From:	Jaikaran, Bianca
To:	DeGeorge, R. Steven
Subject:	RE: Horton Property
Date:	Tuesday, September 11, 2018 10:34:00 AM
Attachments:	image001.png

Thank you.

And for clarification, is the Estate of Josephine Horton a surviving entity that would enter in the Consent Decree or has the Estate been administered so that Phillips 66 and Horton Iron and Metal would be the only parties to the Consent Decree?

(W.R. Grace is another potential party but due to the bankruptcy we can only ask for contribution – they will not be a party to the Consent Decree)

Bianca

From: DeGeorge, R. Steven [mailto:SDeGeorge@robinsonbradshaw.com]
Sent: Tuesday, September 11, 2018 10:32 AM
To: Jaikaran, Bianca <Jaikaran.Bianca@epa.gov>
Subject: RE: Horton Property

She has not replied to me. I will follow up right away.

From: Jaikaran, Bianca [mailto:Jaikaran.Bianca@epa.gov]
Sent: Tuesday, September 11, 2018 10:25 AM
To: DeGeorge, R. Steven
Subject: RE: Horton Property

Hi Steven,

Have you reached out to Mona O'Bryant or has she confirmed her representation of Horton Iron and Metal for this matter? What is Phillips position in position in terms of Horton Iron and Metal?

Thanks,

Bianca N. Jaikaran
Associate Regional Counsel
Office of Regional Counsel
U.S. EPA Region 4
61 Forsyth Street S.W.
Atlanta, GA 30303-8931
Direct: 404.562.9680
Fax: 404.562.8078
jaikaran.bianca@epa.gov

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From: DeGeorge, R. Steven [mailto:SDeGeorge@robinsonbradshaw.com]
Sent: Thursday, September 6, 2018 4:08 PM
To: 'William A. Raney Jr.' <wraney@wessellraney.com>; 'Mona OBryant' <Mona.O'Bryant@smithmoorelaw.com>
Cc: 'Steve Earp' <Steve.Earp@smithmoorelaw.com>; Jaikaran, Bianca <Jaikaran.Bianca@epa.gov>
Subject: RE: Horton Property

Thank you for reminding me of this. I went back and read the entire file, and you are correct that Phillips 66 has agreed to indemnify the Horton Estate and its beneficiaries relative to the site. Therefore, Phillips 66 will take the lead on any future negotiations that might implicate the Horton Estate or its beneficiaries.

Thank you very much.

R. Steven DeGeorge
Robinson Bradshaw

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sdegeorge@robinsonbradshaw.com
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From: William A. Raney Jr. [mailto:wraney@wessellraney.com]
Sent: Thursday, September 06, 2018 10:52 AM
To: DeGeorge, R. Steven; 'Mona OBryant'
Cc: 'Steve Earp'; 'Jaikaran, Bianca'
Subject: RE: Horton Property

Steve,

You caught me just in ti*me.* I have retired and will be closing my office by the end of September. I have turned over all the files related to the Horton matter to my client, Marcia Horton, so I don't have access to the agreement between Phillips and the estate of Josephine Horton. My distinct recollection is that the agreement was that Phillips assumed all the responsibility and liability of the Josephine Horton estate for the Horton site in return for payment of a sum of money which was paid by the estate. I assume you have access to that agreement through the prior counsel for Phillips whose name I can't recollect at the moment. Although EPA may still consider the Estate to be

technically responsible for some aspects of the matter, Phillips agreed to handle those matters for the estate. If you are unable to track down the agreement between the Estate and Phillips, let me know and I will see if I can dig it up for you.
Bill

From: DeGeorge, R. Steven [mailto:SDeGeorge@robinsonbradshaw.com]
Sent: Tuesday, September 04, 2018 5:01 PM
To: William A. Raney Jr.; 'Mona OBryant'
Cc: 'Steve Earp'; 'Jaikaran, Bianca'
Subject: RE: Horton Property

I understand EPA plans to issue the Record of Decision soon. The EPA lawyer, Bianca Jaikaran, has asked me whether Phillips 66 will take the lead on negotiations as they relate to your clients. Although I believe that's what happened in 2012, I'm not aware of any ongoing agreement to this effect. Please let me know what you think about this.

Thank you very much.

R. Steven DeGeorge
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From: DeGeorge, R. Steven
Sent: Friday, June 10, 2016 2:35 PM
To: 'William A. Raney Jr.'; 'Mona OBryant'
Cc: Steve Earp
Subject: RE: Horton Property

I will check on this right away. The key from my perspective is whether EPA will be comfortable with continuing use of the wells.

From: William A. Raney Jr. [mailto:wraney@wessellraney.com]
Sent: Friday, June 10, 2016 2:19 PM
To: DeGeorge, R. Steven; 'Mona OBryant'
Cc: Steve Earp
Subject: RE: Horton Property

All,

I would like to get the property transferred as soon as possible. My client has been very patient in closing the trust that has title to the property and wants to take this last step. Mona suggested the possibility of HIM signing a letter to P66 indicating that they understand that restrictions are to be placed on the property as part of the remediation process if that will make P66

feel more comfortable with the transfer. I don't' think this is necessary as either the P66 settlement with HIM or EPA's independent authority under its settlement with HIMcould require the owner to impose the restrictions after HIM is the owner. I further understand that EPA and its contractor are aware of the existing wells and their continued use as a non-potable water source for restrooms.

Please let me know your thoughts.

Bill Raney

From: DeGeorge, R. Steven [mailto:SDeGeorge@robinsonbradshaw.com]
Sent: Wednesday, May 04, 2016 1:44 PM
To: 'Mona OBryant'
Cc: William A. Raney Jr.; Steve Earp
Subject: RE: Horton Property

Can you send me a diagram of the property showing where the two supply wells are located?

From: Mona OBryant [mailto:Mona.O'Bryant@smithmoorelaw.com]
Sent: Tuesday, May 03, 2016 9:52 PM
To: DeGeorge, R. Steven
Cc: William A. Raney Jr.; Steve Earp
Subject: Re: Horton Property

Determined that wells are used for toilets and bathroom sinks.

On May 3, 2016, at 12:23 PM, DeGeorge, R. Steven <SDeGeorge@robinsonbradshaw.com> wrote:

> Please confirm that neither well is used for anything other than toilets. (Aren't there sinks/faucets?)
>
> ---
>
> **From:** Mona OBryant [mailto:Mona.O'Bryant@smithmoorelaw.com]
> **Sent:** Tuesday, May 03, 2016 12:22 PM
> **To:** DeGeorge, R. Steven
> **Cc:** William A. Raney Jr.; Steve Earp
> **Subject:** Re: Horton Property
>
> Just for clarification there are 2 wells, both used for toilets.
>
> Mona
>
> On May 3, 2016, at 12:20 PM, DeGeorge, R. Steven <SDeGeorge@robinsonbradshaw.com> wrote:
>
>> Thanks. This is helpful. P66 is generally fine with this approach, although we will need HIM's commitment to specific use restrictions before the property transfer. I will promptly look into whether the restriction modifications highlighted below are acceptable to P66.
>>
>> ---
>
> **R. Steven DeGeorge**
> Robinson, Bradshaw & Hinson, P.A.

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From: William A. Raney Jr. [mailto:wraney@wessellraney.com]
Sent: Tuesday, May 03, 2016 12:13 PM
To: Mona OBryant; Steve Earp
Cc: DeGeorge, R. Steven
Subject: RE: Horton Property

All,

I am sending this to all the lawyers in hopes of getting agreement on a final process to convey the Horton Trust property to HIM with Phillip 66's approval. Just a quick recap.

1. The settlement between the Horton Estate/Trust and P66 provided that the Horton Estate would convey its property to a person/entity directed by P66.

2. P66 agreed that the property could be conveyed from the Horton Estate to the Horton Trust so closing the Horton Estate would be possible. The ultimate conveyance by the Horton Trust is still only with approval of P66.

3. the Horton Trust wants to convey the property to enable the closing of the Trust. The property is the only remaining asset in the Trust.

4. P66 specified HIM as the grantee of the property and HIM agreed to accept the property.

5. P66 wants to make sure HIM is obligated on the record to provide access to P66 and its contractors to accomplish remediation of the site in accordance with the Special Order by Consent with EPA and P66's separate settlement agreements with HIM and the Horton Estate.

6. HIM has agreed to grant an easement allowing P66 access to the property for remediation purposes after the property is transferred to HIM.

7. P66 asked that restrictions be included in the deed from the Trust to HIM that restrict certain uses of the property customarily required as part of a site remediation.

8. I suggested that it would be cleaner to have the restrictions imposed by a declaration of restrictions recorded after the transfer from the Trust to HIM so as to cover all the HIM site and to enhance enforceability of the restrictions by P66 and perhaps by EPA/US if such restrictions are part of the ultimate remediation requirements.

9. P66 has agreed to that process and asked that HIM confirm

that HIM will cooperate in imposing the restrictions once HIM hold title.

10. HIM's president has suggested certain changes to the restrictions proposed by P66 to allow the continued use of a well that is used only for toilets handling domestic waste and to limit the provisions relating to soil disturbance to only the part of the property east of the railroad tracks.

I suggest the following to allow this process to be wrapped up:

A. The deed from the Trust to HIM be a simple non-warranty deed such as originally proposed by P66.

B. HIM and P66 will coordinate on signing and recording any access easement such as already proposed and agreed to by HIM.

C. HIM and P66 coordinate the signing and recording of appropriate restrictive covenants covering all or parts of the HIM combined property. I expect HIM is already bound to agree to impose such restriction in its settlement agreements with both EPA and P66, so I do not think it is necessary to have all the provisions worked out at the time of the transfer from the Trust to HIM. If fact, it may be better to wait until a final set of restrictions is approved by EPA, if that has not already been done, to avoid the possibility of EPA not approving the restrictions or the enforcement language suggested now by the parties.

D. If P66 feels it and/or EPA do not have the ability to require HIM to impose restrictions after HIM becomes the owner of the Trust tract, a separate agreement binding HIM to cooperate can be drafted and signed before the transfer from the Trust to HIM occurs.

Thanks for your consideration of this process. I hope we can agree on my proposal so as to move this along.
Bill

From: Mona OBryant [mailto:Mona.O'Bryant@smithmoorelaw.com]
Sent: Monday, May 02, 2016 4:23 PM
To: William A. Raney Jr.; Steve Earp
Subject: RE: Horton Property

Bill,

I shared the restrictions with Horton Iron & Metal. I received the following two concerns. I am not sure how they should/can be handled.

(b) groundwater restrictions - There are existing wells (2) in place that service toilet facilities. These are located on the Horton Iron & Metal side of the property.

(c) soil restrictions – They had no concerns as long as the Site is defined as area east of railroad crossing.

Mona

From: William A. Raney Jr. [mailto:wraney@wessellraney.com]
Sent: Thursday, April 28, 2016 1:41 PM
To: Mona OBryant; Steve Earp
Cc: DeGeorge, R. Steven
Subject: FW: Horton Property

Mona and Steve,

Below is a message I sent to Steven DeGeorge regarding the proposed deed transferring the Horton Trust property to HIM. He indicates that he agrees with my approach and wants to get confirmation that HIM will be willing to impose restrictive covenants like the ones in their proposed deed. I think it goes without saying that these covenants can be required by EPA so I don't see any problem. If you agree, please let me and John Horton know and I will proceed with transferring the Horton Trust property to HIM by simple non-warranty deed, then recording the easement from HIM to P66. I expect P66 will then want to have restrictions placed on the property such as those in the attached draft deed, but I think P66 may want to coordinate with EPA to make sure the form and content is approved. Let me know.
Bill

From: William A. Raney Jr.
Sent: Thursday, April 28, 2016 11:56 AM
To: 'DeGeorge, R. Steven'
Cc: boojustntyme@yahoo.com
Subject: RE: Horton Property

Steven,

I think there are some problems with the new version of the deed.

1. Since the property will have to be transferred to HIM before HIM can grant the easement it will not be possible to show the book and page of the Easement on the deed since the easement will not be recorded at the time the deed is recorded.

2. I understand that restriction on the use of the property will probably be required as part of the remediation, but I think putting restrictions in this deed will not necessarily achieve the desired purpose and is premature. First, it will only apply to the half of the property that is being granted by the Horton Trust. Second, the deed does not establish a benefitted property or party that is able to enforce the covenants.

Without a benefitted property the covenants may be considered not to be appurtenant and not to run with the property.

3. I suggest that a more logical way to achieve the intended purpose is to have the property conveyed from the Horton Trust to HIM and to then have HIM impose restriction by a declaration of restrictive covenants applicable to all the property. The Declaration can attempt to grant enforcement rights to EPA or Phillips 66 or anyone else that is appropriate. I have seen such restriction with recitals stating the enforcement authority of government agencies even though there is no benefitted property. I believe it is best to have all the property in HIM's ownership, have HIM grant the easement to P66 and then seek guidance from EPA about the form for applying restrictive covenant to the property.

Let me know if this process makes sense to you. If so, I think the first deed that you provided will be appropriate to complete the transaction.

Bill Raney

From: DeGeorge, R. Steven [mailto:SDeGeorge@robinsonbradshaw.com]
Sent: Wednesday, April 27, 2016 5:20 PM
To: William A. Raney Jr.
Subject: Horton Property

Attached is the current version of the Deed. It contains some use restrictions that may not have been in the last version I sent you.

R. Steven DeGeorge
Robinson, Bradshaw & Hinson, P.A.

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