

VIA EMAIL AND CERTIFIED MAIL:

Todd Denton
President
Phillips 66 Pipeline LLC
2331 CityWest Blvd.
Houston, Texas 77042

RE: In the Matter of Phillips 66 Pipeline LLC– CPF No. 4-2018-5029S

Dear Mr. Denton:

Enclosed please find the fully executed Consent Agreement and Order that resolves the issues underlying the Notice of Proposed Safety Order issued by PHMSA on December 11, 2018, in the above-referenced proceeding. Your receipt of this Consent Agreement and Order constitutes service, as 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

cc: Ms. Mary McDaniel, Director, Southwest Region, OPS
Ms. Linda Daugherty, Deputy Associate Administrator for Field Operations, Pipeline Safety, OPS
Mr. Todd Tullio, Manager, Regulatory Compliance, Phillips 66 Pipeline LLC
Mr. Van Williams, Senior Counsel, Phillips 66
Mr. Vince Murchison, Murchison Law Firm

**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. 4-2018-5029S
)	
Respondent.)	
)	

CONSENT AGREEMENT AND ORDER

On December 11, 2018, the Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a Notice of Proposed Safety Order (Notice), to Phillips 66 Pipeline LLC (Phillips 66 or Respondent). The Notice alleged that conditions exist on the LO-01 Pipeline in Elk City, Oklahoma that poses a pipeline integrity risk to public safety, property or the environment. The Notice also made preliminary findings of fact and proposed certain corrective measures.

On February 14, 2019, Phillips 66 responded to the Notice by submitting a timely written response and request for an informal consultation pursuant to 49 C.F.R. § 190.239(b)(2). An informal consultation was held, commencing on March 14, 2019, between representatives from Phillips 66 and PHMSA. By entering into this Consent Agreement, Phillips 66 agrees that no further administrative hearing will be provided for in this matter pursuant to 49 C.F.R. § 190.239(b)(2).

Accordingly, upon consent and agreement of the Parties and in accordance with 49 C.F.R. § 190.219, PHMSA and Phillips 66 hereby agree to the terms and conditions set forth in this Consent Agreement and Order (Agreement and Order) to resolve the issues underlying the Notice.

For the purposes of this Agreement and Order, the term “Affected Pipeline” means the entire 272-mile length of the LO-01 Pipeline.

I. General Provisions

1. Respondent acknowledges that the LO-01 Pipeline in Elk City, Oklahoma is regulated by PHMSA, and therefore, as the operator, Phillips 66 is 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 and Order, Respondent further 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 administrative orders issued thereunder.

2. Respondent neither admits nor denies any allegation or conclusion in the Notice but agrees, for the purposes of this Agreement and Order, that the risk condition identified in the Notice exists and agrees to address, pursuant to Respondent's repair criteria, said condition and any other identified condition on the pipeline by completing the actions specified in Section II of this Agreement and Order (Corrective Measures), as well as to abide by the terms of this Agreement and Order. This Agreement and Order does not constitute a finding of violation of any Federal law or regulation and may not be used in any civil or administrative proceeding of any kind as evidence or proof of any fact, fault or liability, or as evidence of the violation of any law, rule, regulation or requirement, except in a proceeding to enforce the provisions of this Agreement and Order.

3. Respondent consents to the issuance of this Agreement and Order, and hereby waives any further procedural requirements with respect to its issuance. Subject to the rights granted by Section V hereof, Respondent waives all rights to contest the adequacy of notice, or the validity of this Agreement and Order, including all rights to administrative or judicial hearings, reviews, or appeals.

4. This Agreement and Order shall apply to, and be binding upon, PHMSA and Phillips 66, 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 Order and any incorporated work plans and schedules to such of Phillips 66's officers, employees, and agents whose duties might reasonably include compliance with this Agreement and Order.

5. For any transfer of ownership or operating responsibility of Phillips 66's LO-01 Pipeline in Elk City, Oklahoma occurring during the term of this Agreement and Order, Respondent will provide a copy of this document to the prospective transferee at least 30 days prior to such transfer. Consistent with federal and state laws applicable to corporate disclosure obligations, Respondent shall provide written notice of the prospective transfer to the PHMSA Southwest Region Director (Director) at least 30 days prior to such transfer.

6. This Agreement and Order constitutes the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied herein. The Parties acknowledge that there are no representations, agreements, or understandings relating to settlement other than those expressly contained in this Agreement and Order.

7. Nothing in this Agreement and Order 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 administrative orders issued thereunder. Nothing in this Agreement and Order alters PHMSA's right of access, entry, inspection, and information gathering, or PHMSA's authority to bring enforcement action(s) against Phillips 66 pursuant to the Federal pipeline safety laws, the regulations and orders issued thereunder, or any other provision of Federal or State law, including future enforcement action relating to Phillips 66's LO-01 Pipeline.

8. This Agreement and Order does not waive or modify any Federal, State, or local law or regulation applicable to Respondent's LO-01 Pipeline. This Agreement and Order is not a permit, or a modification of any permit, under any Federal, State, or local laws or regulations. Phillips 66 remains responsible for achieving and maintaining compliance with all applicable Federal, State, and local laws, regulations and permits.

9. This Agreement and Order does not create rights in, or grant any cause of action to, any third party not party to this Agreement and Order. U.S. Department of Transportation and PHMSA are 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 and Order. Phillips 66 agrees to hold harmless U.S. Department of Transportation, PHMSA, 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 and Order.

10. This Agreement and Order resolves the underlying issues in the Notice. This Agreement and Order makes no findings of violation.

11. Upon the issuance of this Agreement and Order, Phillips 66 agrees to perform the Corrective Measures set forth in Section II below.

II. Corrective Measures

12. ***Pressure Restriction.*** On December 1, 2018, Respondent agreed to a pressure restriction of 80% of the operating pressure at the time of the accident on the entire Affected Pipeline. Respondent provided PHMSA information regarding nine segments of the Affected Pipeline and the associated pressure reductions to accomplish the 20% de-rate of the line pressure. Respondent shall maintain such pressure restriction until the Director approves the removal or modification of the pressure restriction pursuant to Paragraph 13 hereof.

13. ***Removal of Pressure Restriction.*** The Director may approve the removal or modification of the pressure restriction upon a written request from Respondent demonstrating that restoring the Affected Pipeline to its pre-failure operating pressure is

justified based on a reliable engineering analysis pursuant to Respondent's applicable procedures showing that the pressure increase is safe considering the identified risk condition and all known defects, anomalies, and operating parameters of the pipeline. The Director may also consider a demonstration that temporary mitigative and preventive measures are implemented prior to and during the temporary removal or modification of the pressure restriction. The Director's determination will be based upon the identified risk condition and evidence of the analyses and/or measures taken by Respondent.

14. ***Mechanical and Metallurgical Testing.*** In accordance with the Notice, on February 12, 2019, Respondent delivered to the Director a report of metallurgical testing of the pipe joint that failed, entitled *Evaluation of an ERW Seam Failure from Phillips 66's Line O 10-inch Pipeline*, prepared by Kiefner and Associates, Inc., and dated February 11, 2019 (the Metallurgical Report). Prior to finalization of the Metallurgical Report, Respondent caused Kiefner and Associates to provide a draft of the report to PHMSA simultaneously with provision of the draft report to Respondent. Respondent maintained chain of custody documentation for transporting the pipe to the Kiefner and Associates laboratory, and the metallurgical analysis followed established PHMSA testing protocol. Arrangements were made to provide the opportunity for PHMSA representatives to observe the metallurgical testing. Respondent has caused its ILI tool vendor to examine data from a 2014 crack ILI tool run to identify the anomaly that failed (the Failure Anomaly) and to more precisely examine the characteristics of that anomaly as indicated by that ILI tool data. Respondent delivered to the Director a report of metallurgical examination of certain ILI tool indications on four pipe joints which were removed from the Affected Pipeline, entitled *Evaluation of ILI Seam Anomalies from Phillips 66's Line O 10-inch Pipeline*, prepared by Kiefner and Associates, Inc. and dated June 17, 2019. Prior to finalization of the report, Respondent delivered a draft of the report, dated May 1, 2019, to PHMSA.

15. ***Root Cause Failure Analysis.*** In accordance with the Notice, Respondent performed a Root Cause Failure Analysis (RCFA), and a report of the RCFA was provided to the Director on March 13, 2019. The RCFA documented a timeline of events relating to the accident and included a pipeline history, a seam integrity assessment history, a failure history, results from the Metallurgical Report conclusions, contributing factors, and action items.

16. ***Remedial Work Plan.*** Within 45 days after this Agreement and Order is issued, Respondent will submit to the Director for approval, a written remedial work plan (RWP) that includes corrective measures. Once approved, the RWP shall automatically become incorporated into this Order. The RWP must include provisions to:

- a. Include procedural, process or other engineering solutions to manage the pressure cycling regime of the Affected Pipeline.
- b. Re-evaluate data collected from crack ILI tool runs performed on

the Affected Pipeline, to identify tool indications of anomalies that bear characteristics similar to the Failure Anomaly (the Similar Indications).

- c. Perform calibration digs of the Similar Indications. Upon excavation of each Similar Indication, Respondent shall perform non-destructive examination (NDE) of the Similar Indication and determine whether or not the subject Similar Indication meets repair criteria. To the extent the characteristics of a given Similar Indication meets repair criteria, Respondent shall repair that Similar Indication.
- d. Respondent shall implement any procedural revisions for the continuing long-term periodic testing and integrity verification measures to ensure the ongoing safe operation of the Affected Pipeline as identified in 49 CFR 195.452 considering the results of the analyses, inspections, evaluations, and corrective measures undertaken pursuant to this safety order. Respondent will submit to the Director any procedural revisions.

17. **Schedule.** The RWP must include a proposed timeline for completion of the Corrective Measures required in Paragraph 16.

18. **Documentation.** Respondent shall retain on file documentation of compliance with the RWP. Respondent shall provide copies of such documentation to the Director upon written request.

19. **Quarterly Reporting.** Respondent must submit quarterly reports to the Director, due not more than 30 days following the end of each calendar quarter, which (1) include available data and results of the testing and evaluation required by the Agreement and Order, and (2) describe the progress of the repairs and other corrective measures being undertaken.

20. **Appeals.** Respondent may appeal any decision of the Director to the Associate Administrator for Pipeline Safety. Decisions of the Associate Administrator shall be final.

21. **Documentation of Costs.** It is requested (not mandated) that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Safety Order and submit the total to Mary McDaniel, Director, Southwest Region, 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.

III. Approvals

22. With respect to the submissions under this Agreement and Order requiring the approval of the Director, the Director shall act promptly to: (a) approve, in whole or part, the submission; (b) approve the submission on specific conditions; (c) disapprove, in whole or in part, the submission, directing that Phillips 66 modify the submission; or (d) any combination of the above. In the event of approval or approval upon conditions, Respondent will proceed to take all action required by the submission, as approved or conditioned by the Director, subject to Respondent's right to invoke the dispute resolution procedures in Section V with respect to any conditions specified by Director. If the Director conditions or disapproves all or any portion of a submission, the Director shall in writing state with specificity the basis for the decision and Respondent will resubmit it to address the stated issues. If a resubmitted item is disapproved in whole or in part, the Director may again require Respondent to address the stated issues in accordance with the foregoing procedure, or the Parties may proceed to dispute resolution pursuant to Section V below.

IV. Extensions of Time

23. The Director may grant an extension of time for compliance with any of the terms of this Agreement and Order upon a written request submitted at least 15 calendar days prior to a stated deadline, demonstrating good cause for an extension. The Director shall respond within a reasonable time to any request for extension of time.

V. Dispute Resolution

24. The Director and Phillips 66 will attempt to resolve informally any disputes arising under this Agreement and Order, including but not limited to any decision of the Director. The Director and Phillips 66 will first confer in an effort to resolve any dispute. If the Director and Phillips 66 are unable to resolve informally the dispute within 15 business days of notice by Respondent, Phillips 66 may request in writing, within 10 business days of the end of said 15-day period, a written determination resolving the dispute by the Associate Administrator for Pipeline Safety, PHMSA. Along with its request, Phillips 66 will provide the Associate Administrator with all information Phillips 66 believes is relevant to the dispute. If the request is submitted as provided herein, the Associate Administrator will promptly issue a written determination that shall be final. Decisions of the Associate Administrator will constitute final agency action, and are subject to judicial appeal. The existence of a dispute and PHMSA's consideration of matters placed in dispute shall not excuse, toll, or suspend any term or timeframe for completion of any Corrective Measures to be performed under this Agreement and Order during the pendency of the dispute resolution process, except as agreed by the Director or the Associate Administrator in writing.

VI. Enforcement

25. Respondent's obligations pursuant to this Agreement and Order may be enforced by PHMSA pursuant to enforcement authorities available to the PHMSA under 49 U.S.C. § 60101, *et seq.*, and 49 C.F.R. Part 190. All deadlines set forth or referenced in this Agreement and Order will be automatically incorporated into this Agreement and Order and, subject to Respondent's right to request an extension of time under Section IV and modify this Agreement under Section IX, are enforceable in the same manner.

VII. Recordkeeping and Information Disclosure

26. Except as otherwise provided herein, Phillips 66 agrees to maintain records demonstrating compliance with all requirements of this Agreement and Order for a period of five years following notice by Respondent of the completion of all work to be performed.

27. For any reports, plans, or other deliverables required to be submitted to PHMSA pursuant to this Agreement and Order, 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 and Order in accordance with 49 C.F.R. Part 7 and 49 C.F.R. § 190.343. 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 will determine the release of any information submitted pursuant to this Agreement and Order 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 statutes, regulations and Executive Orders.

VIII. Effective Date

28. The term "Effective Date," as used herein, is the later date on which this Agreement and Order is fully executed by each of the Parties. Unless specified to the contrary, all deadlines for actions required by this Agreement and Order run from the Effective Date.

IX. Modification

29. The terms of this Agreement and Order may be modified by mutual agreement of the Parties. Such modifications must be in writing and signed by both Parties.

X. Termination

30. This Agreement and Order terminates upon completion of the Corrective

Measures and other actions within Section II, as determined by the Director. Phillips 66 may request written confirmation from PHMSA when this Agreement and Order is terminated and the Director will provide such confirmation within a reasonable time. Nothing in this Agreement and Order prevents Respondent from completing any of the obligations earlier than the deadlines provided for in this Agreement and Order.

XI. Ratification

31. The Parties' undersigned representatives certify that they are fully authorized to enter into the terms and conditions of this Agreement and Order and to execute and legally bind such party to this document.

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

For Phillips 66 Pipeline LLC (Respondent):

Todd Denton
President

Date

For PHMSA:

Alan K. Mayberry
Associate Administrator for Pipeline Safety
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation

Date