Before the
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
Office of Pipeline Safety
Washington, D.C.

In the Matter of	)	
	)	
DCP Midstream, LP,	)	
a subsidiary of Phillips 66,	)	CPF No. 4-2025-056-NOPV
	)	Notice of Probable Violation
Respondent.	)	
	)	

Request for Hearing, Statement of Issues, and Response

DCP Midstream, LP (DCP), a subsidiary of Phillips 66 (Phillips 66) is in receipt of the above-referenced Notice of Probable Violation (NOPV or Notice), Proposed Civil Penalty, and Proposed Compliance Order issued by the Pipeline and Hazardous Materials Safety Administration (PHMSA or Agency), within the U.S. Department of Transportation (DOT), on August 29, 2025.[1] The NOPV was issued following inspection of DCP's pipeline systems and associated records in Texas, Oklahoma, and Kansas that occurred from July 16 to October 31, 2024. The NOPV alleges three (3) probable violations of the pipeline safety regulations, Title 49, Code of Federal Regulations (C.F.R.), Part 192, including one (1) allegation with an associated proposed civil penalty of $37,200 (for Item 1), and proposed compliance items associated with two (2) of the allegations (for Items 2 and 3). Phillips 66's responses to the allegations in the NOPV are due on October 29, 2025;[2] therefore, this response is timely.

Phillips 66, including its subsidiary DCP, prioritizes pipeline safety and appreciates the views expressed by PHMSA during the underlying inspection. Striving for continuous improvement and with cooperation in mind, Phillips 66 has, without admission, proactively worked to address certain concerns raised by PHMSA and provided all relevant information requested by the Agency both during and after the inspection, and in advance of receiving the Notice.

[1] Phillips 66 acquired a majority ownership interest in DCP in 2023 and now provides operating services to the joint venture; DCP remains a separate registered operator with PHMSA and, as such, maintains a separate operator identification number.
[2] *See* Letter from Bryan Lethcoe to Doug Sauer (dated Sep. 22, 2025) (granting request for extension).

Based on the facts at issue, documentation provided, and the applicable law, Phillips 66 believes that the three (3) alleged violations are unwarranted. To that end, Phillips 66 believes these issues are capable of resolution, and respectfully requests an informal settlement meeting with PHMSA's Southwest Region. To preserve its rights in the event the parties are unable to resolve this matter through an informal settlement conference, Phillips 66 is filing this response on behalf of DCP, pursuant to 49 C.F.R. §§ 190.208 and 190.211, to request an in-person hearing to address the factual and legal issues presented by the NOPV. As set forth below, Phillips 66 is contesting the three (3) allegations (Items 1, 2, and 3) contained in the NOPV, including the associated proposed civil penalty for Item 1, and the associated proposed compliance items for Items 2 and 3. Phillips 66 respectfully requests that each be withdrawn in their entirety.

If the Southwest Region is amenable, Phillips 66 requests that the scheduling of a hearing be postponed to allow for settlement meetings. In the event the parties proceed to a hearing, Phillips 66 will be represented by in-house counsel as well as outside counsel with Bracewell, LLP.

I. <u>Background</u>

Phillips 66 is a diversified energy manufacturing and logistics company with unique businesses across refining, midstream, chemicals, and marketing and specialties services, supporting the Company's vision of safely providing energy and improving lives. In 2023, Phillips 66 acquired majority ownership in DCP to bolster its midstream business. The acquisition expanded Phillip 66's natural gas liquids footprint across several key basins as DCP is engaged in the gathering, compressing, treating, and processing of natural gas, the transportation, trading, marketing, and fractionation of natural gas and natural gas liquids, and the recovery of condensate, with operations in Colorado, New Mexico, Texas, and Oklahoma, including the Denver-Julesburg Basin, Permian Basin, and the Eagle Ford.

Following the acquisition, Phillips 66 integrated the newly acquired DCP assets into its operating procedures and programs. This included replacing DCP's historical corrosion procedures with Phillips 66 procedures in March 2024. As a result, there are references to both DCP and Phillips 66 procedures in the record, and DCP remains a separate registered operator.

II. <u>Response to PHMSA NOPV Allegations</u>

Phillips 66 respectfully requests that Items 1, 2, and 3, including the associated proposed civil penalty for Item 1 and the proposed compliance order requirements for Items 2 and 3, be withdrawn, on the basis that these items are unsupported by the facts and the law as set forth below.

A. Item 1 (§ 192.229(c)(1) - Limitations on welders and welding operators.)

PHMSA Allegation

DCP utilized a welder on pipe to be operated at a pressure that produces a hoop stress of 20 percent or more of SMYS without, within the preceding 6 calendar months, the welder having one weld tested and found acceptable in accordance with § 192.229(c)(1) and API Std. 1104 (Incorporated by reference § 192.7). Specifically, DCP failed to maintain adequate

documentation to support the requalification of the welder on its 26-inch Line B pipeline project in calendar year 2024.

DCP's procedure Welding Required Practice (Rev. 3; Aug. 2020), Section 3.2.1: "Welder Qualification Testing and Requalification" states that a welder may be re-qualified by X-ray at most six months after their initial qualification test. After six months, the welder will be flagged as inactive, and must be re-qualified instead by destructive testing.

DCP records reviewed by PHMSA stated that a welder was qualified by destructive testing under the applicable procedures, P1E and P1F, on May 22, 2018. The welder in question maintained his qualification until November 1, 2019 by non-destructive examination (NDE) in accordance with § 192.229(c)(1) and DCP's procedure. However, DCP's records indicated that the welder in question did not re-qualify by destructive testing after November 1, 2019, and was instead re-qualified by X-ray on March 6, 2020. Thus, the welder in question should have been flagged as "inactive" and required to re-qualify with destructive testing.

In June 2024, the welder in question made multiple welds during DCP's pipe replacement project WO# 65049776 on the 26-inch Line B pipeline without being re-qualified by destructive testing after November 1, 2019.

Therefore, DCP utilized a welder on pipe operated at a pressure that produces a hoop stress of 20 percent or more of SMYS without, within the preceding 6 calendar months, the welder having one weld tested and found acceptable in accordance with § 192.229(c)(1) and API Std. 1104 (Incorporated by reference § 192.7).

Phillips 66 Response

Phillips 66 contests this allegation and the associated proposed civil penalty and respectfully requests that they be withdrawn. The welder at issue worked as part of a team of four (4) welders on the June 2024 replacement project, who collectively completed 27 mainline welds that were verified by a successful pre-installation hydrostatic pressure test. Prior to completion of the welds in 2024, the welder at issue was properly qualified in accordance with the relevant industry standard, API 1104. DCP records reviewed by PHMSA during the inspection (Welder Test Update forms) demonstrate that the welder at issue successfully completed passing welds for purposes of requalification, as verified by API 1104 Radiographic Inspection Reports, on 9/4/2020, 2/27/2021, 6/21/2022, 7/15/2021, 1/12/2022, 5/23/2023, 11/13/2023, 4/30/2024, 8/23/2024. As a result, the allegation set forth in Item 1 should be withdrawn as unwarranted based on documentation provided which confirms the welder's qualifications and verifies the safety and integrity of the welds performed on the segment at issue.[3]

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[3] *See* Linda Daugherty Memorandum to OPS Safety Staff, Inspection and Enforcement Priorities (dated Jul. 17, 2025) ("any decision to pursue an enforcement action must be based on a reasonable interpretation of the law considering principles of fair notice, the facts and evidence available, agency resources, Administration policy, and PHMSA's mission—protecting people, property, and the environment by advancing the safe transportation of energy and other hazardous materials") (emphasis added); Gregory Cote Memorandum to Secretarial Officers and Heads of Operating Administrations, Procedural Requirements for DOT Enforcement Actions (dated Mar. 11, 2025) at 4-6 (requiring that DOT enforcement should be based on a reasonable interpretation of the law for which the public has received fair

B. Item 2 (§ 192.463(a); Appendix D - External corrosion control: Cathodic protection.)

PHMSA Allegation

DCP failed to consider voltage (IR) drop for valid interpretations of its voltage measurements while utilizing the Appendix D(I)(A)(1) criterion of a negative (cathodic) voltage of at least 0.85 volts (-850 mV) in accordance with § 192.463(a). DCP used the Appendix D section (I)(A)(1) criteria of -850mV. DCP's procedure CORR-2200 Application of Cathodic Protection Criteria, referring to NACE SP0169-2007 Section 6.2.2.1.1, gives four options for consideration of IR drop when using the Appendix D(I)(A)(1) criterion, including measuring or calculating the voltage drop, reviewing historical cathodic protection system performance, evaluating the physical and electrical characteristics of the pipe and its environment; and determining if there is physical evidence of corrosion. However, DCP failed provide records indicating that it used any of the four options to incorporate IR drops in its annual pipe-to-soil survey for approximately 90 miles of 26-inch and 30-inch Line B pipelines from Beaver to Mullinville. After the inspection, DCP responded to PHMSA's Post-Inspection Written Preliminary Findings Report on February 10, 2025, and stated DCP experienced a leak event in May 2024 due to external corrosion, which it concluded was unrelated to any issues with its cathodic protection system. However, DCP failed to provide any records which support that it fully evaluated physical evidence of corrosion, or any of the other options in its procedure in its interpretations of its voltage measurements. Therefore, DCP failed to consider voltage (IR) drop for valid interpretations of its voltage measurements while utilizing the Appendix D(I)(A)(1) criterion of a negative (cathodic) voltage of at least 0.85 volts (-850 mV) in accordance with § 192.463(a).

Phillips 66 Response

There is no legal or factual basis to support NOPV Item 2. Accordingly, Phillips 66 respectfully contests the allegation and the associated compliance order item and asks that they be withdrawn. Phillips 66 adequately considered the voltage (IR) drop in interpretating voltage measurements as provided in DCP's procedures. The procedures at issue are based on industry standard, NACE SP0169-2007, which provides multiple options for consideration of IR drop. These procedures include options such as (1) measuring or calculating the voltage drop, (2) reviewing historical CP system performance, (3) evaluating the physical/electrical characteristics of the pipe and its environment, and (4) determining if there is physical evidence of corrosion. Based on documentation provided, Phillips 66 has demonstrated consideration of IR drop in compliance with its procedures.

As alleged, Item 2 also raises serious fair notice concerns. Both Phillips 66 and DCP have had practices and procedures in place for years based on the NACE industry standard, and in line with

notice and made with due regard for fairness, the facts and evidence, the availability of scarce resources and the importance of the issues to the fulfillment of DOT's statutory responsibilities, among other factors).

the industry as a whole.[4] PHMSA has not previously taken issue in any prior inspection with either Phillips 66 or DCP's longstanding approach to consideration of IR drop. Furthermore, Phillips 66 is unaware that the Agency has issued any enforcement, guidance, or advisories suggesting that it would be taking a new approach to interpreting and enforcing 49 C.F.R. § 192.463(a).

For these reasons, this allegation is inconsistent with the Administrative Procedure Act and the U.S. Constitution,[5] as well as DOT's enforcement policy, which instructs that "[a]ll decisions by DOT to prosecute or not to prosecute an enforcement action should be based upon a reasonable interpretation of the law about which the public has received fair notice and should be made with due regard for fairness…."[6]

C. Item 3 (192.619(c)(1) Maximum allowable operating pressure - Steel or plastic pipelines.)

PHMSA Allegation

DCP failed to establish a Maximum Allowable Operating Pressure (MAOP) for its pipeline in accordance with § 192.619(c)(1). Specifically, DCP failed to provide the highest actual operating pressure to which the segment was subjected during the 5 years prior to July 1, 1970, for approximately 89 miles of 26-inch and 30-inch Line B pipelines (Mainline) from Beaver to Mullinville in accordance with § 192.619(c)(1).

During the inspection, DCP provided three documents purporting to describe the highest actual operating pressure to which the segment was subjected in the five years prior to July 1, 1970: *Corporate Engineering & Research #35-02-Engineering Approval Form* ("Gold Sheet # 169"), *Form No. 3580 Summary – System MAOP Qualification* ("Form 3580"), and *Form No. 3579 Segment MAOP – Qualification* ("Form 3579"). First, Gold Sheet # 169 does not indicate the highest actual operating pressure of the relevant time period. The document merely states that the pipeline is qualified to operate at 800 psig in accordance with § 192.619(c) without reference to a test or measurement. In addition, the form is not contemporaneous with the relevant time period, and instead was approved by various personnel in calendar years 1973 and 1974. Similarly, Form 3580 states that the system has been reviewed and found qualified to operate at 800 psig but does not reference a specific test and was signed in 1973. Lastly, Form 3579, Step IV states that the pipeline experienced 800 psig for 24 hours on June 30, 1970, referencing

[4] For reference, in March 2024, the historical DCP corrosion procedures were replaced with Phillips 66 procedures. The Pipeline Safety Violation Report references the historical DCP procedures. As explained above, both procedures utilize NACE industry standard.

[5] If PHMSA intends to expand or alter the requirements at 49 C.F.R. 192.463, it cannot do so for the first time via enforcement. *See Fabi Constr. Co. v. Sec'y of Labor*, 508 F.3d 1077, 1088 (D.C. Cir. 2007) ("Even if the [Agency's] interpretation were reasonable, announcing it for the first time in the context of this adjudication deprives Petitioners of fair notice. Where, as here, a party first receives actual notice of a proscribed activity through a citation, it implicates the Due Process Clause of the Fifth Amendment."). Rather, the Agency is required to put industry on notice through notice and comment rulemaking. *See* 5 U.S.C. § 553(b).

[6] *See* Gregory Cote Memorandum to Secretarial Officers and Heads of Operating Administrations (dated Mar. 11, 2025) at 5. *See also supra* n. 3 (requiring that DOT enforcement be based on, among other things, the facts and evidence, the availability of scarce resources, and the importance of the issues to the fulfillment of DOT's and PHMSA's statutory responsibilities).

Dispatcher's "Log Book No. 1970" and verified by a DCP representative on August 1, 1972. However, DCP could not produce Log Book No. 1970. Without the log book itself, DCP failed to provide direct evidence of the highest actual operating pressure in the relevant time period. An after-the-fact declaration such as Form 3579 usually cannot take the place of a contemporary record. See 77 Fed. Reg. 26,822, 26,823 (May 7, 2012) ("In general, the only acceptable use of an affidavit would be as a complementary document, prepared and signed at the time of the test or inspection by an individual who would have reason to be familiar with the test or inspection."). In addition, Form 3579 was signed in November 1973, suggesting that the form is a third-hand verification which is not contemporaneous with the time period relevant to the regulation.

Therefore, DCP failed to establish a Maximum Allowable Operating Pressure (MAOP) for its pipeline in accordance with § 192.619(c)(1).

Phillips 66 Response

Phillips 66 contests this allegation and associated proposed compliance order item as lacking any basis in law or fact. Phillips 66 respectfully requests that this allegation and proposed compliance order item be withdrawn in light of the MAOP documentation provided to PHMSA during the inspection which fully meets the regulatory standard at § 192.619(c)(1). Further, the statutory prohibition on retroactive application of pipeline safety regulations prohibits PHMSA from applying the regulatory interpretation articulated in Item 3. PHMSA itself has recently signaled its agreement that the records sought in Item 3 and the proposed compliance order – on the basis of "traceable, verifiable, and complete" standard – are violative of the statutory non-retroactivity provision as illustrated in PHMSA's direct final rule and commitment to issue forthcoming guidance. Moreover, it is not an efficient use of PHMSA's resources to pursue this enforcement action while an appeal is currently pending before the U.S. Court of Appeals for the Fifth Circuit which could materially impact it.

During the inspection, Phillips 66 provided PHMSA with adequate documentation in substantiation of MAOP under § 192.619(c)(1). These documents confirm the highest operating pressure to which the segment was subjected in the five (5) years prior to July 1, 1970. Multiple documents were provided by Phillips 66 which demonstrate that the pipeline was operated at 800 psi for 24 hours on June 30, 1970, thereby qualifying it to operate at an MAOP of 800 psi under § 192.619(c)(1). These very same documents were provided by DCP in all prior inspections at which time they were deemed acceptable by PHMSA, consistent with prior PHMSA guidance.

Without basis in the regulations, PHMSA now alleges the documents are inadequate because they do not include a specific "log book," are allegedly not contemporaneous, and/or are akin to affidavits. There is no prescriptive requirement that operators maintain any specific type of document, including log books, to demonstrate the 5-year highest operating pressure prior to 1970. The MAOP documentation historically maintained by DCP and provided to PHMSA memorializes the highest actual operating pressure during the time period in question. It also consists of multiple complementary and contemporaneous documents, which were verified by multiple operator representatives within the timeframe in which the Part 192 regulations went into effect. Collectively, these documents clearly document MAOP under § 192.619(c)(1), thereby confirming the safe operating pressure of the segment. PHMSA now seeks to impose a new, heightened recordkeeping standard, seemingly based on guidance that is not applicable to § 192.619(c)(1), and which has been openly questioned by the Agency itself, as further described below.

Further, this allegation violates the statutory prohibition on retroactive application of pipeline safety regulations by imposing heightened recordkeeping requirements, in this case on pipelines constructed prior to promulgation of federal regulations in 1970.[7] Such a standard is effectively impossible to meet unless an operator happened to create them prior to promulgation of federal regulations and maintain them today fifty-five (55) years later. The Pipeline Safety Act's non-retroactivity provision prohibits PHMSA from imposing heightened recordkeeping requirements established in 2019 associated with an operator's documentation for its pre-1970 pipelines that pre-dates promulgation of the federal regulations at 49 C.F.R. Part 192.[8]

In conflict with the allegations in Item 3, PHMSA has recently acknowledged that the regulations cannot now require impossible MAOP recordkeeping standards on operators of pre-1970 pipelines. In the preamble to a forthcoming rulemaking to clarify recordkeeping requirements for grandfathered pipe, *Clarifying Recordkeeping Requirements for Testing in MAOP Reconfirmation Regulation*, PHMSA committed to "clarify that for pressure tests performed prior to the adoption of the pipeline safety regulations on August 19, 1970, [operators are not] expected to have each of the specific information listed in § 192.517(a) for those testing records to be considered traceable, verifiable, and complete."[9] PHMSA further affirms that to require more records than what Phillips 66 has already provided would "violate[] the non-retroactivity provision in 49 U.S.C. 60104(b) and the general limitation on the applicability of part 192 in § 192.13(a)."[10] Yet in this enforcement action, PHMSA is now attempting to invalidate pre-Part 192 records by arguing they do not satisfy subsequently adopted recordkeeping requirements.

It is fundamentally unfair to pursue a rulemaking to clarify MAOP recordkeeping requirements for operators of pre-1970 pipelines, a rulemaking which is ongoing, while enforcing a standard that is not articulated in the regulations.[11] Further, the Agency has put industry on notice that it "intends to provide additional guidance in addressing the records needed to satisfy the traceable, verifiable, and complete" standard for pre-1970 pipelines,[12] however, this allegation of violation appears to rely on the exact guidance PHMSA has committed to replacing.[13] The regulated community cannot reasonably be expected to comply with a standard that is not prescribed in the regulations and which the Agency has recognized violates the statutory non-retroactivity prohibition for pre-1970 pipelines, and which is pending clarification as a result. At the same time, pre-1970 MAOP records standards are the subject of a challenge before the Fifth Circuit, which could have a material impact on this action.[14]

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[8] *See* 49 U.S.C. § 60104(b); *see also* 49 C.F.R.§ 192.13(a).
[9] 90 Fed. Reg. 28054, 28055 (Jul. 1, 2025).
[10] *Id*.
[11] *See* 90 Fed. Reg. 38429 (Aug. 8, 2025) (Notice of comment period). The comment period closed on September 8, 2025, and no changes to the final rule have been released as of the date of this filing. The docket for this rulemaking is available at https://www.regulations.gov/docket/PHMSA-2025-0117/document.
[12] 90 Fed. Reg. at 28055.
[13] 77 Fed. Reg. at 26822.
[14] *See* Florida Gas Transmission Company, LLC v. United States Dept. Transp., et al., 5th Cir. No. 24-60420.

For all of these reasons, Phillips 66 respectfully requests that PHMSA withdraw this NOPV item. It is based on an unlawful and unreasonable application of 49 C.F.R. § 192.619(c)(1) for which industry has not received fair notice, it violates fundamental concepts of fairness and DOT policy,[15] and it is not an efficient use of Agency resources.

III. Statement of Issues

1. Whether based on the facts and applicable law, PHMSA has met its burden to prove by a preponderance of the evidence that DCP did not comply with 49 C.F.R. §§ 192.229(c)(1), 192.463(a) and Appendix D, and/or 192.619(c)(1), as alleged in NOPV Items 1, 2, and 3, respectively.

2. Whether PHMSA provided due process and fair notice, as required by the U.S. Constitution and the Administrative Procedure Act, in issuing alleged violations for NOPV Items 2 and 3 based on the facts and the applicable law.

3. Whether PHMSA has made available a copy of the complete case file in this matter pursuant to 49 C.F.R. § 190.209 and consistent with PHMSA's *Revised Procedures for Determining the Contents of the Case File in Pipeline Safety Enforcement Proceedings* (May 29, 2025).

4. Whether PHMSA's allegations of noncompliance under NOPV Items 1, 2, and 3 are arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law in violation of the Administrative Procedure Act and in contradiction to DOT enforcement policy.[16]

5. Whether Item 3 should be withdrawn considering the impending PHMSA rulemaking, forthcoming PHMSA guidance, and an ongoing appeal in the U.S. Court of Appeals for the Fifth Circuit that may materially impact the outcome of this action.

6. Whether the proposed civil penalty associated with NOPV Item 1:

   (a) should be withdrawn or reduced to:

      i. accurately reflect the statutory and regulatory penalty assessment criteria required under 49 U.S.C. § 60122(b) and 49 C.F.R. § 190.225, and
      ii. align with penalties issued in prior relevant PHMSA enforcement as well the mandates in the March 11, 2025 DOT Memorandum entitled "Procedural Requirements for DOT Enforcement Actions" (and specifically that all penalties are supported by sufficient findings of fact, mitigating factors are considered, and that a full explanation of the basis for the calculation of the penalties be provided to the operator); or

[15] *See supra* n. 3.
[16] *See* Gregory Cote Memorandum to Secretarial Officers and Heads of Operating Administrations (dated Mar. 11, 2025).

(b) is otherwise inconsistent with PHMSA's *Policy for Calculating Proposed Civil Penalties in Pipeline Safety Enforcement Proceedings* (May 20, 2025), requiring "calculate[ion] [of] proposed civil penalties…using the version of the Civil Penalty Worksheet that was in effect on the date when an alleged violation occurred," and instructing that "penalty calculation worksheets, manuals, charts or other appropriate materials that shed[] light on the way penalties are calculated" have been provided to "to ensure fairness in the process."[17]

7. Whether the proposed compliance order requirements for Items 2 and 3 should be withdrawn because they:

(a) are unnecessary as there is no ongoing noncompliance that necessitates corrective action, and

(b) contradict PHMSA's Pipeline Safety Enforcement Procedures and prior enforcement precedent.

IV. <u>Relief Requested</u>

For the reasons identified above, and in consideration of other matters as justice may require, Phillips 66 respectfully requests that NOPV Items 1, 2, and 3 be withdrawn in their entirety including the proposed civil penalty for Item 1 of $37,200 and the proposed compliance order obligations for Items 2 and 3. As noted above, Phillips 66 believes these issues are capable of resolution without the need to proceed to a hearing and respectfully requests an informal settlement meeting with the Southwest Region. In advance of the requested settlement meeting or an in-person hearing (should it be necessary), and pursuant to 49 C.F.R. § 190.209, Phillips 66 requests a copy of the complete case file in this matter, to the extent not already provided.

Phillips 66 and its subsidiary DCP remain committed to operating their pipeline systems safely and in compliance with all applicable regulations, as well as to continuously working to improve their processes.

[17] *See* Keith Coyle Memorandum to Linda Daugherty (dated May 20, 2025) at 3.

Dated: October 29, 2025

Respectfully submitted,

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