



Louis S. Mosconi  
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January 24, 2020

*By Email and U.S. Mail*

Ms. Jing Song  
Cleanup Project Manager  
NWRO Toxics Cleanup Program  
Department of Ecology  
3190 160<sup>th</sup> Ave. SE  
Bellevue, WA 98009-5452

**Re: Preliminary Determination of Liability  
TOSCO 25535330857  
600 Westlake Avenue North, Seattle, WA 98109  
Cleanup Site ID: 6134  
Facility/Site ID: 46445373**

Dear Ms. Song:

This letter responds, on behalf of Phillips 66 Company ("Phillips 66"), to your letter of December 27, 2019, setting forth the Department of Ecology's ("Ecology") Preliminary Determination of Liability of Phillips 66 for the release of hazardous substances at the referenced facility (the "Site").<sup>1</sup>

Without admitting liability under the Model Toxics Control Act (MTCA) or any other statute or common law principle, and as set forth in this letter, Phillips 66 has agreed, for purposes of Ecology's proposed Agreed Order, to accept its status as a Potentially Liable Person ("PLP") and to waive its rights to the thirty day notice and comment period described in MTCA's implementing regulations (WAC 173-340-500(3)). Phillips 66's Potentially Liable Person Waiver is enclosed.

The Preliminary Determination of Liability letter includes certain statements regarding a corporate relationship between Union Oil Company of California ("Union Oil") and Phillips 66 that are factually and materially incorrect. There is *no corporate predecessor or successor relationship between Phillips 66 and Union Oil*. In 1997, Tosco Corporation acquired a portion of the Site (Parcel Numbers 408880-3355-05 and 198720-0015-04, collectively, the "Southern Parcels") from Union Oil in a large, arms'-length asset acquisition on April 1, 1997. The

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<sup>1</sup> Phillips 66 joins City Investors IX in its request that the Site be referred to as "Block 37" rather than "Block 77," for reasons set forth in Mr. Ziker's letter to you of January 23, 2020.

corporate separateness of the two entities was not changed by that transaction: Tosco did not acquire Union Oil, and Union Oil did not acquire Tosco. Tosco thereafter merged into Phillips Petroleum Company in 2001, and Phillips Petroleum Company merged with Conoco Corporation to form ConocoPhillips Company in 2002. As noted in your December 27 letter, COP station 255353 was demolished in 2009. In a spinoff transaction effective May 1, 2012, Phillips 66 acquired the Southern Parcels from ConocoPhillips Company, and sold the Southern Parcels to City Investors XI, an unrelated entity, on December 5, 2014.

Accordingly, while Phillips 66 is the successor to Tosco, it is *not* a corporate successor to Union Oil, as incorrectly stated in the Preliminary Determination of Liability. None of these transactions created a corporate predecessor or successor relationship between Union Oil and Tosco or Union Oil and Phillips 66. Rather, Phillips 66's status under MTCA as a PLP at the Site can only arise from the following:

- The ownership of the Southern Parcels by Tosco and its corporate successors by merger, Phillips Petroleum Company and ConocoPhillips Company, from 1997-2012;
- Phillips 66's direct ownership of the Southern Parcels from 2012-2014; and
- The migration, if any occurred, of hazardous substances released at the Southern Parcels to other parcels that comprise the Site, or to offsite locations.

We therefore respectfully request that findings suggesting that Union Oil is a corporate predecessor of Phillips 66 be corrected to state that it is not a corporate predecessor of Phillips 66, or at least to delete the erroneous characterization.

Notwithstanding, in connection with its remediation activities addressing contaminants released at and migrating from the Tosco site (600 Westlake Avenue North), Phillips 66 has also been addressing contaminants originally released at and migrating from the City property that includes the former Union 76 station site known as the Auto Service Company cleanup site (FSID 24436664 and CSID 5749). Phillips 66 has no objection to Ecology's proposed combination of the two sites into a single new site, and Phillips 66 looks forward to discussing with Ecology the terms of an Agreed Order that addresses the single combined site.

Apart from the foregoing issues, Phillips 66 is unaware of any evidence of an independent release at the Site of halogenated (i.e., chlorinated) volatile organic compounds ("HVOCs"). Phillips 66 therefore disclaims any liability under MTCA or other theory or principle of liability for HVOC's found at the Site. As noted in your letter, the source of HVOC impacts to groundwater at the Site is the documented releases of HVOCs from the American Linen Supply site located at 700 Dexter Avenue North in Seattle. That site, designated the American Linen Supply Co Dexter Avenue Site (FSID 3573/CSID 12004), is already the subject of an agreed order between Ecology and BMR-Dexter LLC (Order DE 14302), which requires the remediation of that HVOC plume. For this reason, Phillips 66 believes that there is no need to include BMR-Dexter LLC in an agreed order regarding the Site, and that confusion and unnecessary duplication can be avoided if the agreed orders are kept separate. Therefore,

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Phillips 66 joins City Investors XI LLC in urging Ecology to refrain from naming BMR-Dexter LLC to the proposed agreed order for the Site.

As you know, Phillips 66 and its predecessor ConocoPhillips Corporation have been actively involved for more than a decade in an independent remedial action at the Site. As a result, Phillips 66, along with Ecology and City Investors XI LLC, have generated a significant base of knowledge of Site conditions and made significant progress in the cleanup. Phillips 66 therefore believes that the opportunity exists for remediation of the Site to be completed under an agreed order in a particularly expeditious and efficient manner. We look forward to meeting with you and the other PLPs at the Site in the near future, and to working with you to complete this important cleanup.

If you have any questions or wish to discuss further, please do not hesitate to call. Thank you.

Very truly yours,



Louis S. Mosconi  
Western Region Manager, Remediation Department

Enclosure

cc: Ed Ralston, Phillips 66  
City Investors XI, LLC  
Barry Ziker, Esq.  
Allyson Bazan, Office of the Attorney General



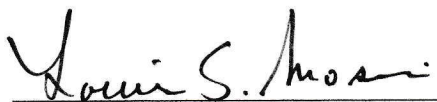
## Potentially Liable Person Waiver

Phillips 66 Company  
3900 Kilroy Airport Way, Suite 210  
Long Beach, CA 90806

Pursuant to WAC 173-340-500 and WAC 173-340-520(1)(b)(i), I, Louis S. Mosconi, a duly authorized representative of Phillips 66 Company, do hereby waive the right to the thirty (30) day notice and comment period described in WAC 173-340-500(3) and accept status of Phillips 66 Company as a Potentially Liable Person with regard to petroleum hydrocarbon contamination at the following contaminated site ("Site"):

- Site Name: TOSCO 25535330857
- Site Address: 600 Westlake Avenue North, Seattle, Washington 98109
- Cleanup Site ID: 6134
- Facility/Site ID: 46445373

By waiving this right, Phillips 66 Company makes no admission of liability and reserves all defenses. Furthermore, Phillips 66 Company specifically disclaims any liability for hazardous substances that have migrated to the above-described Site, including without limitation any chlorinated volatile organic compounds released at or emanating from the property located at 700 Dexter Avenue North, which is the subject of a separate site under Department of Ecology oversight ("American Linen Supply Company Dexter Avenue Site," Facility Site/ID 3573).

  
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Signature

January 24, 2020  
Date

Relation to the Site: Former Owner and Operator