

April 26, 2023

VIA ELECTRONIC MAIL TO: manny.h.cortez@p66.com

Manny Cortez, President
Phillips 66 Pipeline LLC
2331 City West Blvd.
Houston, Texas 77042

CPF No. 4-2022-006-NOPV

Dear Mr. Cortez:

Enclosed please find a Consent Order incorporating the terms of the Consent Agreement between the Pipeline and Hazardous Materials Safety Administration (PHMSA) and Phillips 66 Pipeline LLC, which was executed on April 26, 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

Enclosure: Consent Order and Consent Agreement

cc: Mr. Bryan Lethcoe, Director, Southwest Region, Office of Pipeline Safety, PHMSA
Mr. Doug Sauer, Vice President, Pipeline Regulatory Affairs, Phillips 66 Pipeline LLC,
doug.b.sauer@p66.com
Ms. Julie P. Pradel, Managing Counsel, Phillips 66 Pipeline LLC, julie.p.pradel@p66.com
Ms. Catherine D. Little, Outside Counsel for Phillips 66 Pipeline LLC, Bracewell, LLP,
catherine.little@bracewell.com
Ms. Mandi Moroz, Outside Counsel for Phillips 66 Pipeline LLC, Bracewell, LLP,
mandi.moroz@bracewell.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)	
)	
Phillips 66 Pipeline LLC,)	CPF No. 4-2022-006-NOPV
)	
Respondent.)	
)	

CONSENT ORDER

By letter dated September 16, 2022, the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), issued a Notice of Probable Violation and Proposed Civil Penalty (Notice) to Phillips 66 Pipeline LLC (Phillips 66 or Respondent).

In response to the Notice, Respondent requested a hearing on Items 1, 2 and 3, contesting the underlying violations and proposed civil penalties (Response). Phillips 66 also asked for the opportunity to meet informally with PHMSA to discuss the allegations in the Notice. 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, the Parties have agreed to a Consent Agreement by which Respondent, without admission, agreed to the findings of violation for Items 1 and 2, accepted Item 3 as a warning, and agreed to pay a reduced civil penalty in the amount of **\$297,200**.

Accordingly, the Consent Agreement is hereby approved and incorporated by reference into this Consent Order. Phillips 66 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.

April 26, 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**

)	
In the Matter of)	
)	
Phillips 66 Pipeline LLC,)	CPF No. 4-2022-006-NOPV
)	
Respondent.)	
)	

CONSENT AGREEMENT

From March 11, 2020, through June 4, 2021, 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.), performed an inspection following a reported accident involving Breakout Tank #1401 at Gray Oak Pipeline, LLC’s (Gray Oak’s) Helena Terminal in Karnes County, Texas. During that time, Phillips 66 Pipeline LLC (Phillips 66 or Respondent) was the operator of the Gray Oak system.¹ On March 10, 2020, Phillips 66 notified the National Response Center of an unintentional release of 6.50 barrels of crude oil from Breakout Tank #1401 at Gray Oak’s Helena Terminal. After conducting its own internal investigation, Phillips 66 determined that undetected weld defects caused the failure.

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated September 16, 2022, a Notice of Probable Violation and Proposed Civil Penalty (Notice), which also included a warning item pursuant to 49 C.F.R. § 190.205. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Phillips 66 committed violations of two provisions of 49 C.F.R. Part 195 (Items 1 and 2), and proposed a civil penalty of \$552,800. The other probable violation (Item 3) was brought as a warning item, noting that failure to promptly correct this item may result in future enforcement action.

Phillips 66 responded to the Notice by letter dated October 14, 2022 (Response). Respondent contested the underlying violations and the proposed civil penalties.

PHMSA and Respondent (the Parties) subsequently met to discuss the issues raised in the Response. As a result of those discussions and as explained in more detail below, the parties agree to a reduced civil penalty of **\$297,200**.

¹ The tanks and property at the Helena Terminal belong to Gray Oak Pipeline, LLC, a joint venture between subsidiaries of Enbridge, Marathon Petroleum Corp. Diamondback Energy, Inc., and Phillips 66. Phillips 66 Pipeline LLC was the operator of that joint venture until April 1, 2023. As of that date, operations transferred to Enbridge Holdings (Gray Oak) LLC, a subsidiary of Enbridge.

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 U.S.C. § 60101, *et seq.* and 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 prior operator of the pipeline facilities subject to the Notice, Respondent and the 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 Consent Agreement (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, recommending that the Associate Administrator adopt the terms of this 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. 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 for the Dispute Resolution provisions 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 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. 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. Respondent is no longer the operator of the Gray Oak pipeline system referenced herein but retains an ownership interest in the system. Once executed, Respondent will provide a copy of this Agreement to the new operator of the Gray Oak pipeline system and any relevant owners. For all future transfers by Respondent of its ownership interest in the Gray Oak pipeline system referenced herein, Respondent will provide a copy of this Agreement to the prospective transferee at least 30 days prior to such transfer. Respondent will provide written notice of the transfer to the Director no later than 60 days after the transfer occurs.

8. 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.

9. 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.

10. For the purposes of this Agreement, Respondent neither admits nor denies the alleged violations identified in the Notice but agrees to the findings of violation.

11. Except as set forth 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.

12. Upon issuance of the Consent Order, the Parties agree to the following terms.

II. Findings of Violation:

13. *Item 1 - 49 C.F.R. § 195.202:* The Notice alleged that Phillips 66 failed to construct Breakout Tank #1401 in Karnes County, Texas, in accordance with its comprehensive written specifications as required by §§ 195.202 and 195.132(b)(3). Specifically, the Notice alleged that Phillips 66 failed to properly remove weld slag, debris, and conduct visual inspections before pre-commissioning vacuum box testing. These failures masked the defects that caused the accident, a release of 6.50 barrels of crude oil, which was discovered by the Company four (4) days after the tank was placed into service and contained within facility property. Phillips 66 conducted a post-accident investigation which determined that a contractor failed to properly

perform the required inspections of the welds on the bottom plates of the breakout tank resulting in the newly constructed tank leaking after being placed in service. The visual examination and vacuum box testing performed during the failure investigation revealed 28 weld defects with 17 confirmed weld defects requiring repairs. After PHMSA's inspection and related discussions, Phillips 66 conducted inspections of additional tanks at Helena Terminal constructed by the same contractor to ensure similar issues were not present on other tanks. After the Notice was issued, Phillips 66 revised its procedures to provide for a separate inspection of the tank bottom weld seams by a Company appointed inspector. Upon further discussions between the Parties, Respondent, without admitting or denying the allegation, agrees to the finding of violation for purposes of this Agreement.

14. **Item 2 - 49 C.F.R. § 195.579(d)**: The Notice alleged that Phillips 66 failed to install the tank bottom lining in Breakout Tank #1401 in accordance with API RP 652 as required by § 195.579(d) and its written procedures. Specifically, the Notice alleged that Phillips 66 failed to conduct adequate surface preparation, improperly applied the tank bottom epoxy lining, failed to properly visually inspect the epoxy lining for holidays after installation, and failed to repair the defects in the epoxy lining. PHMSA maintains that a properly installed lining may have prevented the release. Phillips 66 contested the allegation in the Notice and provided information about its efforts to address the identified deficiency on other tanks constructed by the same contractor at Helena Terminal. Upon further discussions between the Parties, Respondent, without admitting or denying the allegation, agrees to the finding of violation for purposes of this Agreement.

15. Items 1 and 2 will be considered by PHMSA as prior offenses in any future PHMSA enforcement action taken against Respondent for the five (5)-year period following the *Effective Date* of this Agreement.

III. Warning Item:

16. **Item 3 - 49 C.F.R. §§ 195.307(c) & 195.202**: The Notice alleged that Phillips 66 failed to perform a hydrostatic test in accordance with its written procedures and API Standard 650 as required by § 195.307(c) for the breakout tanks at the Wink and Crane, Texas terminals. This Item was issued as a warning. API Standard 650 allows operators to deviate from certain hydrostatic testing requirements “[i]f sufficient water to fill the tank is not available.” Phillips 66 maintains that it based its determination on a variety of factors, including the cost of hydrotesting, that it lacked “practical access” to a source that could supply a sufficient amount of water and a way to dispose of the water once testing was completed. PHMSA acknowledges that Phillips 66 management approved the deviation but maintains that the decision to forego hydrostatic testing was due to “economic impact,” and not lack of sufficient water. Respondent, without admitting or denying the allegation, accepts the warning item for purposes of this Agreement.

17. As referenced in § 190.205, warnings are complete upon issuance and are not adjudicated to determine whether a finding of violation occurred. Therefore, Item 3 does not constitute a finding of violation. If OPS finds a violation of this provision in a subsequent inspection, Respondent may be subject to future enforcement action.

IV. Civil Penalty:

18. **Item 1:** The Notice proposed assessing a civil penalty in the amount of \$276,400 for Item 1. Respondent requested a reduction of the proposed civil penalty and PHMSA agrees to reduce the civil penalty. The reduction is based on reconsideration of the history of prior offenses after consideration of additional information provided by Respondent. PHMSA finds that information presented by Respondent indicates this selection should be reduced from “6 or more” to “2-3” prior offenses in the five-year period preceding issuance of the Notice. Respondent agrees to pay a reduced civil penalty in the amount of **\$259,200** for the violation in Item 1.

19. **Item 2:** The Notice proposed assessing a civil penalty in the amount of \$276,400 for Item 2. Respondent requested a reduction of the proposed civil penalty and PHMSA agrees to reduce the civil penalty. The reduction is based on reconsideration of gravity and the history of prior offenses after consideration of additional information provided by Respondent. With respect to gravity, PHMSA reduces the selection from causal to occurred not in an HCA, and removes the accident multipliers in recognition that the improperly installed lining may not have been a direct cause of the release from the breakout tank. With respect to history of prior offenses, PHMSA finds that information presented by Respondent indicates this selection should be reduced from “6 or more” to “2-3” prior offenses in the five-year period preceding issuance of the Notice. Respondent agrees to pay a reduced civil penalty in the amount of **\$38,000** for the violation in Item 2.

20. Respondent shall pay an adjusted civil penalty in the amount of **\$297,200**, 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. Enforcement:

21. 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 under 49 U.S.C. § 60122, of 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 in accordance with decisions of the Associate Administrator if resolved pursuant to the Dispute Resolution process herein. The maximum civil penalty amounts are adjusted annually for inflation. *See* 49 C.F.R. § 190.223.

VI. Dispute Resolution:

22. The Director and Respondent will informally attempt to resolve any disputes arising under this Agreement. 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 Southwest Region, and to the Associate Administrator for Pipeline Safety, 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.

VII. Effective Date:

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

VIII. Recordkeeping and Information Disclosure:

24. Unless otherwise required in this Agreement, Respondent agrees to maintain records demonstrating compliance with all requirements of this Agreement for a period of at least five (5) years following completion of all work to be performed. For any reports, plans, or other deliverables required to be submitted to PHMSA pursuant to this Agreement, Respondent may assert a claim of business confidentiality or other protections applicable to the release of information by PHMSA, covering part or all of the information required to be submitted to PHMSA pursuant to this Agreement in accordance with 49 C.F.R. Part 7. Respondent must mark the claim of confidentiality in writing on each page, and include a statement specifying the grounds for each claim of confidentiality. PHMSA determines release of any information submitted pursuant to this Agreement in accordance with 49 C.F.R. Part 7, the Freedom of Information Act, 5 U.S.C. § 552, DOT and PHMSA policies, and other applicable regulations and Executive Orders.

IX. Modification:

25. 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. Termination:

26. The Agreement shall not terminate until the Director confirms, in writing, that the Agreement is terminated in accordance with this paragraph. Nothing in this Agreement prevents Respondent from completing any of the obligations earlier than the deadlines provided for in this Agreement.

XI. Ratification:

27. 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.

28. The Parties hereby agree to all findings, conditions, and terms of this Agreement.

[Signature Lines on Following Page]

For Phillips 66 Pipeline LLC:

Manny H. Cortez
President, Phillips 66 Pipeline LLC

Date

For PHMSA:

Bryan Lethcoe
Director, Southwest Region, Office of Pipeline Safety

Date