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Via Email Transmission and Certified Mail, Return Receipt Requested

August 7, 2019

Marshall Waller
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Phillips 66 Company
1660 West Anaheim Street
Wilmington, California 90744

Paula Johnson
General Counsel, Executive Vice President, and Corporate Secretary
Phillips 66
P.O. Box 421959
Houston, TX 77242-1959

Re: Notice of Intent to Sue for RCRA violations at the Phillips 66 Wilmington and Carson Refineries

Dear Mr. Waller and Ms. Johnson:

The Environmental Integrity Project (EIP) and Environmental Advocates, on behalf of Communities for a Better Environment (CBE), serve this letter as notice of intent to sue Phillips 66 Company (Phillips 66), regarding serious and ongoing violations of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, as amended by the Hazardous and Solid Waste Amendments of 1984 (RCRA), at the Phillips 66 Los Angeles Refinery in Los Angeles County, California, including the Wilmington Plant, located at 1660 W. Anaheim Street, Wilmington, California 90744, and the Carson Plant, located at 1520 E. Sepulveda Boulevard, Carson, California 90745. In accordance with section 7002 of RCRA, this letter notifies you that CBE is entitled and intends to file suit in the U.S. District Court for the Central District of California at any time hereafter to remedy the violations identified in this letter. 42 U.S.C. § 6972.

In 1992, the California Department of Toxic Substances Control (DTSC) received authorization from the United States Environmental Protection Agency (EPA) to implement Subtitle C of RCRA—the hazardous waste management program—and the regulations promulgated thereunder. RCRA

Subtitle C establishes standards for the generation, transportation, treatment, storage, and disposal of hazardous waste in the United States.¹

The Phillips 66 Los Angeles Refinery consists of two plants connected via pipelines: the Wilmington Plant, which has been conducting refining operations since 1919 (originally under different ownership), and the Carson Plant, which is a “cracker” that produces intermediates needed on the refining side, including naphtha distillates, diesel distillates, and gas oils.

The Wilmington Plant receives the processed petroleum fractions from the Carson Plant and processes them into gasoline, liquid petroleum gas, and jet fuel. This processing is done through fluid catalytic cracking, reforming/unifying, isomerization, alkylation, Penex, and hydro-cracking. The Wilmington Refinery operates an oil recovery unit, a sulfur recovery unit, five flares, and an operating lab for quality control.

The Carson Plant receives and stores raw crude and completes initial separation, conversion and treating. In addition to the processed petroleum fractions, which are piped to the Wilmington Refinery, the Carson Plant produces three co-products: petroleum coke, carbon dioxide, and sulfur.

The Phillips 66 Refinery operates pursuant to two expired but administratively continued DTSC-issued hazardous waste post-closure permits. Neither plant has applied for or been issued a hazardous waste operating permit.

As explained more fully below, Phillips 66 has violated RCRA, the regulations promulgated thereunder, and both its post-closure permits since at least August 2015 because it has stored, treated, and/or disposed of hazardous waste without a permit, failed to make hazardous waste determinations, failed to adhere to the requirements of its post-closure permits, and failed to properly operate and maintain its facilities as required by RCRA.

On information and belief, the violations described in this letter are continuing, have not been resolved, and unless abated immediately, will continue to harm CBE and present risks to health and the environment.

I. RCRA Overview

RCRA sections 3001 through 3024, 42 U.S.C. §§ 6921-6939, known as RCRA Subtitle C, establish standards for the generation, transportation, treatment, storage, and disposal of hazardous waste in the United States. Subtitle C of RCRA authorizes “cradle-to-grave regulation of hazardous waste,” and RCRA section 3002 requires the EPA Administrator to promulgate regulations establishing standards applicable to generators of hazardous waste that may be necessary to protect human health and the environment. 42 U.S.C. § 6922.

Section 3005 of RCRA establishes permit requirements for owners or operators of hazardous waste treatment, storage, and disposal facilities (known as TSDFs). 42 U.S.C. § 6925.

Under RCRA sections 3005 and 3010, any person who generates or transports hazardous waste, or who owns or operates a facility where hazardous waste is treated, stored, or disposed, must notify EPA or the authorized state agency—in this case DTSC—of the location of the facility as well as the types of hazardous wastes handled onsite. Thereafter, depending on the types and quantities of

¹ Resources Conservation and Recovery Act, Subtitle C, 42 U.S.C. §§ 6921-6939g.

waste generated onsite, as well as the way in which such waste is handled, the owner or operator may be required to apply for a RCRA operating permit, which—when granted—allows it to operate the facility as a TSDF. 42 U.S.C. §§ 6925, 6930. The permitting program is important to the cradle-to-grave management system for hazardous wastes, which is intended to prevent dangerous releases and avoid costly Superfund cleanups.

Regardless of permitting status, any owner or operator of a facility who generates or handles hazardous waste must adhere to the regulations governing hazardous waste management, either found in 40 C.F.R. Part 265 (for those without an operating permit) or 40 C.F.R. Part 264 (for TSDF-permitted facilities). These mirror image requirements, applicable to both unpermitted and permitted facilities, exist because the purpose of RCRA is to prevent contamination to land, groundwater, surface water and air, and in so doing protect human health and the environment and prevent the need for costly cleanup in the future, which often comes at public expense.

RCRA's comprehensive statutory framework operates by identifying hazardous waste handlers (through assignment of an EPA ID number) and tracking the waste generated by each handler from the point of origin to final disposal. The Wilmington Plant has been assigned EPA ID number CAD 008237679 and the Carson Plant has been assigned EPA ID number CAD 980881676. The Phillips 66 plants are not TSDF-permitted facilities, which means they do not have authorization to treat, store (other than temporary, less than 90-day storage), or dispose of hazardous waste.

RCRA Section 7002(a)(1)(A) authorizes CBE to enforce violations of the Subtitle C hazardous waste program in federal court. 42 U.S.C. § 6972(a)(1)(A).² Section 7002(a) further authorizes CBE to seek the assessment of civil penalties up to the maximum amount set forth in Sections 3008(a) and (g). 42 U.S.C. § 6328(a), (g). For violations that occurred after November 2, 2015, Phillips 66 is subject to a maximum civil penalty of up to \$74,552 for each day that each separate violation occurred, and for violations that occurred before November 2, 2015, Phillips 66 is subject to a maximum civil penalty of up to \$37,500, as per the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. 42 U.S.C. §§ 6928(a), (g); 40 C.F.R. § 19.4 tbls. 1-2; 84 Fed. Reg. 2,056, 2,059.

Thus, pursuant to Section 7002(b)(1) of RCRA, CBE hereby gives notice of its intent to sue Phillips 66 for violations of RCRA at its Wilmington and Carson plants in Los Angeles County unless it enters into a binding agreement to cease and remediate promptly all violations identified herein. 42 U.S.C. § 6972(b)(1). Pursuant to RCRA sections 7002(b) and (c), CBE may file suit any time after service of this letter. 42 U.S.C. §§ 6972(b), (c).

II. Background, Site History, and Permitting History

The current site of the Phillips 66 Los Angeles Refinery has been an operating refinery for approximately 100 years. The refinery consists of two plants located within 5 miles of each other and connected via pipeline(s). The Wilmington Plant has been in operation since 1919 and sits on 424 acres. There are residential areas in close proximity, particularly along the eastern boundary of the facility. The Wilmington Plant is a refining, processing and storage facility that processes intermediate petroleum products, fed via pipeline from the nearby Carson Plant, into finished fuel

² Together, sections 7002 (a)(1)(A) and (b)(1) state that an action may be commenced immediately in the district court where violation(s) of subchapter III (Hazardous Waste Management) of RCRA are alleged to have occurred once notification is provided. Subchapter III of RCRA also is known as "Subtitle C of RCRA" and as such, these terms are used interchangeably in this NOI. 42 U.S.C. §§ 6972 (a)(1)(A), (b)(1).

products. The intermediate products received from the Carson Plant include naphtha distillates, diesel distillates, and gas oils. The major products produced and stored at the Wilmington Plant include automotive gasoline, jet fuel, and diesel.³

Wilmington has a throughput of crude oil of approximately 139,000 barrels per day, operates 24 hours per day, and employs approximately 450 full-time employees. Attachment 1, EPA Region 9 Enforcement Division, Phillips 66 Los Angeles Refinery, Wilmington Inspection Report, at 2 (Dec. 5, 2016) [hereinafter Wilmington Inspection Report].

There are several different processing methods utilized at the Wilmington Plant, including fluid catalytic cracking, isomerization, alkylation, and hydrocracking. Wilmington also operates an Oil Recovery Unit that utilizes oil-water separators, dissolved air flotation units for the removal of impurities, and an observation basin that discharges pursuant to a City of Los Angeles Industrial Wastewater Permit (W-536165) to the Los Angeles Terminal Island publicly owned treatment works (POTW). The sludge from the Oil Recovery Unit is trucked to Carson where it is consolidated with other oil-bearing materials for coking. The Wilmington Plant also operates a Sulfur Recovery Unit, a Hydrogen Plant, and a Selenium Plant. There are a number of auxiliary units and five flares operate episodically to combust hydrocarbon gases that have accumulated due to upset conditions or during planned shutdowns. Attachment 1, at 2.

The Carson Plant consists of 245 acres of relatively flat land within the former floodplain of the Los Angeles River. The plant has been operating at the current location since 1923 and is surrounded by other industrial operations. Crude oil fractionation and further refining heavy-end fractions of crude oil occur at Carson. In addition to producing intermediate products for the Wilmington Plant, Carson produces three products: petroleum coke, carbon dioxide, and sulfur. Attachment 2, EPA Region 9 Enforcement Division, Phillips 66 Los Angeles Refinery, Carson Inspection Report, at 2-3 (Dec. 7, 2016) [hereinafter Carson Inspection Report]. The three main areas of the plant are the central processing and refining area, a coke processing area, and aboveground tank farms.⁴

The Carson Plant utilizes an Oil Recovery Unit to process oily wastewaters from both Carson and Wilmington. All wastewaters potentially containing residual oil are routed to the Oil Recovery Unit inlet where they are pumped into a large equalization tank. Incidental oil separation occurs in this tank and recovered oil is periodically pumped to the recovered oil tanks. Further separation occurs in those tanks. The resulting sludge is sent to the coker and oils are sent to the recovered oil tank. The wastewater generated from this process is discharged to the POTW pursuant to an industrial pre-treatment permit issued by the Los Angeles County Sanitation District. Wastewater generated in other areas of the plant are treated to remove sulfur and ammonia and are also discharged to the POTW. Attachment 2, Carson Inspection Report, at 2-3.

According to EPA, the Carson Plant has an average crude oil throughput of 119,700 barrels per day, operates 24 hours per day, and employs approximately 154 full-time employees. Attachment 2, at 2.

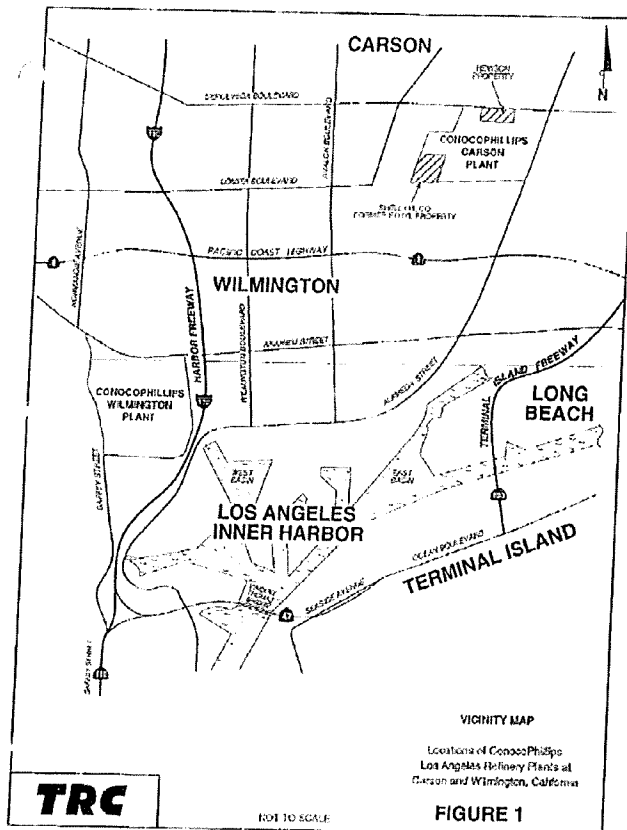
³ DTSC, Hazardous Waste Post-Closure Facility Permit: Wilmington Plant, (July 24, 2008) [hereinafter Wilmington Post-closure Permit] *available at* https://www.hwmpenvirostor.dtsc.ca.gov/public/site_documents/7352124869/ConocoPhillipsW_fPCPermit.pdf.

⁴ DTSC, Hazardous Waste Post-Closure Facility Permit: Carson Plant, at 4-5 (Oct. 25, 2007); renewed on June 24, 2019 and effective on August 15, 2019 *available at* https://www.hwmpenvirostor.dtsc.ca.gov/public/site_documents/5216520011/P66%20Final%20Signed%20Permit_Redacted.pdf [hereinafter Carson Post-Closure Permit].

Dating back to 1919, Unocal (formerly Union Oil Company of California) was the original owner and operator of the Wilmington Plant. Unocal purchased the Carson Plant from Shell Oil Company in 1991. A number of subsequent sales, corporate restructurings, and transfers of assets occurred thereafter. Phillips 66 became the owner and operator of the Phillips 66 Los Angeles Refinery on April 26, 2012.⁵

Neither of the two plants that comprise the Phillips 66 Los Angeles Refinery currently has a RCRA operating permit but both have been issued RCRA post-closure permits regarding a closed oil recovery unit (ORU) basin at the Wilmington Plant and a former process water pond, which was filled, capped, and closed in 1996, at the Carson Plant. Both post-closure permits impose groundwater monitoring and remediation, site inspection, record-keeping, and repair and maintenance requirements.⁶

Figure 1: Vicinity Map of the Wilmington and Carson Plants⁷



⁵ Trihydro, RCRA Part A and B Post-Closure Application for Phillips 66 Wilmington, at II-1 (Jan. 16, 2018) [hereinafter Draft Wilmington Post-Closure Permit] *available at* https://www.envirostor.dtsc.ca.gov/public/hwmp_final_documents?global_id=CAD008237679&link_key=532&document_category=INITIAL+PART+B+RECEIVED&event_description=PC+Renewal+PC+%2D+No+Changes+%2D+APPLICATION+PART+B+RECEIVED+&mytype=pa.

⁶ Wilmington Post-Closure Permit, *supra* note 3, and Carson Post-Closure Permit, *supra* note 4.

⁷ Wilmington Post-Closure Permit, *supra* note 3, at 15.

III. The 2015 EPA Region 9 Inspections

On August 24 – 28, 2015, EPA Region 9 inspectors conducted comprehensive, process-based inspections at both the Wilmington and Carson plants.⁸ The purpose of the inspections was to determine compliance with RCRA. Violations and other findings from the inspections were documented in inspection reports issued in December 2016, attached as Attachments 1 and 2.

The Wilmington Plant

According to the Wilmington Inspection Report, Phillips 66 is in violation of multiple provisions of RCRA and the regulations promulgated thereunder, as well as its post-closure permit, due to Phillips 66's onsite management of hazardous waste at the Wilmington Plant. The violations identified relate primarily to Phillips 66's: 1) treatment and storage of listed hazardous waste (waste codes F001-F005) without a permit; 2) failure to adhere to regulations that control air emissions from RCRA-regulated tanks; 3) failure to manage run-off from waste piles; and 4) failure to maintain an operating record, conduct tank assessment, and general failure to operate and maintain the facility in a manner to prevent the release of hazardous waste to air, soil, or water, as required by RCRA and Phillips 66's post-closure permit. *See Attachment 1.*

Figure 2: Aerial View of the Wilmington Plant⁹



⁸ See Attachment 1 and Attachment 2.

⁹ Google, Google Maps, <http://maps.google.com> (search for "Phillips 66 Wilmington") (accessed July 2, 2019).

On January 23, 2017, EPA Region 9 issued Phillips 66 a RCRA Notice of Violation, attached as Attachment 3,¹⁰ based on the following inspection findings:

1. *Treatment and storage of listed hazardous waste (F001-F005 –spent solvents) in a large holding tank without a permit and related violations.* Phillips 66 directs spent (i.e., used) hazardous waste solids mixed with product samples from Phillips 66's onsite laboratory to Tank 0. Under RCRA, when listed hazardous waste is mixed with nonhazardous waste, the entire mixture becomes regulated as listed hazardous waste. The purpose of this "mixture rule" is to ensure that hazardous waste is handled properly and not just diluted. Other violations associated with this primary violation include:

- a. Failure to manage equipment associated with Tank 0, including failure to implement a leak detection and repair program.
- b. Failure to control air pollutant emissions from Tank 0 as well as other applicable requirements, including an inspection plan and visual monitoring.
- c. Failure to assess Tank 0 for integrity (to prevent leaks) or, in the absence of a professional engineering report regarding integrity, install secondary containment.

2. *Failure to properly operate and maintain.* Multiple violations regarding the heat exchanger bundle cleaning pad were noted: holes were observed in the concrete berm that is meant to contain waste placed on the pad, debris was observed around and outside of the secondary containment area, liquid and other debris was found inside the pad's sump, and there were no records to indicate when the sump was last cleaned out or emptied.

3. *Failure to adhere to post-closure permit requirements regarding the closed oil recovery unit (ORE) basin.* Multiple violations were discovered, including water and debris on the surface of the basin, tears in the lining of the basin, and missed inspections.

The Carson Plant

According to the Carson Inspection Report, Phillips 66 is in violation of multiple provisions of RCRA and the regulations promulgated thereunder, as well as its post-closure permit, due to Phillips 66's onsite management of hazardous waste at the Carson Plant. The violations identified relate primarily to Phillips 66's: 1) treatment, storage, and disposal of hazardous waste, including selenium, without a permit; 2) failure to make hazardous waste determinations (regarding selenium and sodium hypochlorite); 3) multiple instances of failure to operate and maintain the facility in a manner to prevent the release of hazardous waste to air, soil, and water; and 4) failure to maintain the cap/cover of the closed, former Process Water Pond, in violation of its post-closure permit. See Attachment 2.

¹⁰ Attachment 3, EPA Region 9, Notice of Violation: Phillips 66 Carson and Phillips 66 Wilmington (Jan 23, 2017).

Figure 3: Aerial View of the Carson Plant¹¹



In the January 23, 2017 EPA Region 9 Notice of Violation, EPA provided notice to Phillips 66 regarding the following violations, as documented in its inspection findings:¹²

1. *Storage and disposal of hazardous waste (K050, K051, F037) without a permit.* These violations are with regard to two heat exchanger bundle cleaning pads (one is temporary, the other permanent).
2. *Treatment and disposal of selenium waste without a permit.* This violation is with regard to a stream of liquid observed to be leaking from the Selenium Removal Unit, which bypassed secondary containment and was discharging to a process water drain that eventually lead to the Oil Recovery Unit and from there to the Los Angeles Sanitation District Publicly Owned Treatment Works (POTW), which discharges to the Pacific Ocean. Selenium is a heavy metal that is highly toxic to aquatic life and waterfowl that consume fish, and POTWs are not designed to remove heavy metals, which means they can pass through and can be discharged to the receiving waterbody. The Oil Recovery Unit is not permitted to treat selenium and therefore, this is a violation of RCRA (treatment without a permit). Because the selenium was spilled and/or bypassed secondary containment, and ultimately discharged to the local POTW, the leak also constitutes disposal without a permit. Given what the inspectors observed, EPA also determined that Phillips 66 failed to properly manage this hazardous waste.
3. *Failure to make proper hazardous waste determinations.* This violation relates to the leaking selenium waste stream as well as crystalized waste sodium hypochlorite, which was accumulating

¹¹ Google, Google Maps, <https://maps.google.com> (search for “Phillips 66 Carson”) (accessed July 2, 2019).

¹² Attachment 3.

in a secondary containment structure. Both of these waste streams were sampled and determined to be hazardous.

4. *Failure to properly close hazardous waste containers.* During the inspection, EPA noted an open 55-gallon drum containing F037, K050, and K051 hazardous waste.

5. *Multiple post-closure permit violations regarding the former Process Water Pond.* During the inspection, EPA Region 9 inspectors observed deficiencies in the way the asphalt cover was being maintained, including cracks, gouges, and dirt spilling over from adjacent unstable earthen banks. Additionally, Phillips 66 failed to produce required quarterly inspection reports as requested by the EPA inspectors.

No enforcement has ensued despite clear findings of significant violations of RCRA at a major refinery – violations that have been documented in formal inspection reports and in a formal Notice of Violation issued by EPA to Phillips 66. Attachments 1-3. Many of the documented violations illustrate very poor housekeeping practices and indicate that required maintenance has been unreasonably deferred, which potentially can be dangerous to workers and those living and working nearby as well as harmful to the environment.

In a letter written to EPA Region 9 and DTSC on June 4, 2018, EIP raised concern on behalf of CBE and Environment California regarding identified violations at Phillips 66 (and at another facility, Dow Chemical) and requested that the regulatory agencies charged with enforcing RCRA take immediate action. Letter from Mary E. Greene, Deputy Director EIP to Mike Stoker, EPA Region 9 Regional Administrator (June 4, 2018), attached hereto as Attachment 4 (attachments omitted). In response, EPA Region 9 stated in an undated letter that the agency, in general, “continues to evaluate compliance with federal environmental regulations at our most significant facilities.” Letter from Michael Stoker, EPA Region 9 Regional Administrator to Mary E Greene, Deputy Director EIP (undated), attached hereto as Attachment 5 (attachments omitted). Last, in an August 16, 2018 letter to Mary Greene at EIP, DTSC explained that the violations identified by EPA had not been referred to the state for enforcement. Letter from Barbara Lee, Director, DTSC, to Mary Greene, Deputy Director, EIP, (Aug. 16, 2018), attached hereto as Attachment 6.

The unresolved violations at these plants provide a glaring illustration that “cooperative federalism” often works better in concept than in practice. These violations have been known and largely left unaddressed since at least August 2015 and neither the state nor EPA have taken action to compel compliance.

IV. Impacts to Human Health and the Environment

The violations identified in the inspection reports and EPA Region 9’s Notice of Violation are serious and ongoing. Treatment, storage, and disposal of hazardous waste without a permit, failure to make proper hazardous waste determinations, and failures to control air emissions from hazardous waste units, such as tanks, are serious violations of RCRA and put workers, nearby businesses and residents, and the environment at substantial risk of harm. Phillips 66’s failure to operate and maintain the facility in a manner that prevents releases of hazardous waste also makes it more difficult to assess compliance and increases the likelihood of future or additional violations.

Regarding the Wilmington Plant, DTSC's Envirostor website indicates that 554 people live near the facility and 76 percent live below the federal poverty level.¹³ More than 93 percent of those living in the City of Wilmington are people of color.¹⁴ Moreover, the pollution burden and related health indices associated with living in this area are extremely high. According to Envirostor, this is a population that is extremely vulnerable to both the health and socioeconomic impacts of toxic pollution.¹⁵

Although demographic data on Envirostor regarding the Carson Plant is incomplete, the website indicates that the surrounding population in the area is extremely vulnerable to both the health and socioeconomic impacts of toxic pollution.¹⁶ Moreover, 88 percent of people living in the City of Carson are people of color.¹⁷

For all the reasons set forth above, CBE intends to bring suit for the following claims in order to abate these violations.

V. Claims

Phillips 66 is a "person" and the "owner" and "operator" of the Phillips 66 Company Los Angeles Refinery (including both the Wilmington and Carson plants), which are "facilit[ies]," as those terms are defined in 40 C.F.R. § 260.10. In addition, Phillips 66 manages and handles "solid waste" as that term is defined in 40 C.F.R. § 261.2. Finally, Phillips 66 is a person and "generator," who also engages in "storage," "treatment" and "disposal" as those terms are defined in 40 C.F.R. § 260.10.

For purposes of the claims described below, all of the information and findings in the EPA inspection reports, Attachment 1 and Attachment 2, are incorporated herein as if restated in full.

The Wilmington Plant

Claim 1: Treatment and Storage of Hazardous Waste without a Permit

All of the allegations set forth above are incorporated herein by reference.

40 C.F.R. § 270.1(c) and RCRA section 3005 states that a RCRA permit is required for the transfer, treatment, storage, and disposal of any waste which is hazardous. 42 U.S.C. § 6925. Phillips 66 does not have a RCRA permit (often referred to as a RCRA "operating" permit) to store, treat, or dispose of hazardous waste at the Wilmington Plant.

Under RCRA's "mixture rule," when listed hazardous waste is mixed with nonhazardous waste, the entire mixture becomes regulated as listed hazardous waste. 40 C.F.R. § 261.3(a)(2)(iv). According

¹³ DTSC, *Envirostor* for the Phillips 66 Wilmington Plant, https://www.envirostor.dtsc.ca.gov/public/hwmp_profile_report?global_id=CAD008237679 (under the "CalEnviroScreen" tab) (last visited June 28, 2019).

¹⁴ Los Angeles Times, <http://maps.latimes.com/neighborhoods/> (enter "Wilmington" into the "Select a neighborhood" drop-down menu) (last visited July 11, 2019).

¹⁵ *Envirostor* for the Phillips 66 Wilmington Plant, *supra* note 13.

¹⁶ DTSC, *Envirostor* for the Phillips 66 Carson Plant, https://www.envirostor.dtsc.ca.gov/public/hwmp_profile_report?global_id=CAD980881676 (under the "CalEnviroScreen" tab) (last visited June 28, 2019).

¹⁷ *Supra*, note 16 (enter "Carson" in the "Select a neighborhood" drop-down menu).

to the Wilmington Inspection Report, Phillips 66 used, and, on information and belief continues to use, Tank 0 to accumulate spent solvents (F001-F005), mixed with product samples from Phillips 66's onsite laboratory. Tank 0 is a vapor-controlled 600-gallon tank located outside the laboratory area where multiple wastes are mixed together and stored before they are vacuumed out and transported to the Oil Recovery Unit for treatment. Wilmington Inspection Report at 6. Phillips 66 does not have a permit to store or treat hazardous waste in Tank 0 and therefore is in violation of 40 C.F.R. § 270.1(c), which states that a permit is required for the storage and treatment of any hazardous waste, as well as RCRA section 3005. 42 U.S.C. § 6925.

This violation has occurred daily since at least August 2015 and will continue until Phillips 66 ceases unpermitted treatment and storage of hazardous waste in Tank 0 or obtains RCRA permit authorization to store, treat, or otherwise manage these hazardous wastes appropriately.

Each day Phillips 66 engaged or engages in storage or treatment of hazardous waste without a RCRA permit constitutes a violation of RCRA for which the statutory maximum civil penalty per day per violation can be assessed. This violation has existed since at least August 2015 and upon information and belief, continues to date. In addition to civil penalties, CBE is entitled to seek all necessary injunctive relief to resolve the violations, recover costs and attorneys and expert witness fees, and seek any other relief the court deems appropriate.

Claim 2: Failure to Adhere to Regulations Applicable to Hazardous Waste Tanks

All of the allegations set forth above are incorporated herein by reference.

40 C.F.R. § 264 Subpart BB imposes requirements to control and prevent emissions from regulated hazardous waste tanks, and Phillips 66 has failed and continues to fail to adhere to those requirements regarding Tank 0, which is being used to accumulate spent solvent (F001-F005). Attachment 1, at 8-10. Specifically, as noted in the Wilmington Inspection Report, Phillips 66 failed to properly maintain, monitor, and keep records for the equipment associated with Tank 0 by failing to equip each of its open-ended valves with a cap, blind flange, plug, or a second valve, as required by 40 C.F.R. § 265.1056(a)(1). Attachment 1, at 9. Phillips 66 also failed to implement a leak detection and repair program to monitor each valve monthly, as required by 40 C.F.R. § 265.1057(a). Last, Phillips 66 failed to document, in the facility operating record, the required identifying information for Tank 0, as required by 40 C.F.R. § 265.1064(b)(1). Attachment 1, at.

In addition to the above violations, Phillips 66 failed to adhere to 40 C.F.R. 264 Subpart CC requirements with regard to Tank 0. Subpart CC establishes requirements for the control of air emissions from hazardous waste tanks unless excepted by 40 CFR § 264.1 and § 264.1080(b). According to the Wilmington inspection report, Phillips 66 produced no documentation showing compliance with these regulations (or eligibility for an exception) at the time of the site visit. Specifically, the EPA inspector determined that Phillips 66 had failed to control air pollutant emissions from Tank 0 as required by the Subpart CC regulations and failed to develop and implement a written plan and schedule to perform the inspections and monitoring the Subpart CC regulations require. The EPA Region 9 inspector noted a similar failure on Phillips 66's part regarding the provisions of 40 C.F.R. 265 Subpart J, which require that a professional engineer assess the tank's integrity or, in the absence of such an assessment, that secondary containment be provided. Phillips 66 is in violation of these provisions because there was no professional engineering report regarding tank integrity and secondary containment has not been installed. Attachment 1, at 10.

All of the violations related to the failure to adhere to regulations governing the management of hazardous waste tanks are, on information and belief, ongoing and unresolved. These violations have occurred daily since at least August 2015 and will continue until Phillips 66 adheres to RCRA and the regulations applicable to treatment, storage, and disposal of hazardous waste in tanks.

Each day Phillips 66 engaged or engages in treatment, storage, or disposal of hazardous waste in Tank 0 without adhering to the RCRA regulations applicable to tanks (40 C.F.R. 264 Subpart CC (Air Emission Standards for Tanks, Surface Impoundments, and Containers: §§ 265.1080-1090) and 40 C.F.R. 265 Subpart J (Tank Systems: §§ 265.190-202)) constitutes a violation of RCRA for which the statutory maximum civil penalty per day per violation can be assessed. These violations have existed since at least August 2015 and, upon information and belief, continue to date. In addition to civil penalties, CBE is entitled to seek all necessary injunctive relief to resolve the violations, recover costs and attorneys and expert witness fees, and seek any other relief the court deems appropriate.

Claim 3:

All of the allegations set forth above are incorporated herein by reference.

40 C.F.R. § 265.253(a)(4) states that collection and holding facilities (e.g. tanks, basins) associated with run-on and run-off control systems shall be emptied or otherwise managed expeditiously to maintain design capacity of the system.

At the time of the inspection, EPA inspectors noted several deficiencies in violation of 40 C.F.R. § 265.253(a)(4) throughout the plant, including: 1) the sump at the Heat Exchanger Bundle Cleaning Pad had not been pumped out and contained debris; 2) oily water was present at the oil truck unloading area inside the Hazardous Waste Accumulation Area; 3) grit from bead blast operations was on the ground of the bead blast area; 4) the Selenium Plant roll-off bin for filter press cakes was observed leaking liquid into secondary containment; 5) the cover of a roll-off bin at the Selenium Plant was pulled back and not covering the bin; and 6) there were empty aerosol cans of spray paint in the paint room of the Maintenance Area. Attachment 1, at 11-12.

These failures to properly manage run-off from hazardous waste piles are, on information and belief, ongoing and unresolved. These violations have occurred daily since at least August 2015 and will continue until Phillips 66 adheres to RCRA and the regulations applicable to the management of run-off from waste piles.

Each day Phillips 66 failed or fails to manage run-off from each hazardous waste pile constitutes a separate violation of 40 C.F.R. § 265.253(a)(4) and RCRA for which the statutory maximum civil penalty per day per violation can be assessed. These violations have existed since at least August 2015 and, upon information and belief, continue to date. In addition to civil penalties, CBE is entitled to seek all necessary injunctive relief to resolve the violations, recover costs and attorneys and expert witness fees, and seek any other relief the court deems appropriate.

Claim 4: Failure to Properly Operate and Maintain the Facility to Prevent the Release of Hazardous Waste

All of the allegations set forth above are incorporated herein by reference.

40 C.F.R. § 265.31 (as referenced by 40 C.F.R. § 262.34(a)(4)) states that “Facilities shall be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.” During the EPA Region 9 inspection, the inspectors noted numerous operation and maintenance failures, including but not limited to observed holes in the concrete berm of a hazardous waste pad, debris around the area of the heat exchanger bundle cleaning pad, and liquid and debris inside the sump (K050) for the heat exchanger bundle cleaning pad. This sump is required to be emptied and records maintained, as per 40 C.F.R. § 265.253(a)(4), yet Phillips 66 was unable to produce any documentation indicating compliance with this requirement. Attachment 1, at 11. In addition to these deficiencies, the Wilmington Inspection Report documents numerous other instances of poor housekeeping related to Phillips 66’s management of hazardous waste. In fact, the entire Wilmington Inspection Report indicates a chronic and ongoing failure to properly operate and maintain process areas, storage areas, and other areas of the plant where hazardous wastes are generated and managed. Attachment 1.

Upon information and belief, these operation and maintenance violations have occurred at least since August 2015 and will continue until abated. Each day Phillips 66 failed or fails to properly operate and maintain the Wilmington Plant is a violation of RCRA for which the statutory maximum civil penalty per day per violation can be assessed. In addition to civil penalties, CBE is entitled to seek all necessary injunctive relief to resolve the violations, recover costs and attorneys and expert witness fees, and seek any other relief the court deems appropriate.

The Carson Plant

Claim 1: Storage and Disposal of Hazardous Waste at Cleaning Pads without a Permit

All of the allegations set forth above are incorporated herein by reference.

40 C.F.R. § 270.1(c) and RCRA section 3005 states that a RCRA permit is required for the transfer, treatment, storage, and disposal of any waste which is hazardous. 42 U.S.C. § 6925. Phillips 66 does not have a RCRA permit to store, treat, or dispose of hazardous waste at the Carson Plant.

During the August 2015 inspection, EPA inspectors discovered that Phillips 66 was storing and disposing of multiple hazardous wastes (F037, K050, K051) at two pads used to clean heat exchanger bundles (HEBs) without a permit. Heat exchangers are equipment used in the refining process. Attachment 2, at 14. The two pads in question are the Permanent HEB Cleaning Pad and the Temporary HEB Cleaning Pad.

The evidence cited in the Carson Inspection Report regarding unpermitted storage includes review of manifests from 2012-2015. These manifests confirm that K050 and F037 hazardous wastes were placed on the pads. In addition, EPA inspectors observed large quantities (145,200 lbs) of cleaning waste on one of the pads (the Permanent HEB Cleaning Pad) from Tank 42 and noted that such waste, which derived from sand blasting the tank, should have been classified as F037 if the tank held petroleum products. Attachment 2, at 14. In addition, EPA sampling of the solids from Tank 42 indicated zinc concentrations above 8.7 mg/L, rendering the material hazardous (U249) due to exceedance of non-wastewater universal treatment standards for zinc. Attachment 2, at 12.

The evidence cited in the Carson Inspection Report regarding unpermitted disposal includes observations by the EPA inspectors of cracks in the Permanent HEB Cleaning Pad and waste pile

debris accumulating outside of secondary containment due to gaps as wide as 10 inches along the lower portion of the eastern wall. In addition, inspectors observed oily waste accumulating in the trenches of the Permanent HEB Cleaning Pad. Attachment 2, at 6-7. Cracks on the surface or walls of storage pads and other failures to contain hazardous waste (F037, K050, K051) allow hazardous waste to be released onto unprotected soils and constitute disposal, in violation of RCRA. Attachment 2.

Upon information and belief, the violations alleged, some of which date back as far as 2012, have not been remedied, and will continue until Phillips 66 ceases unpermitted treatment and storage of hazardous waste or obtains RCRA permit authorization to store, dispose of, or otherwise manage these hazardous wastes appropriately. Each day within the last five years that Phillips 66 stored or disposed of, or continues to store or dispose of, each hazardous waste at either of the HEB pads without a permit is a separate violation of RCRA for which the statutory maximum civil penalty per day per violation can be assessed. In addition to civil penalties, CBE is entitled to seek all necessary injunctive relief to resolve the violations, recover costs and attorneys and expert witness fees, and seek any other relief the court deems appropriate.

Claim 2: Treatment and Disposal of Hazardous Waste (Selenium) without a Permit

All of the allegations set forth above are incorporated herein by reference.

40 C.F.R. § 270.1(c) and RCRA section 3005 states that a RCRA permit is required for the transfer, treatment, storage, and disposal of any waste that is hazardous. Phillips 66 does not have a RCRA permit to store, treat, or dispose of hazardous waste at the Carson Plant. 42 U.S.C. § 6925.

During the August 2015 EPA inspection, EPA inspectors observed hazardous levels of selenium (2.6 mg/L, hazardous waste code D010) leaking from the Selenium Removal Unit. The selenium-containing waste stream had bypassed the Selenium Removal Unit's secondary containment through an open valve which allowed the waste to be discharged into a process water drain that led to the Oil Recovery Unit and then to the local POTW. The Oil Recovery Unit is not designed or permitted to treat (i.e., remove) selenium (D010). Attachment 2, at 8, 15.¹⁸ The uncontained leak from the Selenium Removal Unit, beyond secondary containment constitutes disposal without a permit. The treatment of this wastestream within the Oil Recovery Unit constitutes unauthorized treatment.

Upon information and belief, the violations alleged, which in some cases date back to at least August 2015, have not been remedied, and will continue unless abated. Each day Phillips 66 treated and/or disposed, and continues to treat and/or dispose, of selenium from the Selenium Removal Unit and/or the Oil Recovery Unit without a permit is a separate violation of RCRA for which the statutory maximum civil penalty per day per violation can be assessed. In addition to civil penalties, CBE is entitled to seek all necessary injunctive relief to resolve the violations, recover costs and attorneys and expert witness fees, and seek any other relief the court deems appropriate.

¹⁸ Whether these occurrences also violate Phillip 66's industrial pre-treatment permit issued by Los Angeles County is currently being evaluated. It is notable that the Carson Plant is listed as a facility that has been in significant noncompliance with its industrial (pre-treatment) discharge permit issued by Los Angeles County from at least 2014 through 2018, the most current reporting year. Sanitation Districts of Los Angeles County, Industrial Waste Annual Reports, 204-2018 (Appendices E), <https://lacs.d.org/wastewater/wwpubreports/iwannualrpts.asp> (last visited July 16, 2019).

Claim 3: Failure to Make Proper Hazardous Waste Determinations

All of the allegations set forth above are incorporated herein by reference.

40 C.F.R. § 262.11 states that a person who generates a solid waste, as defined in 40 C.F.R. § 261.2, shall determine if that waste is a hazardous waste.

As part of the August 2015 inspection, EPA inspectors analyzed the selenium waste discharging from the Selenium Removal Unit to a process water drain that led to the Oil Recovery Unit and eventually to the local POTW. EPA's analysis revealed that the waste stream contained hazardous levels of selenium, rendering it a hazardous waste (D010). Attachment 2, at 8, 12, 15-16. At the time of the EPA inspection, Phillips 66 had not made a hazardous waste determination regarding this waste stream. Attachment 2.

As part of the August 2015 inspection, EPA inspectors observed the build-up of a white, powdered residue within the secondary containment structure of a tank stored in the hazardous waste accumulation area that contained sodium hypochloride with a pH equal to or greater than 12.5, which renders it a hazardous waste due to corrosivity (D002). At the time of the EPA inspection, Phillips 66 had not made a hazardous waste determination regarding this waste stream. Attachment 2, at 5, 15. In addition, the wastewater generated from the cleanout of this tank, according to Phillips 66, was discharged to the POTW. If the pH of the rinse water was equal to or greater than 12.5, such rinse water is hazardous due to the corrosivity characteristic (D002).¹⁹

The observation and subsequent analysis of the contents of Tank 42, which was stored on the Permanent HEB Cleaning Pad at the time of the August 2015 EPA inspection, indicates that Phillips 66 also failed to make a proper hazardous waste determination regarding both the contents of this tank and the waste generated from sand blasting the tank's interior during cleanouts. *See Carson Plant, Claim 1, supra* pp. 14-15.

Upon information and belief, the violations alleged have not been remedied, date back to at least April 2015, and will continue until abated. Each day Phillips 66 generated or managed, or continues to generate or manage, a solid waste without making a proper hazardous waste determination regarding such waste is a violation of RCRA for which the statutory maximum civil penalty per day per violation can be assessed. In addition to civil penalties, CBE is entitled to seek all necessary injunctive relief to resolve the violations, recover costs and attorneys and expert witness fees, and seek any other relief the court deems appropriate.

Claim 4: Failure to Operate and Maintain the Facility to Prevent the Release of Hazardous Waste

All of the allegations set forth above are incorporated herein by reference.

40 C.F.R. § 265.31, as referenced by 40 C.F.R. § 262.34(a)(4), states that facilities shall be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous constituents to air, soil, or surface water which could threaten human health or the environment.

¹⁹ Attachment 2, at 5.

The Carson Inspection Report documents numerous instances of Phillips 66's failure to operate and maintain the plant in a manner designed to minimize the risk of fire, explosion, or release of hazardous waste to air, water, or soil. These failures include but are not limited to:

1. Failure to operate, maintain, and manage the release of hazardous waste (selenium) from the Selenium Removal Unit;
2. Failure to operate and maintain, and manage the release of hazardous waste at both HEB Cleaning pads; and
3. Failure to close hazardous waste containers, as observed during the time of the inspection regarding an open 55-gallon container of hazardous waste (F037, K050, K051) at the hazardous waste accumulation area;

Attachment 2, at 16. In fact, the entire Carson Inspection Report indicates a chronic and ongoing failure to properly operate and maintain process areas, storage areas, cleaning pads, and other areas of the plant where hazardous wastes are generated and managed. Attachment 2.

Upon information and belief, the violations alleged have not been remedied, date back to at least August 2015, are chronic in nature, and will continue until abated. Each day Phillips 66 failed or fails to properly operate and maintain the Carson Plant is a violation of RCRA for which the statutory maximum civil penalty per day per violation can be assessed. In addition to civil penalties, CBE is entitled to seek all necessary injunctive relief to resolve the violations, recover costs and attorneys and expert witness fees, and seek any other relief the court deems appropriate.

Claim 5: Failure to Inspect and Repair the Cover of the Closed Process Water Pond in Violation of the Carson Plant's Post-Closure Permit

Part IV of the 2007 DTSC-issued Hazardous Waste Post-Closure Facility Permit regarding the closed Process Water Pond at the Carson Plant requires Phillips 66 to conduct quarterly inspections of the asphalt cover and conduct repair and maintenance as necessary.²⁰ During the August 2015 inspection, EPA inspectors observed several deficiencies in the way the asphalt cover was being maintained, including material from adjacent unstable earthen banks that were eroding and spilling onto the asphalt cover, which prevented proper visual inspection, and cracks and gouges in other areas of the cover. Attachment 2, at 16-17. In addition, Phillips 66 failed to produce quarterly inspection reports as requested by the EPA inspectors. The only quarterly inspection report produced was for the month of August 15, 2015. That report does not reference the cracks in the asphalt cover or the presence of sediment on the cover and also fails to note that any necessary repairs took place. Failure to properly maintain the cover, failure to conduct quarterly inspections, failure to maintain accurate records of quarterly inspections, and failure to produce required records during compliance inspections are all violations of the Hazardous Waste Post-Closure Facility Permit.

Upon information and belief, the violations alleged have not been remedied, date back to at least August 2015, and will continue until abated. Each day Phillips 66 failed or fails to properly inspect and repair the cover on the closed Process Water Pond, and maintain and produce proper records, as required by its post-closure permit, is a violation of the permit and RCRA for which the statutory

²⁰ Carson Post-Closure Permit, *supra* note 4.

maximum civil penalty per day per violation can be assessed. In addition to civil penalties, CBE is entitled to seek all necessary injunctive relief to resolve the violations, recover costs and attorneys and expert witness fees, and seek any other relief the court deems appropriate.

VI. Persons Giving Notice

Communities for a Better Environment is the person giving notice. Its Wilmington office is located at 113 E. Anaheim Street, Wilmington, CA 90744. The phone number is (323) 826-9771. The Environmental Integrity Project's (EIP) offices are located at 1000 Vermont Avenue NW, Suite 1100, Washington, DC 20005. EIP's main phone number is (202) 296-8800. Environmental Advocates' offices are located at 5135 Anza Street, San Francisco, CA 94121. The main phone number is (415) 533-3376.

If you have any questions concerning this notice letter or the violations described herein, or if you believe the information contained herein is incorrect in any respect, please contact the undersigned counsel, Mary E. Greene, Deputy Director EIP, at (202) 263-4449. We welcome the opportunity to discuss resolution of these compliance issues as soon as possible. Please be advised that the failure of DTSC and/or EPA to address these violations through assessment of a civil penalty in an enforceable order or settlement agreement could result in a federal court order enjoining further violations and imposing statutory maximum civil penalties per day for each violation of the RCRA. Upon the successful prosecution of this suit, CBE intends to seek compensation for attorneys' and expert witness fees and the costs of litigation under the citizen suit provisions of RCRA.

Thank you for your prompt attention to this matter.

Sincerely,



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