U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue SE
Washington, DC 20590

APR 17 2015

Mr. Todd Denton
President
Phillips 66 Pipeline, LLC
3010 Briarpark Drive
Ninth Floor
Houston, TX 77042

Re: CPF No. 4-2014-5001

Dear Mr. Denton:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of $364,200, and specifies actions that need to be taken by Phillips 66 Pipeline, LLC, to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Southwest Region, this enforcement action will be closed. Service of the Final Order by certified mail is deemed effective upon the date of mailing, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure
cc: Mr. R.M. Seeley, Director, Southwest Region, OPS
Mr. Todd Tullio, Manager, Regulatory Compliance, Phillips 66 Pipeline, LLC

CERTIFIED MAIL - RETURN 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. 4-2014-5001**
Respondent.	)	

FINAL ORDER

Between August 20 and December 16, 2013, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an investigation of an accident involving the hazardous liquid pipeline system of Phillips 66 Pipeline, LLC (Phillips 66 or Respondent). Phillips 66 Pipeline, LLC, a wholly-owned subsidiary of Phillips 66, operates more than 12,000 miles of pipelines in the United States transporting both raw and finished petroleum products.[1]

The investigation arose out of an accident that occurred as the result of excavator damage on the Wood River 12-inch Products Line (WR-01), Ponca City to Glenpool Segment, near Cleveland, Oklahoma, on August 19, 2013 (Accident).

As a result of the investigation, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated February 4, 2014, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice), which also included a warning pursuant to 49 C.F.R. § 190.205. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Phillips had committed various violations of 49 C.F.R. Part 195 and assessing a civil penalty of $364,200 for the alleged violations. The warning items required no further action, but warned the operator to correct the probable violations or face future potential enforcement action.

Phillips 66 responded to the Notice by letter dated March 5, 2014 (Response). The company did not contest the allegations of violation, but offered additional information in response to the Notice, and requested that the proposed civil penalty be reduced or eliminated.[2] Respondent did not request a hearing and therefore has waived its right to one.

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[1] *See* http://www.phillips66pipeline.com/EN/Pages/index.aspx (last accessed August 15, 2014).

[2] Response at 1.

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. § 195.52(b), which states in relevant part:

> **§ 195.52 Immediate notice of certain accidents.**
> (a) Notice requirements. At the earliest practicable moment following discovery of a release of the hazardous liquid or carbon dioxide transported resulting in an event described in § 195.50, the operator of the system must give notice, in accordance with paragraph (b) of this section, of any failure that:
> (1) . . . .
> (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:
> (1) . . . .
> (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.

The Notice alleged that Respondent violated 49 C.F.R. § 195.52(b) by failing to provide an initial estimate of the amount of product released in its telephonic notification of the Accident to the National Response Center (NRC). Specifically, the Notice alleged that Phillips 66 reported the amount of product released to the NRC as "0," despite its knowledge that product had been released.

In its Response, Phillips 66 noted that in its initial report of the release to the NRC, the company stated that there had been an "unknown" amount of product released. The company explained that "the NRC inserted the zero as the form requires a numerical entry," and therefore the actual NRC report stated "Qty Released: 0 UNKNOWN AMOUNT." Phillips 66 stated that it "used its written procedures and was unable to provide an estimate during the initial notification to NRC" but that the company provided an estimate of 500 barrels the following day.

The company also argued that it relied upon guidance in PHMSA's Advisory Bulletin ADB-2013-01[3] to conclude that an estimate of the amount of product released was not required until 48 hours after the initial notification. The company quoted the following statement from the Advisory Bulletin: "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

[3] Pipeline Safety: Accident and Incident Notification Time Limit, 78 Fed. Reg. 6402 (Jan. 30, 2013).

the incident or extent of the damages." The company argued that the Advisory Bulletin does not specifically require an estimate of volume in an operator's initial notification, and that language from the Pipeline Safety, Regulatory Certainty and Job Creation Act of 2011 only required that an estimate of the amount of product released be provided in a revised notice within 48 hours of the accident.[4]

I disagree. I find that the Advisory Bulletin did not attempt to list every item required in § 195.52 notifications. Indeed, the stated purpose of the Advisory Bulletin was

> "...[t]o advise owners and operators of gas and hazardous liquids pipeline systems and LNG facilities that they should contact the NRC within one hour of discovery of a pipeline incident and *should also file additional telephonic reports if there are significant changes in the... product release estimates or the extent of damages*" (emphasis added).

The introductory summary of the Bulletin stated that

> "...[o]wners and operators... are already required to provide telephonic reports of pipeline incidents and accidents to the National Response Center (NRC) promptly, accurately, *and fully communicate the estimated extent of the damage*" (emphasis added).

The entirety of the Advisory Bulletin merely reinforces the existing regulatory requirement that operators provide an estimate of the quantity of product released during the initial notification, and that this quantity be updated within 48 hours if there are any significant changes to the estimate.

The Advisory Bulletin does not change the clear meaning and intent of the regulation. The regulation plainly states that notification must be made at the earliest practicable moment following an accident, and must include an initial estimate of amount of product released in accordance with a written procedure to calculate and provide a reasonable initial estimate of the amount of released product. The Advisory Bulletin provided guidance as to the timing of the initial notification, but did not purport to change the requirements regarding the content of the notification.

Phillips 66 further explained that it had "used its written procedures and was unable to provide an estimate during the initial notification to NRC." The company did not provide an explanation as to why it was unable to provide an estimate, or how its written procedures were followed, or why the procedures were unsuccessful in providing the company with an estimate of the quantity released.

A pipeline rupture can conceivably release less than one barrel or thousands of barrels of product. The regulation requires an early estimate of the quantity released for purposes of providing the National Response Center and PHMSA with a general idea of the size of the

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[4] *Id.* at 3.

accident, the extent of possible environmental damage, and the scope of the cleanup effort that is likely to be required. It should be noted that the initial NRC report's listing of "0 UNKNOWN AMOUNT" was accompanied by a description stating "unknown amount of gasoline spilled in the ditch." Accordingly, after considering all of the evidence and the legal issues presented, I find that Respondent violated 49 C.F.R. § 195.52(b) by failing to provide the NRC with an initial estimate of the amount of product that was released in its initial telephonic notification of the Accident.

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.

The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a) by failing to follow its manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. Specifically, the Notice alleged that the Phillips 66 procedure for *Excavations*, *P66PL-MPR-4010*, required that "[e]xtreme 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."[5] According to PHMSA, the pipeline, at the time of the Accident, was being uncovered using a track hoe, but that there was no designated spotter monitoring the depth of digging.

In its Response, Phillips 66 took issue with two of the factual allegations in the Notice. First, the company argued that at the time of the Accident, there was indeed a designated spotter observing the excavation process. Phillips 66 stated: "The spotter at the time of the accident was Jovanny Garcia, an employee of the contractor and he is an [Operator Qualification (OQ)] qualified spotter.... Mr. Garcia was standing in for the designated spotter for the day, Dakota Midkiff, while that person took a break to use the rest room."[6] Phillips 66 also argued that the two contractor employees had a brief conversation to establish that Mr. Midkiff would be taking a break and that "Mr. Garcia would then take over for the designated spotter. This was apparent in the written statements of Mr. Garcia and Mr. Midkiff...."

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[5] Pipeline Safety Violation Report (Violation Report), (February 4, 2014) (on file with PHMSA), at Exhibit A.

[6] Response at 6.

However, the employees' written statements do not support this argument. Three contractor employees who were working at the site of the Accident provided statements to the PHMSA investigator: (1) Riley Neeley, the track hoe operator; (2) Dakota Midkiff, the spotter; and (3) Jovanny Garcia, a laborer.[7] Mr. Neeley, the operator of the track hoe, stated that at the time of the accident, Dakota Midkiff had stepped away and that Jovanny Garcia was about 50 feet away watching the digging. Mr. Midkiff, the spotter, also stated that he had stepped away, and that he "told Jovanny to watch Riley." Jovanny Garcia stated: "I was never hired as a spotter, I was hired as a labor *(sic)*.... I was standing on the opposite side of the spotter watching the operator dig. Dakota said I'm going to go pee and I said okay."

Mr. Garcia may be qualified to perform the task of a spotter, but he was not performing that task at the time of the Accident in accordance with *P66PL-MPR-4010.* This procedure required the spotter to be constantly monitoring the depth of digging using a probe or alternative means. Mr. Garcia could not have been doing so while watching from 50 feet away.

Second, Phillips 66 argued that at the time of the Accident, the pipeline was not being initially uncovered and that therefore its procedures did not require that there be a designated spotter. The company stated that the pipeline had been "previously uncovered and could be visually seen by the track hoe operator and spotter."[8] The company also stated that its procedure states: "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." Phillips 66 argued that the pipeline alignment was visible to the operator of the track hoe and that therefore the company had complied with its procedures.

Photographs provided by Phillips 66, however, show the track hoe located at the end of an open trench, positioned above the pipeline.[9] In the photographs, a portion of the pipeline had been uncovered and part of it was still buried. However, there is no date or description of the photographs to provide their context. Mr. Neeley, the operator of the track hoe, stated that at the time of the Accident, he "had 150 ft done and 50 ft to go,"[10] which seems to indicate that 50 feet of the pipeline had not yet been "initially uncovered." In addition, the fact that Dakota Midkiff was the designated spotter for the day does not support Respondent's contention that its procedures did not require that there be a spotter present.

Taken as a whole, the evidence and the employee statements do not support Respondent's argument that the pipeline had already been uncovered and that no spotter was required. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(a) by failing to follow its manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies.

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[7] Violation Report, Exhibit A.

[8] Response at 5.

[9] Response, Exhibits 5, 6, and 7.

[10] Violation Report, Exhibit A.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.505, which states, in relevant part:

> **§ 195.505 Qualification program.**
>
> Each operator shall have and follow a written qualification program. The program shall include provisions to:
>
> (a) . . . .
>
> (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;

The Notice alleged that Respondent violated 49 C.F.R. § 195.505 by failing to follow its written qualification program. Specifically, the Notice alleged that Phillips 66 designated the "spotter" task as a covered task for purposes of its operator qualification (OQ) program, but that on the day of the Accident, Phillips 66 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.

In its Response, Phillips 66 argued that its 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."[11] The company stated that Mr. Garcia was an operator-qualified spotter who was mentoring the designated spotter, Mr. Midkiff.

However, the regulation does not merely require that the operator-qualified individual "mentor" the non-qualified individual; neither does the regulation mention a "span of control rule." Rather, the requirement in § 195.505(c) is that a non-qualified person may perform a qualified task, but only if a qualified individual actually directs and observes the non-qualified individual as he or she performs the task. According to the contractor employees' statements, the qualified individual was 50 feet away from the location where the task was supposed to be performed, he was not hired to perform the task on the day in question, and he was not personally directing and observing the individual who was performing the task. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.505 by failing to follow its written qualification program.

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

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

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[11] Response at 7.

related series of violations. 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; and any effect that the penalty may have on its ability to continue doing business; and the good faith of Respondent in attempting to comply with the pipeline safety regulations. 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 $364,200 for the violations cited above.

Item 1: The Notice proposed a civil penalty of $30,200 for Respondent's violation of 49 C.F.R. § 195.52(b), by failing to provide an initial estimate of the amount of product released in its telephonic notification of the Accident to the NRC. Respondent argued that an initial estimate of the quantity of product released was not actually required during the initial notification, which is contrary to the plain language in the regulation. Phillips 66 provided no explanation for why it was unable to provide an estimate of the quantity of product released. Accurate and timely reporting of information relating to an accident and the extent of resulting damage is critical to enable federal, state, and local emergency response officials to respond efficiently and effectively to minimize impact to people and the environment. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $30,200 for violation of 49 C.F.R. § 195.52(b).

Item 3: The Notice proposed a civil penalty of $167,000 for Respondent's violation of 49 C.F.R. § 195.402(a), for failing to follow its own manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. As discussed above, I found that Phillips 66 failed to follow its own procedure requiring that extreme care be used in the initial excavation of a pipeline and that a qualified spotter must observe and monitor any excavation being performed with mechanical equipment. Respondent's failure to follow this procedure was a causal factor in the pipeline being struck by excavation equipment and a release of hazardous liquid,[12] an accident that could easily have been catastrophic. Respondent was fully culpable for its failure to follow the procedures it had in place to prevent excavation damage. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $167,000 for violation of 49 C.F.R. § 195.402(a).

Item 4: The Notice proposed a civil penalty of $167,000 for Respondent's violation of 49 C.F.R. § 195.505, for failing to follow its written qualification program. As discussed above, I found that Phillips 66 failed to ensure that the person it had designated as the "spotter" was qualified or that he was directed and observed by an individual who was qualified. This error was also a causal factor to the accident,[13] resulting in the pipeline being struck by excavation equipment and in the release of hazardous liquid. Respondent was fully culpable for its failure to ensure that covered tasks were being conducted by fully qualified individuals during the pipeline excavation. Accordingly, having reviewed the record and considered the assessment criteria, I

[12] Violation Report at 25.

[13] *Id.* at 33.

assess Respondent a civil penalty of $167,000 for violation of 49 C.F.R. § 195.505.

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 **$364,200**.

Payment of the civil penalty must be made within 20 days of service. 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, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the $364,200 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.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Item 1 in the Notice for violation of 49 C.F.R. § 195.52(b). Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 195.52(b) (**Item 1**), Respondent has submitted draft modified procedures regarding DOT/PHMSA telephonic notification of accidents and incidents to require that an initial estimate of the amount of product released is reported to the NRC. Respondent must finalize these procedures and submit them to the Director within 30 days of receipt of this Final Order.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent and demonstrating good cause for an extension.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed $200,000 for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

WARNING ITEMS

With respect to Items 2 and 5, the Notice alleged probable violations of Part 195 but did not propose a civil penalty or compliance order for these items. Therefore, these are considered to be warning items. The warnings were for:

> 49 C.F.R. § 195.52(b) **(Item 2)** — Respondent's alleged failure to provide all significant and relevant facts known by the operator when making the telephonic notification of the Accident;[14] and
>
> 49 C.F.R. § 195.404(b)(2) **(Item 5)** — Respondent's alleged failure to maintain operating records relating to the Hot Work Permit that was required for the repair work that was performed on August 20, 2013.

Phillips 66 presented information in its Response showing that it had taken certain actions to address the cited warning 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 has a right to submit a Petition for Reconsideration of this Final Order. The petition must be sent to: Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. PHMSA will accept petitions received no later than 20 days after receipt of service of this Final Order by the Respondent, provided they 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. Unless the Associate Administrator, upon request, grants a stay, all other terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

APR 17 2015
Date Issued

[14] In its Response, Phillips 66 contested this allegation of probable violation, stating that at the time of the notification, the company did not know that the line had been struck during excavation activity, but only had a "strong suspicion" of it. The company stated that it had provided all significant facts during the notification, including that excavation activities were taking place and that product had been released. Knowledge of excavator damage is a significant fact that should be included in the NRC report, but because this is a warning item and not a finding of violation, it is not necessary to determine whether Phillips 66 had sufficient knowledge at the time of reporting to provide this information.