advising Respondent to correct the probable violations or face potential future enforcement action.

Kiantone timely responded to the Notice on June 2, 2023 (Response). Respondent requested a hearing and contested Items 1, 5, 8, and 9 and the proposed civil penalty. Kiantone also requested PHMSA withdraw the warning in Item 4 and stated there was no factual basis for the warning in Item 6. Respondent also requested to meet informally with PHMSA to discuss the issues raised in the Response.

PHMSA and Respondent (the Parties) subsequently met several times to discuss the issues raised in the Response. As a result of those discussions, and as explained in more detail below for Items 3 and 9, the Parties have agreed that the Proposed Compliance Order has already been completed. The Parties have agreed to a reduced total civil penalty assessment of \$84,700 for Items 1, 5, and 9, and to a withdrawal of the proposed civil penalty for Item 8. The Parties have

also agreed to a compliance order action to be taken by Respondent for Item 8, which has already been completed.

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, PHMSA (Associate Administrator), 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. As a part of this settlement, 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. Respondent agrees to withdraw its request for an administrative hearing regarding the Notice.

4. This Agreement shall apply to and be binding upon PHMSA, and upon 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. PHMSA acknowledges that the claims asserted in the Notice constitute all claims of probable violations that it will assert against Respondent arising out of the Inspection. 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. 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.

8. 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.

9. 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.

II. Findings of Violation:

10. **Item 1- 49 C.F.R. § 194.7(b):** The Notice alleged Respondent failed to follow its response plan regarding spill response equipment testing. Specifically, Kiantone failed to operate its facilities in accordance with its Facility Response Plan when it did not test its spill response equipment according to the required intervals at its Warren, Pennsylvania facility during 2020 and 2021. Respondent contested Item 1 and requested that the proposed civil penalty be withdrawn. With its Response and subsequently thereafter, Kiantone submitted records covering the time periods addressed in the Notice which reflected inspection of certain spill response equipment at its pipeline facilities. Upon review of the additional documents, the Parties agree to a reduced civil penalty assessment for this alleged violation. PHMSA finds violations of § 194.7(b).

11. **Item 3- 49 C.F.R. § 195.402(a):** The Notice alleged Respondent failed to follow its written procedures. Specifically, Kiantone failed to follow its Annual Cathodic Protection and New Cathodic Protection Systems Survey regarding conducting its breakout tank cathodic protection surveys. The Response indicated that following the inspection, Kiantone developed a

new procedure for conducting its breakout tank cathodic protection surveys and also a new form to document information collected during such surveys. Respondent requested the Director find that the Proposed Compliance Order action associated with this alleged violation has already been completed. PHMSA finds a violation of § 195.402(a).

12. **Item 5- 49 C.F.R. § 195.403(c):** The Notice alleged Respondent failed to require and verify that its supervisors maintain a thorough knowledge of that portion of the emergency response procedures for which they are responsible for ensuring compliance. Specifically, Kiantone failed to provide records demonstrating compliance with § 195.403(c). Respondent contested Item 5, stating it met the stated requirement in § 195.403(c), but acknowledged relevant records were not available during the inspection and provided additional records with the Response and subsequently thereafter. Upon review of the additional documentation, the Parties agree to a reduced civil penalty assessment for this alleged violation. PHMSA finds violations of § 195.403(c).

13. **Item 8- 49 C.F.R. § 195.402(a):** The Notice alleged Respondent failed to follow its written procedures. Specifically, Kiantone failed to follow its Operations, Maintenance & Emergency Response Procedures Manual regarding calibration of field instrumentation used in leak detection. Kiantone contested Item 8 and requested withdrawal of the associated proposed civil penalty, indicating that the relevant standards were discretionary as to the manufacturer's recommended calibration intervals. Further, Kiantone amended its relevant procedures and PHMSA agrees that these amendments meet the applicable requirements. Therefore, the Director agrees to withdraw the proposed civil penalty. PHMSA finds a violation of § 195.402(a).

14. **Item 9- 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, Kiantone failed to maintain documents of the evaluation of the capability of its leak detection as required by § 195.452(i)(3). Respondent contested the alleged violation, indicating it performed a leak detection evaluation incorporating most of the required regulatory factors, and requested a reduction of the proposed civil penalty or that it be treated as a warning. Kiantone provided additional documentation of the leak detection evaluations. Upon review of the additional documents, the Parties agree to a reduced civil penalty assessment for this alleged violation. Respondent requested the Director find that the Proposed Compliance Order action associated with this alleged violation has already been completed. PHMSA finds a violation of § 195.452(l)(1).

III. Warning Items:

15. **Item 2- 49 C.F.R. § 195.402(a):** The Notice alleged Respondent failed to follow its Operations, Maintenance & Emergency Response Procedures Manual and Facility Response Plan regarding emergency response training.

16. **Item 4- 49 C.F.R. § 195.402(a):** The Notice alleged Respondent failed to conduct a review of its Operations, Maintenance, & Emergency Response Procedures 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.

17. **Item 6- 49 C.F.R. § 195.406(a):** The Notice alleged Respondent failed to maintain adequate records demonstrating the design pressure of all pipeline components pursuant to § 195.406(a)(2), to support its maximum operating pressure determination for its West Seneca -Warren and Enbridge -West Seneca pipelines.

18. **Item 7- 49 C.F.R. § 195.410(a)(1):** The Notice alleged Respondent failed to maintain line markers at a public road crossing in the north and south directions adjacent to mainline valve eight, in Warren County, Pennsylvania.

19. For Warning Items 2, 4, 6, and 7, if OPS finds a violation of these provisions in a subsequent inspection, Respondent may be subject to future enforcement action.

IV. Civil Penalty:

20. **Item 1:** The Notice proposed a civil penalty of \$37,900 for the alleged violations. Respondent contested Item 1 and requested that the allegation and the proposed civil penalty be withdrawn. Kiantone provided inspection and checklist records for certain spill response equipment that reflected inspections conducted during the time periods implicated by the alleged violations. The Parties agree to a reduced civil penalty assessment (reduced gravity consideration) for this violation. Respondent agrees, without admission, to pay a reduced civil penalty in the amount of **\$24,500** for the violations in Item 1.

21. **Item 5:** The Notice proposed a civil penalty of \$40,500 for the alleged violation. Kiantone contested the alleged violation and requested that the proposed civil penalty be reduced or that it be treated as a warning. Kiantone provided records of evaluation for a covered task addressing control room emergency response that it asserts verify a supervisor's knowledge of, and ability to implement, emergency response procedures. The Parties agree to a reduced civil penalty assessment (reduced gravity consideration) for this violation. Respondent agrees, without admission, to pay a reduced civil penalty in the amount of **\$24,900** for the violation in Item 5.

22. **Item 8:** The Notice proposed a civil penalty of \$35,300 for this alleged violation. As discussed above, the Director withdraws the proposed civil penalty for this Item.

23. **Item 9:** The Notice proposed a civil penalty of \$53,900 for this alleged violation. Respondent contested the alleged violation and requested a reduction in the proposed civil penalty or that it be treated as a warning item. Kiantone provided additional documentation that it believed evidenced that its practice has been to incorporate the leak detection evaluation, including all the required regulatory factors, into other programmatic reviews, such as the annual reviews of the Integrity Management Program and the Facility Response Plan. The Parties agree to a reduced civil penalty assessment (reduced gravity consideration) for this violation. Respondent agrees, without admission, to pay the proposed civil penalty in the amount of **\$35,300** for the violation in Item 9.

24. Respondent shall pay a total civil penalty in the amount of **\$84,700** 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:

25. **Item 3:** The Notice proposed certain compliance order actions to address the claims alleged in Item 3. As discussed above, based on additional records submitted by Respondent, the Parties agree that the proposed compliance order for this Item has already been completed.

26. **Item 8:** The Parties discussed certain compliance order actions to address the claims alleged in Item 8. As discussed above, the Respondent submitted a revised procedure to PHMSA and the Director has approved. Therefore, the parties agree that any potential compliance order for this Item has already been completed.

27. **Item 9:** The Notice proposed certain compliance order actions to address the claims alleged in Item 9. Based on additional records submitted by Respondent, including a leak detection evaluation report that satisfies 49 C.F.R. §§ 195.452(l)(1) and 195.452(i)(3), the Parties agree that the proposed compliance order for this Item has already been completed.

VI. Enforcement:

29. 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 as specified in 49 U.S.C. § 60122 and 49 C.F.R. § 190.223 (presently 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.

VII. Dispute Resolution:

30. 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, 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.

VIII. Effective Date:

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

IX. Modification:

32. 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.

X. Ratification:

33. 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.

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

XI. Termination:

35. This Agreement will remain in effect until the total civil penalty amount in Paragraph 24 has been paid in accordance with that paragraph.

For Kiantone Pipeline Corp.:

Date

For PHMSA:

Director, Eastern Region, Office of Pipeline Safety

Date