



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

U.S. Environmental Protection Agency  
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Certified Mail Return Receipt Requested  
No. 7016-0910-0000-4441-4618

Phillips 66 Company  
Linda Hester, Esq.  
P.O. Box 4413  
Houston, Texas 77210

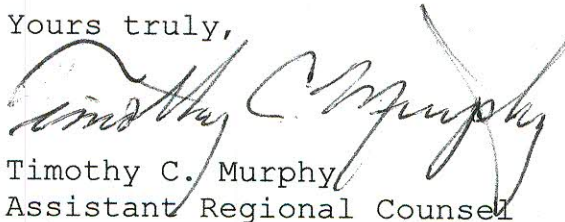
December 13, 2016

Subject: Phillips 66 Company, Docket No., CWA 02-2007-3810

Dear Mr. Hester:

Enclosed herewith is the Consent Agreement/Final Order (CAFO) for the subject case. Payment of the penalty will be due thirty (30) days after receipt. Please contact me at (212) 637-3236 if you have any questions with respect to this document. Thank you.

Yours truly,



Timothy C. Murphy  
Assistant Regional Counsel

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

IN THE MATTER OF

Phillips 66 Company  
2311 City West Blvd.,  
Houston, TX 77042

Respondent.

CWA SECTION 311 CLASS II  
CONSENT AGREEMENT & FINAL ORDER

Docket No. CWA-02-2007-3810

U.S. Environmental Protection Agency  
Region 2  
2018 DEC 13 PM 3:30  
SOLUTIONS ASSISTANCE  
CLERK

CONSENT AGREEMENT AND FINAL ORDER

The parties, in their own capacity or by their attorneys or other authorized representatives, hereby stipulate:

1. Complainant, the Director of the Removal and Remedial Response Division, U.S. Environmental Protection Agency, Region 2 ("EPA"), and Respondent, Phillips 66 Company, have agreed to the settlement of this action before filing an amended complaint or answer. Therefore, this action is simultaneously commenced and concluded under Rules 22.13(b) and 22.18(b) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits* found at 40 C.F.R. §§ 22.13(b) and 22.18(b).<sup>1</sup>
2. EPA institutes this civil administrative proceeding for the assessment of civil penalties pursuant to Section 311(b)(6)(B)(ii) of the Clean Water Act ("Act"), 33 U.S.C.

<sup>1</sup> On September 28, 2007, EPA filed an initial Complaint against Conoco Phillips seeking civil penalties for violations alleged in ¶¶ 18-19. Respondent did not file an answer. On April 30, 2012, Phillips 66 (the parent corporation of Phillips 66 Company) became a separate stand-alone company through a tax-free spin-off transaction. By virtue of the Separation Agreement between ConocoPhillips and Phillips 66, Phillips 66 Company became responsible for liability, if any, associated with this Facility. As such, the correct entity name for Respondent in this matter is Phillips 66 Company as reflected in the above caption. As a result, pursuant to 40 C.F.R. Part 22.14(c) this CAFO amends the initial action as a matter of right since no answer has been filed.

§1321(b)(6)(B)(ii). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 2, who in turn has delegated it to the EPA Complainant.

3. Respondent consents to the entry of this CAFO, all of the conditions of this CAFO, and the assessment of the civil penalty as outlined in this CAFO.

4. Complainant and Respondent agree that the settlement of this matter pursuant to 40 C.F.R. § 22.13(b) is in the public interest and that the entry of this CAFO without engaging in litigation is the most efficient means of resolving this matter.

#### **Statutory and Regulatory Background**

5. Section 311(j)(1)(C) of the Clean Water Act (the "Act"), 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from onshore facilities, and to contain such discharges . . ."

6. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11677 (July 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to EPA his Section 311(j)(1)(C) authority to issue the regulations referenced in the preceding Paragraph for non-transportation-related onshore facilities.

7. EPA subsequently promulgated the SPCC regulations pursuant to these delegated statutory authorities, and pursuant to its authorities under the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, which established certain procedures, methods and requirements incumbent upon each owner and operator of a non-transportation-related onshore facility if such facility, due to its location, could reasonably be expected to discharge oil into or upon the navigable waters of the United States and their adjoining shorelines in such quantity as EPA has determined in 40 C.F.R.

§ 110.3 may be harmful to the public health or welfare or the environment of the United States (“harmful quantity”).

8. In promulgating 40 CFR § 110.3, which implements Section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4), EPA has determined that discharges of harmful quantities include oil discharges that cause either (1) a violation of applicable water quality standards or (2) a film, sheen upon, or discoloration of the surface of the water or adjoining shorelines, or (3) a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

#### General Allegations

9. Respondent is a corporation organized under the laws of the State of Delaware with a place of business located at 2311 City West Blvd., Houston, TX 77042. Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 CFR § 112.2.

10. Respondent is within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 CFR § 112.2 of an onshore oil refining facility, located at 1400 Park Avenue, Linden, New Jersey (“the Facility”).

11. The facility has a production of approximately 275,000 barrels per day.

12. Morses Creek and Arthur Kill are navigable waters of the United States within the meaning of 40 C.F.R. § 112.2 [and Section 502(7) of the Act, 33 U.S.C. § 1362.(7)].

13. Respondent is engaged in storing, processing, refining, transferring, distributing, using or consuming oil or oil products located at the Facility.

14. The Facility is a “non-transportation-related facility” within the meaning of 40 CFR § 112.2 Appendix A, as incorporated by reference within 40 CFR § 112.2.

15. The Facility is an “onshore facility” within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and 40 CFR § 112.2.

16. The facility is therefore a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States (as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 CFR §§ 110.1 and 112.2) or its adjoining shorelines in a harmful quantity (“an SPCC-regulated facility”).

17. Pursuant to Section 311(j)(1)(C) of the Act, E.O. 12777, and 40 C.F.R. § 112.1, Respondent, as the owner and operator of an SPCC-regulated facility, is subject to the SPCC regulations.

18. On September 6, 2006 Respondent discharged approximately 3,000 gallons of oil as defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), and 40 CFR § 110.1, from its facility into or upon Morses Creek, Arthur Kill and their adjoining shorelines, violating Section 311(b)(3) of the Act.

19. Respondent’s September 6, 2006 discharge of oil from its facility caused a sheen upon or discoloration of the surface of Morses Creek and Arthur Kill and their adjoining shorelines, violating Section 311(b)(3) of the Act.

20. In addition, from September 20, 2013 through June 29, 2016, Respondent reported the five (5) incidents in Attachment A to the NRC database. Some of these incidents may have been in violation of Section 311(b)(3) of the Act. A description for each event is attached as Attachment A to the CAFO.

21. Pursuant to Section 311(b)(6)(B)(ii) of the Act and 40 CFR § 19.4, as amended by 69 FR 7121, the Respondent is liable for civil penalties of up to \$11,000 per day for each day

during which the violation continues, up to a maximum of \$157,500, pursuant to Section 311(b)(6)(B)(ii) of the Act.

**Waiver of Rights**

22. The Respondent waives the right to appeal any Final Order in this matter pursuant to Section 311(b)(6)(G)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(G)(ii), and consents to the issuance of a Final Order without further adjudication.

**Jurisdiction**

23. For the purpose of this proceeding, Respondent a) admits the jurisdictional allegations of the CAFO as applied to the facility; and b) neither admits nor denies the specific factual allegations contained in the CAFO and Findings of Fact contained herein.

**Penalty**

24. Respondent consents to the assessment of a civil penalty of \$35,500 (Thirty Five thousand and five hundred dollars).

**Payment Terms**

25. Respondent shall pay, by cashiers or certified check, a civil penalty in the amount of thirty five thousand and five hundred dollars (\$35,500), payable to the "Treasurer of the United States of America" within 60 days the signature date on the Final Order. Respondent will identify on the check the name and docket number of this case, set forth in the capitation on the first page of this document. The checks shall be mailed to:

U.S. Environmental Protection Agency  
PO Box 979077  
St Louis MO 63197-9000

26. The Respondent shall send copies of each check to the following recipients:  
  
Timothy C. Murphy, Esq.

Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway - 16<sup>th</sup> Floor  
New York, New York 10007

And

Karen Maples  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway - 16<sup>th</sup> Floor  
New York, New York 10007

Payment must be received at the above address on or before 60 calendar days after the date of signature of the Final Order at the end of this document (the date by which payment must be received shall hereafter be referred to as the "due date").

27. Failure by the Respondent to pay the penalty assessed by the Final Order in full by its due date may subject Respondent to a civil action to collect the total amount of the assessed penalty, plus interest, attorney's fees, costs and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H). In any such collection action, the validity, amount and appropriateness of the penalty agreed to herein shall not be subject to review.

#### General Provisions

28. The provisions of the CAFO shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

29. The effective date of this CAFO is the date that the CAFO is filed in the office of the Regional Hearing Clerk, after having been signed by the Regional Administrator or her

designated representative and subjected to the requirements of Section 311 of the CWA, 33 U.S.C. § 1319(g)(4)(C).

30. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 33 U.S.C. § 1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law. Payment of the total penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the Administrative Complaint.

Phillips 66 Company

Date: 5/5/16



Mr. Darren Cunningham  
Manager, Bayway Refinery



**Attachment A**  
Phillips 66 Company - Bayway Refinery

<b>Date</b>	<b>NRC #</b>	<b>Quantity</b>	<b>Description</b>
6/29/2016	1152049	Reported light sheen detected beyond Dam I	Process sewer backup, investigation revealed that sheen did not pass beyond the dam – 1 gallon sheen removed 6/30/16
9/9/2015	1127950	Reported 7 gallons slop oil to Morses Creek	Pipe leak in facility – USCG verified cleaned up a total of 15 gallons on 9/10/15
9/17/2014	1095559	Reported an unknown quantity of fuel released to Arthur Kill	Overflow due to pinhole leak in a sump – USCG verified clean-up of 1 gallon of jet product before 10/10/14
1/11/2014	1070845	Reported release of waste oil onto pier by the refinery	Leak from sump piping at the pier - (1 gallon to Arthur Kill, 2 gallons on land) addressed by removing sheen. Confirmed to NJDEP in letter dated 1/27/14
9/20/2013	1060787	Reported 1 quart of No. 2 fuel oil to Arthur Kill within containment boom	Leak from a drain valve, sheen removed, confirmed in letter to NJDEP cleaned up 5 gallons 10/11/13

**FINAL ORDER**

Pursuant to Section 311(b)(6) of the Act, 33 U.S.C. § 1321(b)(6) and the delegated authority of the undersigned, and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, codified at 40 CFR Part 22, the forgoing Consent Agreement is hereby approved and incorporated by reference into this Final Order, and the Stipulations by the parties are adopted as Findings in this Final Order.

The Respondent is ordered to comply with the terms of the Consent Agreement.

Date: Dec 12, 2016

Helen Ferrara

Helen Ferrara  
Regional Hearing Officer

ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

IN THE MATTER OF

Phillips 66 Company  
2311 City West,  
Houston, TX 77042

Respondent.

CWA SECTION 311 CLASS II  
CONSENT AGREEMENT & FINAL ORDER

Docket No. CWA-02-2007-3810

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket-number, in the following manner to the respective addresses below:

Original and One Copy By Hand:

U.S. Environmental Protection Agency - Region II  
290 Broadway, 17<sup>th</sup> Floor, Office of Regional Hearing Clerk  
New York, N.Y. 10007-1866

Copy by Certified Mail, Return Receipt Requested:

Phillips 66 Company  
Attn: Ms. Linda Gordon Hester, Senior Counsel  
P.O. Box 4413  
Houston, TX 77210

Date: 12/13/16

  
(Signature)