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Via Certified Mail and electronic mail

March 5, 2014

Rod Seeley Director, Southwest Region
Pipeline and Hazardous Materials Safety Administration
8701 South Gessner Drive
Suite 1110
Houston, Texas 77074

RE: CPF 4-2014-5001

Dear Mr. Seeley:

This letter is in response to the Notice of Probable Violation, Proposed Civil Penalty and Proposed Compliance Order dated February 4, 2014 (Notice) issued by the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA) and received by Phillips 66 Pipeline LLC (Phillips 66) on February 5, 2014.

By delivery of this response, Phillips 66 elects to not contest the violations alleged in the Notice but submits the following explanations, information and other materials. It is our position that these explanations and additional materials will show that Phillips 66 took actions that were in compliance with the laws and regulations. We submit that these explanations and materials will warrant mitigation of the civil penalty. With respect to the proposed Compliance Order, Phillips 66 elects to not contest the compliance order but desires to submit written explanations and information with the anticipation that you will determine that the Compliance Order has been satisfied through the submittal of our information. It is anticipated that PHMSA will still issue the compliance order but requests that PHMSA recognize that it has received the necessary documentation to satisfy the Compliance Order.

By submitting this response, Phillips 66 does not waive any right, privilege or objection that it may have in any separate or subsequent proceeding related in any way to the information provided in this response.

The Notice was issued in response to an investigation conducted by PHMSA of an accident that occurred on the Wood River 12-inch Products Line (WR-01) Ponca City to Glenpool Segment on August 19, 2013. The Notice included five alleged violations and Phillips 66 will address each of the alleged violations.

Item 1. §195.52 Immediate notice of certain accidents.

(b) Information required. Each notice required by paragraph (a) of this section must be made to the National Response Center either by telephone to 800-424-8802 (in Washington, DC, 202-267-2675) or electronically at <http://www.nrc.uscg.mil> and must include the following information:

(6) Initial estimate of amount of product released in accordance with paragraph (c) of this section.

(c) Calculation. A pipeline operator must have a written procedure to calculate and provide a reasonable initial estimate of the amount of released product.

PHMSA's Finding:

The operator failed to provide an initial estimate of the amount of product released when making a telephonic notification of an accident. At 12:47 p.m. (CST) on August 19, 2013, Phillips 66 reported a spill to the National Response Center (NRC), Report No. 1057576, on their Wood River 12-inch Products Line (WR-01) Ponca City to Glenpool Segment near Cleveland, Oklahoma. Phillips 66 reported "0" as the amount of product released at the time of the notification.

Phillips 66 updated their NRC report on August 20, 2013, at 3:47 p.m. (Report No. 1057689) after conversations with PHMSA concerning NRC requirements. At that time, Phillips 66 estimated the amount of product released as 500 bbls.

Phillips 66's Response to Item 1:

Based on the following explanation and materials, Phillips 66 requests that the PHMSA Finding be modified and the portion of the proposed civil penalty associated with this alleged violation (\$30,200) be withdrawn or reduced.

- A. Phillips 66's initial response to NRC stated the amount of the release was "unknown"; P66 did not state that the initial estimate was zero.

When Phillips 66 reported the release to the National Response Center (NRC) on August 19, 2013, Phillips 66 reported that the amount of the release was "unknown" at the time of the call. Attached hereto as Exhibit 1 is the NRC Report No. 1057576. The Report contains two references to the quantity of product. In the section "Released Materials", it states that the "Qty Released: 0 Unknown Amount." Upon reviewing this section alone, it is clear that the amount reported was not zero but unknown. In subsequent discussions with NRC, it was determined that the NRC inserted the zero as the form requires a numerical entry but the NRC included the additional information that it was an "unknown amount". Further, in section "Description of Incident", the NRC states that the "pipeline developed a leak, which resulted in unknown amount of gasoline spilled in the ditch." Again, only reviewing the data originated by the NRC, it is clear that the amount reported and described in this section, "Description of Incident", was not zero but an unknown amount of gasoline spilled in the ditch.

The PHMSA Finding is inaccurate to say that Phillips 66 reported zero as the amount released. There is no ambiguity in the NRC report that this initial call reported a release of an unknown quantity of gasoline in the ditch. Never did Phillips 66 report that the amount of the release was "0" as claimed by PHMSA's Finding above. For this reason alone, the proposed civil penalty should be withdrawn or reduced.

- B. Phillips 66 had a written procedure in place to calculate and provide a reasonable estimate of the amount of the released product as required by the applicable regulations.

It is unclear as to whether PHMSA is raising any concern regarding the calculation of the release as reported by Phillips 66. Further, PHMSA has not expressed a concern that there should be a number reported during the initial call. As will be discussed below, Phillips 66 believed that it was following the guidance of PHMSA by providing the initial determination which was unknown. Phillips 66 used its written procedures and was unable to provide an estimate during the initial notification to NRC. Phillips 66 continued with its use of its written procedures to calculate such release volumes. On August 20, 2013, Phillips 66 notified NRC that the quantity released was 500 barrels. See Exhibit 2, NRC Report No. 1056789. As discussed below, Phillips 66's position is that it satisfied the requirements of the regulations and PHMSA's *Advisory Bulletin [Docket No. PHMSA-2013-0015]*.

Phillips 66 has modified its PHMSA Hazardous Liquid Pipeline Accident and Incident Reporting Guidelines to revise the initial notification process and the communication of the initial estimate associated with a release. A copy of the revised guidelines is attached hereto as Exhibit 3. The revised guidelines are submitted for the purpose of satisfying the requirements of the proposed compliance order.

- C. Phillips 66 relied upon the guidance of PHMSA's Advisory Bulletin (ADB - 2013-01) [Docket No. PHMSA-2013-0015]

Reference is made to the Advisory Bulletin (ADB - 2013-01) [Docket No. PHMSA-2013-0015], attached hereto as Exhibit 4. The purpose of the Advisory Bulletin is to address the time limit of the initial communication to NRC and address the requirements of the notification. The Advisory Bulletin states the following:

The information required to be reported includes the name of the operator, the name and telephone number of the person making the report, the location of the incident, the number of fatalities and injuries, and all other significant facts that are relevant to the cause of the incident or extent of the damages.

In the communication to the NRC, it is uncontested that Phillips 66 provided all of the information required by the Advisory Bulletin. Further, the Advisory Bulletin addresses initial estimates of a release with the following language quoted from the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011:

- (1) Establish time limits for telephonic or electronic notification of an accident or incident to require such notification at the earliest practicable moment following confirmed discovery of an accident or incident and not later than 1 hour following the time of such confirmed discovery;
- (2) [omitted as unnecessary for this purpose]
- (3) Require such owners and operators to revise their initial telephonic or electronic notice to the Secretary and the National Response Center with an estimate of the amount of the product released, an estimate of the number of fatalities and injuries, if any, and any other information determined appropriate by the Secretary within 48 hours of the accident or incident, to the extent practicable.

It is clear that there is not a requirement of an estimate of volume in the initial call and the estimate of product released is only referenced in the revised information required within 48 hours. It is further uncontested that Phillips 66 provided volume estimates in its updated notification to the NRC as addressed in this Advisory Bulletin.

D. Phillips 66 amended its Procedures based upon the guidance of PHMSA's Advisory Bulletin

Phillips 66 addresses the information required to be communicated to the NRC during the initial call in its PHMSA Hazardous Liquid Pipeline Accident and Incident Reporting Guidelines (P66PL-MPR-2827). Specifically, section 5.2.3.1 addresses the telephonic notification procedure. Prior to the Advisory Bulletin, revision 6 (effective February 19, 2013) of the Guidelines included a requirement to communicate the estimate of volume during the initial call. In response to the Advisory Bulletin, the Guidelines were revised and revision 7 was issued effective July 3, 2013. The Guidelines were followed for the initial call to the NRC. Phillips 66 has revised the Guidelines to address the concerns contained in this Notice and submit Exhibit 3 to address this concern and the request contained in the proposed consent order.

For the reasons stated above, Phillips 66 requests that PHMSA withdraw or reduce the civil penalty amount associated with this alleged violation. Further, Phillips 66 requests that the proposed compliance order be withdrawn based on the submittal of the revised reporting guidelines.

Item 2. §195.52 Immediate notice of certain accidents.

(b) Information required. Each notice required by paragraph (a) of this section must be made to the National Response Center either by telephone to 800-424-8802 (in Washington, DC, 202-267-2675) or electronically at <http://www.nrc.uscg.mil> and must include the following information:

(7) All other significant facts known by the operator that are relevant to the cause of the failure or extent of the damages.

PHMSA's Finding:

The operator failed to provide all significant and relevant facts when making the telephonic notification of the accident that occurred on their Wood River 12-inch Products Line (WR-01) Ponca City to Glenpool Segment near Cleveland, Oklahoma on August 19, 2013.

Phillips 66 reported NRC Report No. 1057576 on August 19, 2013 at 12:47 p.m. (CST) and did not provide all of the significant and relevant details known by the operator at the time of the accident. The Phillips 66 employee reporting the incident stated that the pipeline "developed" a leak. The timeline later submitted by Phillips 66, indicates supervisory personnel, field notifications and Duty Officer calls were completed and an initial briefing call was completed by 12:30 p.m. (CST) on Monday, August 19, 2013. Phillips 66 personnel were aware at the time of the initial call that the line was struck by their contractor performing maintenance work but did not report those facts when the initial NRC report was made.

Phillips 66 Response to Item 2:

Phillips 66 disagrees with the Finding and requests that Item 2 be withdrawn. In §195.52(b)(7), the regulation states that each notification must include all other significant facts **known by the operator** that are relevant to the cause of the failure or extent of the damages. At the time of the NRC Report No. 1057576, Phillips 66 had knowledge that there was a release and that the pipeline had developed a leak. Phillips 66 reported this to the NRC and the NRC report states in its section "Description of Incident" the following:

Caller stated that while excavation was going on, a pipeline developed a leak, which resulted in unknown amount of gasoline spilled in the ditch (containment).

See Exhibit 1 attached hereto.

Phillips 66 satisfied the requirements of the regulation in question by providing all significant facts **known by Phillips 66**. Based on the information known at the time of the call, Phillips66 had a

strong suspicion that the excavation activities caused or contributed to the release. However, until further investigation took place, Phillips 66 did not know that the line had been struck by its contractor. Within the 1 hour time limit of the initial call, Phillips 66 could not enter the ditch or get close enough to see if there were other causes. Phillips 66 only has an obligation to provide information that it knows and not to include expectations or suspicions.

In addition, the PHMSA's Finding attempts to characterize the initial report as not providing the significant facts. As stated in the above, the significant facts were communicated which included (1) excavation activities were taking place, (2) a release took place, and (3) the product release was gasoline and (4) the released product was contained in the ditch. The information provided does satisfy the requirements of the regulation and exceed the description that is expressed in the Finding as only stating that Phillips 66 communicated that "the pipeline developed a leak."

By taking into account the information provided by Phillips 66 and the requirement to provide only the significant facts known to Phillips 66, the requirements of the regulation were satisfied and this Finding should be withdrawn.

Item 3. §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 not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to insure that 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.

PHMSA's Finding:

The operator failed to follow their procedures for uncovering their pipeline during maintenance activities. On August 19, 2013, Phillips 66 was performing maintenance activities on their pipeline that required the pipeline to be exposed. Phillips 66 did not follow their procedure Phillips 66-MPR-4010; Excavations.

Phillips 66 Pipeline LLC manual Phillips 66-MPR-4010; Excavations; Section 6.8.2.1. -states that "Extreme care shall be exercised in initially uncovering the pipeline. Mechanical equipment may be used while a designated representative spotter utilizing a probe or alternative means is constantly monitoring the depth of digging."

At the time of the accident, the pipeline was still in the process of being uncovered using mechanical equipment without a designated spotter monitoring the depth of digging.

Phillips 66 Response to Item 3:

Phillips 66 disagrees with the Finding and requests that the alleged violation be withdrawn or that the portion of the proposed civil penalty associated with this alleged violation (\$167,000) be withdrawn or reduced. At the time of the accident, the pipeline had been uncovered and the Finding's specific reference to Phillips 66' manual addressing initially uncovering the pipeline is not applicable. In addition, the Finding is incorrect regarding the statement that there was not a designated spotter at the time of the accident. As stated below, a designated spotter was onsite and observing the operations at the time of the accident.

A. The Finding is inaccurate in depicting the activities as initially uncovering the pipeline.

At the time of the accident, the pipeline was previously uncovered and could be visually seen by the track hoe operator and spotter. See attached exhibits 5, 6 and 7. The track hoe was located at the end of the open trench and the bucket/arm was parallel with the pipe centerline. The pipe could be seen from the top and sides. Soil was still beneath the bottom

of the pipe. Phillips 66' procedure MPR4010 was followed to achieve this open trench condition and extreme care was taken in initially uncovering pipeline. The operator and spotter acted as a team to locate and probe for line until the top and sides were visible.

Per the MPR, "after the line has been initially located and mechanical excavation is allowed to continue, the pipeline alignment shall be kept visible to the equipment operator until completion of the excavation process". The operator followed this guideline when he positioned his track hoe at the end of the open trench and aligned his bucket/arm parallel with the pipe centerline.

Phillips 66 concluded that the line strike was caused by operator error. The operator misjudged how close his bucket was to the side of the pipe and punctured the pipeline with a tooth during the upward motion of removing soil from the trench. The spotter was in visual position and seen by the operator, and was a safe distance away from the swing of the track hoe bucket/arm located above and to the side of the trench. See attached exhibits 5, 6 and 7.

B. At the time of the accident, a designated spotter was observing the excavation process.

The spotter at the time of the accident was Jovanny Garcia, an employee of the contractor and he is an OQ qualified spotter. See Exhibit 8, Employee Qualifications by Company, attached hereto. The listing of qualifications for Mr. Garcia includes PR4010.2 - Excavate a Pipeline for Maintenance - Spotter. Mr. Garcia was standing in for the designated spotter of the day, Dakota Midkiff, while that person took a break to use the rest room. There was a brief conversation between these two people that Mr. Midkiff was taking a break and Mr. Garcia would then take over for the designated spotter. This was apparent in the written statements of the Mr. Garcia and Mr. Midkiff where Mr. Garcia was directed to spot for the track hoe operator when the accident occurred. Contractor employees' statements have been previously submitted.

Phillips 66 requests the alleged violation be withdrawn or that the portion of the proposed civil penalty associated with this alleged violation (\$167,000) be withdrawn or reduced. Phillips 66 was following its established procedure MPR4010 - Excavations, during this maintenance project work and at the time of the accident. Extreme care was being taken throughout the project to locate, excavate, probe, and expose the pipeline in a safe and methodical manner. At the time of the accident, the line was exposed and visible to the operator and spotter. Further, there was a spotter, OQ qualified, that was present at the time of the accident.

Item 4. §195.505 Qualification program

Each operator shall have and follow a written qualification program. The program shall include provisions to:

- (b) Ensure through evaluation that individuals performing covered tasks are qualified.
- (c) Allow individuals that are not qualified pursuant to this subpart to perform a covered task if directed and observed by an individual that is qualified;

PHMSA Concerns:

The operator failed to ensure that the person designated as the "Spotter" was qualified or that he was directed and observed by an individual that was qualified. On August 19, 2013, Phillips 66 was performing maintenance activities on their pipeline that required the pipeline to be exposed. This activity required a qualified person per covered task PR4010.2. The employee designated as the Spotter was not qualified to perform the task. While other individuals were on site and qualified per PR4010.2 they were neither directing nor observing the unqualified individual or performing the Spotter tasks themselves.

Phillips 66 Response to Item 4:

Phillips 66 disagrees with the Finding and requests that the alleged violation be withdrawn or that the portion of the proposed civil penalty associated with this alleged violation (\$167,000) be withdrawn or reduced.

On the day of the line strike incident, the immediate contractor work crew consisted of a track hoe equipment operator and two contract laborers on the ground, Mr. Garcia and Mr. Midkiff. Mr. Midkiff, the designated spotter for the day, was not yet fully OQ qualified by the contractor. He was still in training and being mentored by Mr. Garcia, who was a fully OQ qualified spotter in the contractor records and the Phillips 66 data base. See attached Exhibit 8.

The contractor was using the span of control rule in the OQ program requirements to have the OQ certified spotter mentor the non-OQ certified spotter.

Mr. Garcia, the OQ qualified spotter, had temporarily taken over spotter duties at the time of the incident so that Mr. Midkiff, the designated spotter, could use the rest room. Written statements from both individuals acknowledge this 'handoff' while the designated spotter took a break. Contractor employees' statements have been previously submitted.

Phillips 66 does not believe alleged violation or the severity of the proposed penalty is appropriate for this item. Phillips 66 has a robust Operator Qualification Program and tracking database for contractor personnel, which was applied to this project by tracking contractor personnel assigned to OQ tasks. The contractor chose to assign an OQ certified spotter to mentor the non-certified spotter using the span of control rule.

Item 5. §195.404 Maps and Records

- (b) Each operator shall maintain for at least 3 years daily operating records that indicate—
(2) Any emergency or abnormal operation to which § 195.402 apply.

PHMSA Concerns:

The operator failed to provide records to demonstrate that a Hot Work Permit required by Phillips 66 HSE Hot Work Permit Policy, was obtained for the repair work performed on August 20, 2013, following the excavation damage. Phillips 66 procedure Phillips 66-MPR-4010 Excavations; Section 6-6.3.8 state that a Hot Work Permit should be obtained prior to beginning excavations and refer to the Phillips 66 -Health and Safety Hot Work Permit Policy (Rev. 3/2007-12-01). PHMSA requested the Hot Work Permits for the repair work performed on August 20, 2013. According to an email received from the compliance supervisor dated December 16, 2013, the permit for the requested day could not be located.

Phillips 66 Response to Item 5:

Phillips 66 was able to locate other permits, but was unable to locate this particular permit. Phillips 66 will enhance its process for tracking and keeping these "low energy" hot work permits.

Proposed Compliance Order

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to Phillips 66, a Compliance Order incorporating the following remedial requirements to ensure the compliance of Phillips 66 with the pipeline safety regulations:

- 1. In regard to Item Number 1 of the Notice pertaining to telephonic notification of the initial estimate of the amount of product released:*

Phillips 66 Pipeline LLC manual (P66PL-MR-2827) contains a procedure titled PHMSA Hazardous Liquid Pipeline Accident and Incident Reporting Guidelines Rev.7, Section 5. Action Required, Section 5.2 Telephonic Notification (number 9). These procedures state "Initial estimate of amount of product released (needs to be reported within 48 hours of discovery). If working the spill amount, tell the NRC that you will get back with them within 48 hours." This procedure includes a reporting time of 48 hours which is not reflected in the 49 CFR 195.52(b)(6). Phillips 66 shall revise these procedures to ensure that an initial estimate is reported to the National Response Center when a release occurs.

2. *Phillips 66 shall provide the revised procedures within 30 days after receipt of a Final Order.*
3. *It is requested (not mandated) that Phillips 66 maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to R. M. Seeley, Director, Southwest, Pipeline and Hazardous Materials Safety Administration. It is requested that these costs be reported in two categories: 1) total cost associated with preparation/revision of plans, procedures, studies and analyses, and 2) total cost associated with replacements, additions and other changes to pipeline infrastructure.*

Phillips 66 Response to Proposed Compliance Order:

Phillips 66 is not contesting the compliance order but desires to submit the following written explanation, information and other materials. We request that the compliance order be modified in whole or in part based on the submitted materials.

As discussed in Phillips 66 Response to Item 1, Phillips 66 believed that it was following the regulations and guidance of PHMSA's *Advisory Bulletin [Docket No. PHMSA-2013-0015]*. The Advisory Bulletin states that the information required to be reported includes the name of the operator, the name and telephone number of the person making the report, the location of the incident, the number of fatalities and injuries, and all other significant facts that are relevant to the cause of the incident or extent of the damages. Phillips 66 addresses the information required to be communicated to the NRC during the initial call in its PHMSA Hazardous Liquid Pipeline Accident and Incident Reporting Guidelines (P66PL-MPR-2827). Specifically, section 5.2.3.1 addresses the telephonic notification procedure. Prior to the issuance of the Advisory Bulletin, revision 6 (effective February 19, 2013) of the Guidelines included a requirement to communicate the estimate of volume during the initial call. In response to the Advisory Bulletin, the Guidelines were revised and revision 7 was issued effective July 3, 2013. The Guidelines (revision 7) were followed for the initial call to the NRC.

Phillips 66 has modified its PHMSA Hazardous Liquid Pipeline Accident and Incident Reporting Guidelines to revise the initial notification process and the communication of the initial estimate associated with a release. Specifically, the last paragraph of Section 4, Section 5.3.3.1 and Appendix A (visible release reference) of the Guidelines have been revised to address the requests of the proposed compliance order. A copy of the revised guidelines is attached hereto as Exhibit 3. The revised guidelines are submitted for the purpose of satisfying the requirements of the proposed compliance order.

Based on the Phillips 66 Response to Item 1 and the revised procedures as submitted hereto as Exhibit 3, Phillips 66 requests that the proposed compliance order be withdrawn. If the proposed compliance order is issued, the attached Exhibit 3 is submitted to satisfy the requirements of Section 1 of the proposed compliance order.

Summary

Based on these explanations and additional materials provided herein, Phillips 66 requests that certain alleged violations be withdrawn, that the civil penalty be withdrawn or reduced and that the compliance order be amended to reflect compliance or withdrawn. Thank you for your consideration and review of this response and the attached materials. Please do not hesitate to contact me if you have any questions or need additional information or explanation.

Sincerely,

A handwritten signature in blue ink, appearing to read "Todd Tullio". The signature is fluid and cursive, with a large initial "T" and a long horizontal stroke extending to the right.

Todd Tullio
Manager, Regulatory Compliance