

**HORTON IRON AND METAL
SUPERFUND SITE
WILMINGTON, NORTH CAROLINA**

SETTLEMENT AGREEMENT

U.S. EPA Region 4
CERCLA Docket No. 04-2024-7010

**PROCEEDING UNDER
SECTION 122(h)(1) OF CERCLA,
42 U.S.C. § 9622(h)(1)**

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I. JURISDICTION

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which authority has been delegated to the Regional Administrators of EPA by EPA Delegation No. 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders) and re-delegated to the Chief, Enforcement Branch, Superfund & Emergency Management Division, Region 4, EPA. This Settlement Agreement is also entered into under the authority of the Attorney General of the United States to compromise and settle claims of the United States, which authority, in the circumstances of this settlement, has been delegated to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice (DOJ) and further delegated to the Deputy Assistant Attorney General, Environment and Natural Resources Division, DOJ.

2. This Settlement Agreement is made and entered into by EPA and Phillips 66 Company ("Settling Party"). Settling Party consents to and will not contest the authority of the United States to enter into this Settlement Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Settlement Agreement concerns the Horton Iron and Metal Superfund Site located in Wilmington, North Carolina. EPA alleges that the Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. The Site consists of three parcels totaling approximately 42.1 acres in Wilmington, North Carolina. It is bounded on the east by the Northeast Cape Fear River and traversed by a railroad spur in a north-south direction. Unless otherwise noted, the operational history discussed in the following paragraphs occurred entirely on the east side of the railroad tracks.

5. From approximately 1911 to 1930, the Site was owned by The American Agricultural Chemical Company of Connecticut (TAACC-Connecticut) and used for the manufacture of fertilizer. By 1914, TAACC-Connecticut began manufacturing sulfuric acid at the Site by means of roasting pyrite in an acid chamber.

6. Pyrite roasting created waste in the form of dust and pyrite cinders. This waste contained inorganic contaminants, including arsenic, lead, copper, chromium, and cadmium. TAACC-Connecticut is not known to have disposed of any other contaminants impacting the Site.

7. Acid manufacturing occurred on-Site from 1914 until the acid chamber building was decommissioned and not replaced in 1921.

8. In 1930, TAACC-Connecticut transferred assets, including the Site property, to its subsidiary, The American Agricultural Company of Delaware (TAACC-Delaware). TAACC-Connecticut legally dissolved in 1937.

9. TAACC-Delaware is not known to have conducted any fertilizer operations at the Site property after acquiring that property. It is not known how or whether TAACC-Delaware used the Site property after that time.

10. In 1948, TAACC-Delaware sold the property to Naco Fertilizer Company, a subsidiary of W.R. Grace & Co. (Grace). Naco then began manufacturing phosphate fertilizers at the Site. When Naco purchased the property from TAACC-Delaware, the acid chamber building was no longer present.

11. In 1954, Grace dissolved Naco and transferred all of the company's assets to the Davison Chemical Company, a division of Grace. Davison then continued Naco's operations at the Site. Naco and Davison contributed inorganic contamination at the Site as well as pesticide contamination.

12. In 1959, Davison sold the Site property to Horton Iron and Metal Company (Horton). After taking ownership of the property in June 1959, Horton began scrap metal recycling and disposal activities west of the railroad line and continued that business on that portion of the Site until it sold the Property in 2023.

13. In 1962, Horton began shipbreaking operations on the east side of the railroad line (the same side as the former fertilizer manufacturing operations). Horton's activities on the east side included construction of two boat slips into the river. The shipbreaking operation contributed to inorganic contamination at the Site and is the only known source of asbestos, semivolatile organic compounds (SVOCs), polycyclic aromatic hydrocarbons (PAHs), and polychlorinated biphenyls (PCBs) at the Site. After the shipbreaking on the east side ended in 1972, most of Horton's operations have occurred west of the railroad tracks.

14. In 1963, all assets and business of TAACC-Delaware were purchased by Fos-Kem Liquidation Corporation (Fos-Kem), a subsidiary of the Continental Oil Company (Continental), in exchange for shares of Continental \$2 cumulative convertible preferred stock and the assumption by Fos-Kem of liabilities of TAACC-Delaware existing at the time of the sale.

15. Following the 1963 purchase, Fos-Kem changed its name to American Agricultural Chemical Company. TAACC-Delaware ceased operations, changed its name, and dissolved.

16. On December 31, 1965, Fos-Kem, then known as American Agricultural Chemical Company, merged with its parent company, Continental.

17. In January 1966, Agrico Chemical Company (Agrico) was incorporated in Delaware as a wholly-owned subsidiary of Continental. In 1972, Continental conveyed all of its domestic plant food business and assets to Agrico and divested the stock of Agrico to a third party.

18. In 2002, Continental (by then known as Conoco Inc.) merged with Phillips Petroleum Company to form ConocoPhillips Company (ConocoPhillips).

19. The North Carolina Department of Environment and Natural Resources (now the North Carolina Department of Environmental Quality) conducted a Site investigation in 2003 and discovered, among other things, arsenic and lead in the soil.

20. EPA conducted a removal assessment at the Site in 2007 and an expanded investigation at the Site in 2009. These investigations detected numerous hazardous substances, including arsenic, lead, and cadmium, in soil and groundwater at the Site.

21. The Site was placed on the National Priorities List (NPL) on September 16, 2011.

22. Effective May 1, 2012, all downstream and midstream business operations of ConocoPhillips were transferred via a tax-free spinoff to Settling Party, which was separately incorporated in Delaware in November 2011. After the spinoff, Settling Party informed EPA that, solely as between Settling Party and ConocoPhillips, Settling Party was the relevant corporate entity for any further notices or communications with respect to the Site.

23. Between 2013 and 2018, Settling Party, Horton, and the Estate of Josephine Horton (a prior owner of the Site property) conducted a remedial investigation/feasibility study (RI/FS) at the Site pursuant to an Administrative Settlement Agreement and Order on Consent with EPA. The RI identified lead, arsenic, cadmium, PCBs, SVOCs, and other hazardous substances in the soil, groundwater, and sediment.

24. In 2016, contractors for Settling Party, Horton, and the Estate completed the installation of a cofferdam to address EPA's concerns regarding the migration of contaminants from the boat slip sediments to surface water during the FS. This work, as well as the RI/FS, was performed under the supervision of EPA.

25. The FS was finalized in April 2018.

26. EPA selected a remedy for the Site in a Record of Decision (ROD) issued on September 6, 2018. The ROD provides for, among other things, excavation of soil, implementation of alkaline-activated persulfate to treat groundwater, and long-term monitoring.

27. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake additional response actions in the future.

28. In performing these response actions, EPA has incurred response costs and will incur additional response costs in the future.

29. EPA alleges that Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for response costs incurred and to be incurred at the Site.

30. EPA and Settling Party recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by Settling Party in accordance with this Settlement Agreement do not constitute an admission of any liability. Settling Party does not admit, and retains the right to controvert in any subsequent proceedings

other than proceedings to implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in this Section.

III. PARTIES BOUND

31. This Settlement Agreement shall be binding upon EPA and upon Settling Party and its successors and assigns. Any change in ownership or corporate or other legal status of Settling Party, including but not limited to any transfer of assets or real or personal property, shall in no way alter Settling Party's responsibilities under this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the party represented by him or her.

IV. STATEMENT OF PURPOSE

32. By entering into this Settlement Agreement, the mutual objective of the Parties is to avoid difficult and prolonged litigation by allowing Settling Party to make a cash payment to resolve its alleged civil liability under Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site as provided in the Covenants by EPA in Section VIII, subject to the Reservations of Rights by EPA in Section IX.

V. DEFINITIONS

33. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or its appendices, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601-9675.

"Day" or "day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

"Effective Date" shall mean the effective date of this Settlement Agreement as provided by Section XVII.

"EPA" shall mean the U.S. Environmental Protection Agency.

"EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

"Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral or a lower- or upper-case letter.

"Parties" shall mean EPA and Settling Party.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901- 6992 (also known as the Resource Conservation and Recovery Act).

"Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

"Settlement Agreement" shall mean this Settlement Agreement and any attached appendices. In the event of conflict between this Settlement Agreement and any appendix, the Settlement Agreement shall control.

"Settling Party" shall mean Phillips 66 Company.

"Site" shall mean the Horton Iron and Metal Superfund Site, encompassing approximately 42.1 acres, located at 2216 U.S. Highway 421 North in New Hanover County, Wilmington, North Carolina, and generally shown on the map included in Appendix A. For purposes of this Settlement Agreement, the Site and its boundaries shall encompass the aerial extent of contamination existing on or under, or that has migrated or is emanating from, any of the properties comprising the approximately 42.1 acres described above and depicted generally in Appendix A.

"State" shall mean the State of North Carolina.

"United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

VI. PAYMENT OF RESPONSE COSTS

34. **Payment by Settling Party for Response Costs.** Within 30 days after the Effective Date, Settling Party shall pay to EPA \$3,400,000, plus an additional sum for Interest on that amount calculated from 30 days after the Effective Date through the date of payment.

35. Settling Party shall make the payment required under Paragraph 34 by way of either of the following methods:

(1) online payment at <https://www.pay.gov/public/form/start/11751879>. Complete the form including the Site Name, docket number, and Site/Spill ID Number A4EB.

(2) Federal Electronic Fund Transfer (EFT) sent to:

Federal Reserve Bank of New York
ABA: 021030004
Account: 68010727
SWIFT Address: FRNYUS33

33 Liberty Street

New York, NY 10045

Field Tag 4200 of the Fedwire Message should read "D 68010727 Environmental Protection Agency"

Settling Party shall include with its payment reference to Site/Spill ID No. A4EB and the EAP Docket No. for this action. Settling Party shall send to EPA, in accordance with Section XIV(Notices and Submissions), a notice of this payment including these references.

36. **Deposit of Payment.** The total amount to be paid pursuant to Paragraph 34 shall be deposited by EPA in the Horton Iron and Metal Superfund Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

VII. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

37. Stipulated Penalty

a. If the amount due to EPA under Paragraph 34 (Payment by Settling Party for Response Costs) is not paid by the required date, Settling Party shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty \$1,000 plus an additional sum for Interest per day that such payment is late.

b. All stipulated penalties accruing under this Section shall be due and payable to EPA within 30 days after Settling Party's receipt from EPA of a demand for payment of the penalties. Settling Party shall make any such payment by way of either method described in Paragraph 35. Settling Party shall send to EPA, in accordance with Section XIV (Notices and Submissions), a notice of this payment including these references.

c. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Party of the violation or made a demand for payment but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment.

38. In addition to the Interest and stipulated penalty payments required by this Section and Section VI (Payment of Response Cost) and any other remedies or sanctions available to the United States by virtue of Settling Party's failure to comply with the requirements of this Settlement Agreement, Settling Party shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3) if Settling Party fails or refuses to comply with the requirements of this Settlement Agreement. If the United States, on behalf of EPA, brings an action to enforce this Settlement Agreement as a result of Settling Party's failure or refusal to comply with the requirements of this Settlement Agreement, Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

39. EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. Settling Party's payment of stipulated penalties shall not excuse Settling Party from payment as required by Section VI or from performance of any other requirements of this Settlement Agreement.

VIII. COVENANTS BY EPA

40. **Covenants for Settling Party by EPA.** Except as specifically provided in Section IX (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Settling Party or ConocoPhillips pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. With respect to present and future liability, these covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Settling Party of its obligations under this Settlement Agreement. These covenants extend only to Settling Party and ConocoPhillips, and do not extend to any other person.

IX. RESERVATIONS OF RIGHTS BY EPA

41. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Party or ConocoPhillips with respect to all matters not expressly included within Paragraph 40 (Covenants for Settling Party by EPA). EPA reserves all rights against Settling Party with respect to:

- a. liability for failure of Settling Party to meet a requirement of this Settlement Agreement;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability based on the ownership or operation of the Site by Settling Party when such ownership or operation commences after signature of this Settlement Agreement by Settling Party;
- e. liability based on Settling Party's transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Settlement Agreement by Settling Party; and
- f. liability arising from the past, present, or future disposal, release, or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

42. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, that EPA may have against any person, firm, corporation, or other entity not a signatory to this Settlement Agreement, except for ConocoPhillips..

X. COVENANTS BY SETTLING PARTY

43. **Covenants by Settling Party.** Settling Party covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site and this Settlement Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the North Carolina Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

c. any claim pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law relating to the Site.

44. The covenants in this Section shall not apply in the event EPA brings a cause of action or issues an order pursuant to any of the reservations in Section IX (Reservations of Rights by EPA), other than in Paragraph 41.a (liability for failure to meet a requirement of the Settlement Agreement) or 41.b (criminal liability), but only to the extent that Settling Party's claims arise from the same response action or response costs that EPA is seeking pursuant to the applicable reservation.

45. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

46. Settling Party agrees not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have for response costs relating to the Site against any other person who is a potentially responsible party under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Party may have against any person if such person asserts a claim or cause of action relating to the Site against Settling Party.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION

47. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Section X (Covenants by Settling Party), the Parties reserve any and all rights (including, but not limited to, under Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

48. The Parties agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Settling Party has, as of the Effective Date, resolved liability within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or

claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or by any other person; provided, however, that if EPA exercises rights under the reservations in Section IX (Reservations of Rights by EPA), other than in Paragraphs 41.a (liability for failure to meet a requirement of the Settlement Agreement) or 41.b (criminal liability), the "matters addressed" in this Settlement Agreement will no longer include those response costs or response actions that are within the scope of the exercised reservation.

49. The Parties further agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Settling Party has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

50. Settling Party shall, with respect to any suit or claim brought by it for matters related to this Settlement Agreement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Settling Party also shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, Settling Party shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

51. In any subsequent administrative or judicial proceeding initiated by EPA, or the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by EPA, or the United States on behalf of EPA, in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by EPA set forth in Section VIII. Settling Party agrees that the time period commencing on the date of its signature of this Settlement Agreement and ending on the date EPA receives from Settling Party the payment required by Section VI (Payment of Response Costs) and, if any, Section VII (Failure to Comply with Settlement Agreement) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the "matters addressed" as defined in Paragraph 48, and that, in any action brought by the United States related to the "matters addressed," Settling Party will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Settling Party that it will not make this Settlement Agreement effective, the statute of limitations shall begin to run again commencing 90 days after the date such notice is sent by EPA.

XII. ACCESS TO INFORMATION

52. Subject to Paragraph 53 (Privileged and Protected Claims), Settling Party shall provide to EPA, upon request, copies of all records, reports, documents, and other information

(including records, reports, documents and other information in electronic form) (hereinafter referred to as "Records") within its possession or control or that of its contractors or agents relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Site.

53. Privileged and Protected Claims

a. Settling Party may assert that all or part of a Record is privileged or protected as provided under federal law, provided it complies with Paragraph 53.b, and except as provided in Paragraph 53.c.

b. If Settling Party asserts a claim of privilege or protection, it shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Settling Party shall provide the record to EPA in redacted form to mask the privilege or protection only. Settling Party shall retain all Records that it claims to be privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Settling Party's favor.

c. Settling Party may make no claim of privilege or protection regarding any data regarding the Site, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site.

54. Business Confidential Claims. Settling Party may assert that all or part of a Record submitted to EPA under this Section or Section XIII (Retention of Records) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Records that Settling Party claims to be confidential business information will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Settling Party that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such Records without further notice to Settling Party.

55. EPA retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XIII. RETENTION OF RECORDS

56. Until 10 years after the Effective Date, Settling Party shall preserve and retain all non-identical copies of Records now in its possession or control, or that come into its possession or control, that relate in any manner to its liability, if any, under CERCLA or the liability of any other person under CERCLA with respect to the Site. These record retention requirements shall apply regardless of any corporate retention policy to the contrary.

57. At the conclusion of the document retention period, Settling Party shall notify EPA at least 90 days prior to the destruction of any such Records, and, upon request by EPA, except as provided in Paragraph 53 (Privileged and Protected Claims), Settling Party shall deliver such Records to EPA.

58. Settling Party certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site, since notification of potential liability by the United States or the State and that it has fully complied with any and all EPA and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XIV. NOTICES AND SUBMISSIONS

59. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Except as otherwise provided, notice to a Party by email in accordance with this Section satisfies any notice requirement of this Settlement Agreement regarding such Party. There is a rebuttable presumption that emailed notices are received on the same day that they are sent. Any Party may change the method, person(s), or address(es) applicable to it by providing notice of such change to all Parties.

As to EPA:

Graham Burkhalter
Associate Regional Counsel
CERCLA Law Office
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303
burkhalter.robert@epa.gov
(404) 562-9519

As to Settling Party:

Chris T. McGowan
Program Manager, Remediation Management
Phillips 66 Company
2200 Old Spanish Trail
P.O. Box 37
Westlake, Louisiana 70669
Chris.T.McGowan@p66.com
(337) 491-5262

With copies to:

John Garrett
Senior Counsel, Environmental and Regulatory
Phillips 66 Company
2331 CityWest Blvd.
Houston, Texas 77042-2862

John.Garrett@p66.com
(832) 765-4637

and
Jamie Thompson
Partner
Shook, Hardy & Bacon, L.L.P.
2555 Grand Blvd.
Kansas City, Missouri 64108-2613
jthompson@shb.com
(816) 559-0372

XV. INTEGRATION

60. This Settlement Agreement constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement.

XVI. PUBLIC COMMENT

61. This Settlement Agreement shall be subject to a public comment period of at least 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, the United States may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations that indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

XVII. EFFECTIVE DATE

62. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 61 has closed and that comments received, if any, do not require modification of or withdrawal by the United States from this Settlement Agreement.

IT IS SO AGREED:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Dated _____


Maurice L. Horsey, IV
Chief, Enforcement Branch
Superfund and Emergency Management Division
U.S. EPA, Region 4

Signature Page for Settlement Agreement Regarding the Horton Iron and Metal Superfund Site.

U.S. DEPARTMENT OF JUSTICE:

1/17/25
Dated

Patricia A. McKenna
Deputy Section Chief
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
Washington, D.C. 20044-7611



James R. MacAyeal
Senior Counsel
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, DC 20044-7611

Signature Page for Settlement Agreement Regarding the Horton Iron and Metal Superfund Site

FOR PHILLIPS 66 COMPANY:

8-13-2024

Dated



Dan Fischman

Manager, Remediation Management

Phillips 66 Company

1660 W Anaheim Street

Wilmington, CA 90744