

IN THE CIRCUIT COURT FOR THE THIRD JUDICIAL CIRCUIT
MADISON COUNTY, STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. KWAME RAOUL, Attorney General)
of the State of Illinois,)
)
Plaintiff,)
)
v.)
)
PHILLIPS 66 COMPANY, a Delaware)
corporation,)
)
Defendant.)

No. 21-CH-108

FILED
JUN 24 2021
CLERK OF CIRCUIT COURT #77
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

AGREED INTERIM ORDER

Under Sections 42(e) and 43(a) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/42(e) and 43(a) (2018), by motion of the Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* KWAME RAOUL, Attorney General of the State of Illinois, and the Illinois Environmental Protection Agency (collectively referred to as “Plaintiff”), and Defendant PHILLIPS 66 COMPANY (“Defendant” or “Phillips 66”), the following Agreed Interim Order is submitted to the Court for approval.

I. STATEMENT OF FACTS AND ALLEGATIONS

1. Defendant Phillips 66 operates a petroleum refinery located at 900 South Central Avenue, Roxana, Madison County, Illinois (“Refinery”).
2. On May 23, 2021, an upset event occurred in the Refinery’s alkylation unit, with an associated flaring event (“Alkylation Unit Event”). The causes and effects of the Alkylation Unit Event are currently under investigation by Defendant Phillips 66.
3. On dates beginning between May 24 and May 25, 2021, The Lemm Corporation, a contractor for Veolia Energy North America Holdings, Inc. (“Veolia”), itself a contractor for Phillips 66, loaded tanker rail cars at the Refinery with spent sulfuric acid from the alkylation unit,

the qualities of which had been impacted by the Alkylation Unit Event.

4. Defendant Phillips 66 leases the tanker rail cars from Veolia.

5. Between May 24 and May 25, 2021, Defendant transported four of the tanker rail cars (“the Tankers”) from the Refinery to the Norfolk Southern Railway transfer station located approximately 638 feet east of State Route 3 and 3,234 feet north of Rand Avenue in Hartford, Illinois (“Site”).

6. On June 2, 2021, prior to 3:00 p.m., a pressure relief valve on one of the Tankers at the Site actuated, causing SO₂ to begin venting from that Tanker into the atmosphere.

7. On June 2, 2021, representatives of Norfolk Southern Railway discovered the pressure relief valve had actuated but were unable to seal the venting Tanker.

8. The pressure relief valves are designed to activate when the pressure inside the tanker rail car reaches 165 pounds per square inch in gauge (“psig”). Pressure in tanker rail cars carrying spent sulfuric acid is commonly within a range of 2 psig to 10 psig.

9. On June 2, 2021, Illinois EPA inspected the Site and observed a plume venting from one of the Tankers.

10. During the early morning hours of June 3, 2021, pressure relief valves on two other Tankers actuated, and those Tankers also began venting SO₂ into the atmosphere.

11. On June 3, 2021, at approximately 4:30 a.m., the Wood River Fire Department issued a shelter in place order for residents near the Site.

12. During the morning of June 3, 2021, the pressure relief valves on the fourth Tanker actuated, causing SO₂ to begin venting from that Tanker into the atmosphere.

13. During the period of June 2, 2021 through June 6, 2021, emissions were also identified as coming from gaskets on appendages on the top of the Tankers.

14. On June 3, 2021, Illinois EPA reinspected the Site and observed all four of the Tankers venting a plume into the atmosphere.

15. On June 3, 2021, and continuing through June 7, 2021, multiple emergency responses units, including the Wood River Fire Department and fire departments from multiple other communities, responded to the Site to address the venting Tankers.

16. By June 6, 2021, Defendant had attached the Tankers to scrubbing units in an attempt to control emissions from the Tankers. Additionally, emissions from the Tanker gaskets had been bagged and routed to a soda ash solution.

17. On June 7, 2021, Defendant replaced the pressure release valves on two of the Tankers. On June 8, 2021, Defendant replaced the pressure release valves on two other Tankers. On June 8, 2021, the four venting Tankers were removed from the railway and returned to the Refinery.

18. On dates beginning June 2, 2021, SO₂ has been vented from the Tankers into the atmosphere (the "Release").

19. On June 10, 2021, Defendant submitted to Plaintiff for its review and approval a disposal plan concerning the Tankers and their remaining contents, as well as a fifth tanker rail car containing spent sulfuric acid that Defendant had transported to the Site ("Disposal Plan"). On June 18, 2021, Defendant submitted to Plaintiff for its review and approval a revised Disposal Plan.

20. Also on June 10, 2021, Defendant submitted to Plaintiff for its review and approval a plan to monitor and address all other tanker rail cars that did receive, or may have received, spent sulfuric acid impacted by the Alkylation Unit Event, and including tanker rail cars loaded prior to June 6, 2021 ("Car Monitoring and Release Plan"). On June 17, 2021, Plaintiff approved the Car Monitoring and Release Plan.

21. On June 18, 2021, Defendant submitted to the Plaintiff a Preliminary Data Summary prepared by CTEH which included preliminary air monitoring data collected between June 3, 2021 and June 8, 2021.

22. On June 18, 2021, Defendant submitted to the Plaintiff its calculations of the amounts of sulfur dioxide and other contaminants released during the Release, with supporting documentation.

23. Plaintiff alleges, in its Verified Complaint for Injunctive Relief and Civil Penalties (“Verified Complaint”) filed in this matter and incorporated by reference herein, that a danger to public health and the environment was created as a result of Defendant causing spent sulfuric acid impacted by the Alkylation Unit Event to be loaded into tanker rail cars. The Parties have met and mutually agree to the following.

IT IS HEREBY ORDERED THAT the Court enters the following Agreed Interim Order directed to Phillips 66, which shall remain in full force and effect until further order by this Court.

II. GENERAL PROVISIONS

24. This Agreed Interim Order shall apply to and bind the Parties.

25. This Agreed Interim Order is not a final resolution on the merits of Plaintiff’s Verified Complaint, nor is it an admission of liability, but rather addresses Plaintiff’s immediate concerns alleged in the Verified Complaint.

26. By entering into this Agreed Interim Order and complying with its terms, Phillips 66 does not admit any wrongful conduct or violation of any applicable statute, law, or regulations, and this Agreed Interim Order and compliance therewith shall not be interpreted as any such admission.

27. This Court shall retain jurisdiction of this matter for the purpose of interpreting the terms and conditions of this Agreed Interim Order.

III. IMMEDIATE COMPLIANCE MEASURES BY PHILLIPS 66

28. Defendant shall immediately implement the Car Monitoring and Release Plan as approved by Plaintiff on June 17, 2021.

29. Within two (2) business days of receiving any written comments from Plaintiff on the Disposal Plan, Defendant shall submit to the Plaintiff for review and approval a revised document that corrects all deficiencies identified by the Plaintiff. Immediately upon Plaintiff's approval of the Disposal Plan, Defendant shall implement the Disposal Plan as approved by Plaintiff.

30. On or before June 25, 2021, Defendant shall submit to Plaintiff all then-final air quality monitoring data obtained by the Defendant in relation to the Release collected between June 3, 2021 and June 25, 2021. Every fourteen (14) days thereafter, Defendant shall submit to Plaintiff any additional final air quality monitoring data in relation to the Release that the Defendant has obtained, continuing through Defendant's submission of all final air monitoring data collected from June 3, 2021 through the date the Tankers are removed from the Refinery pursuant to the Disposal Plan.

31. On or before June 25, 2021, Defendant shall provide to Plaintiff calculations of the amounts of sulfur dioxide and other contaminants released during the Alkylation Unit Event, with supporting documentation.

32. On or before June 30, 2021, Defendant shall submit to Plaintiff for its review and approval a plan to manage the contents of GATX 36174 ("GATX 36174 Management Plan"). The GATX 36174 Management Plan shall propose a workplan to manage the contents of GATX 36174 through the Refinery's wastewater treatment system. Alternatively, should Defendant conclude that it is not technically feasible to manage the contents of GATX 36174 through the Refinery's

wastewater treatment system, the GATX 36174 Management Plan shall include a written analysis in support of that conclusion, as well as an alternative plan to manage the contents of GATX 36174. Upon Plaintiff's approval of the GATX 36174 Management Plan, Defendant shall implement the GATX 36174 Management Plan as approved by Plaintiff.

33. On or before June 30, 2021, Defendant shall complete a written root cause analysis of the cause of (i) the Alkylation Unit Event and (ii) the Release in accordance with recognized engineering standards ("Root Cause Report"). Defendant shall submit the Root Cause Report to Illinois EPA for review and approval upon its completion.

34. Within fourteen (14) days of Illinois EPA's approval of the Root Cause Report, Defendant shall submit to Plaintiff for review and approval Refinery modifications and/or procedures to prevent the occurrence of similar events and releases in the future ("Alkylation Unit Plan"). Such submission shall include, at a minimum, ongoing monitoring, recordkeeping, and reporting requirements sufficient to demonstrate that the Refinery's alkylation unit is operated safely, and that spent sulfuric acid and other materials from the alkylation unit are safe for loading into tanker rail cars and transport. Upon Plaintiff's approval of the Alkylation Unit Plan, Defendant shall implement the Alkylation Unit Plan as approved by Plaintiff.

35. Within thirty (30) days of implementing the Alkylation Unit Plan, Defendant shall submit to Plaintiff for review and approval a final report detailing the successful implementation of the modifications and/or procedures to prevent the occurrence of similar releases in the future ("Alkylation Unit Final Report").

36. If Plaintiff disapproves of any document submitted by Defendant under this Order for Plaintiff's review and approval, other than the Disposal Plan, Defendant shall, within five (5) days of receiving written notice of such disapproval, submit to the Plaintiff for review and approval

a revised document that corrects all deficiencies identified by the Plaintiff in its disapproval letter. This process shall continue until the Plaintiff approves the document or any party invokes the Dispute Resolution procedure in Section VII of this Order.

37. Within fourteen (14) days of the entry of this Agreed Interim Order, Defendant shall submit to Plaintiff a Report of Communications which lists the contacts Defendant's Refinery Management, Government and Community Relations Group, Emergency Response Group, Health, Safety and Environment Group and/or Corporate Claims Group have had with local government officials and citizens regarding the Release. Defendant will also list the contacts its contractor, CTEH, may have had with any local government officials and citizens regarding the Release. This list shall include all available contact information, and any written communications from such individuals, other than written communications exchanged through the unified command responding to the Release. Defendant shall submit monthly updates to Plaintiff with updated information and communications, continuing through entry of a final order in this matter.

38. Defendant will provide Plaintiff at least twelve (12) hours' notice prior to Defendant or its contractors performing activities in any way altering permanently or disturbing the contents of the Tankers, so that Illinois EPA can be present. Defendant also shall allow Illinois EPA the opportunity to take split samples of any additional sampling of the contents of the Tankers.

IV. NOTICES

39. All submittals and correspondence relating the requirements of this Agreed Interim Order shall be directed to the following persons:

FOR PLAINTIFF

Brian Navarrete
Kevin Bonin

Assistant Attorneys General
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706
brian.navarrete@illinois.gov
kevin.bonin@illinois.gov
(217) 782-9031
(by electronic mail)

Maureen Wozniak
Assistant Counsel, Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
maureen.wozniak@illinois.gov
(by electronic mail)

Bobby Elzie
Manager
Office of Emergency Response
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
bobby.elzie@illinois.gov
(by electronic mail and one hard copy)

FOR PHILLIPS 66

Donna Carvalho
Senior Counsel
Legal Compliance, Environmental & Regulatory
Phillips 66 Company
2331 CityWest Blvd
Houston, TX 77042-28862
Donna.H.Carvalho@p66.com

Michael Murphy
HeplerBroom, LLC
4340 Acer Grove Drive
Springfield, IL 62711
Michael.Murphy@heplerbroom.com

V. RIGHT OF ENTRY; SITE ACCESS

40. In addition to any other authority, Phillips 66, its respective employees and representatives, grant the Illinois EPA and the Attorney General and their respective employees and agents the right of entry onto all portions of the Refinery to which Phillips 66 has a right of access at all reasonable times for purposes of conducting inspections or evaluating compliance status. In conducting such inspections, Illinois EPA, its employees, agents and representatives, and the Attorney General, his employees, agents and representatives, may take photographs, samples and collect information with the landowner's permission and as they deem necessary. Any Illinois EPA or Attorney General employees and representatives who enter the Refinery shall undergo any training required and/or comply with any and all safety protocols, Health and Safety Plans, or other applicable requirements.

VI. STIPULATED PENALTIES

41. If Phillips 66 fails to comply with any of the requirements of this Agreed Interim Order without an agreed modification pursuant to Section IX, Phillips 66 shall pay to Plaintiff the following stipulated penalties for each violation from the date the violation occurred until such time as compliance is achieved:

| <u>Period of Noncompliance</u> | <u>Stipulated Penalty</u> |
|--------------------------------|------------------------------|
| 1st to 30th Calendar Days | \$1,250.00/day per violation |
| 31st to 60th Calendar Days | \$1,500.00/day per violation |
| After 60th Calendar Day | \$1,750.00/day per violation |

42. If written notice of any violation of this Agreed Interim Order is given, it shall be served upon Phillips 66 via certified or overnight U.S. Mail, to the persons identified in Section IV (Notices) of this Agreed Interim Order.

43. All penalties owed shall be payable within thirty (30) calendar days after written notice of the violation is given to Phillips 66. Payment shall be made by certified check payable

to the Illinois EPA for deposit into the Environmental Protection Trust Fund (“EPTF”) and delivered to:

Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

The case name and number shall appear on the face of the check. A copy of the certified check and any transmittal letter shall be sent to:

Brian Navarrete
Kevin Bonin
Assistant Attorneys General
Illinois Attorney General’s Office
500 South Second Street
Springfield, Illinois 62706
brian.navarrete@illinois.gov
kevin.bonin@illinois.gov
(217) 782-9031

44. Stipulated penalties shall be in addition to, and not a substitute for, any other remedy or sanction available to Plaintiff.

VII. DISPUTE RESOLUTION

45. The parties shall use their best efforts to resolve any and all disputes or differences of opinion arising with regard to this Agreed Interim Order, informally and in good faith. If, however, a dispute arises concerning this Agreed Interim Order that the parties are unable to resolve informally, either party may, by written motion, request that an evidentiary hearing be held before the Circuit Court for the Third Judicial Circuit, Madison County, Illinois, to resolve the dispute between the parties. The Court shall not draw inferences nor establish any presumptions adverse to any party as a result of the parties’ inability to reach agreement on disputed issues.

VIII. FORCE MAJEURE

46. For the purpose of this Agreed Interim Order, *force majeure* is an event arising beyond the reasonable control of Phillips 66 which prevents the timely performance of any of the requirements of this Agreed Interim Order. For purposes of this Agreed Interim Order *force majeure* shall include, but is not limited to, events such as floods, fires, tornadoes, other natural disasters and labor disputes beyond the reasonable control of Phillips 66.

47. When, in the opinion of Phillips 66, circumstances have occurred that cause or may cause a delay in the performance of any of the requirements of this Agreed Interim Order, Phillips 66 shall notify the Attorney General's Office and the Illinois EPA in writing as soon as practicable, but oral notice shall be given to the Attorney General's Office and the Illinois EPA within 48 hours of the occurrence and written notice shall be given to the Attorney General's Office and the Illinois EPA no later than ten (10) calendar days after the claimed occurrence. Failure to so notify the Attorney General's Office and the Illinois EPA shall constitute a waiver of any defense under this Section of this Agreed Interim Order arising from said circumstances. Phillips 66 shall provide a detailed written description of the precise cause or causes of the claimed occurrence which resulted or will result in the delay, the nature of the delay and its expected duration, the measures taken or to be taken to prevent or mitigate the delay and the timetable under which such measures will be taken. Phillips 66 shall adopt all reasonable measures to avoid or minimize such delay.

48. If the parties agree that the delay has been or will be caused by circumstances beyond the control of Phillips 66, the time for performance may be extended for a period equal to the length of the delay as determined by the parties.

49. In the event that the parties cannot agree that a *force majeure* event has occurred or the extent thereof, the dispute shall be resolved in accordance with Section VII of this Agreed

Interim Order. Provided however, that the invocation of the Dispute Resolution provisions of Section VII of this Agreed Interim Order is not in and of itself a *force majeure* event. Phillips 66 shall have the burden of proving *force majeure* by a preponderance of the evidence as a defense to compliance with this Agreed Interim Order.

50. An increase in costs associated with implementing any requirement of this Agreed Interim Order shall not, by itself, excuse Phillips 66 under the provisions of this Section of the Agreed Interim Order from a failure to comply with such a requirement.

IX. MODIFICATION OF ORDER

51. The parties to this Agreed Interim Order may, by mutual written consent, extend any compliance date or modify the terms of any work plan or obligation without leave of Court. A request for modification shall be in writing and be submitted to the designated representative(s) of the parties to the Agreed Interim Order indicated in Section IV (Notices). Each such agreed modification shall be in writing and signed by an authorized representative of each party, which shall then be deemed incorporated by reference to this Agreed Interim Order.

X. RESERVATION OF RIGHTS

52. Nothing contained herein shall be deemed a finding of fact or adjudication by this Court of any of the facts or claims contained in the Verified Complaint. Plaintiff reserves the right to seek additional technical relief and civil penalties in this matter.

XI. STATUS CONFERENCE WITH THE COURT

53. This matter is set for a status conference on _____, 2021, at _____, without further notice.

XII. SIGNATURE

54. This Agreed Interim Order may be signed in counterparts, all of which shall be considered one agreement.

WHEREFORE the parties, by their representatives, enter into this Agreed Interim Order and submit it to the Court that it may be approved and entered.

AGREED:

FOR THE PLAINTIFF:

PEOPLE OF THE STATE OF ILLINOIS
ex rel. KWAME RAOUL
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

BY: /s/ Andrew Armstrong
ANDREW ARMSTRONG, Chief
Assistant Attorney General
Environmental Bureau

DATE: 06/24/2021

FOR THE DEFENDANT:

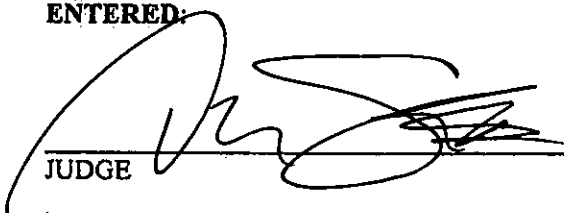
PHILLIPS 66 COMPANY

BY:  *MHC*

Its: VP, Wood River Refinery

DATE: 6/24/2021

ENTERED:



JUDGE

DATE: JUN 24 2021