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Supreme Court No. 100309-9

Court of Appeals No. 80685-8-I

**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.

PHILLIPS 66 COMPANY'S PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER

Petitioner is Phillips 66 Company dba Phillips 66 Company Refinery (Phillips 66 or the Company). Phillips 66 was the defendant in proceedings before an Industrial Appeals Judge (IAJ) of the Board of Industrial Insurance Appeals (the Board) and the respondent in proceedings before the Board, the Superior Court of Whatcom County, and the Court of Appeals, Division I.

II. COURT OF APPEALS' DECISIONS

The published opinion issued by the Court of Appeals on June 28, 2021 and the order issued on September 20, 2021 denying Phillips 66's Motion for Reconsideration in Part and/or Clarification in Part are attached to this petition at App. 1-16 and App. 17, respectively.

III. ISSUES PRESENTED FOR REVIEW

Washington Administrative Code Chapter 296-67 sets forth process safety management (PSM) rules for activities involving the use, storage, manufacture, handling, or moving of

highly hazardous chemicals (HHC). The rules were promulgated to prevent or minimize the consequences of catastrophic releases of HHC. They apply to a wide spectrum of industries and facilities, including but not limited to pulp and paper mills, paint and stain factories, hydrogen production plants, fertilizer plants, bulk chemical distribution warehouses, natural gas facilities, and oil refineries, and cover operating procedures, emergency responses, mechanical integrity inspections, and hazard analyses. Each PSM rule has a discrete scope and its own set of requirements.

A business that engages in activities involving HHC installs a fire water system, the purpose of which is to deliver sufficient water to fight potential fires and related emergencies. The system can include such items as water holding tanks, back-up fresh and saltwater sources, underground and above ground piping, hydrants, sprinklers, and water cannons. It holds and transports water; it does not hold or transport HHC.

The first issue presented here is whether a fire water system is subject to Washington’s PSM rules covering mechanical integrity inspections, WAC 296-67-037(4), and process hazard analyses, WAC 296-67-017(3). The original federal PSM rules¹ and related state PSM rules have been in effect for decades, yet the Court of Appeals is the first court in the entire United States to conclude that a fire water system is covered by mechanical integrity and process hazard analysis rules aimed at ensuring that HHC stay contained in process equipment. If the answer is “yes” (for either the mechanical integrity rule or the process hazard analysis rule), the second issue is how the rule should be applied. Related to the second issue is the question of whether the Court of Appeals violated long-standing principles of administrative law when, without determining whether the factual findings of the Board were supported by substantial evidence, it reversed the Board’s

¹ 29 U.S.C. § 1910.

decision and remanded the matter for reexamination of Phillips 66's compliance with the mechanical integrity rule.

These questions are of critical importance to the many businesses in this state subject to the PSM rules. Because of the importance of these questions, the Court should accept review under RAP 13.4(b)(4). Additionally, the Court of Appeals' mechanical integrity rule remand order is flatly contrary to decisions of this Court and published decisions by the Court of Appeals requiring appellate courts to accept factual findings supported by substantial evidence and introduces uncertainty into an area that had heretofore been entirely clear. This issue is critical to practitioners of administrative law, and review should therefore be accepted under RAP 13.4(b)(1) and (2).

IV. STATEMENT OF THE CASE

A. Background Facts

Phillips 66 operates a refinery in Ferndale, Washington, where crude oil is refined into gasoline, diesel, and other petroleum products. Process equipment is used in the refining

process and in transferring the hydrocarbon products throughout the refinery for storage, shipment, or additional processing.

The refinery has an extensive fire water system that is physically separate from the process equipment. With the capacity to pump more than 30,000 gallons of water per minute, the fire water system consists primarily of a one-million-gallon water tank, freshwater ponds and Puget Sound access, underground and above ground piping laid out in a grid pattern around the refinery, hydrants, sprinklers, and water cannons. There are back-up pumps, back-up water sources, and multi-route piping segments, which provide redundancy protections. The design ensures that if a section of the piping were to fail, water could be routed in different ways to reach all affected areas; if the water in the million-gallon tank were insufficient, the system could switch to freshwater ponds and, if needed, the Pacific Ocean. The water tank and underground piping are made of carbon steel; catastrophic leaks or other significant failures are

practically impossible because corrosion does not spread in carbon steel. AR 23267-23277.

The refinery's fire water system does not hold or transport any HHC—it contains only water. AR 8. It is not directly connected to any of the equipment used in the refining process. *Id.* Nor is it directly connected to any of the piping used to move the HHC into, out of, and around the refinery. *Id.* It was designed with the expectation that water leaks could occur without having any impact on the system's performance. AR 798.

Each category of equipment within the refinery's fire water system is subject to a rigorous testing and inspection program. For the pumps and piping, there are annual flow tests, and weekly test runs and annual performance tests of the diesel pumps. AR 9663-72, 23283, 23293-94, 23313-14, 23328-32; Exs. 55-58, 66, 67. For the fire water hydrants, there are monthly and annual performance tests, monthly visual inspections, and annual flow tests. AR 9663-72, 23286-88, 23924-59, 23332-33;

Ex. 68. For the portable and fixed fire water cannons, there are monthly inspections and annual flow tests. AR 9663-72, 23289-91; Ex. 69. And for the fire water tank, there are regular external visual inspections and ultrasonic thickness testing to check for corrosion or other problems. AR 23520-26; Exs. 41-43, 53, 54; *see also* AR 8. The ultrasonic testing provides a much better picture of the condition of a tank than does a visual internal inspection and is a long-standing industry-accepted testing method. AR 23370-71, 23522.

The evidence in the record showed that Phillips 66 developed and implemented a comprehensive inspection and testing program of its fire water system and was always prepared to provide the necessary water to protect its refinery workers and mitigate the consequences of any HHC release.

B. Procedural History

In September 2014, the Department of Labor and Industries (Department) issued Phillips 66 multiple citations, including the only one remaining at issue (the Citation), which

was for (a) failing to conduct inspections and testing of its fire water system in violation of the mechanical integrity rule under WAC 296-67-037(4)(a); (b) failing to follow “recognized and generally accepted good engineering practices” (RAGAGEP) during the inspections and testing of its fire water system under WAC 296-67-037(4)(b); and (c) failing to perform a process hazard analysis on its fire water system under WAC 296-67-017(3)(g). App. 4. Issuance of the citations was not prompted by any accident, release of HHC, or injury to any refinery worker. Rather, it was the result of an inspection conducted five months earlier, during which a Department inspector had observed a leaking hydrant and a small amount of water bubbling from the fire water system’s underground piping. App. 3.

Phillips 66 appealed the citations. The dispute went before an IAJ who presided over 13 days of hearings. App. 4. The IAJ heard 31 witnesses testify, admitted 103 exhibits, and accepted extensive post-hearing briefing from the parties. *Id.*; AR 145-70. Notably, at the hearing, Phillips 66 never asserted that its fire

water system was categorically exempt from the PSM rules. Rather, it argued that the specific PSM rules listed in the Citation did not apply.

In May 2018, the IAJ issued a 28-page Proposed Decision and Order containing extensive factual findings. AR 145-70. Included were findings that the Department had failed to establish that the fire water system was a “process” or “process equipment” subject to the mechanical integrity rule’s inspection requirements or the “failure of controls” analysis requirement in the process hazard analysis rule. AR 167-69. The IAJ vacated the citations.

The Department appealed to the Board. After additional briefing and review of the administrative record, the Board issued its Decision and Order (Decision). It affirmed the IAJ’s decision with respect to the Citation, noting that it agreed with the IAJ’s findings. AR 4. The Board also made factual findings of its own regarding the refinery’s fire water system and Phillips 66’s testing and inspection program:

4. The fire water system at Ferndale is comprised of a water tank and various pumps, hydrants, monitors, and piping. The system holds nonflammable and non-toxic water; it does not contain or connect to any piping that contains hydrocarbons.
5. Phillips 66 performs annual, monthly, and weekly testing on various parts of its fire water system at the Ferndale Refinery in accordance with Ferndale's policies. Some of the testing is performed by external contractors.
6. The fire water tank was last internally inspected in 1978. At that time, a protective coating was applied to the inside of the tank to help protect against corrosion. The Ferndale inspection department regularly performs external inspections of the fire water tank, including visual inspections and ultrasonic thickness readings.
7. The inspections of the fire water system at the Ferndale Refinery follow recognized and generally accepted general engineering practices.^[2]

² The Board's reference to "general engineering practices" rather than "good engineering practices" is an obvious typographical error. The Department acknowledged as much in its briefing. *See, e.g.*, Appellant's Opening Brief at 39 (referring to "the Board's determination that Phillips 66's inspections of its fire water system followed RAGAGEP"). The Court of Appeals agreed, stating "the Board found ... that the inspections followed recognized and generally accepted good engineering practices." App. 5. Indeed, although this issue was central to Phillips 66's reconsideration motion, the Department still did not dispute that this was a scrivener's error. *See Answer to Motion for Reconsideration and/or Clarification (Answer) at 3-7.*

AR 8 (with original numbering).

The Department again appealed, this time to the Superior Court for Whatcom County. The parties again filed extensive briefing and the court, the Honorable Montoya-Lewis presiding, heard oral argument. The court concluded that the relevant findings by the Board were supported by substantial evidence. Based on those findings, and after concluding the Department had failed to establish that either the mechanical integrity or process hazard analysis rule was applicable to the refinery's fire water system, the court affirmed the Board.

Reversing the Board's Decision and articulating substantively new law applicable to dozens of industries and hundreds of facilities for the first time ever, the Court of Appeals ruled that despite the undisputed absence of any HHC in or connected to the refinery's fire water system, the mechanical integrity and process hazard analysis PSM rules apply to that system. Without assessing whether substantial evidence

supported the Board’s findings of fact regarding Phillips 66’s inspection and testing program, the Court of Appeals remanded the matter to the Board for a reexamination of Phillips 66’s compliance with the mechanical integrity rule. The court also directed the Board to reexamine Phillips 66’s compliance with the process hazard analysis rule.

The Court of Appeals denied Phillips 66’s subsequent motion for reconsideration in part and/or clarification in part.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

Washington’s PSM rules apply to “processes” that involve HHC on-site, in one location, and in large quantities. WAC 296-67-001(2)(a)(ii); *see also* WAC 296-67-005 (defining HHC). 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. Further, “any group of vessels which are interconnected and separate vessels which are located such that a highly hazardous chemical

could be involved in a potential release” are to “be considered a single process.” *Id.*

The PSM rules do not apply uniformly to all equipment and operations at facilities that engage in activities involving HHC. Instead, each rule has its own discrete scope and requirements. For example, the prestartup safety review rule, WAC 296-67-033, applies only to new facilities and to facilities that have undergone modifications significant enough to require changes in process safety information.

Each rule codified in WAC 296-67-009 through -061 specifies when it applies and sets forth the applicable requirements. But instead of mandating specific methods or standards an employer must follow to achieve compliance with the requirements, the regulatory framework establishes a “performance-based standard.” This means the employer is allowed to develop, consistent with good industry practices, its own methods and standards to address the specified operational and maintenance safety obligations.

Phillips 66 developed and implemented a comprehensive set of performance-based standards to ensure safe and compliant operations. The standards included exhaustive inspection and testing programs for both the equipment and piping used in refining, storing, and moving HHC, as well as the separate fire water system. AR 151, 153, 155-56, 226-35, 436-37, 464. Multiple comprehensive audits ensured consistent implementation of the programs. AR 382-93, 434-35, 1056-57, 2047, 2065. The result of these efforts was that for the year in which the Department inspection was conducted, the refinery had zero spills of HHC and zero lost-time injuries. AR 23821-22.

A. Whether the Court of Appeals Erred in Holding the Fire Water System Is Subject to the Mechanical Integrity Rule Is a Matter of Substantial Public Interest That Should Be Determined by This Court

One of the PSM rules, the mechanical integrity rule, WAC 296-67-037, applies only to “process equipment.” WAC 296-67-037(1). Under this rule, the employer is required to establish and implement written procedures to maintain the mechanical

integrity of process equipment and to perform inspections and tests on that equipment. WAC 296-67-037(2), (4). The inspection and testing procedures for process equipment are to follow RAGAGEP (i.e., “recognized and generally accepted good engineering practices”). WAC 296-67-037(4)(b). The purpose of the rule is to keep HHC inside the process equipment and avoid catastrophic releases. AR 2047.

Phillips 66 does not dispute that the mechanical integrity rule applies to the refinery equipment it uses to move, process, and store HHC. Indeed, the Company offered evidence proving, among other things, that it follows industry-accepted American Petroleum Institute codes, standards, and recommended practices, as RAGAGEP, for all process vessels, piping, storage, tanks and other equipment involved in refining, moving, and storing the on-site HHC. AR 767-866, 4664-4739. But the most straightforward analysis, supported by abundant expert

testimony and a rational reading of the existing PSM rules,³ is that because the vessels, piping, pumps, and other components of the refinery’s fire water system (i) contain only plain water, (ii) do not connect to the equipment and piping that contain HHC, (iii) do not control the equipment and piping that contain HHC, (iv) are not necessary to maintain the integrity of the process equipment that contains HHC, (v) cannot release any HHC, and (vi) would not impact normal process operations even if out of service, the fire water system is not a process or process equipment, AR 23360-62, and therefore the mechanical integrity rule does not apply.

To reach its conclusion, the Court of Appeals ignored that the Department never argued to the court that the fire water system itself was a “process,” as defined in WAC 296-67-005,⁴

³ The Department could force the result it seeks herein through the currently ongoing rulemaking to revise the PSM rules. See [Rulemaking Activity at L&I \(wa.gov\)](#) (last visited Oct. 18, 2021).

⁴ In the briefs it submitted to the Court of Appeals, the Department argued, *e.g.*, that “fire water is a post-release

and stretched the regulatory definition beyond all reasonable boundaries. App. 8-10. A system of vessels, piping, and pumps that contains only water and is not interconnected with vessels containing HHC cannot reasonably be considered an “activity involving a highly hazardous chemical.” Such a system also 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. It therefore is not surprising that all the experts who testified at the administrative hearing testified that the refining industry does not recognize a fire water system as a “process” or “process equipment.” *See, e.g.,* AR 23704-08, 23360-62; *see also* discussion at 21-22, *infra* (limited description of the qualifications of the testifying experts).

mitigation system,” Appellant’s Opening Brief at 11, and that the fire water system “is part of the refinery’s processes” and “serves as a ‘control’ for the hazards of those processes,” Appellant’s Reply Brief at 13. It never argued that the fire water system *itself* was a process.

The Court of Appeals erred when it ruled that the Ferndale refinery's fire water system is a "process" and "process equipment" subject to the mechanical integrity rule. The ruling upends the common understanding of the scope and requirements of that rule. Because this is a matter of substantial public interest, this Court should accept review and reverse.

B. The Court of Appeals' Remand Decision Conflicts with Decisions of This Court and Other Published Court of Appeals Decisions

The Court of Appeals ordered this case be remanded to the Board for a reexamination whether Phillips 66 complied with the inspection, testing, and RAGAGEP requirements of the mechanical integrity rule. In so doing, the court erred: remand is inappropriate here. Substantial evidence supported the Board's factual findings regarding Phillips 66's inspection and testing program. As discussed below, those findings are conclusive and compel the conclusion that the Department failed to meet its burden of proving Phillips 66 violated the cited rule.

The evidence in the record shows that Phillips 66 developed and implemented a comprehensive inspection and testing program. The experts who testified regarding the program are highly qualified: one has over 30 years' experience in inspections and nondestructive examinations, holds certifications from the American Welding Society and the National Association of Corrosion Engineers, and is commissioned by the Department as a "special inspector"; another is a fire protection specialist, safety professional, and tank entry supervisor certified by the National Fire Protection Association (NFPA), the Board of Safety Professionals in Occupational Safety and Health, and the American Petroleum Institute; another is a Certified Fire and Explosion Investigator, with a Bachelor of Science degree in Fire Protection Engineering, and 35 years' membership in NFPA, and a drafter of fire protection programs for refineries and auditing fire protection programs; and another is a preeminent expert on mechanical integrity for process equipment who has consulted

for almost every major oil and gas company in the world specifically on mechanical integrity for process equipment. AR 4653-57. These experts gave testimony that provided substantial evidence in support of the Board's findings that (a) Phillips 66 performs annual, monthly, and weekly testing of components of the fire water system (Finding of Fact No. 5); (b) Phillips 66 regularly performs inspections of the fire water tank, including visual inspections and ultrasonic thickness readings (Finding of Fact No. 6); and (c) that in performing these tests and inspections, Phillips 66 followed RAGAGEP (Finding of Fact No. 7). AR 7-9, 167-59, 1933-35, 2394-95, 3762-63. *See, e.g., Orca Logistics, Inc. v. State, Dep't of Labor & Indus.*, 152 Wn. App. 457, 216 P.3d 412 (2009) (observing that evidence sufficient to persuade a fair-minded person of the truth or correctness of the matter is substantial evidence, as required to support an administrative agency's findings of fact on appeal).

Because these findings are supported by substantial evidence, they are dispositive. *See, e.g., Mowat Constr. Co. v.*

Dep't of Labor & Indus., 148 Wn. App. 920, 925, 201 P.3d 407 (2009) (the Board's findings of fact "are conclusive if supported by substantial evidence when viewed in light of the record as a whole," citing RCW 49.17.150(1), RCW 34.05.570(3)(e)). And based on these findings, the only possible conclusion is that Phillips 66 did not commit the alleged violations of the mechanical integrity rule. But the Court of Appeals nonetheless ruled that a remand is necessary to determine Phillips 66's compliance with the rule. App. 14.

The court provided two rationales for its remand ruling. First, it observed that "the parties offered conflicting testimony regarding Phillips 66's fire water system's conformance with RAGAGEP." App. 14. Second, it ruled that the Board "did not identify the proper RAGAGEP or proper conformance with regulation's additional requirements." *Id.* Neither of these rationales justifies remand.

First, it is a fundamental principle of Washington administrative law that even when there is conflicting testimony

in the record, the findings of fact of an agency serving in an adjudicative capacity should be upheld if supported by substantial evidence in the record considered as a whole. *See, e.g., Gogerty v. Dep't of Institutions*, 71 Wn.2d 1, 8-9, 426 P.2d 476 (1967) (holding court's role in assessing board's factual findings is not to weigh or balance conflicting evidence, but to determine if competent, relevant, and substantive evidence supports the findings); *Orca Logistics*, 152 Wn. App. at 461 n.1 (refusing to disturb the Board's finding because substantial evidence supported it, despite acknowledging that the conflicting evidence could have caused a reasonable trier of fact to reach a different conclusion). The Court of Appeals' refusal to abide by this well-established rule conflicts with a multitude of legal decisions by the appellate courts of this state.

The court fares no better with its second rationale. The statement that the Board "did not identify the proper RAGAGEP" implies there is a single "proper" standard for RAGAGEP. But under a performance-based standard an

employer has the discretion to select its method of compliance with the regulation, and there is no published consensus standard on testing and inspecting refinery fire water systems. AR 167-69. Moreover, it appears the Court of Appeals' statement was based on the Department's contention that to meet the RAGAGEP requirement, Phillips 66 must have incorporated and followed "NFPA 25" (i.e., a NFPA standard entitled "Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems") as part of its fire water system inspection and testing procedures. App. 13-14. The court's acceptance of the Department's NFPA 25 contention is error for two independent reasons.

First, the Department is the party with the burden of proof. *See Erection Co. v. Dep't of Labor & Indus.*, 160 Wn. App. 194, 201, 248 P.3d 1085 (2011). The Department tried to meet its burden by convincing the IAJ and the Board that NFPA 25 is a required element of RAGAGEP, but it failed in that effort. The Board's finding that Phillips 66's inspections of the refinery's

fire water system follow RAGAGEP (without implementing NFPA 25) is conclusive because it is supported by substantial evidence. *See Mowat*, 148 Wn. App. at 925.

Second, acceptance of the Department's contention means the Court of Appeals ignored (a) the admission of the Department's compliance safety and health officer (CSHO) that she could cite no published industry book or other source supporting NFPA 25 as a refinery RAGAGEP, AR 22960;⁵ (b) the admission of the Department's witness⁶ that, to her knowledge, NFPA 25 was not a RAGAGEP compliance requirement for the Ferndale refinery, AR 23998-99; and (c) the consistent testimony of all the experts who testified at the hearing that NFPA 25 is not fire water inspection guidance that is

⁵ The CSHO was the only witness who testified that the refinery's fire water system inspection procedures must follow NFPA 25 to comply with the mechanical integrity rule's RAGAGEP requirement.

⁶ The Court of Appeals referred to this witness as a "fire protection expert," App. 13, although the Department did not call her as an expert.

recognized and generally accepted in the refining industry, AR 23361-63, 23374-75, 23411-13. In sum, the remand ruling means the Court of Appeals improperly rejected the Board's finding on the factual issue of whether the inspections at the refinery followed RAGAGEP.

Finally, the court's "additional requirements" reference, App. 14, is meaningless. There are no "additional requirements" in the applicable subsections of the mechanical integrity rule. Those subsections merely require the performance of inspections and tests on the relevant equipment, WAC 296-67-037(4)(a), and that the inspection and testing procedures follow RAGAGEP, WAC 296-67-037(4)(b). Findings of Fact Nos. 5, 6, and 7 addressed all the applicable requirements.

The Court of Appeals' remand ruling was plain error. This Court should accept review and reverse the Court of Appeals' refusal to follow long and well-established principles of administrative law.

C. Whether the Refinery’s Fire Water System Is Subject to the Process Hazard Analysis Rule, and if So, Whether the System Should Be Evaluated as a “Process” or as a “Control for Covered Processes,” Is a Matter of Substantial Public Interest That Should Be Determined by This Court

The process hazard analysis rule, WAC 296-67-017, requires that hazard evaluations be performed on covered “processes.” WAC 296-67-017(1). Phillips 66, however, was cited only for failing to perform a “qualitative evaluation of a range of the possible safety and health effects of *failure of controls* on employees in the workplace.” AR 10; WAC 296-67-017(3)(g) (emphasis added). The Department argued below that the process hazard analysis rule “requires an employer to evaluate the potential failure of controls for process equipment” and that a fire water system “is an important control for many process hazards, including fires and acid vapor releases,” Appellant’s Opening Br. at 4,⁷ the Court of Appeals’ opinion

⁷ The Department never argued to the Court of Appeals that the fire water system was a process that would require its own process hazard analysis. Again, even though the failure of the Department to argue that the fire water system was itself a

introduces ambiguity as to whether a fire water system is to be considered a covered “process” that requires its own process hazard analysis or if it should be evaluated as part of the process hazard analyses for covered processes. The distinction, while seemingly technical, is important. If a fire water system is a PSM-covered process independent of being connected to process equipment that contains HHC, then the exception has swallowed the rule and all fire water systems in all facilities throughout Washington are now subject to the PSM rules regardless of whether such facility has a process that involves use, storage, manufacturing, handling, or movement of HHC. Undoubtedly the Department will attempt to respond to such an obvious concern by trying to limit coverage of fire water systems to those involved with covered processes. But such a distinction makes the point: if a fire water system is covered by the PSM rules, it

process was a central point of the Company’s argument as part of its Motion for Reconsideration and/or Clarification, the Department never refuted the analysis. Answer at 7-9 (only reference is to safety systems as mitigation devices).

can only be as a mitigating element, not as a covered process itself.

Experts testified that in the refining industry, process hazard analyses are performed on “processes,” but not on fire water systems because such systems are not viewed as “processes.” AR 22360-62, 23704-06. The Department’s CSHO admitted that she is unaware of any refinery in the country that has performed a process hazard analysis on a fire water system. AR 22982, 22984.

If the Court nonetheless believes that process hazard analyses are required for fire water systems, it is important it be made clear that, for purposes of the process hazard analysis rule, a fire water system should be evaluated not as a covered “process” that requires its own process hazard analysis, but as a part of processes that themselves contain hazards. Evaluating a fire water system as a covered process literally makes no sense because the first requirement is that the employer perform an evaluation of the “hazards of the process.” WAC 296-67-

017(3)(a). But there are no hazards of a fire water system. It holds only non-flammable and non-toxic water and is not connected to the equipment or piping that contains HHC and therefore does not pose any hazards standing on its own.

On the other hand, treating a fire water system as a mitigation of process releases can make sense because the system limits flammable hazards in a process. As one expert testified, context matters. AR 23718. For example, if a process hazard analysis team is presented with a scenario involving the failure of a fire water pump, it could not assess the impact of the failure without knowing whether a fire or HHC release from process equipment was occurring. Under this approach, the process hazard analysis team considers everything in the fire water system that could possibly fail and evaluates if and where the fire water system interacts with the process under consideration and if the fire water system or a failure of any part of the system could cause a release of HHC from a process, AR 23100, or a failure to mitigate the consequences of a release, AR 23710.

VI. CONCLUSION

The Court of Appeals’ decision reaches an absurd conclusion: that plain, ordinary, non-toxic water is covered by regulations applicable to HHC. It does so without any foundation in the plain language of the applicable regulations. Moreover, the Court of Appeals’ analysis simply cannot be reconciled with basic—and heretofore uncontradicted—principles of Washington administrative law, by rejecting findings of fact by an administrative agency without even bothering to analyze whether those factual findings are supported by substantial evidence. Finally, by treating fire water as a “process” thus requiring analysis of the “hazards” of a process that itself contains no hazards, compels all PSM-covered entities to engage in absurd exercises.

Because of the importance of these issues under the PSM rules, as well as the disruption that will occur in Washington’s administrative law should the opinion stand, this Court should undertake review.

I certify that this petition contains 4,955 words, exclusive of the items listed in RAP 18.17(b).

DATED: October 19, 2021

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APPENDIX

Court of Appeals' slip opinion App. 1
Order Denying Motion for Reconsideration App. 17

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DEPARTMENT OF LABOR AND)	No. 80685-8-I
INDUSTRIES OF THE STATE OF)	
WASHINGTON,)	
)	
Appellant,)	
)	DIVISION ONE
v.)	
)	
PHILLIPS 66 COMPANY DBA)	
PHILLIPS 66 COMPANY REFINERY,)	
)	PUBLISHED OPINION
Respondent.)	
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MANN, C.J. — The Washington Legislature created the Washington Industrial Safety and Health Act (WISHA), ch. 49.17 RCW, “in order to assure, insofar as may reasonably be possible, safe and healthful working conditions for every man and woman working in the state of Washington.” In furtherance of WISHA, the Department of Labor and Industries (Department) promulgated the Process Safety Management of Highly Dangerous Chemicals rules (PSM rules) “for preventing or minimizing the consequences of catastrophic releases of toxic, reactive, flammable, or explosive chemicals [that] may result in toxic, fire, or explosion hazards.” WAC 296-67-001(1).

The PSM rules include the mechanical integrity regulation, WAC 296-67-037, and process hazard analysis regulation, WAC 296-67-017.

The Department cited Phillips 66 for violating both the mechanical integrity and process hazard analysis regulations by failing to inspect and analyze risks to its fire water system at the company's Ferndale refinery. The Department appeals a superior court's decision affirming the Board of Industrial Insurance Appeal's (Board) ruling that the PSM rules do not apply to Phillips 66's fire water system. Because Phillips 66's fire water system is integral to preventing or minimizing the consequences of catastrophic releases at the Ferndale refinery, we hold that the system falls within the plain language and intent of the PSM rules, as well as the overall purpose of WISHA. We reverse the Board's conclusion that the PSM rules do not apply to Phillips 66's fire water system. Because the PSM rules do apply, we remand to the Board to reexamine whether Phillips 66's fire water system complies with the mechanical integrity and process hazard analysis regulations.

FACTS

A. Background

Phillips 66 operates a refinery in Ferndale, Washington, where it refines crude oil into gasoline, diesel, and liquefied petroleum gas. The refinery boils the crude oil in a 100-foot-high cylindrical tower, removing impurities and separating the raw material into its component parts. Specialized equipment diverts the separated hydrocarbon products to other areas of the refinery for storage, shipment, or additional processing.

The refinery contains an elaborate fire water system. The system consists of a one-million-gallon primary water tank, freshwater ponds, underground and above

ground piping, hydrants, and water cannons. The system was designed with redundancies, including back-up pumps, back-up water sources, and multi-route piping segments. The piping is laid out in a grid fashion around the refinery; if one section fails, water could be routed in different ways to reach the necessary areas. The fire water system has the capacity to pump over 30,000 gallons per minute. If the primary tank's water were exhausted, the system could switch to freshwater ponds and, if needed, the Pacific Ocean.

Phillips 66 uses the fire water system to fight potential gas and oil fires, suppress acid vapor releases, and protect process piping and equipment. In the event of a catastrophic release, response teams would use the fire water system to put out any fires and cool the surrounding pipes and equipment to prevent further release or damage. Phillips 66 has also used the fire water system to control some of the refinery's operations. In hot summer months, the company used the system to run "Ferndale coolers," which are large sprinklers used to cool condenser units. The fire water system contains no highly hazardous chemicals and is not directly connected to any of the equipment used to refine the crude oil.

Because the refinery's processes involve high volumes of highly hazardous chemicals, it is subject to the Department's PSM rules. WAC 296-67-001.

In April 2014, Department inspector Sally Buckingham began an inspection at Phillips 66's Ferndale refinery. Buckingham observed leaks in the fire water system, with water bubbling from underground piping and water pooling near the fire equipment. Buckingham also found a leaking hydrant. Phillips 66 provided the Department with its Policy E-4 Inspection and Testing of Fire and Safety Equipment. Although the Policy

had standards for inspection of above-ground systems, including fire sprays, fire pumps, and hydrants, it did not have standards for inspecting the underground pipes or tank.

In September 2014, the Department issued Phillips 66 a citation for violating three provisions of the PSM rules.¹ The citation asserted that Phillips 66: (1) failed to conduct inspections and testing on its fire water system in violation of the mechanical integrity rule under WAC 296-67-037(4)(a); (2) failed to follow “recognized and generally accepted good engineering practices” during the inspections and testing of the fire water systems under WAC 296-67-037(4)(b); and (3) failed to perform a process hazard analysis on the fire water system under WAC 296-67-017(3)(g).

B. Procedural History

Phillips 66 appealed the citation. The Board’s Industrial Appeals Judge (IAJ) presided over 13 days of hearings in October and November 2016. Thirty-one witnesses testified and 103 exhibits were admitted.² Phillips 66’s primary argument was that because the fire water system did not contain highly hazardous chemicals, it was not a “process” covered under the PSM rules.

In May 2018, the IAJ issued a proposed decision and order vacating the citations. The IAJ found that the Department failed to establish that the fire water system was part of a system of vessels, tanks, and piping that hold or carry highly hazardous chemicals and therefore was not a “process” or “process equipment” subject to the PSM rules. As a result, the IAJ found that the Department failed to demonstrate that the inspection requirements in WAC 296-67-037, and process hazard analysis

¹ The citation at issue in this appeal is Citation and Notice of Assessment in Inspection 317037216.

² The appeal hearing addressed two other citations issued to Phillips 66 that are not subject to this appeal.

requirements in WAC 296-67-017, applied to the fire water system at the Phillips 66 refinery. The Department petitioned for review of the IAJ's proposed decision to the Board.

The Board agreed with the IAJ that the Department failed to establish that the fire water system was part of the process or process equipment subject to the PSM rules. Consequently the Board concluded that the inspection requirements in WAC 296-67-037, and process hazard analysis requirements in WAC 296-67-017, did not apply to the fire water system at the Phillips 66 refinery. The Board also found that Phillips 66 regularly inspected the exterior of the fire water tank, and that the inspections followed recognized and generally accepted good engineering practices (RAGAGEP).

The Department appealed the Board's decision to the Whatcom County Superior Court. The superior court affirmed the Board's decision.

The Department appeals.

ANALYSIS

A. Standard of Review

WISHA governs judicial review of decisions issued by the Board. Erection Co., v. Dept. of Labor & Indus., 160 Wn. App. 194, 201, 248 P.3d 1085 (2011). An appellate court reviews "a decision by the Board directly, based on the record before the agency." Erection Co., 160 Wn. App. at 202.

We review challenged Board findings for substantial evidence. Erection Co., 160 Wn. App. at 202. Evidence is substantial if it is enough to convince a fair-minded person of the truth of the asserted fact. Mowat Constr. Co. v. Dep't of Labor & Indus., 148 Wn. App. 920, 925, 201 P.3d 407 (2009). We view the evidence and reasonable

inferences in the light most favorable to the party that prevailed in the administrative proceeding. Frank Coluccio Constr. Co. v. Dep't of Labor & Indus., 181 Wn. App. 25, 35, 329 P.3d 91 (2014).

We review questions of law de novo and interpret agency regulations as if they were statutes. We construe WISHA statutes and regulations “liberally in order to achieve their purpose of providing safe working conditions for every worker in Washington.” Substantial weight is given to the Department’s interpretation of WISHA. In interpreting WISHA we may look to federal decisions that interpret WISHA’s federal analogue, the Occupational Safety and Health Act of 1970 (OSHA), but will not resort to federal case law when Washington law provides controlling precedent.

Schimmick Constr. Co. Inc. v. Dep't of Labor & Indus., 12 Wn. App. 2d 770, 778, 460 P.3d 192 (2020) (internal citations omitted) (quoting Erection Co., 160 Wn. App. at 202).

If a regulation is unambiguous, courts will not look beyond the plain meaning of the words in the regulation. Mader v. Health Care Auth., 149 Wn.2d 458, 473, 70 P.3d 931 (2003). In determining the plain meaning of the regulation, courts may also look to the statutory scheme as a whole. Mader, 149 Wn.2d at 473. In doing so, the court “will not add to or subtract from the clear language of [the] statute, rule, or regulation.” Dep't of Licensing v. Cannon, 147 Wn.2d 41, 57, 50 P.3d 627 (2002).

B. Background - WISHA and the PSM Rules

The Department derives its authority to promulgate the PSM rules from WISHA. RCW 49.17.040. The Washington Legislature created WISHA “in the public interest for the welfare of the people of the state of Washington and in order to assure, insofar as may reasonably be possible, safe and healthful working conditions for every man and woman working in the state of Washington.” RCW 49.17.010. The purpose of WISHA is to “create, maintain, continue, and enhance the industrial safety and health program

of the state, which program shall equal or exceed the standards prescribed by the Occupational Safety and Health Act of 1970.” RCW 49.17.010.

The purpose of the PSM rules are “for preventing or minimizing the consequences of catastrophic releases of toxic, reactive, flammable, or explosive chemicals. These releases may result in toxic, fire, or explosion hazards.” WAC 296-67-001. The PSM rules apply, in part, to “processes” that involve flammable hydrocarbons “on site in one location, in a quantity of 10,000 pounds.” WAC 296-67-001. 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. For purposes of this definition, any group of vessels which are interconnected and separate vessels which are located such that a highly hazardous chemical could be involved in a potential release shall be considered a single process.

WAC 296-67-005.

WAC 296-67-009 through 061 set forth performance-based requirements for specific activities governed by the PSM rule. Each section has discrete scopes. Relevant to this appeal, WAC 296-67-037 regulates mechanical integrity, and WAC 296-67-017 regulates process hazard analyses.

The mechanical integrity regulation applies specifically to various types of “process equipment.” WAC 296-67-037(1). An employer must develop written procedures that maintain the ongoing integrity of the “process equipment,” and then must perform the inspections and tests necessary consistent with its procedures. WAC 296-67-037(2), (4). The employer must perform the inspections and tests following RAGAGEP. WAC 296-67-037(4)(b).

The process hazard analysis regulation applies to “processes” covered by the PSM rules. WAC 296-67-017(1). The process hazard analysis is required to address information including previous incidents, “[c]onsequences of failure of engineering and administrative controls,” human factors, and include “a qualitative evaluation of a range of the possible safety and health effects of failure of controls on employees in the workplace.” WAC 296-67-017(3)(d), (f), (g).

Appendix C of the PSM rules contains nonmandatory compliance guidelines and recommendations for process safety management. WAC 296-67-291. Included in this appendix are guidelines for both the mechanical integrity regulation and the process hazard analysis regulation. WAC 296-67-291(4), (9).

C. Application of the PSM Rules to Phillips 66’s Fire Water System

The Department first argues that because Phillips 66 uses its fire water system for activities involving highly hazardous chemicals, the system is part of its “process,” and thus within the scope of the PSM rules. Phillips 66 concedes that the fire water system falls within the overall scheme of the PSM rules, noting that the system presently complies with the Emergency Planning and Response and Audits portion of the rule. WAC 296-67-053; WAC 296-67-057. Phillips 66 contends however, that the fire water system does not fall within the definition of “process” because it neither contains nor is connected to anything that contains highly hazardous chemicals.

We begin our analysis with the purpose of the PSM rules, which is “preventing or minimizing the consequences of catastrophic releases of toxic, reactive, flammable, or explosive chemicals.” WAC 296-67-001(1). To meet this purpose, the Department adopted a broad interpretation of the term “process” to include:

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. For purposes of this definition, any group of vessels which are interconnected and separate vessels which are located such that a highly hazardous chemical could be involved in a potential release shall be considered a single process.

WAC 296-67-005.

The Department asserts that the definition is broad enough to include Phillip 66's fire water system. The Department supports its argument by emphasizing that the phrase "any activity involving" includes the fire water system because the integrity of the system is equally as important to the safety of crude oil refinement as the integrity of the systems that move and refine crude oil. The Department further argues that by using the term "including" the list of activities included as processes is nonexhaustive and, thus, can include the fire water system. See Associated Press v. Wash. State Legislature, 194 Wn.2d 915, 935, 454 P.3d 93 (2019) (Stephens, J., concurring in part/dissenting in part) (quoting ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 132 (2012) ("The verb to include introduces examples, not an exhaustive list.")).

The Department also relies in part on the Fifth Circuit decision Delek Ref., Ltd. v. Occupational Safety & Health Rev. Comm'n, 845 F.3d 170, 181 (5th Cir. 2016). In Delek, the court reviewed a U.S. Department of Labor, Occupational Safety and Health Review Commission decision upholding a citation to a refinery owner for failing to inspect a positive pressurization unit (PPU) under the federal equivalent of the mechanical integrity regulation. Delek, 845 F.3d at 179. The PPU was a safety system that draws outside air into a refinery's control room, preventing hazardous vapors from entering after release. Delek, 845 F.3d at 179. The refinery owner argued that because

the PPU contained no hydrocarbons, it should not be considered part of the PSM-covered process. Delek, 845 F.3d at 181.

The Fifth Circuit rejected the refinery owner's arguments. In doing so, it referenced a 1997 OSHA letter explaining that a "process" encompasses equipment "even though that equipment does not contain highly hazardous chemicals, if it 'could . . . interfere with mitigating the consequences of such a release.'" Delek, 845 F.3d at 181-82 (quoting OSHA Std. Interp. 1910.119 (U.S. Dep't of Labor Feb. 28, 1997), 1997 WL 33798325, at *1). The Department analogizes the PPU in Delek to Phillips 66's fire water system. Like the PPU, the fire water system minimizes the consequences of a release of highly hazardous chemicals.

We agree with the Department's interpretation of "process" to include the fire water system. A fire water system is paramount in preventing and minimizing the consequences of a catastrophic release of potentially dangerous compounds used in Phillips 66's refining processes. Phillips 66 uses its system to fight chemical fires, suppress acid vapor releases, and protect oil and gas piping during emergencies. It cannot be reasoned that such a system exists in isolation from the remaining activities and is unregulated by the PSM rule.

Phillips 66's fire water system falls within the PSM rule's definition of "process." The definition's inclusive phrasing of "any activity involving" and its subsequent non-exhaustive list of examples extend to the fire water system's inclusion. The suppression of fires and Phillips 66's use of the system to cool its condensing units bring the fire water system within the "process" definition.

Inclusion of the fire water system in both the PSM rule and its definition of “process” comports with the purpose of WISHA. Regulation of the system “assure[s], insofar as may be reasonably possible, safe and healthful working conditions.” Both WISHA and OSHA mandate that Washington workplace safety rules equal or exceed federal standards. RCW 49.17.010; 29 U.S.C. § 667(c)(2). Our Washington PSM rule is identical to its federal counterpart. See WAC 296-67 and 29 C.F.R. § 1910.119. The United States Department of Labor has published its interpretation of the federal standard to include utility systems used to mitigate catastrophic releases. OSHA Std. Interp. 1910.119 (U.S. Dep’t of Labor Jan. 31, 2008) 2008 WL 2565070, at *3. Safe and healthful working conditions, as well as statutory mandate require that the Department be permitted to regulate the fire water system, thus avoiding accidents that threaten the safety and health of workers.

Finally, although we are not bound by federal decisions with respect to OSHA, we may look to them as persuasive authority. Potelco Inc. v. Dep’t of Labor and Indus., 191 Wn. App. 9, 30, 361 P.3d 767 (2015). Here, the Delek decision is persuasive for the reasons expressed by the Department. Phillips 66’s fire water system exists in part to minimize the consequences of a release of highly hazardous chemicals.

We conclude that the fire water system falls within the “process” definition of the PSM rule. The Board erred in concluding otherwise.

D. The Mechanical Integrity Regulation

1. Application

The Department argues that Phillips 66’s fire water system is subject to the mechanical integrity regulation, WAC 296-67-037. The Department relies on both the

plain language of the regulation and the language of Appendix C, WAC-296-67-291(9).³

We agree.

Based on our conclusion that the fire water system falls within the “process” definition of the PSM rule, the mechanical integrity regulation applies. The regulation applies to “pressure vessels and storage tanks; piping systems (including components such as valves); relief and vent systems and devices; emergency shutdown systems; controls (including monitoring devices and sensors, alarms, and interlocks); and pumps.” WAC 296-67-037(1). Much of the fire water system falls squarely within this list of applicable components.

The Department cites WAC 296-67-291(9) to further support its contention that the mechanical integrity regulation applies to the fire water system. Albeit nonmandatory, Appendix C is informative. The appendix identifies fire protection systems as components of the mechanical integrity regulation:

The first line of defense an employer has available is to operate and maintain the process as designed, and to keep the chemicals contained. This line of defense is backed up by the next line of defense which is the controlled release of chemicals through venting to scrubbers or flares, or to surge or overflow tanks which are designed to receive such chemicals, etc. These lines of defense are the primary lines of defense or means to prevent unwanted releases. The secondary lines of defense would include fixed fire protection systems like sprinklers, water spray, or deluge systems, monitor guns, etc., dikes, designed drainage systems, and other systems which would control or mitigate hazardous chemicals once an unwanted release occurs. These primary and secondary lines of defense are what the mechanical integrity program needs to protect and strengthen these primary and secondary lines of defenses where appropriate. The first step of an effective mechanical integrity program is

³ Phillips 66 points to a prior Board decision, where the Board ruled that a water valve that was directly connected to “process equipment” was not itself included, and that the mechanical integrity regulation is restricted to “those pipes and valves that involve highly hazardous chemicals.” In re Equilon Enters., No. 06 W0259, at 5-6 (Wash. Bd. of Indus. Ins. Appeals Oct. 23, 2008), http://www.biiia.wa.gov/DO/06W0259_ORD_20081023_DO.PDF. We hold this interpretation by the Board to be incorrect.

to compile and categorize a list of process equipment and instrumentation for inclusion in the program. This list would include pressure vessels, storage tanks process piping, relief and vent systems, fire protection system components.

WAC 296-67-291(9) (emphasis added).

This guidance clearly contemplates that the fire water system should be included as process equipment.

The Board erred in concluding that Phillips 66's fire water system was not subject to the mechanical integrity regulation.

2. Compliance

The Department argues that because the fire water system is "process equipment" covered by the mechanical integrity regulation, Phillips 66 did not properly inspect the system or comply with RAGAGEP.

The Department cites fire protection expert Sewell for the premise that the National Fire Protection Association's (NFPA) 25 is the "industry standard" for inspection, testing, and maintenance of fire water systems, and that the U.S. Department of Labor generally accepts NFPA 25 as RAGAGEP. Phillips 66 did not comply with NFPA 25 § 9.2.6.1.2, because it did not inspect the interior of the fire water system's storage tank.

Phillips 66's experts refute this premise. PSM expert Steve Arendt, fire water system expert Duane Rehmeyer, expert Clay White, and Refinery Emergency Response Lead William Rinesmith all testified that NFPA is not a RAGAGEP for fire

water systems. Rather, Phillips 66 had its fire water equipment tested by certified American Petroleum Institute (API) inspectors using a different inspection method.⁴

Both parties offered conflicting testimony regarding Phillips 66's fire water system's conformance with RAGAGEP. Although the Board concluded that Phillips 66 complied with the mechanical integrity regulation, it did not identify the proper RAGAGEP or proper conformance with the regulation's additional requirements.

In light of our conclusion that the Board erred in concluding that the mechanical integrity regulation did not apply to the fire water system, we remand to the Board to determine Phillips 66's compliance with the regulation.

E. The Process Hazard Analysis Regulation

1. Application

The Department argues that based on the plain language of both the PSM rule and the process hazard analysis regulation, WAC 296-67-017, the process hazard analysis regulation applies to Phillips 66's fire water system. We agree.

The process hazard analysis regulation requires an employer to perform a "process hazard analysis (hazard evaluation) on processes covered by this standard." WAC 296-67-017(1). As previously discussed, the fire water system is included in Phillips 66's PSM-covered processes because it is used for "activit[ies] involving highly hazardous chemical[s]." WAC 296-67-005. The system "control[s] the hazards involved in [the refinery's] process[es]," thus subjecting the system to evaluation under the process hazard analysis regulation. WAC 296-67-017(1), (3)(g).

⁴ The primary difference at issue between NFPA 25 and the API methods are the way in which the thickness (and thereby the integrity) of the fire water systems components are measured. NFPA 25 calls for visual inspection of the fire water system's primary water tank whereas the API method uses sonic testing. NFPA 25 § 9.2.6.1.2.

We conclude that due to the fire water system being a “process” as defined by the PSM rule, as well as its role in controlling hazards at the refinery, the fire water system is subject to the process hazard analysis regulation.

2. Compliance

The Department argues that because the fire water system is a “process” per the PSM rule, Phillips 66 did not properly take into consideration the system’s failure in any of Phillips 66’s process hazard analyses (PHAs).

Each party offers conflicting evidence in respect to Phillips 66’s examination of the fire water system in its PHAs. Each of Phillips 66’s 17 PHAs are before us in the record. Each PHA was performed under an assumption that “fire protection and mitigation equipment is installed, adequately sized, functional, and tested on a suitable frequency.” Due to the PHAs containing this assumption, it does not appear that Phillips 66 considered the failure of the fire water system.⁵

Alternatively, Phillips 66 offered testimony that each PHA performed on its refinery processes considered the potential loss of all process controls and safety systems, including the fire water system. It further explained that the PHAs evaluated if and where the fire water system interacted with the “process” and can cause a deviation or release of highly hazardous chemicals. Two of Phillips 66’s experts, Czak and Arendt, testified that the PHA procedures met or exceeded the tasks listed in the process hazard analysis regulation.

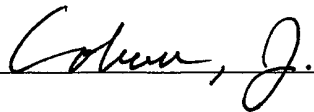
⁵ A lone consideration of the fire water system’s failure exists in Phillips 66’s PHA for “FCC Catalyst and Flue Gas Section.” This consideration, however, is merely a statement of the failure without analysis of any consequence.

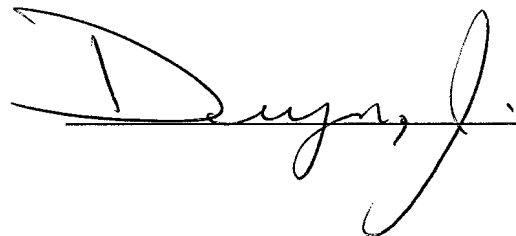
Both parties offered conflicting testimony regarding Phillips 66's examination of the fire water system in its PHAs. Although the Board concluded that Phillips 66 complied with the process hazard analysis regulation, it did not address this conflicting evidence. In light of our conclusion that the process hazard analysis regulation applies, we remand to the Board to determine Phillips 66's compliance.

Reversed and remanded for proceedings consistent with this opinion.



WE CONCUR:





IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DEPARTMENT OF LABOR AND)	No. 80685-8-I
INDUSTRIES OF THE STATE OF)	
WASHINGTON,)	
)	
Appellant,)	
)	DIVISION ONE
v.)	
)	
PHILLIPS 66 COMPANY DBA)	ORDER DENYING MOTION
PHILLIPS 66 COMPANY REFINERY,)	FOR RECONSIDERATION
)	
Respondent.)	
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Respondent Phillips 66 Company DBA Phillips 66 Company Refinery filed a motion to reconsider the court's opinion filed on June 28, 2021. On August 23, 2021, Phillips 66 filed a notice of errata to the July 19, 2021 motion for reconsideration and filed an amended motion for reconsideration. Appellant the Department of Labor and Industries of the State of Washington filed an answer. The panel has determined that the motion for reconsideration should be denied.

Therefore, it is

ORDERED that the motion for reconsideration is denied.

FOR THE COURT:



CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2021, I caused the foregoing document to be efiled, which will send notification to all counsel of record.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing statements are true and correct.

DATED at Seattle, Washington, this 19th day of October, 2021.

s/Karrie Fielder _____
Karrie Fielder, Legal Practice Assistant

STOEL RIVES LLP

October 19, 2021 - 4:38 PM

Transmittal Information

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