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NO. 100309-9

SUPREME COURT OF THE STATE OF WASHINGTON

DEPARTMENT OF LABOR AND INDUSTRIES OF THE
STATE OF WASHINGTON,

Respondent,

v.

PHILLIPS 66 COMPANY dba PHILLIPS 66 COMPANY
REFINERY,

Petitioner.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

In a case involving only well-established principles of statutory interpretation, Phillips 66 seeks to undermine critical protections for Washington workers. As the Court of Appeals properly held, under the Washington Industrial Safety and Health Act (WISHA), because refinery fire water systems act directly on highly hazardous chemicals to mitigate the effects of catastrophic releases, refinery employers must evaluate, inspect, and maintain these systems in accordance with the Department of Labor and Industries' process safety management rules. *Dep't of Lab. & Indus. v. Phillips 66 Co.*, 18 Wn. App. 2d 57, 489 P.3d 1153 (2021). A "process" is defined to include "any activity involving a highly hazardous chemical," and this broad definition encompasses refinery fire water systems used to fight gas and oil fires, suppress acid vapor releases, and cool hydrocarbon condensers during normal operations.

Phillips 66's petition fails to identify any issue warranting this Court's review. The Court of Appeals' routine

exercise of statutory interpretation conflicts with no decision of this Court and involves no constitutional question. Nor does it raise any issue of substantial public interest. Contrary to Phillips 66's assertions, the decision comports with federal case law and longstanding administrative guidance regarding employer responsibilities for fire water systems. The Court of Appeals' opinion, which aligns Washington law with analogous federal decisions, breaks no new ground.

Nor was remand inappropriate here. As the Court of Appeals reasonably determined, meaningful appellate review of Phillips 66's compliance with the regulations required additional fact finding. Because the Board of Industrial Insurance Appeals made no finding about what inspection standard applied to the refinery's fire water tank, the Court of Appeals could not assess whether the chosen standard was appropriate and whether Phillips 66 followed it. This unremarkable conclusion, which follows this Court's precedent, does not warrant review.

II. ISSUES

1. Under the process safety management rules, a “process” is broadly defined as “any activity involving a highly hazardous chemical.” WAC 296-67-005. The mechanical integrity regulation applies to specific “process equipment,” including storage tanks, piping, pumps, and controls. WAC 296-67-037(1). Phillips 66 used its fire water system, which includes storage tanks, piping, and pumps, to mitigate releases of highly hazardous chemicals, protect other process equipment during emergencies, and control its processes during normal operations. Does the mechanical integrity regulation apply to this system?
2. The process hazard analysis rule requires an employer to evaluate the potential failure of controls for process hazards. WAC 296-67-017(3)(g). A fire water system is an important control for many process hazards, including fires and acid vapor releases. Does the process hazard analysis rule apply to the fire water system?

III. STATEMENT OF FACTS

A. WISHA’s Process Safety Management Rules Protect Refinery Workers from Catastrophic Chemical Releases

Phillips 66 operates a refinery in Ferndale, where it purifies crude oil into gasoline, diesel, and liquefied petroleum gas. AR 7, 22596; Ex 162 (AR 7343). It is undisputed that, because the refinery’s processes involve large quantities of

flammable gases and liquids, they are subject to WISHA's "process safety management" (PSM) rules. *See* WAC 296-67-001; AR 23704-05.

The PSM rules set forth "requirements for preventing or minimizing the consequences of catastrophic releases." WAC 296-67-001(1). A "catastrophic release" is "a major uncontrolled emission, fire, or explosion, involving one or more highly hazardous chemicals, that presents a serious danger to employees in the workplace." WAC 296-67-005. A refinery must identify "the hazards involved in [its] process[es]" and develop ways to control those hazards. WAC 296-67-017(1). A "process" is defined as "any activity involving a highly hazardous chemical including any use, storage, manufacturing, handling, or the on-site movement of such chemicals, or combination of these activities." WAC 296-67-005.

Two specific PSM rules are at issue here. First, under the mechanical integrity regulation, an employer must inspect and test its "process equipment" according to "recognized and

generally accepted good engineering practices,” known in the industry as RAGAGEP. WAC 296-67-037(4)(a), (b); *see* AR 23690. Second, under the process hazard analysis (PHA) rule, the employer must evaluate “potential causes and consequences” of fires, explosions, and chemical releases, and perform a “qualitative evaluation of a range of the possible safety and health effects of failure of controls on employees in the workplace.” WAC 296-67-291(4), -017(3)(g).

B. Phillips 66’s Fire Water System—a Safety System Designed to Minimize the Consequences of Chemical Releases—Leaked in Multiple Locations

In April 2014, L&I inspector Sally Buckingham began an inspection at the Ferndale refinery. AR 22867. She walked through the facility taking photographs of equipment, including the refinery’s fire water system. AR 22867-69.

A fire water system mitigates the consequences of chemical releases at refineries. AR 23401-02. Phillips 66 used its fire water system to fight gas and oil fires, suppress acid vapor releases, and protect piping and other equipment during

emergencies. AR 22468-69, 22535-37, 23291. In the event of a catastrophic release, response teams would use the system to put out the fire and to cool surrounding pipes and equipment to prevent additional releases and further damage. AR 23291, 23403-05.

Phillips 66 also used its fire water system to control the refinery's processes during normal operations. AR 22469-71, 22482-87, 22516-17, 22535-36. In hot summer months, the company used the system to run "Ferndale coolers," large sprinklers designed to cool condensers, maintaining the proper temperature for this equipment. AR 22469-71, 22482-87, 22516-17, 22535-36. The water would cool the hydrocarbons within the condensers, keeping these processes running correctly. AR 22469-71, 22516-17, 22535-36, 22627-32.

Buckingham observed multiple leaks in the fire water system. AR 22869, 22881. Phillips 66 workers would later testify that the system was constantly springing leaks because of pipes corroding or rubbing against rocks underground. AR

22432-36, 22472-73, 22531, 22538-42, 22549-59, 22805.

Sometimes these leaks continued for years without repair. AR 22473, 22531. One worker explained that Phillips 66's mentality was to run its systems until they failed. AR 22805-08.

C. L&I Cited Phillips 66 for Failing to Properly Inspect Its Fire Water System or Consider the Consequences of the System's Failure During an Emergency

Buckingham asked Phillips 66 about its inspection protocols for the fire water system. *See* AR 5663-64, 22955.

The company provided a 10-page document entitled "Inspection & Testing of Fire and Safety Equipment." *See* AR 5663-64, 23283-84, 23366-67; Ex 75 (AR 9663-72). The document stated that Phillips 66 followed National Fire Protection Association (NFPA) standards for inspections of its fire extinguishers, water spray systems, and fire pumps. Ex 75 (AR 9664). But the inspection policy contained no information about inspecting the fire water system's underground pipes or water tank. *See* Ex 75 (AR 9663-72).

Buckingham determined that Phillips 66's inspections of its fire water tank did not follow RAGAGEP as required by the mechanical integrity regulation. Under the NFPA 25—a consensus standard for inspecting fire water systems—an employer must inspect the interior of a fire water tank every five years for signs of corrosion and other damage. AR 22871, 23969-70; Ex 173 (AR 7406). But Phillips 66 conducted only external inspections. AR 23521-22. The water tank was built in 1954 and, in 1978, the refinery's previous owner had applied a protective coating to the tank's interior. Ex 50 (AR 8899-900); *see also* AR 22682, 22765. In the following years, Phillips 66 performed visual examinations and took ultrasonic thickness readings of the tank's outer shell. AR 22786. But in the 36 years since 1978, the company never inspected the tank's interior as required by the NFPA 25 standard. AR 22786.

William Rinesmith, Phillips 66's emergency response lead, testified that the company did not follow the NFPA 25 or any other RAGAGEP for its fire water system. AR 23277-78;

see also AR 23520. Steven Robinson, the head of inspections, likewise admitted that the company did not inspect the fire water tank for regulatory requirements. AR 23520.

Nevertheless, Robinson believed that Phillips 66's external inspections showed that the water tank's interior coating was intact. AR 22792-93; *see also* 23524-26.

In fact, the water tank's interior coating had begun to fail, and its metal shell had developed pitting and corrosion. Ex 50 (AR 8900). Following L&I's inspection, divers entered the tank for an interior inspection. Ex 50 (AR 8900). The tank's coating had failed in some areas, and one section of the exposed metal floor was "severely corroded." Ex 50 (AR 8900). The interior coating was in "poor to fair condition," with much of the coating "cracked and checked with rust." Ex 50 (AR 8900). Areas of exposed steel beneath the failed coating showed corrosion and pitting. Ex 50 (AR 8900). While Phillips 66 asserts that ultrasonic testing provides "a much better picture of

the condition of a tank” (Pet. 10), its inspections had detected none of these issues. *See* AR 22792-93.

In addition to the inspection deficiencies, Buckingham determined that Phillips 66 had not evaluated the potential loss of the fire water system in its process hazard analyses. AR 22892-95, 22983. In each of the refinery’s 17 PHAs, the company assumed that “[f]ire protection and mitigation equipment is installed, adequately sized, functional, and tested on a suitable frequency.” Ex 90 (AR 10026, 10661, 11137, 11830, 12051, 12262, 12700, 12887, 13081, 13168, 13227, 13705, 14337, 14639, 15193, 15367, 17500). There was no indication in these documents that Phillips 66 considered what might happen if the system failed during a catastrophic release. *See id.*

L&I cited Phillips 66 for violating the mechanical integrity regulation, noting that the company’s policies did not require the fire water tank’s inspection using RAGAGEP. AR 5702. L&I also cited Phillips 66 for violating the PHA rule

based on its failure to evaluate the loss of the fire water system in its process hazard analyses. AR 5705.

D. After the Board Determined that the Fire Water System Was Not Subject to PSM Rules, the Court of Appeals Reversed

Phillips 66 appealed to the Board. There, it argued that the fire water system was not subject to the mechanical integrity regulation because the system did not contain or connect to piping containing hydrocarbons. AR 313-15. The company's witnesses testified that the fire water system did not "fall within the scope of process equipment" and was therefore not "subject to inspection and testing under WAC 296-67-037." AR 23360-62; *see also* 23147, 23704-06. Phillips 66 further argued that employers are not required to consider the failure of post-release mitigation systems in a PHA. *See* AR 23399.

The Board accepted Phillips 66's arguments and vacated the violations. It determined that "[t]he Department failed to establish that [the mechanical integrity regulation] applies to the fire water system at the Ferndale Refinery," finding that the fire

water system only “holds non-flammable and non-toxic water” and that “it does not contain or connect to any piping that contains hydrocarbons.” AR 8 (FFs 4, 8). And despite Phillips 66’s admission that the company did not follow RAGAGEP when inspecting its fire water tank, the Board found that the company’s inspections “follow recognized and generally accepted general [sic] engineering practices.” AR 8 (FF 7). Finally, the Board determined without analysis that the PHA regulation did not apply to the fire water system. AR 8 (FF 9).¹

The Court of Appeals reversed. Noting that the plain language of the PSM “process” definition includes “any activity involving a highly hazardous chemical,” the court explained that “[t]he suppression of fires and Phillips 66’s use of the system to cool its condensing units bring the fire water system

¹ The superior court affirmed the Board’s findings. CP 271-72. But on appeal in a WISHA case, the Court of Appeals considers only the Board’s decision. *Pro-Active Home Builders, Inc. v. Dep’t of Lab. & Indus.*, 7 Wn. App. 2d 10, 16, 465 P.3d 375 (2018), *as amended* (Jan. 8, 2019).

within the ‘process’ definition.” *Phillips 66*, 18 Wn. App. 2d at 67-69, 72-73. The court held that including the system within this definition comported with the PSM rules’ goal of minimizing the consequences of catastrophic releases, with WISHA’s purpose to protect Washington workers, and with the United States Department of Labor’s interpretation of the analogous federal standard. *Id.* at 67-69. In rejecting Phillips 66’s arguments that PSM-covered processes are limited to equipment containing, or connecting to equipment containing, highly hazardous chemicals, the court explained that federal courts had rejected identical arguments. *Id.*

The court held that the mechanical integrity regulation applied to the fire water system because the system included a large storage tank, extensive piping, and multiple pumps—the “process equipment” specifically subject to the regulation. *Id.* at 61, 70 (citing WAC 296-67-037(1)). And the PHA rule applied both because the fire water system’s activities met the process definition and because the system served as a “control” for the

hazards of the refinery's other processes. *Id.* at 72-73 (citing WAC 296-67-017(1), (3)(g)).

Having determined that the Board erred in finding the mechanical integrity and PHA rules inapplicable, the court remanded for further proceedings. Because the Board made no finding about what RAGAGEP applied to the fire water system, the court held the Board must make this finding and assess Phillips 66's compliance with that standard. *Id.* at 72. It further held the Board must determine if the company complied with the PHA rule's requirement for evaluating the fire water system's potential failure. *Id.* at 73-74.

Phillips 66 petitions for review.

IV. ARGUMENT

Phillips 66's arguments do not warrant review. The Court of Appeals' straightforward interpretation of the PSM rules aligns with the rules' purpose, federal and state administrative guidance regarding fire water systems, and the federal courts' interpretation of identical federal regulations. Contrary to

Phillips 66's assertion, the decision articulates no "substantively new law." Pet. 14. Similarly, consistent with this Court's precedent, in the absence of any finding about what RAGAGEP governed the fire water tank's inspection, the Court of Appeals appropriately remanded to the Board to make this determination. Finally, Phillips 66's purported confusion about whether it must evaluate its fire water system in a standalone process hazard analysis (or in conjunction with other analyses) hardly rises to an issue of substantial public interest. This Court should deny review.

A. The Court of Appeals' Analysis of the Mechanical Integrity Regulation's Plain Language Involves No Issue of Substantial Public Interest Meriting Review

The Court of Appeals' commonplace application of well-established statutory principles raises no issue of substantial public interest. As the court correctly held, safety systems like Phillips 66's fire water system are part of a refinery's PSM-covered processes, and the mechanical integrity regulation applies to the components of such systems.

The PSM rules' explicit purpose is "preventing *or minimizing the consequences* of catastrophic releases of toxic, reactive, flammable, or explosive chemicals." WAC 296-67-001(1) (emphasis added). To accomplish this purpose, L&I adopted a broad definition of what constitutes a "process," bringing "any activity involving a highly hazardous chemical" within the requirements of the PSM rules. WAC 296-67-005. The process definition's use of the terms "any activity" and "involving" show L&I's broad intent. "Any" means "one or some indiscriminately of whatever kind: . . . EVERY."² "Activity" is "the quality or state of being active: behavior or actions of a particular kind."³ And "involve" means "to relate closely" or "affect."⁴ Thus, the process definition contemplates

² Any, *Merriam-Webster Dictionary*, <https://www.merriam-webster.com/dictionary/any> (last visited December 7, 2021).

³ Activity, *Merriam-Webster Dictionary*, <https://www.merriam-webster.com/dictionary/activity> (last visited December 7, 2021).

⁴ Involve, *Merriam-Webster Dictionary*, <https://www.merriam-webster.com/dictionary/involve> (last visited December 7, 2021).

that a refinery's processes include *every* action that closely relates to or affects a highly hazardous chemical.

Nothing in the Court of Appeals' routine analysis raises any issue of substantial public interest. As the court explained, the functions of Phillips 66's fire water system plainly meet the process definition. The company used the system for many activities involving highly hazardous chemicals, including fighting chemical fires, suppressing acid vapor releases, protecting oil and gas piping during emergencies, and cooling chemical condensers during normal operations. AR 22468-71, 22482-87, 22516-17, 22535-37, 23291, 23401-05. Because these activities "relate closely to" and "affect" the refinery's highly hazardous chemicals, the fire water system's activities meet the definition of a "process."⁵

⁵ Phillips 66 asserts L&I never argued that the fire water system was a process within the meaning of the definition. Pet. 19, 29 n.7. But as L&I has repeatedly explained, it is the fire water system's activities involving highly hazardous chemicals that meet the process definition. The system itself constitutes process equipment used to carry out those activities.

The court likewise correctly held that the fire water system's components constitute "process equipment" subject to the mechanical integrity rule. A "process" includes any activity involving a highly hazardous chemical, and "process equipment" is the equipment used to accomplish these activities. Phillips 66's fire water system includes a large storage tank, extensive piping, and multiple pumps—the specific "process equipment" subject to the regulation. *See* WAC 296-67-037(1). Thus, the company needed to inspect and test this equipment according to the mechanical integrity rule's requirements. WAC 296-67-037(4).

Phillips 66's arguments do not merit this Court's review when the company offers no alternative analysis of the regulatory text. While it attempts to add language to the rule, asserting that process equipment is limited to systems containing or connecting to piping that contains hydrocarbons (Pet. 19-20), courts do not add words to the statute or read in a limitation that does not exist. *City of Seattle v. Fuller*, 177

Wn.2d 263, 269, 271, 300 P.3d 340 (2013). Nothing in the rule’s language suggests that process equipment must contain or connect to equipment containing hazardous chemicals. *See* WAC 296-67-005, -037. Rather, under the regulation’s plain language, process equipment includes all equipment used for “activit[ies] involving a highly hazardous chemical.” WAC 296-67-005.

The mechanical integrity regulation’s purpose is not merely “to keep [highly hazardous chemicals] inside the process equipment and avoid catastrophic releases.” *Contra* Pet. 18. Instead, as the Court of Appeals recognized, “the integrity of [post-release mitigation systems like a refinery’s fire water system] is equally as important to the safety of crude oil refinement as the integrity of the systems that move and refine crude oil.” *Phillips 66*, 18 Wn. App. 2d at 68. If the regulation’s

drafters wanted to limit process equipment to systems that contain gas and oil, they would have done so.⁶

Contrary to Phillips 66's contention, this is hardly new law. *See* Pet. 14. The United States Department of Labor, the Occupational Safety and Health Review Commission (OSHRC), and the federal courts have rejected Phillips 66's argument that the mechanical integrity regulation applies only to equipment that contains hazardous chemicals or prevents a release before it happens. In affirming an OSHRC decision, the Fifth Circuit held that process equipment is not limited to equipment containing highly hazardous chemicals or involved in the "containment of chemicals *before* release," but also

⁶ Phillips 66 argues the testimony of its industry witnesses shows that "process equipment" does not include fire water systems. Pet. 18-20 (citing AR 23360-62, 23704-08). But these statements are merely impermissible legal conclusions offered in the guise of expert opinion. Courts disregard testimony about the scope and meaning of the law. *See Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 344, 858 P.2d 1054 (1993). Because the interpretation of a statute is a legal issue that is the province of the court, the Court of Appeals properly ignored this testimony.

includes safety systems designed to mitigate releases after they occur. *Delek Refin., Ltd. v. Occ. Safety & Health Rev. Comm'n*, 845 F.3d 170, 179-80, 182-83 (5th Cir. 2016) (internal quotation omitted).⁷ As the *Delek* court explained, this interpretation furthers the PSM rules' purpose of minimizing the consequences of catastrophic chemical releases. *Id.* at 183.

Both L&I and the Department of Labor have long required that fire water systems comply with the mechanical integrity regulation. Each has issued identical guidelines explaining that "process equipment" subject to the regulation includes "fire protection system components." WAC 296-67-291(9); 29 C.F.R. § 1910.119, App. C at 9. The Department of Labor has issued several interpretations of the federal rule, explaining that PSM-covered processes include post-release mitigation systems designed to limit potential damage

⁷ The Tenth Circuit has likewise held that "the definition of process unambiguously includes vessels which do not contain a highly hazardous chemical." *Scalia v. Wynnewood Refin. Co.*, 978 F.3d 1175, 1182 (10th Cir. 2020).

following a release. OSHA Std. Interp. 1910.119 (U.S. Dep't of Labor Jan. 31, 2008) 2008 WL 2565070, at *3. The Department of Labor's "long-standing position [is] that utility systems *are* part of the PSM-covered process when employers use them to control/prevent *and mitigate* catastrophic releases of [highly hazardous chemicals]". *Id.* (second emphasis added). Thus, any system used for this purpose must be inspected, tested, and maintained in accordance with the PSM rules. *Id.*

Phillips 66's remaining arguments likewise do not rate review. Nonsensically, the company asserts that fire water systems "cannot reasonably be viewed as posing a risk of interfering with mitigation of an HHC release, as the whole purpose of the system is to provide the means to perform such mitigation." Pet. 20. But this only proves the point. If the fire water system were to fail during a catastrophic release, its loss would plainly interfere in mitigating the resulting damage. Accordingly, as L&I, the Department of Labor, and the federal courts have recognized, refinery owners must test and inspect

such equipment under the mechanical integrity regulation to ensure its proper functioning.

Phillips 66's narrow reading of the mechanical integrity rule puts workers' lives at risk. Under the company's interpretation, refinery owners are subject to no regulation requiring inspection of safety systems designed to mitigate catastrophic releases. *See* Pet. 18-20. Because this strained interpretation runs contrary to the PSM standard's purpose to minimize the consequences of uncontrolled emissions, fires, and explosions, the Court of Appeals properly rejected it. The court's routine analysis, which aligns with longstanding administrative guidance, federal case law, and public policy, raises no issue of substantial public interest.

B. The Court of Appeals' Determination that Meaningful Appellate Review Required Remand Complies with This Court's Precedent

The Court of Appeals' reasonable resolution of this case conflicts with no Washington appellate decision. The court properly remanded to the Board to identify the particular

RAGAGEP applicable to the refinery's fire water tank and assess Phillips 66's compliance with that standard. As the court determined, the Board's conclusory finding that the company's inspections "follow recognized and generally accepted general [sic] engineering practices" did not allow for meaningful appellate review. AR 8; *see Phillips 66*, 18 Wn. App. 2d at 72. Unsurprisingly, the Court of Appeals could not assess Phillips 66's compliance with a consensus standard when the Board failed to identify what standard applied.

Contrary to Phillips 66's argument, nothing about the court's decision conflicts with this Court's precedent. *See* Pet. 23-25. As the Court has observed, the precise issues that must be determined in findings of fact depend on the circumstances of each case. *Groff v. Dep't of Lab. & Indus.*, 65 Wn.2d 35, 40, 395 P.2d 633 (1964) (citing *Kelley v. Everglades Drainage Dist.*, 319 U.S. 415, 419, 63 S. Ct. 1141, 87 L. Ed. 1485 (1943)). But to enable appellate review, the fact finder must (1) enter findings of fact that resolve the disputed issues of material

fact and (2) apply the law to the facts it has found. *Groff*, 65 Wn.2d at 40.

Here, as the Court of Appeals held, meaningful appellate review required identification of the specific RAGAGEP applicable to the fire water tank. As explained above, the mechanical integrity regulation requires that inspections of a refinery's fire water system follow RAGAGEP, and the company's compliance with the regulation turns on what RAGAGEP applies. In *Groff*, this Court held that findings of fact are insufficient when "[i]t is impossible to tell upon what underlying facts the court relied and whether proper standards were applied." *Id.* As the Court explained, such limited findings make appellate review impossible: "We could not pass upon the factual issues in this case on such findings without ourselves making a complete de novo review of the entire record." *Id.*

The same is true here. Whether Phillips 66 complied with the mechanical integrity regulation hinges on the particular RAGAGEP applicable to the refinery's fire water tank. *See*

WAC 296-67-037(4). Phillips 66 does not contest that “RAGAGEP detail generally approved ways to perform specific engineering, inspection or mechanical integrity activities, such as fabricating a vessel, inspecting a storage tank, or servicing a relief valve.” OSHA Std. Interp. 1910.119 (U.S. Dep’t of Labor June 8, 2015), 2015 WL 3652419, at *1. RAGAGEP are “based on established codes, standards, published technical reports or recommended practices (RP) or similar documents.” *Id.* Phillips 66 agreed at hearing that RAGAGEP are the “published guidelines of consensus organizations.” AR 22287.

Without a finding on the applicable RAGAGEP (a disputed issue at hearing), the Court of Appeals found it impossible to determine whether Phillips 66 met the standard’s requirements. The company appears to argue that the Board’s finding that the company tested “various parts” of the fire water system “in accordance with Ferndale’s policies” shows compliance with RAGAGEP. Pet. 23; AR 8 (FF 5). But this

only confirms the inadequacy of the Board’s findings. The undisputed evidence was that there was no written policy for inspections of the fire water system’s water tank. Phillip 66’s policy for “Inspection & Testing of Fire and Safety Equipment”—the only refinery policy document relating to the fire water system—contained no information about inspecting the water tank. *See* Ex 75 (AR 9663-72). Phillips 66 cannot reasonably dispute that a written policy is a necessary element for RAGAGEP. *See* OSHA Std. Interp. 1910.119, 2015 WL 3652419, at *1 (discussing “use of internal employer documents as RAGAGEP”).

And in any event, no witness testified that the company’s internal policies constituted appropriate RAGAGEP. *Contra* Pet. 23-24. In support of this assertion, Phillips 66 improperly cites to the discovery depositions of its witnesses, testimony that is not part of the evidentiary record. Pet. 23 (citing 1933-35, 2394-95, 3762-63); *see* AR 171-72. But even if the unpublished depositions were considered, these documents

contain no testimony that the company's internal inspection policies constituted RAGAGEP. There is, of course, a difference between saying that an action meets an internal company policy and saying that such policy is a RAGAGEP.

The Board made no finding that the NFPA 25 is not RAGAGEP for fire water systems. *Contra* Pet. 26-27. While Phillips 66 misleadingly asserts that its witnesses testified that the NFPA 25 was not RAGAGEP for refineries (Pet. 26-27), in fact, these witnesses testified that because, in their view, the fire water system was not process equipment, *no* RAGAGEP applied to this system. AR 23277-78, 23706-07. In its opinion, the Court of Appeals rejected this premise, holding that the fire water system is process equipment subject to the mechanical integrity regulation. *Phillips 66*, 18 Wn. App. 2d at 71. And contrary to Phillips 66's assertion (Pet. 27), fire protection expert Sandra Sewell explained that the NFPA 25 is "the industry standard" for inspection, testing, and maintenance of fire water systems. AR 23970.

As the Court of Appeals correctly determined, the Board's conclusory finding that Phillips 66's inspections followed RAGAGEP was insufficient for meaningful appellate review. Because the court's reasonable decision to remand for additional fact finding complies with this Court's precedent, it provides no basis for review.

C. Whether the Refinery's Fire Water System Should Be Evaluated as a "Process" or as a "Control for Covered Processes" Is Not a Matter of Substantial Public Interest

The Court of Appeals' decision regarding the PHA rule raises no issue of substantial public interest. As the court correctly concluded, this rule applies to the fire water system both because the system's activities meet the "process" definition and because the system serves as a control for hazards in the refinery. *Phillips 66*, 18 Wn. App. 2d at 73. Thus, the court concluded that Phillips 66 must evaluate the loss of the system in a process hazard analysis. *Id.*

Phillips 66's professed confusion regarding whether it must evaluate the system in isolation or in conjunction with

other refinery processes does not merit this Court's review. While the company frets that the Court of Appeals' decision will bring "all fire water systems in all facilities throughout Washington" within the ambit of the PSM rules (Pet. 30), in fact, only fire water systems in large chemical plants and refineries are subject to the PHA rule. It is the fire water system's activities involving large quantities of highly hazardous chemicals that bring the system within the process definition. When a fire water system's intended uses do not relate to such chemicals (or the chemicals are not present in sufficient quantities), the PSM rules do not apply to the system. *See* WAC 296-67-001, -005. Phillip 66's concern for other Washington businesses is unfounded.

Nor is review required to avoid absurd results. Phillips 66 warns that treating the fire water system as a covered process will require analysis of the system in isolation, a result it contends will "compel[] all PSM-covered entities to engage in absurd exercises." Pet. 31-33. But nothing in the Court's

opinion or the PHA rule requires such an analytical approach. While L&I agrees that loss of the fire water system will generally present hazards only during a hazardous chemical release, nothing in the PHA rule disallows the assumption of such a release when analyzing the hazards of a process. *See* WAC 296-67-017. As the Court noted in its opinion, “[i]t cannot be reasoned that [the fire water] system exists in isolation from the remaining activities” at the refinery. *Phillips 66*, 18 Wn. App. 2d at 68. In assessing the hazards associated with the fire water system’s failure (as required by the PHA rule), *Phillips 66* remains free to evaluate the system in the context of other refinery activities, including releases of highly hazardous chemicals.

The Court’s determination that the fire water system falls within the definition of a “process” will lead to no absurd results.

V. CONCLUSION

Phillips 66 fails to identify any issue meriting this Court's review. The Court should deny the company's petition.

This document contains 4,998 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 20th day of December, 2021.

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NO. 100309-9

**IN THE SUPREME COURT
OF THE STATE OF WASHINGTON**

DEPARTMENT OF LABOR
AND INDUSTRIES OF THE
STATE OF WASHINGTON,

Respondent,

v.

PHILLIPS 66 COMPANY dba
PHILLIPS 66 COMPANY
REFINERY,

Petitioner.

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The undersigned, under penalty of perjury pursuant to the laws of the State of Washington, declares that on the below date, she caused to be served the Respondent's Answer to Petition for Review and this Declaration of Service in the below described manner:

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