



DOUGLAS COUNTY CLERK, OREGON



CERTIFICATE PAGE

IAW ORS 205.180

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IF DOCUMENT IS RE-RECORDED

AFTER RECORDING, RETURN TO:

Oregon Department of Transportation
Attn: Tim Doyle
Region 3 Hazardous Materials Coordinator
3500 NW Stewart Parkway
Roseburg, OR 97470

LICENSE AND AGREEMENT REGARDING RIGHT-OF-WAY CONTAMINATION

This License and Agreement Regarding Right-of-Way Contamination ("Agreement") is entered into by and between Phillips 66 Company ("Phillips 66"), and the STATE OF OREGON, by and through its Department of Transportation ("ODOT"). ODOT and Phillips 66 may from time to time hereinafter be referred to individually as a "Party" and collectively as the "Parties".

Recitals:

(A) ODOT owns certain real property for highway right-of-way purposes as depicted on "Exhibit A," which is attached hereto and incorporated herein by reference ("the Right-of-Way"). ODOT has designated the highway on which the Right-of-Way is located as State Highway 138, delineated by the red lines. The known area of contamination in the Right-of-Way is indicated by the red boxed area on Exhibit A. **The impacted areas shown in Exhibit A are considered to be potentially contaminated with hazardous substances.**

(B) Immediately adjacent to the Right-of-Way on the north side of Highway 138, located at 1744 NE Diamond Lake Blvd, Roseburg, Oregon, is a property owned by Phillips 66 (the "Property"). A legal description and map of the Property is attached hereto and incorporated herein as Exhibit "B." The Property has been used as a bulk petroleum (gasoline and diesel) storage and distribution, and waste oil facility from 1920 to present. In 1997 Union Oil Company of California conveyed the property to Tosco Corporation (predecessor to ConocoPhillips Company). In 2012, ConocoPhillips Company assigned the property to Phillips 66 Company. Tyree Oil has leased the site since 1994 and operates the site as a bulk petroleum (gasoline and diesel) storage and distribution, and waste oil facility. A memorandum from the Department of Environmental Quality, as annotated by the Parties, with a summary of Property ownership, releases and remediation is attached hereto and incorporated herein as Exhibit "C". In 1995 and 2007 diesel releases on the Property were reported to the Oregon Emergency Response System ("OERS"). During the investigation for the diesel spills, additional petroleum contamination was discovered in soil and groundwater on and adjacent to the Property as detailed in Exhibit C, including gasoline, benzene, and PAH's.

(C) Phillips 66 has accepted responsibility for the Contamination for releases associated with the OERS: OERS#1995-1843 and OERS#2007-2308, as described in a file of the Oregon Department of Environmental Quality ("DEQ") identified as DEQ ECSI File 1784 (the "DEQ File"), incorporated herein by this reference.

(D) Under the supervision of the DEQ, Tosco Corporation and Chevron Environmental Management Company have completed some remediation of the site as described in Exhibit C, and Phillips 66 is requesting a determination of No Further Action from the DEQ.

(E) The potential exists for ODOT to incur additional costs associated with the removal, disposal, and replacement of impacted soil and groundwater during future construction projects.

NOW THEREFORE, in consideration of the mutual promises, covenants, representations and warranties contained herein, the Parties agree as follows:

Section 1: Definitions. As used in this Agreement, the following terms shall have the meaning ascribed hereto:

(a) "Environmental Laws" means any applicable federal, state or local statute, ordinance or regulation pertaining to health, industrial hygiene, or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Article 9601, et seq. (CERCLA); the Resource Conservation and Recovery Act, 42 U.S.C. Article 6901, et seq. (RCRA); the Toxic Substances Control Act, 15 U.S.C. Article 2601, et seq. (ISCA); the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Article 136 et seq. (FIFRA); the Federal Water Pollution Control Act, 33 U.S.C. Article 1251, et seq. (Clean Water Act); the Safe Drinking Water Act, 42 U.S.C. Article 300, et seq.; the Solid Waste Disposal Act, 42 U.S.C. Article 6901, et seq.; the Emergency Planning and Community Right To Know Act, 42 U.S.C. Article 11001, et seq.; Oregon Revised Statutes (ORS) chapters 459, 459A, 465, 466, and 468; and all rules existing or hereafter adopted and guidelines promulgated pursuant to the foregoing.

(b) "Hazardous Substances" means all substances, materials and wastes that by its nature or its use are, or that become, regulated under, or that are classified as hazardous or toxic under Environmental Law, including, but not limited to, petroleum-related products such as gasoline, diesel, lubricating oil and any additive to or fraction thereof.

(c) "Remediation" means any activity which is required to respond to any imminent threat to the public health, safety, welfare, and the environment, including, but not limited to, cleanup and removal of contaminated soils or groundwater, soil and groundwater monitoring, and the installation, operation, and maintenance of any technical controls, structures or other devices to prevent further releases or threatened releases pursuant to Environmental Laws.

(d) "Contamination" means those Hazardous Substances that were released by Phillips 66 as a result of its bulk petroleum (gasoline and diesel), waste oil storage, and distribution operations as identified in the DEQ File and releases associated with the Oregon Emergency Response System (OERS) #1995-1843 and #2007-2308 that have come to be located in the soil and groundwater of the Right-of-Way.

Section 2: License to Allow Contamination to Remain on the Right-of-Way.

(a) ODOT will allow the Contamination to remain on the Right-of-Way, pursuant to the conditions and covenants set forth herein, and will not require any additional investigative activity or Remediation regarding the Contamination, except as otherwise provided herein.

(b) In the event ODOT engages in any construction activity in the Right-of-Way that disturbs contaminated soil or water, or where by reason of the construction activity the Contamination creates a hazard to public or worker health, safety or welfare, or the environment, ODOT may either conduct the Remediation or require Phillips 66 to engage in such Remediation as may be necessary to eliminate such hazards. If ODOT conducts the remediation, Phillips 66 shall be responsible for the cost of Remediation as set forth in Section 3, below.

(c) In the event that any natural event including but not limited to a flood or rock slide should expose or disturb the Contamination and create an obligation for Remediation of the Contamination, Phillips 66 shall perform any further Remediation required by law or to protect public or worker safety.

(d) The Parties acknowledge that Phillips 66, as an owner and operator of a facility from which a release of a hazardous substance occurred, is strictly liable under federal and state Environmental Laws for remedial action costs incurred by ODOT, the State of Oregon or any other person that are attributable to or associated with the Contamination.

(e) The Parties further acknowledge that ODOT, as the present owner of the Right-of-Way upon which the Contamination has come to be located, is under certain legal obligations to prevent releases or threatened releases, and retains all rights of contribution against Phillips 66 for the costs of any Remedial Action or other damages or losses incurred by ODOT, DEQ and other parties with respect to a release or threatened release.

(f) Subject to conditions expressed herein, ODOT will allow the Contamination to remain within the Right-of-Way without further Remediation by Phillips 66 on the condition that Phillips 66 accept ongoing liability for the Contamination as provided herein.

(g) ODOT's obligations and forbearance under this Agreement is conditioned and terminates upon occurrence of any of the following:

- (1) Phillips 66's breach or default of any terms, covenants or conditions of this Agreement;
- (2) Phillips 66's violation of any regulations, orders or other regulatory directives regarding its responsibilities or legal obligations with respect to the Contamination;
- (3) Phillips 66's failure to exercise due care with respect to Phillips 66's ongoing monitoring or management obligations pertaining to the Contamination;
- (4) Phillips 66's failure to act in good faith and cooperate with ODOT regarding the monitoring and management of the Contamination.

(5) ODOT's need to undertake highway construction, improvement, repair, operation or maintenance activities that require Remediation of the Contamination;

(6) The conveyance by ODOT of the Right-of-Way or any of ODOT's rights therein to any other party, including, but not limited to, a local public body;

(7) ODOT is ordered or otherwise directed by a federal, state or local agency having regulatory authority over the Contamination to undertake Remediation or any other action to prevent an imminent threat to the public health, safety, welfare, and the environment; or

(8) The occurrence of an emergency or an act of God, as such acts are defined under Oregon law, exposes, disturbs or exacerbates the Contamination for which Remediation is necessary to prevent any imminent threat to human health, safety, and the environment.

Section 3: Responsibility for Remediation Costs. Phillips 66 shall be solely responsible for the costs of any Remediation activity, including, but not limited to, costs connected with or incurred in the creation of a health and safety plan; the proper management and disposal of the impacted material or groundwater; monitoring or any other actions taken to protect public and worker health, safety and welfare, and the environment; and additional engineering controls or designs to prevent further migration or dispersal of the Contamination, as well as any costs incurred by ODOT to investigate, remediate, and monitor the Contamination to the extent that such activities are required of ODOT by DEQ or other governmental agency with jurisdiction. Phillips 66's financial responsibility is contingent upon Phillips 66 being provided a reasonable opportunity to review and comment on any proposed Remediation activities. Phillips 66 will not be liable for costs (i) associated with Remediation activities that arise solely due to ODOT's failure to promptly notify the authorities or take action in the event of any release or exposure associated with the Contamination, or (ii) that ODOT would have incurred in the absence of the Contamination. Upon notice from ODOT, Phillips 66 shall undertake such action deemed reasonably necessary by ODOT to satisfy Phillips 66's duties under this Agreement, including, but not limited to, payment of costs incurred, or performing such Remediation activity as may be necessary.

Section 4. Pollution Liability Insurance: Phillips 66 shall obtain at Phillips 66's expense, and shall keep in effect during the term of this Agreement, pollution liability insurance covering Phillips 66's liability for bodily injury, property damage and environmental damage resulting from sudden accidental and gradual pollution and related cleanup costs that may be incurred relative to Contamination allowed to remain on the Right-of-Way under the terms of this Agreement and Contamination originating from the real property described in Exhibit "B." Combined single limit per occurrence of \$1,000,000. Annual aggregate limit of \$2,000,000. The State of Oregon shall be named as an Additional Insured to the extent of the risk and liabilities and indemnification obligations assumed by Phillips 66 in the Agreement.

Notwithstanding the foregoing, Phillips 66 may elect to self-insure all or any part of its insurance requirements to the extent allowed by applicable law. Upon request, Phillips 66 shall provide The State of Oregon with a letter of self-insurance evidencing its compliance with this clause.

Section 5: Covenants of Phillips 66. Phillips 66 represents, covenants, and warrants as follows:

- (a) Phillips 66 has full power and authority to enter into and carry out the provisions of this Agreement and all activities contemplated hereunder;
- (b) To the best of its knowledge, execution of this Agreement and consummation of the transactions contemplated herein shall not violate or be in conflict with any law, rule, regulation or order, or any agreement to which it is a party or under which it is bound;

That each individual signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Phillips 66, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Phillips 66.

- (c) To the best of its knowledge, this Agreement constitutes a valid and binding obligation of the Parties and is enforceable in accordance with its terms.

Section 6: Notice. Any notice or other communication required or permitted hereunder shall be in writing, and delivered personally, or sent by registered or certified mail, postage and registration or certified charges prepaid, addressed as follows:

Oregon Department of Transportation
Attn: Region 3 Hazardous Materials Coordinator
3500 NW Stewart Parkway Roseburg, Oregon, 97470
Phone no: 541-521-9626

Phillips 66
1660 West Anaheim Street Wilmington, California 90744
Attn: Audrey Bonafede
Phone no: 310-952-6215

Notices shall be deemed received three (3) business days after the date mailed. The address of a Party may be changed by notice delivered or mailed to the other Party.

Section 7: Termination.

- (a) ODOT may terminate this Agreement with or without cause, upon thirty (30) calendar days' notice to Phillips 66, in writing and delivered by certified mail or in person.
- (b) ODOT may terminate this Agreement effective upon delivery of written notice to Phillips 66, or at such later date as may be established by ODOT, under any of the following conditions:
 - (1). If Phillips 66 breaches or otherwise fails to perform any of its obligations under this Agreement.

(2). If ODOT fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to perform its obligations under this Agreement.

(3). If federal or state laws, regulations or guidelines are modified or interpreted in such a way that ODOT's performance of its obligations under this Agreement is prohibited.

Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

Section 8: Term; Assignment. Unless earlier terminated under Section 7, this Agreement shall remain in effect and continue as long as the Contamination remains on, under or within the Right-of-Way and shall inure to the benefit of and be binding upon the Parties and their successors and assigns. With the exception of the transfer of the adjacent property or of the Right-of-Way, no rights or obligations under this agreement may be assigned without the prior, written consent of the other Party.

Section 9: Indemnification. Phillips 66 hereby agrees to indemnify, defend, save, and hold harmless ODOT, the State of Oregon, its officials, employees and agents (collectively, "Indemnitees"), against any and all claims, demands, fees, losses, damages, liabilities, costs and expenses, including without limitation attorney fees at trial and on any appeal or petition for review or any administrative proceeding, arising out of, or relating to, any investigation or Remediation required by DEQ or any other governmental regulatory agency related to the Contamination on the Right-of-Way, or on account of injury to any person whatsoever or damage to the Right-of-Way or any other property arising out of, in connection with or in any way relating to the Contamination, or on account of any injury to persons or property arising from any future actions Phillips 66 takes to complete Remediation of the Contamination to the satisfaction of DEQ or any other governmental regulatory agency with jurisdiction. The foregoing indemnity obligation shall be effective, unless caused by the negligence or willful misconduct of Indemnitees. Notwithstanding the foregoing defense obligations, Phillips 66 nor any attorney engaged by Phillips 66 shall defend any claim in the name of the State of Oregon, nor purport to act as legal representative of the State of Oregon without the prior written consent of the State of Oregon. The State may, at any time at its election assume its own defense and settlement in the event that it determines that Phillips 66 is prohibited from or is not adequately defending the State's interests, or that an important governmental principle is at issue or that it is in the best interests of the State to do so.

Section 10: Amendments. This Agreement may only be amended upon the Parties' mutual consent, in writing, and duly recorded as provided in Section 11.

Section 11: Agreement to Be Recorded. Upon execution, ODOT shall record this Agreement in the real property records of Douglas County, Oregon.

Section 12: Governing Law; Forum; Consent to Jurisdiction.

(a) The laws of the State of Oregon, without giving effect to its conflicts of law principles, shall govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement

Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County. **Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.** Provided, however, that if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This section applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This section is also not a waiver by the State of Oregon of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

Section 13: Attorney fees. In any action by a Party to this Agreement to enforce its terms or conditions, each Party shall bear its own attorney fees and costs.

Section 14: Remedies Not Exclusive. No remedy herein conferred upon or reserved to ODOT is intended to be exclusive, and every such remedy is in addition to any other remedy now or hereafter existing at law or in equity. No delay or omission to exercise any right or remedy contained herein shall impair any such right or remedy, or be construed to be a waiver thereof.

Section 15: Severability. The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

Section 16: Merger. This Agreement contains all of the agreements and understanding between the Parties and supersedes and replaces all prior negotiations and proposed agreements, written or oral.

Section 17: Time of the Essence. Time is of the essence of this Agreement.

Section 18: Execution. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

Section 19: Integration; No waiver. This Agreement and attached exhibit constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party

Phillips 66 Company

By Tracey R. Brown 6-3-2024
Tracey R. Brown Attorney-in-Fact Date

STATE OF CALIFORNIA)

) ss.

County of San Luis Obispo)

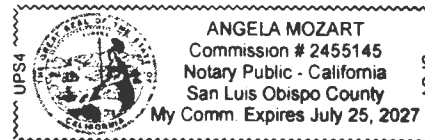
This instrument was acknowledged before me on June 3, 2024 by
Tracey R. Brown of Phillips 66 Company.

Angela Mozart
NOTARY PUBLIC FOR CALIFORNIA
My Commission Expires: 7/25/2027

**STATE OF OREGON, by and through the
DEPARTMENT OF JUSTICE**

Approved as to form by:

Jennifer O'Brien May 29, 2024
Assistant Attorney General for Oregon



27 5 19BA
& INDEX
ROSEBURG

REVISED ON
1-20-22

CANCELLED NO'S
600 800 1100
4300 1700A1 7301
3800



1744 NE Diamond Lake Blvd, Roseburg, Oregon
Map ID 270519BA01900, (Map 27 -5 -19BA), Northeast ¼ of the Northwest ¼ of section 19,
Township 27 South, Range 5 West, Douglas County, Oregon.

27 5 19BA
& INDEX
ROSEBURG

CANCELLED NO'S
600 800 1100
4300 1700A1 7301
3800

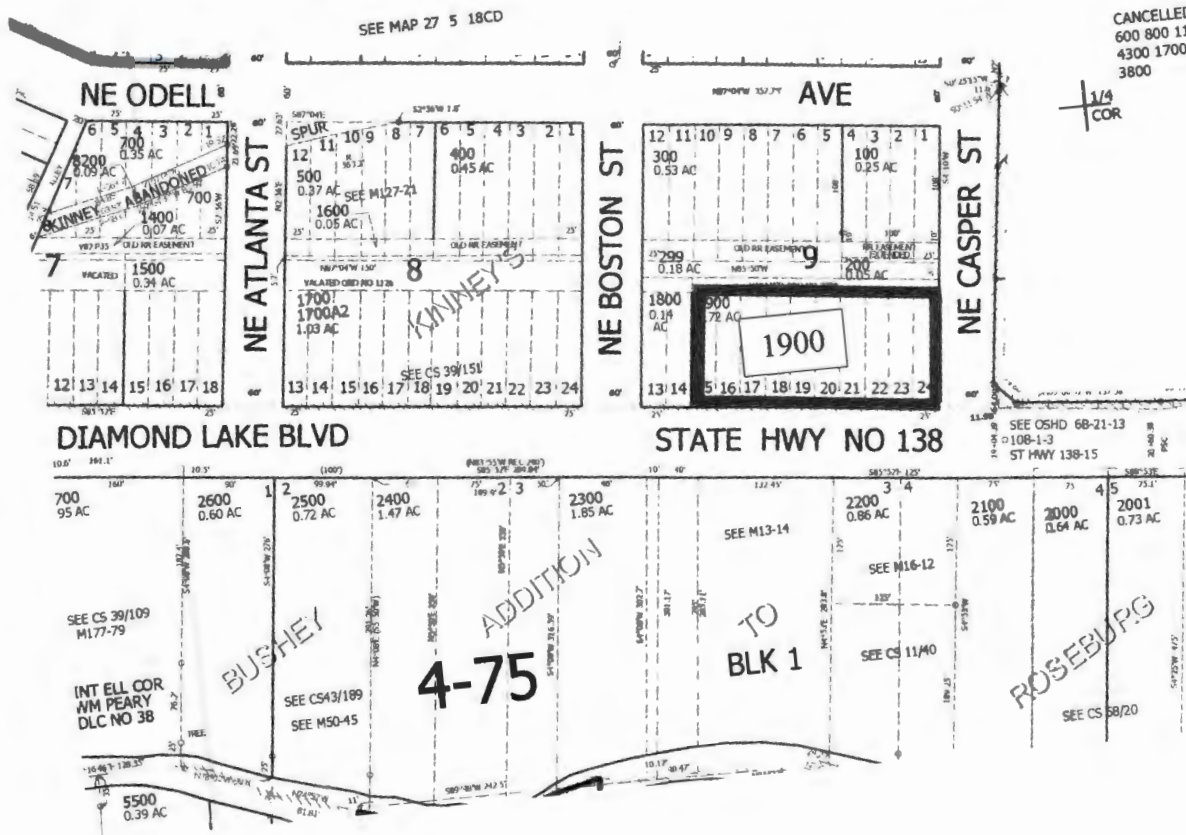


EXHIBIT “C”

Summary of Ownership, Releases and Remediation

State of Oregon

Department of Environmental Quality

Memorandum

See Attached Report