



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

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FILED
EPA REGION VIII
HEARING CI FRK

DOCKET NO.: CAA-08-2019-0008

IN THE MATTER OF:

PHILLIPS 66 COMPANY; *and*
CONOCOPHILLIPS COMPANY,

BILLINGS REFINERY

RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) of EPA’s Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon filing this Consent Agreement and Final Order.

SO ORDERED THIS 8th DAY OF April, 2019.


Katherin E. Hall
Regional Judicial Officer

2019 APR -8 PM 12:03

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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EPA REGION VIII
HEARING CLERK

In the Matter of:)
)
PHILLIPS 66 COMPANY; *and*)
CONOCOPHILLIPS COMPANY,)
)
Billings Refinery)
)
Respondents.)

CONSENT AGREEMENT
Docket No. : CAA-08-2019-0008

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This is an administrative penalty assessment proceeding brought under section 113(d) of the Clean Air Act (CAA or the Act), 42 U.S.C. § 7413(d), and §§ 22.13 and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. part 22.
2. Complainant is the undersigned delegated representative of the United States Environmental Protection Agency, Region 8. On the EPA’s behalf, Suzanne J. Bohan, Assistant Regional Administrator for the Office of Enforcement, Compliance and Environmental Justice, is delegated the authority to settle civil administrative penalty proceedings under section 113(d) of the Act.
3. Respondents are Phillips 66 Company (Phillips 66) and ConocoPhillips Company (ConocoPhillips), both organized under the laws of Delaware and doing business in the State of Montana.
4. Each Respondent is a “person” as defined in section 302(e) of the Act, 42 U.S.C. § 7602(e).

5. Complainant and Respondents (collectively the Parties), having agreed that settlement of this action is in the public interest, consent to the entry of this Consent Agreement (Agreement) without adjudication of any issues of law or fact herein, and, as specified herein, Respondents agree to comply with the terms of this Agreement.

II. JURISDICTION

6. This Agreement is entered into under section 113(d) of the Act, 42 U.S.C. § 7413(d), and the Consolidated Rules, 40 C.F.R. part 22. The violations in this Agreement are alleged pursuant to section 113(a)(3)(A) of the CAA, 42 U.S.C. § 7413(a)(3)(A).
7. The EPA and the Department of Justice determined that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty assessment, pursuant to 42 U.S.C. § 7413(d).
8. The Regional Judicial Officer is authorized to ratify this Agreement with a final order. 40 C.F.R. §§ 22.4(b) and 22.18(b).
9. The issuance of this Agreement and final order simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

III. GOVERNING LAW

10. The purpose of the CAA is to “protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population.” 42 U.S.C. § 7401(b)(1).
 - A. **New Source Performance Standards (NSPS)**
11. Section 111 of the CAA authorizes the Administrator of the EPA to promulgate standards of performance applicable to stationary sources of air pollution that “may reasonably be anticipated to endanger public health or welfare.” 42 U.S.C. § 7411(b).

i. *General Provisions, 40 C.F.R. Part 60, Subpart A*

12. Pursuant to section 111 of the CAA, 42 U.S.C. § 7411, EPA promulgated regulations that contain general provisions applicable to all NSPS sources at 40 C.F.R part 60, subpart A (NSPS subpart A).
13. NSPS subpart A requires that “[a]t all times, including periods of startup, shutdown, and malfunction, owners and operators shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions.” 40 C.F.R. § 60.11(d).
14. NSPS subpart A contains specific requirements for flares when used as a control device to comply with applicable NSPS standards, including the requirement that flares “be used only with the net heating value [NHV] of the gas being combusted at 11.2 MJ/scm (300 BTU/scf) or greater if the flare is steam-assisted.” 40 C.F.R. § 60.18(c)(3)(ii).

ii. *Standards of Performance for New Stationary Sources for Petroleum Refineries, 40 C.F.R. Part 60, Subparts J and Ja*

15. Pursuant to section 111 of the CAA, 42 U.S.C. § 7411, EPA promulgated the Standards of Performance for New Stationary Sources (NSPS) for Petroleum Refineries at 40 C.F.R. part 60, subparts J and Ja (NSPS subparts J and Ja).
16. NSPS subpart J applies to the following affected facilities in petroleum refineries: fluid catalytic cracking unit catalyst regenerators, fuel gas combustion devices, and all Claus sulfur recovery plants except Claus plants with a design capacity for sulfur feed of 20 long tons per day or less. 40 C.F.R. § 60.100(a).
17. NSPS subpart Ja applies to the following affected facilities in petroleum refineries: fluid catalytic cracking units, fluid coking units, delayed coking units, fuel gas combustion devices (including process heaters), flares, and sulfur recovery plants. 40 C.F.R. § 60.100a(a).

18. Petroleum refineries subject to NSPS subparts J and Ja must comply with good air pollution control requirements in NSPS subpart A.

iii. *Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries, 40 C.F.R. Part 60, Subparts GGG and GGGa*

19. Pursuant to section 111 of the CAA, 42 U.S.C. § 7411, EPA promulgated the Standards of Performance for Equipment Leaks of volatile organic compounds (VOC) in Petroleum Refineries at 40 C.F.R. part 60, subparts GGG and GGGa (NSPS subparts GGG and GGGa).

20. NSPS subparts GGG and GGGa apply to the following affected facilities in petroleum refineries: compressors and the group of all equipment within a process unit. 40 C.F.R. §§ 60.590, 60.590a.

21. Petroleum refineries subject to NSPS subpart GGG must comply with provisions of 40 C.F.R. part 60, subpart VV, at §§ 60.482-1 to 60.482-10. Subpart VV requires compliance with 40 C.F.R. part 60, subpart A, § 60.18. 40 C.F.R. § 60.485-10.

22. Petroleum refineries subject to NSPS subpart GGGa must comply with provisions of 40 C.F.R. part 60, subpart VVa, at §§ 60.482-1a to 60.482-10a. Subpart VVa requires compliance with 40 C.F.R. part 60, subpart A, § 60.18. 40 C.F.R. § 60.482-10a.

23. Petroleum refineries subject to NSPS subparts GGG and GGGa must comply with good air pollution control requirements in NSPS subpart A.

B. National Emissions Standards for Hazardous Air Pollutants

24. Section 112 of the CAA, 42 U.S.C. § 7412, authorizes the Administrator of the EPA to promulgate regulations establishing national emission standards for hazardous air pollutants (NESHAP).

i. *General Provisions, 40 C.F.R. Part 63, Subpart A*

25. Pursuant to section 112 of the CAA, 42 U.S.C. § 7412, EPA promulgated regulations that contain general provisions applicable to sources that are subject to NESHAP at 40 C.F.R. part 63, subpart A (NESHAP subpart A).
26. NESHAP subpart A requires that “[a]t all times, including periods of startup, shutdown, and malfunction, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions.” 40 C.F.R. § 63.6(e)(1)(i).
27. NESHAP subpart A contains control device and work practice standards for flares when used as a control device to comply with applicable NESHAP standards, including the requirement that flares be used “only with net heating value of the gas being combusted at 11.2 MJ/scm (300 Btu/scf) or greater if the flare is steam-assisted.” 40 C.F.R. § 63.11(b)(6)(ii).

ii. *National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries, 40 C.F.R. Part 63, Subpart CC*

28. Pursuant to section 112 of the CAA, 42 U.S.C. § 7412, EPA promulgated National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries at 40 C.F.R. part 63, subpart CC (NESHAP subpart CC).
29. NESHAP subpart CC applies to petroleum refining process units and to related emissions points specified in 40 C.F.R. § 63.640(c)(1)–(9). 40 C.F.R. § 63.640(a).
30. Prior to February 1, 2016, petroleum refineries subject to NESHAP subpart CC were required to comply with good air pollution control requirements at 40 C.F.R. part 63, subpart A, § 63.11(e)(1)(i).

31. As of February 1, 2016, petroleum refineries subject to NESHAP subpart CC must comply with good air pollution control requirements at 40 C.F.R. § 63.642(n).
32. Petroleum refineries subject to subpart NESHAP subpart CC must comply with 40 C.F.R. part 60, subpart VV; 40 C.F.R. part 60, subpart GGGa; or 40 C.F.R. § 63.670 for flares used as control devices prior to January 30, 2019. 40 C.F.R. § 63.648(a)(3). Subparts VV and GGGa require compliance with § 60.18 of NSPS subpart A. 40 C.F.R. §§ 60.482-10, 60.592a (requiring compliance with 40 C.F.R. § 60.482-10a).

C. Title V

33. Title V of the CAA, 42 U.S.C. § 7661–7661f, establishes an operating permit program for “major sources,” as defined by section 502 of the CAA. The purpose of Title V is to ensure that all applicable requirements that a source is subject to under the CAA, including NSPS and NESHAP, are collected in one permit. *See* 42 U.S.C. § 7661a(b)(5)(A); 40 C.F.R. § 70.1.
34. On December 22, 2000, EPA approved Montana’s program to issue federally-enforceable operating permits under Title V of the CAA, 42 U.S.C. §§ 7661–7661f, as part of the Montana State Implementation Plan. 65 Fed. Reg. 80,785 (Dec. 22, 2000).
35. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and the Montana Title V program have at all relevant times made it unlawful for any person to operate a major source except in compliance with a permit issued by a permitting authority under Title V.

D. Federal Implementation Plan for the Billings/Laurel Area

36. EPA promulgated a federal implementation plan (FIP) to establish emission limits and compliance monitoring methods for sulfur dioxide (SO₂) emissions from flares at four sources located in Billings/Laurel, Montana. 40 C.F.R. § 52.1392.
37. The FIP established the following emission limit for the Billings Refinery: “combined emissions of SO₂ . . . shall not exceed 150.0 pounds per 3-hour period.” 40 C.F.R. § 52.1392(e)(2)(i)(A).

IV. STIPULATED FACTS

38. At all times relevant to this Agreement, Respondents owned and operated the Billings Refinery in Yellowstone County, Montana. Respondent ConocoPhillips owned and operated the Refinery at all times relevant to this Agreement, prior to April 30, 2012. Respondent Phillips 66 has owned and operated the Refinery since May 1, 2012.
39. The Billings Refinery is a petroleum refinery that contains affected facilities subject to NSPS subparts J, Ja, GGG, or GGGa, as applicable, and the general provisions at NSPS subpart A.
40. The Billings Refinery is a petroleum refinery subject to NESHAP subpart CC and the general provisions at NESHAP subpart A.
41. The Montana Department of Environmental Quality (MDEQ) issued Title V Operating Permit No. OP2619-03 to the Billings Refinery effective December 16, 2008. MDEQ has amended this permit several times since then, with the current Title V Operating Permit No. OP2619-12 issued to the Billings Refinery on November 24, 2018.
42. At all times relevant to this Agreement, Respondents used a Steam-Assisted Flare (Main Plant Flare) to control air pollution from various process units at the Billings Refinery. The Main Plant Flare, in conjunction with the existing Flare Gas Recovery System, controls emissions of refinery operations. The Main Plant Flare also controls unplanned emission events from refinery operations.
43. Jupiter Sulfur LLC (Jupiter) operates a sulfur recovery plant (SRP) adjacent to the Billings Refinery. Jupiter processes sulfur recovered from the Refinery's refining activities. Jupiter uses a Claus process to make elemental sulfur and an ammonium thiosulfate tail gas process to make ammonium thiosulfate fertilizer and ammonium bisulfite product. Jupiter also operates a sodium hydrosulfide (NaHS) process. Jupiter operates a Steam-Assisted Flare (the "Jupiter Flare"); however, steam is not normally directed to the Flare until the rupture disk is breached. The gases that this Flare combusts are natural gas, purge gas, process upset gases or fuel gas from the SRP

that is routed to the Flare as a result of relief valve leakage or other emergency malfunctions. No fuel gas from Billings Refinery operations is or can be routed to the Jupiter Flare. The Jupiter operations are included in the Phillips 66 Title V permit for the Billings Refinery.

44. Process units at the Billings Refinery that vent to the Main Plant Flare are subject to NESHAP subpart CC. No equipment at the SRP is subject to NESHAP subpart CC requirements.
45. The Main Plant Flare and Jupiter Flare can combust fuel gas and therefore are fuel gas combustion devices subject to NSPS subpart Ja.

V. ALLEGED VIOLATIONS OF LAW

A. Good Air Pollution Control Practices

46. The Main Plant Flare is subject to 40 C.F.R. § 60.11(d), which requires Respondents at all times, including periods of startup, shutdown, and malfunction, to maintain and operate, to the extent practicable, the Main Plant Flare consistent with good air pollution control practices for minimizing emissions.
47. The Main Plant Flare is subject to 40 C.F.R. § 63.6(e)(1)(i), which requires Respondents at all times, including periods of startup, shutdown, and malfunction, to operate and maintain the Main Plant Flare in a manner consistent with safety and good air pollution control practices for minimizing emissions.
48. Assist Steam is added at the Main Plant Flare tip to enhance combustion of the Flare Vent Gas stream and minimize the formation of visible emissions. Assist Steam is added in proportion to the volume and composition of Flare Vent Gas. It is possible to measure the amount of Assist Steam as a ratio of the mass of assist steam per unit mass of Flare Vent Gas (lb/lb).
49. At various times from May 16, 2010, to September 30, 2018 the Main Plant Flare was operated with an Assist Steam-to-Flare Vent Gas ratio that increased the likelihood of flame quenching and reduced combustion efficiency.

50. Operation of the Main Plant Flare with an Assist Steam-to-Flare Vent Gas ratio that increased the likelihood of flame quenching and reduced combustion efficiency violates the requirements to operate the Main Plant Flare in a manner consistent with good air pollution control practices for minimizing emissions, pursuant to 40 C.F.R. §§ 60.11(d), 63.6(e)(1)(i), and 63.642(n).

B. Gas Being Combusted with a Net Heating Value of Less than 300 Btu/scf

51. Prior to January 30, 2019, the Main Plant Flare was subject to 40 C.F.R. §§ 60.18(c)(3)(ii) and 63.11(b)(6)(ii), which require that Steam-Assisted Flares, when used as a control device to comply with applicable NSPS or NESHAP standards, be used only with NHV of the gas being combusted at 11.2 MJ/scm (300 Btu/scf) or greater.

52. At various times from May 16, 2010, to September 30, 2018, for a minimum of 632 hours, the Main Plant Flare was used with NHV of the gas being combusted below 300 Btu/scf.

53. Operation of the Main Plant Flare with NHV of the gas being combusted below 300 Btu/scf when the Main Plant Flare was being used as a control device violates 40 C.F.R. §§ 60.18(c)(3)(ii) and 63.11(b)(6)(ii).

C. Title V

54. The Billings Refinery Title V Operating Permit No. OP2619-03, and all subsequent Title V Operating Permits, issued to the Billings Refinery require compliance with NSPS subparts A, J, Ja, GGG, and GGGa, as appropriate; and NESHAP subparts A and CC.

55. At various times from May 16, 2010, to September 30, 2018, the Main Plant Flare was used with an Assist Steam-to-Flare Vent Gas ratio that increased the likelihood of flame quenching and reduced combustion efficiency and with NHV of the gas being combusted below 300 Btu/scf.

56. Operation of the Main Plant Flare with an Assist Steam-to-Flare Vent Gas ratio that increased the likelihood of flame quenching and reduced combustion efficiency and with NHV of the gas being combusted below 300 Btu/scf when the Flare was being used as a control device constitute violations of the Billings Refinery Title V permit.

D. FIP SO₂ Emission Limits

57. At various times from June 2016 to June 2017, the Main Plant Flare exceeded the 150.0 lb/3-hr SO₂ emission limit in violation of 40 C.F.R. § 52.1392(e)(2)(i)(A).

VI. TERMS OF CONSENT AGREEMENT

58. Terms used in this Agreement shall have the meaning as defined in Appendix A.
59. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondents:
- a. admit that the EPA has jurisdiction over the subject matter alleged in this Agreement;
 - b. admit to the stipulated facts stated above;
 - c. neither admit nor deny the alleged violations of law stated above;
 - d. consent to the assessment of a civil penalty as stated below;
 - e. consent to EPA's authority to issue and the issuance of any specified compliance or corrective action order;
 - f. consent to the conditions specified in this Agreement;
 - g. consent to any stated Permit Action;
 - h. waive any right to contest the alleged violations, the terms of this Agreement, and the conditions specified in this Agreement; and
 - i. waive any rights to appeal any final order which approves this Agreement.
60. For the purpose of this proceeding, Respondents:
- a. agree that this Agreement states a claim upon which relief may be granted against Respondents;
 - b. acknowledge that this Agreement constitutes an enforcement action for purposes of considering Respondents' compliance history in any subsequent enforcement actions;
 - c. waive any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondents may have with respect to any issue of fact or law

set forth in this Agreement, including any right of judicial review under section 307(b)(1) of the Act, 42 U.S.C. § 7607(b)(1);

- d. consent to personal jurisdiction in any action to enforce this Agreement, in the United States District Court for the District of Montana; and
 - e. waive any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the Agreement, and to seek an additional penalty for such noncompliance, and agree that federal law shall govern in any such civil action.
61. Section 113(d)(1)(B) of the Act, 42 U.S.C. § 7413(d)(1)(B), and 40 C.F.R. part 19 authorize the assessment of a civil penalty of up to \$37,500 per day of violation occurring between January 13, 2009 and November 2, 2015, and up to \$46,192 per day for each violation occurring after November 2, 2015. To determine the amount of the civil penalty to be assessed pursuant to section 113(e)(1) of the Act, 42 U.S.C. § 7413(e)(1), the EPA took into account, in addition to such other factors as justice may require, the size of the business, the economic impact of the penalty on the business, the violators' full compliance history and good faith efforts to comply, the duration of the violations as established by any credible evidence, payment by the violators of penalties previously assessed for the same violations, the economic benefit of noncompliance, and the seriousness of the violations.
62. The EPA has compromised the civil penalty pursuant to section 113(d)(2)(B) of the Act, 42 U.S.C. § 7413(d)(2)(B).
63. Penalty Payment. By agreement between Respondents, Respondent Phillips 66 shall:
- a. pay the civil penalty of \$150,000 within 30 days of the Effective Date of this Agreement;
 - b. pay the civil penalty using any method provided on the following website:
<https://www.epa.gov/financial/makepayment> within the timeframe noted in (a) above;

- c. identify any payment with the docket number that appears on the Consent Agreement;
 - d. within 24 hours of payment of the civil penalty, send proof of payment to Gregory Gehrig at Gehrig.Greg@epa.gov and Bob Gallagher at Gallagher.Bob@epa.gov (proof of payment means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment was made according to EPA requirements).
64. If Respondent Phillips 66 fails to timely pay any portion of the penalty assessed under this Agreement, the EPA may:
- a. request the Attorney General to bring a civil action in the United States Court for the District of Montana to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10% quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);
 - b. refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33;
 - c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. part 13, subparts C and H; and
 - d. suspend or revoke Respondent Phillips 66's licenses or other privileges, or suspend or disqualify Respondent Phillips 66 from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

65. In the event payment is not received by the specified due date, interest accrues from 30 days prior to the applicable due date, at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received.
66. A handling charge of \$15 shall be assessed the 31st day from the due date of any payment, and for each subsequent thirty 30-day period that the debt, or any portion thereof, remains unpaid. In addition, a 6% per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date. Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest as described in Paragraph 65. The remainder is then applied to the outstanding principal amount.
67. Supplemental Environmental Project. Phillips 66 agrees to complete the following Supplemental Environmental Project (SEP) to further protect the environment and public health by reducing emissions of related air pollutants to the environment. Specifically, the SEP will reduce emissions of nitrogen oxides, VOC, and carbon monoxide from bus engines in the Billings, Montana area. Nitrogen oxides, VOC, and carbon monoxide are ozone precursors, and the alleged violations addressed in this Agreement are alleged to have resulted in additional emissions of VOC. Phillips 66 must complete the SEP as follows:
- a. Phillips 66 must purchase, in whole or in part, at least two buses (60- or 72-passenger) model year 2018 or 2019. The buses purchased by Phillips 66 shall replace the following two buses in Billings, Montana: (i) a 72-passenger bus with a diesel engine, model year 2001, owned and operated by the Boys and Girls Club of Yellowstone County; and (ii) a 60-passenger bus with a gasoline engine, model year 1991, owned and operated by the YMCA. The buses described in (i) and (ii) must be destroyed once the purchased buses are put in service.
 - b. Phillips 66 will spend at least \$220,000 on the SEP.

- c. Phillips 66 certifies as follows:
- (1) Phillips 66 is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
 - (2) Phillips 66 was not planning or intending to perform or implement the SEP other than in settlement of the claims resolved in this Agreement;
 - (3) Phillips 66 has not received and will not receive credit for the SEP in any other enforcement action;
 - (4) Phillips 66 will not receive any reimbursement for any portion of the SEP from any other person or entity;
 - (5) For federal income tax purposes, Phillips 66 agrees it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP; and
 - (6) Phillips 66 is not a party to any federal financial assistance transaction that is funding or could fund the same activity as the SEP, and it has inquired of the SEP recipients or SEP implementer whether either is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the recipient or implementer that neither is a party to such a transaction. For purposes of this certification, "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance where the performance period has not expired.
- d. Phillips 66 must complete the SEP by no later than 180 days following the Effective Date of this Agreement.

- e. Phillips 66 must submit a SEP completion report to the addresses listed in subparagraph 68.g(2) no later than 90 days following SEP completion pursuant to subparagraph 67.d. The SEP completion report must contain, at minimum, the following information:
- (1) Detailed description of the SEP as completed;
 - (2) Description of any problems executing the SEP and the actions taken to correct the problems;
 - (3) Certification from Phillips 66 that the new buses were received by the recipients identified in subparagraph 67.a and that the funds were spent in conformity with the SEP as described;
 - (4) Certification and documentation demonstrating that the replaced buses identified in subparagraph 67.a(i) and (ii) were destroyed or disassembled such that they will no longer be operated;
 - (5) Certification that Phillips 66 completed the SEP in compliance with this Agreement; and
 - (6) Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).
- f. After receiving the SEP completion report, the EPA shall notify Phillips 66, within 60 days in writing, (i) regarding any deficiencies in the SEP completion report, along with a grant of an additional 30 days for Phillips 66 to correct any deficiencies; (ii) indicate that the EPA concludes the SEP has been completed satisfactorily; or (iii) determine that the SEP has not been completed satisfactorily.
- g. If the EPA elects to exercise option (i) in Paragraph 67.f (i.e., the SEP Completion Report is determined to be deficient but the EPA has not made a final determination about the adequacy of the SEP completion itself), the EPA shall permit Respondent the opportunity

to object in writing to the notification of deficiency from the EPA within 10 days of receipt of such notification. The EPA and Respondent shall have an additional 30 days from the EPA's receipt of such notification of objection to reach agreement on changes necessary to the SEP Completion Report. If the EPA and Respondent cannot reach agreement on any such issue within this 30-day period, the EPA shall provide a written statement of its decision on the adequacy of the SEP to Respondent.

- h. Each submission required under this Paragraph shall include the following certification, to be signed by the Billings Refinery Manager:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

- i. Any public statement, oral or written, in print, film, or other media, made by Phillips 66 referencing the SEP under this Agreement shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency to enforce the Clean Air Act."
- j. In the event Phillips 66 fails to comply with any terms or provisions of this Agreement relating to the performance of the SEP, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
 - (1) If the SEP is not completed satisfactorily and timely pursuant to the requirements set forth in this Paragraph, Phillips 66 shall be liable for and shall pay a stipulated penalty to the United States in the amount of \$220,000, less any amount that the EPA, in its unreviewable discretion, determines was expended on the SEP in a manner consistent with this Agreement.

- (2) The EPA shall determine whether the SEP has been satisfactorily completed and whether Phillips 66 made a good faith, timely effort to implement the SEP.
- (3) If Phillips 66 completed the SEP satisfactorily but spent less than 90% of the amount set forth in subparagraph 67.b Phillips 66 must pay a penalty of \$20,000.
- (4) If Phillips 66 fails to timely complete and submit the SEP completion report required by this Paragraph, Phillips 66 shall be liable for and shall pay stipulated penalties as follows for each day until a complete report is submitted:

<u>Penalty per violation per day</u>	<u>Period of violation (calendar days)</u>
\$500	1st through 14th
\$1,000	15th through 30th
\$1,500	31st until report submitted

- (5) Phillips 66 shall pay any stipulated penalties no later than 15 days after receipt of a written demand by the EPA for such penalties. Stipulated penalties shall be paid in accordance with the provisions set forth in subparagraph 68.i.
 - (6) The EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Agreement.
- k. Phillips 66 shall maintain legible copies of documentation for the SEP completion report and for any other information submitted to the EPA relating to this SEP for 5 years from completion of the SEP and shall provide the EPA with copies of such documentation within 14 days of any request from the EPA for this documentation.

68. Conditions. As conditions of settlement, Phillips 66 agrees to the following:

a. Flare Vent Gas and Assist Steam Monitoring Systems.

- (1) Phillips 66 has installed and shall continue to use, on each Flare header connected to the Flare stack, a flow meter, and gas chromatograph that meets the requirements of NESHAP subpart CC, 40 C.F.R. §§ 670 and 671, for analysis of Flare Vent Gas routed to the Main Plant Flare. This subparagraph does not preclude Phillips 66 from seeking approval for alternative monitoring to use a mass spectrometer as an equivalent to analyze Flare Vent Gas routed to the Main Plant Flare in lieu of a gas chromatograph to meet the requirement of NESHAP subpart CC, 40 C.F.R. §§ 63.670 and 63.671. Any application for alternative monitoring shall be done in accordance with the NESHAP General Provisions.
- (2) Phillips 66 has installed and shall continue to use a flow meter that meets the requirements of NESHAP subpart CC, 40 C.F.R. Part 63 §§ 670 and 671, to measure the flow rate of Assist Steam addition to the Main Plant Flare.
- (3) The monitoring instruments in subparagraphs 68.a(1) and (2) above shall be used when the Main Plant Flare is in operation and Capable of Receiving Flare Sweep, Flare Supplemental, or Waste Gas.

b. Waste Gas Mapping. Using instrumentation, isotopic tracing, and/or engineering calculations, Phillips 66 shall identify and estimate the flow from each process unit header (i.e., sub-header) to the main header(s) connected to the Main Plant Flare. Using that information and other available information, Phillips 66 shall complete an identification of each Waste Gas tie-in to the main header(s) and process unit header(s), as applicable. Temporary connections to the main header(s) of the Main Plant Flare or process unit header(s) are not required to be included in the mapping. The Waste Gas

mapping shall be completed within 12 months of the Effective Date of this Agreement and results shall be submitted to EPA within 30 days of completion of the Waste Gas mapping. The level of detail required in the Waste Gas mapping and results is presented in Appendix B.

c. Limitations on Waste Gas Flaring. Phillips 66 shall comply with a 345,430 standard cubic feet per day (scfd) limitation on Waste Gas flaring on a 365-Day Rolling Average basis, rolled daily. The initial compliance period for this limitation shall begin 365 days after the Effective Date of this Agreement.

(1) The limit in subparagraph 68.c is based on 60,000 barrels per calendar day (bpcd) from Form EIA-820, Annual Refinery Report to the U.S. Energy Information Agency, Report Year 2016, at Part 5, Total Operable capacity (Code 401), Atmospheric Crude Oil Distillation Capacity. This form is available in Appendix C. The Parties agree that this Agreement does not establish a limit on the barrels per calendar day that Phillips 66 may actually process.

(2) Phillips 66 shall comply with the following procedure to change flaring limits: Phillips 66 can increase the limit(s) in subparagraph 68.b with notice to EPA and MDEQ. Phillips 66 must comply with other CAA requirements, if any, before implementing this increase.

Any new limit(s) shall be based upon the following equations:

i. For the Refinery-wide, 365-Day Rolling Average limit:

$$\text{Refinery Flaring} \leq \frac{500,000 \text{ scfd}}{100,000 \text{ bpcd}} \times \frac{P66 \text{ Crude Cap.}}{100,000 \text{ bpcd}} \times \frac{P66 \text{ Complexity}}{\text{Industry Avg Complexity}}$$

Nothing in this Agreement shall be construed to relieve Phillips 66 of the obligation to evaluate, under applicable Prevention of Significant

Deterioration and Nonattainment New Source Review requirements, any increase in a Refinery-wide limit on flaring.

- ii. The *P66 Complexity* shall be calculated in accordance with Equation 1 of Appendix D for the Billings Refinery. Phillips 66 shall certify the accuracy of the projected crude capacity and process unit capacities used to support the calculations.
- iii. The *Industry Average Complexity* shall be calculated in accordance with Equation 2 of Appendix D.
- iv. Phillips 66 shall utilize the instrumentation for monitoring the Main Plant Flare in subparagraph 68.a to comply with this subparagraph.
- v. For the purposes of this equation, the *P66 Crude Cap* shall be the Billings Refinery crude capacity from the most recent form EIA-820, Annual Refining Report to the U.S. Energy Information Agency, at Part 5, Total Operable capacity (Code 401 in bpcd), Atmospheric Crude Oil Distillation Capacity in effect at the time the change is requested.

d. Flare Gas Recovery System (FGRS).

- (1) Capacity and Startup Dates. For the Main Plant Flare, by no later the Effective Date of this Agreement, Phillips 66 shall continue to operate the following FGRS:

Total No. of Compressors	Operating Design Capacity of each Compressor (kscfh) (at suction)	FGRS Total Operating Design Capacity (kscfh) (at suction)
2	87.5	175

- (2) Operation. Phillips 66 shall operate the FGRS in a manner to minimize Waste Gas through the water seal to the Main Plant Flare while ensuring safe refinery operations. Phillips 66 shall also operate the FGRS consistent with good engineering and maintenance practices, and in accordance with its design and the manufacturer's specifications.
- (3) Requirements Related to Compressors Being Available for Operation or in Operation. Upon the Effective Date of this Agreement, Phillips 66 shall have one Compressor Available for Operation or in operation 98% of the time and two Compressors Available for Operation or in operation 95% of the time. Periods of maintenance and subsequent restart on the Compressors within the FGRS may be included in the amount of time that the Compressors are Available for Operation when determining compliance with the requirement to have two Compressors Available for Operation or in operation 95% of the time, provided that these periods shall not exceed 1344 hours per Compressor in a five-year rolling sum period, rolled hourly.
- i. Period to be Used for Computing Percentage of Time. For purposes of calculating compliance with the 95% and the 98% of time that a Compressor or group of Compressors must be Available for Operation or in operation, as required by subparagraph 68.d(3), the period to be used shall be an 8760-hour rolling sum, rolled hourly, using only hours when Potentially Recoverable Gas was generated during all or part of the hour but excluding hours for flows that could not have been prevented through reasonable planning and were in anticipation of or caused by a natural disaster, act of war or terrorism, or External Utility Loss. When no

Potentially Recoverable Gas was generated during an entire hour, then that hour shall not be used in computing the 8760-hour rolling sum. The rolling sum shall include only the prior 8760 one-hour periods when Potentially Recoverable Gas was generated during all or part of the hour, provided that the Potentially Recoverable Gas was not generated by flows that could not have been prevented through reasonable planning and were in anticipation of or caused by a natural disaster, act of war or terrorism, or External Utility Loss.

- e. Incorporation of Conditions into a Federally Enforceable Permit. By no later than 90 days after the Effective Date of the Agreement, Phillips 66 shall submit to the State of Montana a request to amend the federally-enforceable Title V Operating Permit, No. OP2619-12, for the Billings Refinery to incorporate a compliance schedule for complying with the applicable limitations and requirements in Paragraph 68 of this Agreement that shall continue after the Effective Date of this Agreement. In particular, the requirements found in subparagraphs 68.a to 68.d shall be included in the compliance schedule. Phillips 66 shall request to incorporate the Waste Gas flaring limit found in subparagraph 68.c and the FGRS requirements of subparagraph 68.d into the above-referenced permit.
- (1) Phillips 66 shall submit the request for an amendment in accordance with applicable state and federal rules, including any applicable administrative amendment and modification provisions of such rules.
 - (2) Following submission of the complete request, Phillips 66 shall cooperate with the State of Montana by promptly submitting all available information that it seeks following the State's receipt of the permit materials.

- (3) This Agreement shall not terminate before the compliance schedule and the applicable limits and requirements of subparagraphs 68.c and 68.d are incorporated into the Title V Operating Permit for the Billings Refinery.
 - (4) Phillips 66 shall provide a copy to EPA of any request made pursuant to this subparagraph simultaneous with the submission to MDEQ, as well as a copy of any permit proposed as a result of such request, in the manner set forth in subparagraph 68.g(2).
- f. Notice of Delay. If an event occurs which causes or may cause a delay in completing the requirements of Paragraph 68:
- (1) Phillips 66 must notify EPA in writing, pursuant to the instructions in subparagraph 68.g(2), within 10 days after learning of an event which caused or may cause a delay in completing the requirement. The notice must describe the anticipated length of the delay, its cause(s), Phillips 66's past and proposed actions to prevent or minimize the delay and a schedule to carry out those actions. Phillips 66 must take all reasonable actions to avoid or minimize any delay. If Phillips 66 fails to notify EPA according to this Paragraph, Phillips 66 will not receive an extension of time to complete the requirement.
 - (2) If Phillips 66 and EPA agree that circumstances beyond Phillips 66's control caused or may cause a delay in completing a requirement, Respondent and EPA may stipulate to an extension of time no longer than the period of delay.
 - (3) If EPA does not agree that circumstances beyond Phillips 66's control caused or may cause a delay in completing the requirement, EPA will notify Phillips 66 in writing of its decision and any delays in completing the requirement will not be excused.

(4) Phillips 66 has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the requirement. Increased costs for completing the requirement will not be a basis for an extension of time under subparagraph 68.f(2), above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

g. Reporting. After the Effective Date of this Agreement, Phillips 66 shall submit to EPA a periodic report, within 60 days after the end of each half of the calendar year (January through June and July through December). The report shall contain: (1) All information necessary to determine compliance with Paragraph 68, including subparagraphs 68.c and 68.d during the reporting period.

(1) All reports required by this Paragraph shall be signed by the Refinery Manager and shall contain the following certification:

This information was prepared either by me or under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my evaluation, or the direction and my inquiry of the person(s) who manage the system, or the person(s) directly responsible for gathering the information, I hereby certify under penalty of law that, to the best of my knowledge and belief, this information is true, accurate, and complete. I understand that there are significant penalties for submitting false, inaccurate, or incomplete information to the United States.

(2) All reports required by this Agreement shall be submitted to:

Attention: Compliance Tracker (AE-18J)
Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Bob Gallagher
Air Program Coordinator
U.S. Environmental Protection Agency, Montana Office
10 West 15th Street, Suite 3200
Helena, Montana 59626

- h. 40 C.F.R. Part 63, Subpart CC, Revisions. The Agreement requires Phillips 66 to implement requirements (subparagraph 68.a) at the Billings Refinery that were published in the Federal Register on December 1, 2015, 80 Fed. Reg. 75,178, July 13, 2016, 81 Fed. Reg. 45,241, and November 26, 2018, 83 Fed. Reg. 60,696. If any referenced provision is stayed, vacated, or withdrawn, Phillips 66 shall continue to comply with the referenced provisions as adopted on December 1, 2015 and amended on July 13, 2016 and November 26, 2018 as Conditions of complying with this Agreement. To the extent that, from the Effective Date of this Agreement until its termination, final, effective revisions to the referenced provisions are adopted that are different from the terms and conditions as published in the Federal Register on December 1, 2015 and July 13, 2016, Phillips 66 shall comply with the final, effective regulations no later than the relevant effective date of the new requirements. Additionally, should EPA provide publicly available guidance clarifying how a particular provision of a referenced requirement should be implemented or will be enforced, Phillips 66 may rely on that guidance in complying with this Agreement.
- i. Stipulated Penalties. Phillips 66 shall be liable for stipulated penalties to the United States for violations of this Agreement as specified below. A violation includes failing to perform any obligation required by the terms of this Agreement, including any work plan or schedule approved under this Agreement, according to all applicable requirements of this Agreement and within the specified time schedules established by or approved under this Agreement.
- (1) If EPA determines that a stipulated penalty should be paid pursuant to this Agreement, it shall make a written demand for stipulated penalty. Phillips 66 shall

pay any stipulated penalty within 60 days of receiving EPA's written demand, unless the demand is disputed.

- (2) The EPA may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Agreement.
- (3) Stipulated penalties continue to accrue during any dispute resolution, but need not be paid until 30 days after the dispute is resolved.
- (4) Phillips 66 shall pay stipulated penalties to EPA in the manner set forth in Paragraph 63.b-d, except that the transmittal letter must state that the payment is for stipulated penalties and must state for which alleged violation(s) the penalties are being paid.
- (5) The following stipulated penalties may apply:

Violation	Stipulated Penalty	
(a) Violation of subparagraph 68.a for Flare Vent Gas and Assist Steam Monitoring Systems for failure to operate equipment listed in this subparagraph, conditions (1) and (2).	<u>Period of Delay or Noncompliance</u>	<u>Penalty per Day per Condition</u>
	Days 1-30	\$ 250
	Days 31-60	\$ 500
	Days 61 and later	\$1,000
(b) Violation of subparagraph 68.b for Waste Gas Mapping for failure to conduct Waste Gas mapping and/or report Waste Mapping results in accordance with this subparagraph.	<u>Period of Delay or Noncompliance</u>	<u>Penalty per Day</u>
	Days 1-30	\$ 250
	Days 31-60	\$ 500
	Days 61 and later	\$1,000
(c) Violation of subparagraph 68.c for Limitation on Waste Gas Flaring for failure to comply with the refinery-wide 365-Day Rolling Average limit on Waste Gas Flaring.	<u>Period of Delay or Noncompliance</u>	<u>Penalty per Day</u>
	Days 1-30	\$ 250
	Days 31-60	\$ 500
	Days 61 and later	\$1,000

Violation	Stipulated Penalty	
(d) Violation of subparagraph 68.d for failure to operate FGRS in accordance with this subparagraph, conditions (1) and (2).	<u>Period of Delay or Noncompliance</u>	<u>Penalty per Day per Condition</u>
	Days 1–30	\$ 250
	Days 31–60	\$ 500
	Days 61 and later	\$1,000
(e) Violation of subparagraph 68.d for FGRS for failure to have the Compressor Available for Operation or In Operation, in accordance with this subparagraph, condition (3).	The number of hours or fraction thereof—over the allowed percentage—in a rolling 8760-hour period that a Compressor required to be Available for Operation or In Operation is not: \$750 per hour; provided however, that stipulated penalties shall not apply for any hour or fraction thereof in which a Compressor’s unavailability did not result in flaring.	
(f) Violation of subparagraph 68.e for failure to submit a complete and timely permit modification in accordance with this subparagraph.	<u>Period of Delay or Noncompliance</u>	<u>Penalty per Day</u>
	Days 1–30	\$ 250
	Days 31–60	\$ 500
	Days 61 and later	\$1,000

69. Respondents agree that the time period from the Effective Date of this Agreement until all of the conditions specified in Paragraph 68 are completed (Tolling Period) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by Complainant on any claims (Tolled Claims) set forth in Section V of this Agreement. Respondents shall not assert, plead, or raise in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims.
70. The provisions of this Agreement shall apply to and be binding upon Respondents and their officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns. From the Effective Date of this Agreement until the end of the Tolling Period, as set

out in Paragraph 69, Respondent Phillips 66 must give written notice and a copy of this Agreement to any successors in interest prior to any transfer of ownership or control of any portion of or interest in the Billings Refinery. Simultaneously with such notice, Respondent Phillips 66 shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such transfer, assignment, or delegation, Respondent Phillips 66 shall not be released from the obligations or liabilities of this Agreement unless the EPA has provided written approval of the release of said obligations or liabilities.

71. By signing this Agreement, Respondents acknowledge that this Agreement will be available to the public and agrees that this Agreement does not contain any confidential business information or personally identifiable information.
72. The Parties agree that this Agreement may be signed in any number of counterparts, each of which will be deemed an original and, when taken together, constitute one agreement; the counterparts are binding on the parties individually as fully and completely as if the Parties had signed one single instrument, so that the rights and liabilities of the Parties will be unaffected by the failure of any of the undersigned to execute any or all of the counterparts; any signature page and any copy of a signed signature page may be detached from any counterpart and attached to any other counterpart of this Agreement and any signature page may be transmitted electronically (*e.g.*, a PDF file).
73. By signing this Agreement, the undersigned representative of Complainant and the undersigned representative of Respondents each certify that he or she is fully authorized to execute and enter into the terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents to this Agreement.
74. By signing this Agreement, the Parties agree that each party's obligations under this Agreement constitute sufficient consideration for the other party's obligations.

75. By signing this Agreement, each Respondent certifies that the information it has supplied concerning this matter was, based on information and belief at the time of submission, true, accurate, and complete for each such submission, response, and statement. If either Respondent learns after certifying that the information submitted was in any material respect inaccurate or incomplete, it shall promptly submit such supplementary or corrected information. Respondents acknowledge that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
76. Except as qualified by Paragraph 64, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

VII. DISPUTE RESOLUTION

77. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Agreement. Respondent's failure to seek resolution of a dispute under this Section shall preclude Respondent from raising any such issue as a defense to an action by EPA to enforce any obligation of Respondent arising under this Agreement.
78. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Agreement shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Respondent sends EPA a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 60 days from the date the dispute arises, unless that period is modified by written agreement. If Complainant and Respondent cannot resolve a dispute by informal negotiations, then the position advanced by EPA shall be considered binding unless, within 45 days after the conclusion of the informal negotiation period, Respondent invokes formal dispute resolution procedures as set forth below.

79. Formal Dispute Resolution. Respondent shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on EPA a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Respondent's position and any supporting documentation relied upon by Respondent.
80. EPA shall serve its Statement of Position within 45 days of receipt of Respondent's Statement of Position. EPA's Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by EPA. EPA's Statement of Position shall be binding on Respondent, unless Respondent request alternative dispute resolution in accordance with the following Paragraph.
81. Respondent may request that EPA coordinate to designate a neutral party for dispute resolution consistent with 40 C.F.R. § 22.18(d). If the Parties cannot agree on a neutral party, the Respondent may move for the appointment of a neutral party to proceed with dispute resolution consistent with 40 C.F.R. § 22.18(d).
82. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Respondent under this Agreement, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 68.i(3). If Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in subparagraph 68.i (Stipulated Penalties).

VIII. EFFECT OF AGREEMENT

83. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Agreement resolves only Respondents' liability for federal civil penalties for the violations and facts specifically alleged above.

84. Penalties paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.
85. This Agreement constitutes the entire agreement and understanding of the Parties and supersedes any prior agreements or understandings, whether written or oral, among the Parties with respect to the subject matter hereof.
86. The terms and conditions of this Agreement may not be modified or amended except upon the written agreement of all Parties, and approval of the Regional Judicial Officer.
87. Any violation of this Agreement, and subsequently issued final order approving this Agreement, may result in a civil judicial action for an injunction or civil penalties of up to \$97,229 per day per violation, or both, as provided in section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2) and adjusted for inflation pursuant to 40 C.F.R. part 19, as well as criminal sanctions as provided in section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this Agreement in an administrative, civil judicial, or criminal action.
88. Nothing in this Agreement shall relieve Phillips 66 of the duty to comply with all provisions of the Act and other federal, state, or local laws or statutes applicable to the Billings Refinery, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
89. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondents or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
90. If and to the extent that the EPA finds, after signing this Agreement, that any information provided by Respondents was materially false or inaccurate at the time such information was provided to the EPA, the EPA reserves any and all of its legal and equitable rights.

IX. TERMINATION

91. Upon completion of conditions in subparagraphs 68.a and 68.b, demonstration of compliance with subparagraphs 68.c and 68.d for one year after the initial compliance demonstration, receipt of the permit specified in subparagraph 68.e incorporating the compliance schedule and surviving applicable limitations and requirements established under this Agreement, payment of the civil penalty in accordance with Paragraph 63, and completion of the SEP in accordance with Paragraph 67, Respondent Phillips 66 shall provide a Statement of Completion along with the final periodic report described in subparagraph 68.g.
92. The Statement of Completion shall certify that Respondent Phillips 66 has completed or has demonstrated compliance with the conditions referenced in Paragraph 91, as specified, and that Respondent Phillips 66 is in substantial and material compliance with all other requirements of this Agreement.
93. After reviewing the Statement of Completion, EPA shall provide a Confirmation of Termination or notify Respondent Phillips 66 of outstanding compliance items within 90 days of receipt.

X. 42 U.S.C. SECTION 162(f)(2)(A)(ii) IDENTIFICATION

94. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of subparagraph 68.a–h, 70 and Appendices B and D, is restitution or required to come into compliance with law.

XI. EFFECTIVE DATE

95. Respondents and Complainant agree to issuance of a final order approving this Agreement. Upon filing, the EPA will transmit a copy of the filed Agreement to Respondents. This Agreement and subsequently issued final order shall become effective after execution of the final order by the Regional Judicial Officer, on the date of filing with the Regional Hearing Clerk (Effective Date).

The foregoing Consent Agreement In the Matter of Phillips 66 Company and ConocoPhillips Company is Hereby Stipulated, Agreed, and Approved.

FOR RESPONDENTS:

Signature Ray Ricdon *RRIC* Date 3/18/2019

Printed Name: RAY RICDON

Title: REFUELING MANAGER

Address: 401 South 23rd Street, Billings MT 59101
PO Box 30198 Billings MT 59107-0198

Respondent's Federal Tax Identification Number: 37-1652702

Signature Ray Ricdon ON BEHALF OF CONOCOPHILLIPS Date 3/18/2019

Printed Name: RAY RICDON

Title: REFUELING MANAGER

Address: 925 N. Eldridge Parkway Houston TX 77079
PO Box 2197 Houston TX 77252-2197

Respondent's Federal Tax Identification Number: 73-0400345

The foregoing Consent Agreement In the Matter of Phillips 66 Company and ConocoPhillips Company is Hereby Stipulated, Agreed, and Approved.

FOR COMPLAINANT:

3/25/19
DATE



Suzanne J. Bohan
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice
U.S. Environmental Protection Agency,
Region 8

Appendix A – Definitions
In the Matter of Phillips 66 Company and ConocoPhillips Company,
Billings Refinery, Respondents

- a. “365-Day Rolling Average” shall mean the average daily flow rate during the preceding 365 days. For purposes of clarity, the first day used in a 365-day rolling average compliance period is the first day on which the emissions limit is effective and the first complete 365-day average compliance period is 365 days later (e.g., for a limit effective on January 1, the first day in the period is January 1 and the first complete 365-day period is January 1 through December 31).
- b. “Agreement” or “Consent Agreement” shall mean this Consent Agreement, including any and all Appendices attached to the body of this Consent Agreement.
- c. “Available for Operation” shall mean, with respect to a Compressor within a Flare Gas Recovery System, that the Compressor is capable of commencing the recovery of Potentially Recoverable Gas as soon as practicable but not more than one hour after the Need for the Compressor to Operate arises. The period of time, not to exceed one hour, allowed by this definition for the startup of a Compressor shall be included in the amount of time that a compressor is Available for Operation.
- d. “BTU/scf” shall mean British Thermal Unit per standard cubic foot.
- e. “Capable of Receiving Flare Sweep, Flare Supplemental, or Waste Gas” shall mean, for a Flare, that the flow of Flare Sweep, Flare Supplemental, or Waste is not prevented from being directed to the Flare by means of closed valves or blinds.
- f. “Compressor” shall mean, with respect to a Flare Gas Recovery System, a mechanical device designed and installed to recover gas from a flare header. Types of Flare Gas Recovery System compressors include but are not limited to reciprocating compressors, centrifugal compressors, liquid ring compressors and liquid jet ejectors.
- g. “Day” or “Days” as used herein shall mean a calendar day or days.
- h. “External Utility Loss” shall mean a loss in the supply of electrical power or other third-party utility to the Billings Refinery that is caused by events occurring outside the boundaries of the Billings Refinery, excluding utility losses due to an interruptible utility service agreement.
- i. “Flare Gas Recovery System” or “FGRS” shall mean a system of one or more compressors, piping, and associated Flare seal used to divert gas from a Flare and direct the gas to a fuel gas system, to a combustion device other than the Flare, or to a product, co-product, by-product, or raw material recovery system.

- j. "In operation" or "being in operation" or "operating," with respect to a Flare, shall mean any and all times that Sweep, Supplemental, or Waste Gas is or may be vented to a Flare. A Flare that is in operation is Capable of Receiving Flare Sweep, Flare Supplemental, or Waste Gas unless all Flare Sweep, Flare Supplemental, and Waste Gas flow is prevented by means of closed valves or blinds.
- k. "KSCFH" or "kscfh" shall mean thousand standard cubic feet per hour.
- l. "Need for a Compressor to Operate" shall mean:
 - i. For a situation in which no Compressor within the FGRS is recovering gas: When a Potentially Recoverable Gas flow rate (determined on a fifteen-minute block average) to the Main Plant Flare serviced by the FGRS exists; or
 - ii. For a situation in which one or more Compressors within the FGRS already are recovering gas: When the Potentially Recoverable Gas flow rate (determined on a fifteen-minute block average) exceeds the capacity of the operating Compressor(s).

For the purposes of this definition, a fifteen-minute block average is calculated in the same manner that such blocks are calculated as outlined in 40 C.F.R. § 63.670(k)(2).

- m. "Non-Recoverable Gases" shall mean the following specific gases that are not recoverable by the Billings Flare Gas Recovery System:
 - i. Flare Supplemental and Flare Purge Gas introduced between a Flare seal and a Flare tip;
 - ii. Hydrogen vented from a pressure swing absorber, steam methane reformer (hydrogen plant), or catalytic reformer;
 - iii. Hydrogen that must bypass an FGRS in order to reestablish hydrogen balance in the event that hydrogen demand declines or stops rapidly;
 - iv. Gases that exceed the Total Capacity of the FGRS Compressors;

- v. Gases vented from purges of process units in the process of Shutdown, in the process of Startup, in turnaround, or as a result of malfunction which are directed to the Flare because the Net Heating Value makes the gas unsuitable for use as fuel gas. Examples include, but are not limited to nitrogen purging, high or low Net Heating Value from relief valves as a result of malfunction.

- n. "Potentially Recoverable Gas" shall mean the Flare Sweep Gas, Flare Supplemental Gas (unless introduced after a Flare seal), and/or Waste Gas (including hydrogen, nitrogen, oxygen, carbon dioxide, carbon monoxide, and/or water) directed to the Main Plant Flare's FGRS that does not meet the definition of "Non-Recoverable Gases".

- o. "Steam-Assisted Flare" shall mean a Flare that utilizes steam piped to a Flare tip to assist in combustion.

- p. "Total Capacity" shall mean the sum of the capacities (at suction) of all Compressors in a given FGRS.

- q. "Waste Gas" shall mean the mixture of all gases from facility operations that is directed to a Flare for the purpose of disposing of the gas. "Waste Gas" does not include gas introduced to a Flare exclusively to make it operate safely and as intended; therefore, "Waste Gas" does not include Pilot Gas, Total Steam, or the minimum amount of Flare Sweep Gas and Purge Gas that is necessary to perform the functions of Flare Sweep Gas and Flare Purge Gas. "Waste Gas" also does not include gas introduced to a Flare to comply with regulatory requirements; therefore, "Waste Gas" does not include Flare Supplemental Gas. For the purpose of determining limitations on Waste Gas flaring, certain compounds (hydrogen, nitrogen, oxygen, carbon dioxide, carbon monoxide, and/or water (steam)) that are directed to a Flare for the purpose of disposing of these compounds may be excluded from calculations relating to Waste Gas flow.

- r. The following terms shall have the definitions set forth in 40 C.F.R. § 63.641:
 - a. Assist Steam
 - b. Flare
 - c. Flare Purge Gas
 - d. Flare Sweep Gas
 - e. Flare Supplemental Gas
 - f. Flare Vent Gas
 - g. Net Heating Value
 - h. Pilot Gas
 - i. Total Steam

Appendix B - WASTE GAS MAPPING:
LEVEL OF DETAIL NEEDED TO SHOW MAIN HEADERS
AND PROCESS UNIT HEADERS
In the Matter of Phillips 66 Company and ConocoPhillips Company,
Billings Refinery, Respondents

Purpose:

Waste Gas Mapping is required in order to identify the source(s) of waste gas entering the Main Plant Flare. Waste Gas Mapping can be done using instrumentation, isotopic tracing, acoustic monitoring, and/or engineering estimates for all sources entering a flare header (e.g. pump seal purges, sample station purges, compressor seal nitrogen purges, relief valve leakage, and other sources under normal operations). This Appendix outlines what needs to be included in the Waste Gas Submission to EPA required by Paragraph 68(b) of the Consent Agreement.

Waste Gas Mapping Criteria:

For purposes of waste gas mapping, a main header is defined as the last pipe segment prior to the flare knock out drum. Process unit headers are defined as pipes from inside the battery limits of each process unit that connect to the main header. For process unit headers that are greater than or equal to six (6) inches in diameter, flow ("Q") must be identified and quantified if it is technically feasible to do so. In addition, all sources feeding each process unit header must be identified and listed in a table, but not necessarily individually quantified. For process unit headers that are less than six (6) inches in diameter, sources must be identified, but they do not need to be quantified.

Waste Gas Mapping Submission Requirements:

For the Main Plant Flare, the following shall be included in a report submitted to EPA:

1. Simplified Schematic consistent with the example schematic included on page B2 of this Appendix.
2. Table of all sources connected to each flare main header and process unit header consistent with the Table included on the page B3 of this Appendix.

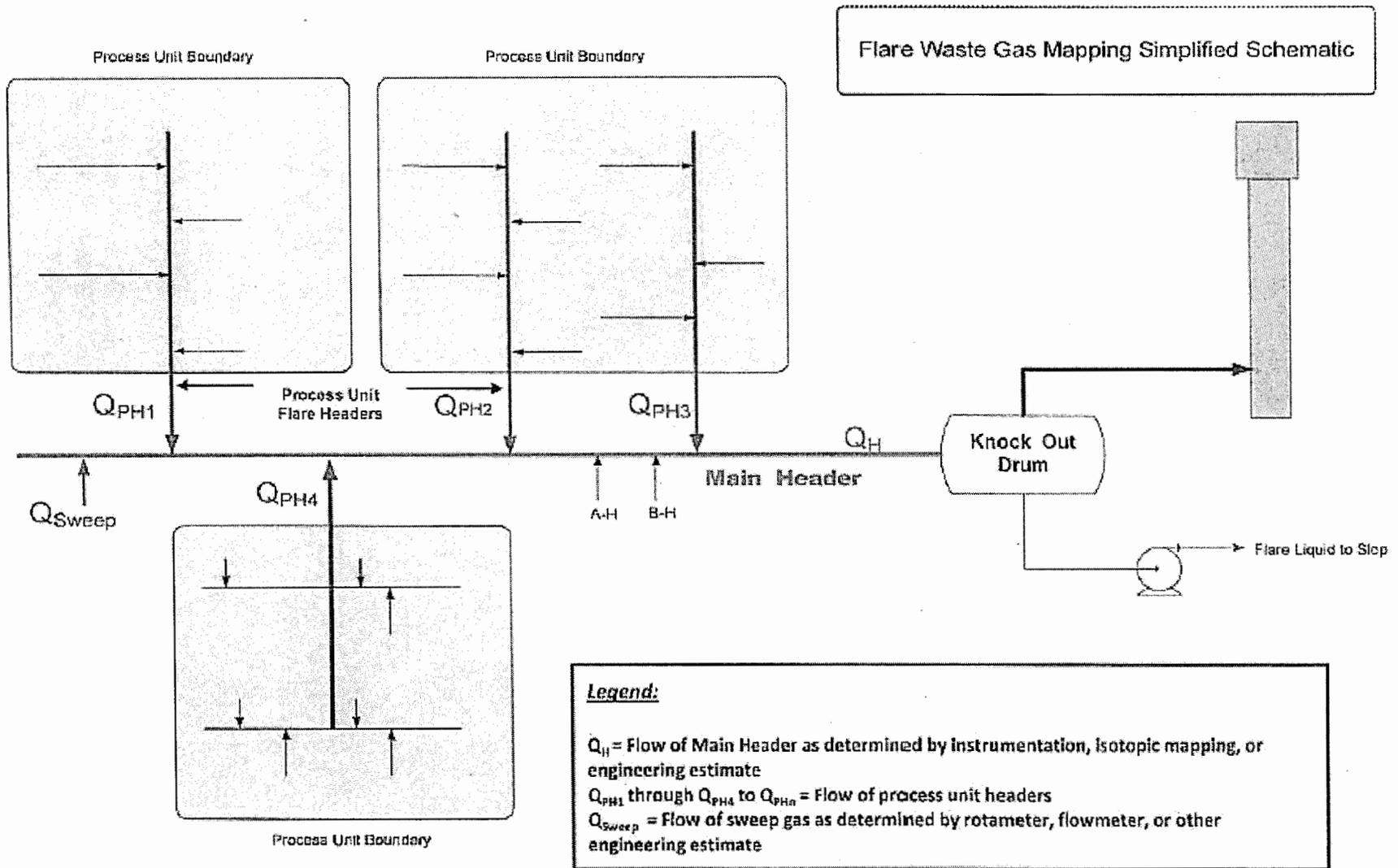


Table 1: Example of Flare Source Description Table

Process Unit Header	Sources	Detailed Source Description
Q _{PH1} (Ex: FCCU Gas Con Unit)	3 PSVs	PSV-14 on 110-D-5 Gas Con Absorber PSV-12 on 110-D-1 Amine Scrubber PSV-7 on 110-F-1 Batch Caustic Vessel
	2 Pump Seal Purges	110-G-1 LPG Pump 110-G-2 Rich Amine Pump
	1 Sample Station	110-S-1 LPG
	1 PSV	PSV 17 on 112-D-1 Main Column
	1 Pressure Control Valve	PCV 21 – Emergency Wet Gas Compressor
	1 PSV	PSV-21 on Flush Oil Drum
	1 Pump Seal Purge	110-G-23 Slurry Oil Pump
Q _{PH2} (Ex: Gas Oil Treater)	Continue same as PH1	Continue same as PH1
Q _{PH3}	Continue same as PH1	Continue same as PH1
Q _{PH4}	Continue same as PH1	Continue same as PH1
A-H	1 PSVs	PSV-17 on 109-E-42 Slurry Heat Exchanger
B-H	2 Pump Seal Purges	110-G-3 Gas Oil Feed 110-G-4 Main Column Reflux



Independent Statistics & Analysis
U.S. Energy Information
Administration

OMB No. 1905-0165
Expiration Date: 05/31/2016
Version No.: 2013.01

FORM EIA-820
ANNUAL REFINERY REPORT
REPORT YEAR 2016

This report is mandatory under the Federal Energy Administration Act of 1974 (Public Law 93-275). Failure to comply may result in criminal fines, civil penalties and other sanctions as provided by law. For further information concerning sanctions and data protections see the provision on sanctions and the provision concerning the confidentiality of information in the instructions. Title 18 USC 1001 makes it a criminal offense for any person knowingly and willingly makes to any Agency or Department of the United States any false, fictitious, or fraudulent statements as to any matter within its jurisdiction.

PART 1. RESPONDENT IDENTIFICATION DATA

PART 2. SUBMISSION/RESUBMISSION INFORMATION

EIA ID NUMBER:

If this is a resubmission, enter an "X" in the box:

If any Respondent Identification Data has changed since the last report, enter an "X" in the box:

A completed form must be received by February 16th of the designated report year.

Company Name: Phillips 66

Forms may be submitted using one of the following methods:

Doing Business As: _____

Site Name: Billings Refinery

Email: OOG.SURVEYS@eia.gov

Terminal Control Number (TCN): _____

Fax: (202) 586-1076

Physical Address (e.g., Street Address, Building Number, Floor, Suite):

401 South 23rd Street

City: Billings State: MT Zip: 59107 - 0198

Secure File Transfer:
<https://signon.eia.doe.gov/upload/noticeoog.jsp>

Mailing Address of Contact (e.g., PO Box, RR): If the physical and mailing addresses are the same, only complete the physical address.

City: _____ State: _____ Zip: _____ - _____

Questions? Call: 202-586-6281

Contact Name: Stephen Seidman

Phone No.: (406) 255-2467 Ext: _____

Fax No.: (406) 255-2507

Email address: Stephen.Seidman@P66.com

Comments: Explain any unusual or substantially different aspects of your current year's operations that affect the data reported. For example, note new processing units, major modifications or retirement of processing units, sale of refinery, etc. (To separate one comment from another, press ALT+ENTER)



Independent Statistics & Analysis
**U.S. Energy Information
 Administration**

OMB No. 1905-0165
 Expiration Date: 05/31/2016
 Version No.:2013.01

**FORM EIA-820
 ANNUAL REFINERY REPORT
 REPORT YEAR 2016**

EIA ID NUMBER: 1115470131

RESUBMISSION: X

PART 3. FUEL, ELECTRICITY, AND STEAM PURCHASED & CONSUMED AT THE REFINERY DURING 2015

Item	Code	Quantity Used As Fuel or Feedstock	Item	Code	Quantity Used as Fuel
Natural Gas (million standard cubic feet):			Coal (thousand short tons)	109	
Fuel	105	2169	Purchased Electricity (million kWh)	114	297
Hydrogen Feedstock	107	3047	Purchased Steam (million pounds)	113	352

PART 4. REFINERY RECEIPTS OF CRUDE OIL BY METHOD OF TRANSPORTATION DURING 2015 (Thousand Barrels)

Source	Code	Pipelines	Tankers	Barges	Tank Cars	Trucks	Total ¹
Domestic	010					451	451
Foreign	020	22000					22000

¹ Total Domestic and Total Foreign Refinery Receipts (Codes 010 and 020) must equal the sum of the comparable refinery receipts on the Form EIA-810, "Monthly Refinery Report," filed for January through December 2015.

PART 5. ATMOSPHERIC CRUDE OIL DISTILLATION CAPACITY AS OF JANUARY 1

Atmospheric Crude Oil Distillation Capacity	Code	Barrel per Calendar Day ²	Barrels per Stream Day
2016: Operating	399	60000	63400
Idle	400		
Total Operable	401	60000	63400
2017: Operable	501		63400

² Barrels per Calendar Day Operating, Idle and Total Operable Capacity (Codes 399, 400 and 401) must match the comparable capacity numbers reported on the Form EIA-810, "Monthly Refinery Report," filed for January 2016.



Independent Statistics & Analysis
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**FORM EIA-820
ANNUAL REFINERY REPORT
REPORT YEAR 2016**

EIA ID NUMBER: 1115470131

RESUBMISSION: X

PART 6. DOWNSTREAM CHARGE CAPACITY AS OF JANUARY 1

Downstream Charge Capacity	Code	2016 Barrels per Calendar Day	2016 Barrels per Stream Day	2017 Barrels per Stream Day
Vacuum Distillation	402		37100	37100
Thermal Cracking:				
Visbreaking	403			
Fluid Coking (incl. Flexicoking)	404			
Delayed Coking	405	20600	21700	21700
Other (incl. Gas Oil)	406			
Catalytic Cracking:				
Fresh Feed	407	19400	21500	21500
Recycled	408		990	990
Catalytic Hydrocracking:				
Distillate	439			
Gas Oil	440			
Residual	441			
Desulfurization (including Catalytic Hydrotreating):				
Naphtha/Reformer Feed	426		13550	13550
Gasoline	420		6000	6000
Kerosene and Jet	421		5800	5800
Diesel Fuel	422		29750	29750
Other Distillate	423			
Residual	424			
Heavy Gas Oil	413		25760	25760
Other	425			
Catalytic Reforming:				
Low Pressure	430			
High Pressure	431	9420	13550	13550
Fuels Solvent Deasphalting	432			

PART 7. PRODUCTION CAPACITY AS OF JANUARY 1 (Barrels per Stream Day, Except Where Noted)

Production Capacity	Code	2016 Barrels per Stream Day	2017 Barrels per Stream Day
Alkylates	415	7250	7250
Aromatics	437		
Asphalt and Road Oil	931		
Isobutane (C4)	644	4000	4000
Isopentane (C5), Isohexane (C6)	438		
Isooctane (C8)	635		
Lubricants	854		
Petroleum Coke - Marketable	021	5475	5475
Hydrogen (million cubic ft. per day)	091	34	34
Sulfur (short tons per day)	435	246	246

Appendix D - DETERMINING REFINERY-SPECIFIC AND INDUSTRY-AVERAGE COMPLEXITY THROUGH USE OF THE NELSON COMPLEXITY INDEX
In the Matter of Phillips 66 Company and ConocoPhillips Company,
Billings Refinery, Respondents

REFINERY COMPLEXITY. The complexity of the Refinery is to be calculated using the following formula:

Equation 1:

$$Complexity = \sum_{n=1}^i \frac{NCI_i \times CAP_i}{CAP_{DIST}}$$

NCI _i	=	The 2011 Nelson Complexity Index Coefficient shown in Table 1 below for Process Unit i
CAP _i	=	<p>The throughput capacity for Process Unit i, in barrels per calendar day, which shall be determined as follows:</p> <p>(a) for a Process Unit that is not new or modified, the capacity, in barrels per calendar day, that the Refinery reported for Procession Part 6* of the most recent Form EIA-820 that the Refinery filed with the Energy Information Agency (“EIA”) prior to requesting the increase; if the Refinery did not report the capacity of Process i in "barrels per calendar day," but instead reported it in "barrels per stream day," then "barrels per stream day" will be converted to "barrels per calendar day" by multiplying "barrels per stream day" by the following factors: 0.95 for a vacuum distillation unit and 0.9 for all other units; or</p> <p>(b) for a Process Unit that is new or modified, where the new or modified capacity was not reported in the most recent Form EIA-820, the new or modified unit capacity that is set forth in the corresponding air permit application(s).</p>
CAP _{DIST}	=	<p>The Refinery’s Atmospheric Crude Oil Distillation Capacity, in barrels per calendar day, which shall be determined as follows:</p> <p>(a) if the post-settlement modification does not affect the crude capacity, the Atmospheric Crude Oil Distillation Capacity, in barrels per calendar day, that the Refinery reported under “Total Operable” capacity on Part 5, Code 401*of the most recent Form EIA-820 that the Refinery filed prior to requesting the increase; or</p> <p>(b) if the post-settlement modification does affect crude capacity, the projected, new capacity set forth in the air permit application(s) for the post-settlement modification</p>

* The references to particular “Parts” or “Codes” of Form EIA-820 are to the Parts and Codes as they exist for the Form EIA-820 that was used for Reporting Year 2016. To the extent that the “Parts” or “Code” on Form EIA-820 are changed in the future, the intent of the Parties is that the “Parts” and “Codes” of future forms that correspond most closely to those found on the Form EIA-820 for Reporting Year 2016 will be used.

INDUSTRY AVERAGE COMPLEXITY: The Industry Average Complexity is to be calculated using the following formula:

Equation 2

$$\text{Industry Average Complexity} = \sum_{n=1}^i \frac{NCI_i \times ICAP_i}{ICAP_{DIST}}$$

NCI _i	=	The 2011 Nelson Complexity Index Coefficient shown in Table 1 below for Process Unit i
ICAP _i	=	<p>Total US throughput capacity, in barrels per calendar day, for Process Unit i which shall be determined as follows:</p> <p>(a) From the most recent annual release by the EIA of the "Number and Capacity of Petroleum Refineries" that is found, as of June 2016, at https://www.eia.gov/petroleum/refinerycapacity/ and is updated June of each year, the total US capacity of Process Unit i in barrels per calendar day. For the total US capacity of those process units that the EIA lists only in "barrels per stream day" and not in "barrels per calendar day," the "barrels per stream day" shall be converted to "barrels per calendar day" by multiplying "barrels per stream day" by the following factors: 0.95 for a vacuum distillation unit and 0.9 for all other units.</p> <p>(b) if and only if the most recent annual release of the "Number and Capacity of Petroleum Refineries" by the EIA does not list a process unit that the Refinery operates, then the total US throughput capacity for that process unit listed in the most recent Oil & Gas Journal annual survey.</p>
ICAP _{DIST}	=	<p>From the most recent release by the EIA of the "Number and Capacity of Petroleum Refineries" that is found as of June 2016, at https://www.eia.gov/petroleum/refinerycapacity/ and is updated in June of each year, the total "Operable" US Atmospheric Crude Oil Distillation Capacity, in barrels per calendar day.</p>

Table 1: 2011 Nelson Complexity Index Coefficients

Refining Process	NCI Coefficients
Distillation Capacity	1.00
Vacuum Distillation	1.30
Thermal Processes	2.75
Coking	7.50
Catalytic Cracking	6.00
Catalytic Reforming	5.00
Catalytic Hydrocracking	8.00
Catalytic Hydrotreating	2.50
Catalytic Hydrorefining	2.50
Alkylation	10.00
Polemerization	10.00
Aromatics	20.00
Isomerization	3.00
Lubes	60.00
Asphalt	1.50
Hydrogen (MCFD)	1.00
Oxygenates	10.00
Sulfur Extraction	240.00

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT and FINAL ORDER** in the matter of **PHILLIPS 66 COMPANY; and CONOCOPHILLIPS COMPANY; DOCKET NO.: CAA-08-2019-0008** was filed with the Regional Hearing Clerk on April 8, 2019.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Jessica Portmess, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on April 8, 2019, to:

Respondent

Ray Rigdon
Phillips 66
PO Box 30198
Billings, Montana 59107-0198

Ray Rigdon
ConocoPhillips
PO Box 2197
Houston, Texas 77252-2197

And emailed to:

Jessica Chalifoux
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

April 8, 2019



Melissa Haniewicz
Regional Hearing Clerk