May 11, 2020

<u>VIA ELECTRONIC MAIL TO: greg.garland@p66.com</u>

Mr. Greg C. Garland
Chairman and Chief Executive Officer
Phillips 66 Company
2331 CityWest Boulevard
Houston, Texas 77042

Re: CPF No. 3-2019-5006

Dear Mr. Garland:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation against your subsidiary, Phillips 66 Pipeline, LLC, and assesses a civil penalty of $39,700. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. Service of the Final Order by electronic mail is effective upon the date of transmission, 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: Mr. Allan Beshore, Director, Central Region, Office of Pipeline Safety, PHMSA
Mr. C. Todd Denton, President, Phillips 66 Pipeline, LLC, todd.denton@p66.com
Mr. Van P. Williams, Senior Counsel, Phillips 66 Company, van.p.williams@p66.com

<u>CONFIRMATION OF RECEIPT REQUESTED</u>

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. 3-2019-5006**
a subsidiary of Phillips 66 Company,	)	
	)	
Respondent.	)	
	)	

FINAL ORDER

On August 22, 2017, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the facilities and records of Phillips 66 Pipeline, LLC (Phillips or Respondent), a subsidiary[1] of Phillips 66 Company, in East St. Louis, Illinois.[2] Phillips 66 Company processes, transports, stores, and markets hydrocarbon fuels and products globally, with more than 18,000 miles of hazardous liquid and natural gas pipelines across the United States.[3]

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated June 14, 2019, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Phillips had violated 49 C.F.R. § 195.264(a) and proposed assessing a civil penalty of $67,300 for the alleged violation.

Phillips 66 Company responded to the Notice on behalf of Respondent by letter dated July 15, 2019 (Response). The company did not contest the allegation of violation but provided an explanation of its actions and requested that the proposed civil penalty be reduced. Respondent did not request a hearing and therefore has waived its right to one.

[1] Phillips 66 Company Form 2018 10-K, *available at* https://investor.phillips66.com/financial-information/sec-filings/sec-filings-details/default.aspx?FilingId=13246402 (last accessed March 9, 2020).

[2] The Notice of Probable Violation incorrectly noted the location of the inspected facility.

[3] Phillips 66 Company website, *available at* https://www.phillips66midstream.com/EN/Pages/pipelines.aspx *and* https://www.phillips66pipeline.com/ (last accessed March 9, 2020).

FINDING OF VIOLATION

In its Response, Phillips did not contest the allegation in the Notice that it violated 49 C.F.R. Part 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.264(a), which states:

> **§ 195.264 Impoundment, protection against entry, normal/emergency venting or pressure/vacuum relief for aboveground breakout tanks.**
> (a) A means must be provided for containing hazardous liquids in the event of spillage or failure of an aboveground breakout tank.

The Notice alleged that Respondent violated 49 C.F.R. § 195.264(a) by failing to provide a means for containing hazardous liquids in the event of spillage or failure of an aboveground breakout tank. Specifically, the Notice alleged that while Phillips had installed diking around Tank 6818 at the company's East St. Louis terminal, an abandoned pipe provided an open path through the diking in the event of a spill or failure of the tank.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.264(a) by failing to provide a means for containing hazardous liquids in the event of spillage or failure of an aboveground breakout tank.

This finding of violation will be considered a prior offense 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 related series of violations.[4] 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; 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 $67,300 for the violation cited above.

Item 1: The Notice proposed a civil penalty of $67,300 for Respondent's violation of 49 C.F.R. § 195.264(a), for failing to provide a means for containing hazardous liquids in the event of spillage or failure of an aboveground breakout tank. Phillips argued for a reduction in the

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[4] These amounts are adjusted annually for inflation. *See* 49 C.F.R. § 190.223.

proposed civil penalty, stating that the violation had been identified during the PHMSA inspection, corrected the same day, and did not result in any damages or impact on the environment.

I have considered the arguments raised by Phillips and reviewed the Violation Report and find that a penalty reduction in this case is warranted. Like all of PHMSA's proposed penalties, the one in this case was based on assessment criteria set out by statute[5] and on specific facts indicated in Parts E4 through E10 of the Violation Report. I find that OPS correctly noted the violation was discovered by PHMSA and not by the operator, that the non-compliance had been present for more than 10 days, and that Phillips failed to comply with a requirement that was clearly applicable. Further, I reject the notion that Phillips' post-inspection corrective actions warrant a penalty reduction since those actions were only taken after PHMSA had already identified the violation.

However, with respect to the "gravity" criterion under Part E6, I find that the penetration of the diking occurred on a secondary containment structure and that a failure of the breakout tank would have been necessary for the violation to result in a serious impact to pipeline safety. That did not happen. Part E6 of the Violation Report provides that the lowest level of gravity should be attributed to this violation since there was minimal impact on pipeline safety. Accordingly, I find that the penalty assessment criterion for gravity should be reduced from Category 3 to Category 5, thus justifying a substantial penalty reduction.

Based on the foregoing, I assess Respondent a reduced civil penalty of **$39,700** for violation of 49 C.F.R. § 195.264(a).

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, 6500 S MacArthur Blvd, Oklahoma City, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the $39,700 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.

Under 49 C.F.R. § 190.243, Respondent may submit a Petition for Reconsideration of this Final Order to the 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

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[5] 49 U.S.C. § 60122(b)

Chief Counsel, PHMSA, at the same address, no later than 20 days after receipt of service of the Final Order by Respondent. Any petition submitted must 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. The other terms of the order, including any corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay. If Respondent submits payment of the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived.

The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

May 11, 2020

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued