

RECEIVED

Gary Stewart SCDHEC-L&WM
 2600 Bull Street
 Columbia, SC

MAY 11 2022

SITE ASSESSMENT,
 REMEDIATION, &
 REVITALIZATION

SCANNED
 5-12-22 (CL)

This letter is in response to the Notice of Intent to Settle & Opportunity for Public Comment concerning Phillip Services Corporation (ThermalKem) Superfund site. I have the following concerns and submit this letter along with 11 pages of documents. I include references to specific parts of the Consent Agreement of concern, a history of the site that has relevant information that is not included in the department's version, concerns that this document will take precedence over Federal and State law when or if there is an inconsistency.

1. The public hearing that was held on August 26, 2014 was held during the time of a hotly debated C&D landfill permit that had just been applied for, and possibly issued by, L&WM to a NC company, Griffin Brothers. This was obviously what the people who came to the hearing thought you were having the meeting for, as is evidenced in your printout of the meeting. This landfill could have piled C&D wastes 100 to 200 feet above ground level, so you can understand a neighborhood that had suffered since 1966 with a hazardous waste site and since 1985 with a hazardous waste incinerator, would be upset and thought you had come to rescue them from the fate of another waste facility on this site. Instead, you were discussing an old feasibility study among other things, and they did not know what you were talking about. At best it was bad timing.
2. Wastes from this site may well end up in the York County regulated C&D Landfill located on Hwy 324 (McFarland Road) just outside the York, SC town limits and within about 15 miles from this site. The waste removed from the site can be transferred to ANY regulated C&D Landfill WITHOUT a permit. The York County landfill is permitted to pile the wastes as high as 200 feet above ground level and Langrum Branch runs through the property. This will in fact transfer the costs and the danger to the neighbors and citizens of York County. It is also next door to a Black church, Langrum Branch Baptist. The Phillips/ThermalKem site is directly across from Nazareth Baptist, which is also an historic Black church established in 1859. This may involve Environmental Justice issues.
3. No comparative information in lieu of (insitu thermal treatment) seems to have been considered, and no other choices recommended by the in Journal of Environmental Engineers are listed. There is no indication as to the % of retrievable VOCs achieved with in situ thermal compared with other treatments such as Sorbant based remediation using granular biochar amendment and magnetic separation. NEVER is the word incinerator used, but EPA allows it for situ toxics collected, and when I asked EPA about this, they said it is in fact an incinerator. No permits are required for any portion of work conducted on site, and no time limits for clean-up. This is remediation, but NOT a clean -up, and there are limited or no clean-up standards.

2795

4. The site will not be completely cleaned up. Maps do not truly represent the full contamination at this site, and seem to lean toward eventually allowing uses at this site including residences. A major concern is that DEHEC simply wants this long festering problem off their plate. .

5. Composite samples are not prohibited, but should be. When Rock Hill, SC excavated their old sewage lagoons, and could not pass lab tests due to heavy metal concentrations, DHEC allowed them to take samples from other lagoons, mix the samples, and test the composites, so they were all spread the sewage on farmer's land. Later some of it was put in the York county landfill. This information came directly from the Rock Hill Public Works Director at the time, Nick Stegall.

6. According to Sec. 4.3 of the appendix 6 (SOW), the requirements for reporting of an emergency release of toxic materials during cleanup allows 15 days. This is hardly protective of nearby residents.

7. On page 12, the items included in cost reimbursements could easily take most of the \$24 million in escrow considering \$13million has already been spent so far, and the site is still a ticking time bomb. Estimated costs in 2014 were between \$43 and \$29 million and that was 8 years ago.

8. No permits will be required for any work done on site.

9. The only record that can be reviewed is the administrative record of this site. Many times in the past, the responsibility for this permitted site has been allowed to shift from one owner to another with the expectation and promise that each would be more responsible than the last, which has proven false. Each time there was a change of name it was in reality just a pseudo company still owned by the original owners.

10. I have concerns that the companies who produced the wastes will now have the authority and responsibility to clean up the site. If they could have performed this task, I am sure they would not have paid dearly for ThermalKem and Phillips Services Corp. to do it. DHEC and EPA have failed so far to hold the companies that owned this super fund site accountable. From Quality Drum and Industrial Chemical to ThermalKem and Phillips Services, the record of compliance was abysmal. I am concerned that now that DHEC will be getting money for past and future costs, and they will not be anxious to do any better oversight in the future. In addition, this may be a conflict of interest.

11. One of the worst ideas in this agreement is that in Article III pages 23 and 24 no FOI requests will be allowed, and all information will go into a secure server at DHEC. The companies are claiming that they will be business confidential and privileged documents in Article X pages 44 and 45 Paragraph 40 (a)(b). No information will be deposited in local libraries or be made available to the public or press in violation of FOI law.

12. The Potential Responsible Parties (PRPs) made this offer in 2005. It is now 2022. It allows the PRP to collect from smaller companies who do not sign on. You are asking a Federal Judge to sign off on a document that super cedes CERCLA, RICRA, OSHA, FOI, and NCP if there is a conflict. This will be a Federal Judge circumventing Federal Law

13, There is no mention of Nazareth Baptist Church which is located directly across the street from the toxic site. This is an historic 150 year old black church whose members along with local white neighbors formed Citizens for Clean Air and Water, (CCAW), and fought for years to stop the air and water pollution that was going on at this site. Much of the battle was fought against DHEC and the very people who should have been protecting them. They had to go to Federal Court to prevent DHEC from issuing a second incinerator to more than double the toxic capacity of the site.

With kindest regards,

Mary Ellen Connolly [REDACTED]

[REDACTED]

Mary Ellen Connolly
May 6, 2022

IF SIGNED BY THE COURT, THIS CONSENT DECREE WILL BE THE FINAL SETTLEMENT OF ALL PAST, PRESENT AND FUTURE CLAIMS, INCLUDING MATTERS UNDER CERCLA 42 USC 9601. IF IT TURNS OUT TO BE ANOTHER FIASCO AS THE LAST 56 YEARS AND MANY CHANGES OF OWNERSHIP HAVE, THE COMMUNITY HAS NO REDRESS AND NO INFORMATION. THIS CONSENT ORDER LIMITS THE JUDICIAL REVIEW TO THE ADMINISTRATIVE RECORD ONLY. [Per Page 3 C of Consent Decree] – [Article X 14 Future Response Costs] – [Page 84 and 85 and Page 87 (e) ii] No liability for release of substances outside site]

ALL RECORDS WILL BE BUSINESS CONFIDENTIAL AND WILL BE LOCATED IN A SECURE SERVER REQUIRING A PASSWORD AT DEHEC. BASICALLY, THEY WILL BE MADE CLASSIFIED BY ALLOWING THE WORK PARTNERS TO CLAIM THEM AS BUSINESS CONFIDENTIAL AND PRIVILEGED DOCUMENTS. AND NOT AVAILABLE TO FOI REQUESTS BY THE PRESS OR INDIVIDUALS. THEY WILL BE KEPT IN A SECURE SERVER AT DHEC WITH A PASSWORD AVAILABLE TO ONE. NO COPY WILL GO TO A LOCAL LIBRARY. THE FOI WAS PASSED IN 1966 AND STATES THE PUBLIC AND PRESS “HAS THE RIGHT TO ACCESS FEDERAL AGENCY RECORDS” AND SC LAW ALSO COVERS THIS, [Per Article III page 23-24] – [Article X pages 43-45 and 40 (a) (b)] – [page 8(T)]

THERE IS A MUTUAL “NO SUE” CLAUSE BETWEEN DHEC AND THE PRPs. HOWEVER, SECTION XXIII PARAGRAPH 87(a) RESERVES THE PRPs RIGHT TO SUE IF THERE IS A MUTUAL COVENANT DISPUTE. HOW DOES THIS WORK IF ONE SIDE CAN SUE, BUT THE OTHER CANNOT? [Article XXII 61 C Dispute Resolution] – [Paragraph 87 (a) Mutual Covenant not to sue]

DHEC RESERVES THE RIGHT TO USE ITS LEGAL AUTHORITY TO COMPEL ACCESS TO ANY ADJACENT PROPERTY NOT ORIGINALLY OWNED BY THERMALKEM. THIS INCLUDES THE NAZARETH BAPTIST CHURCH, A 250 YEAR-OLD BLACK CHURCH, AND CEMETERY DIRECTLY ACROSS THE ROAD FROM THIS SITE. HOW IS THIS NOT A MISUSE OF IMMINENT DOMAIN? [VII Article 29 (a) page 39]

NO PERMITS ARE REQUIRED FOR THERMAL TREATMENTS OR OTHER REMEDIATION AT THE SITE. THE (PRPs).PROSPECTIVE RESPONSIBLE PARTIES HAVE ALL THE AUTHORITY AFTER DEHEC’s APPROVAL, WHICH IS ALMOST ASSURED BECAUSE THEY ARE DIRECT RECIPIANTS OF 10s OF MILLIONS OF DOLLARS FROM THESE SAME PEOPLE. THE REQUIRMENT FOR REPORTING EMERGENCY RELEASES IS 15 DAYS OR MORE IF NEEDED. HOW DOES THIS PROTECT THE COMMUNITY? [Article III 15(A) page 31] – SECTION 4.3 OF SOW APPENDIX 6]

THE DOCUMENT STATES THAT WORKERS MAY BE EXPOSED TO TOXIC FUMES WHICH IS AGAINST OSHA FEDERAL LAW. IT ALLOWS 15 DAYS TO REPORT A TOXIC RELEASE AND ALSO EXPOSES TOXIC VAPORS TO THE COMMUNITY. WHAT HAPPENS TO THE TOXIC CHEMICALS THAT YOU MANAGE TO TRAP? WHAT OTHER OPTIONS DID YOU CONSIDER FOR THE POTENTIAL REMEDIATION OF THE SITE AND HOW DID THEY COMPARE IN EFFICACY? [Appendix 6 SOW Section 43 Emergency Releases] – [Pg 31 Vapors risk to workers] AND [OSHA 29 CFR 910.120(e) FOR SITE SPECIFIC HASP] - [Federal OSHA Law of 1970 deals with Exposure of workers onsite to vapors] – [SC Pollution Control Act]

MATERIALS AND CONTAMINATED SOILS, INCLUDING THOSE WITH HEAVY AND TOXIC METALS EXCEEDING REMEDIAL GOALS, MAY BE TAKEN TO ANY REGULATED C&D LANDFILL. THIS INCLUDES THE NEARBY YORK COUNTY C&D LANDFILL IN YORK, SC WHICH IS PERMITTED TO ALLOW 200 FEET HIGH LEVELS OF WASTES. THIS TRANSFERS THE PROBLEMS AT THIS SUPERFUND SITE WILL BE TRANSFERRED TO YORK COUNTY AND YORK COUNTY TAXPAYERS. THE LANGRUM BRANCH BAPTIST CHURCH WHICH IS ANOTHER PREDOMINATELY BLACK CHURCH, IS LOCATED IN THE BUFFER ZONE OF THE YORK COUNTY LANDFILL. WHERE DID THE DEBRIS FROM THE OLD INCINERATOR BUILDING THAT WAS TORN DOWN BY DHEC GO? WAS IT THE YORK COUNTY C&D LANDFILL? IN ADDITION, NO RECORDS AT ALL ARE REQUIRED FOR SHIPMENTS OF 10 CUBIC YARDS OF DEBRIS, SO THAT COULD CONTAIN ANY AND EVERYTHING. [SOW Appendix 6 Section 4.4 (a)(b)(c)] – [page 22 under Soil Alternative 3] – a\ [Appendix 6 paragraph 39 on Records of off Site Shipments] - [Appendix 6 Excavation and offsite disposal that contain metals in excess of RGs]

WITH THE FINANCIAL ASSURANCE MECHANISM, AFTER 1 YEAR THE PRPs CAN LOWER OR ADJUST THE AMOUNT OF MONEY IN THE ESCROW ACCOUNT. THE WORK PARTIES HAVE CONTROL OF THE TRUSTEE OF THE ESCROW ACCOUNT. THEY CAN GO AFTER NON-COMPLIANT COMPANIES WHO HAVE SENT SMALL AMOUNTS OF WASTE TO THE SITE, WHICH WAS PERMITTED AND RECOMMENDED BY DHEC AND EPA. COLLECTION FEES, AND LEGAL COSTS CAN BE CHARGED AND KEPT, NOT BY DHEC, BUT BY THESE LARGE PRIVATE WORK PARTY COMPANIES. IN EFFECT, DHEC RELEGATES THEIR REGULATORY AUTHORITY TO THEM WHILE ALSO FINANCIALLY BENEFITING FROM THEM. [Page 54 paragraph 51(a)]

CERCLA rules for Bona Fide Prospective Purchasers are ignored in this Consent Agreement and supercedes CERCLA Section 107(a) that states “CORPORATE OFFICERS AND DIRECTORS AND DIRECTORS CAN BE HELD ACCOUNTABLE” FOR SUPER-FUND SITE” – [42-USC 9601] AND CODIFIED IN 42-USC CHAPTER 103- CERCLA PASSED IN 1960 IMPOSED A “ LIABILITY ON THE PERSON THAT ACTUALLY OWNS THE CONTAMINATED FACILITY”

UNDER "STATUTORY DETERMINATION", IT SAYS "THE SELECTED REMEDY ATTAINS THE MANDATES OF CERCLA & 121 AND TO THE EXTENT POSSIBLE, THE NCP (NATIONAL CONTINGENCY PLAN)" BUT ON PAGE 31 #13, IT STATES THAT THE AGREEMENT SUPERCEDES CERCLA (COMPREHENSIVE ENVIRONMENTAL RESPONSE LIABILITY ACT) IF THERE IS AN INCONSISTENCY. IN THE DECLARATION RECORD OF DECISION, OR ROD, APPENDIX 6, IT STATES THE DOCUMENT WAS DEVELOPED "TO THE EXTENT PRACTICABLE, THE NCP. SO WHICH IS IT? [Page 31 #13] – [Appendix 6 ROD]

THERE IS A MENTION OF VENDORS WHO WILL USE SPECIALTY CONSTRUCTION METHODS AT THE SITE. IT STATES THAT THIS IS A LIMITED NUMBER OF COMPANIES, BUT NONE ARE LISTED, ALTHOUGH THEY WILL ACTUALLY BE DOING THE WORK. WHO ARE THE VENDORS, AND WHAT IS THEIR HISTORY OF PAST ENDEAVORS OF THIS KIND?

WERE ANY PRESENT OR FORMER DHEC, PHILLIPS SERVICES, OR THERMALKEM EMPLOYEES INVOLVED IN ANY CAPACITY IN CHOOSING THIS COMPANY OR THEIR LEGAL TEAM? [CONSENT Agreement Page 12-0 #5-6]

RESTORATION AND REDEVELOPMENT SOLUTIONS, LLC WAS REGISTERED AS AN LLC IN SOUTH CAROLINA ON DECEMBER 2, 2003 BY ROBERT A KERR, JR, 4TH AVENUE MT. PLEASANT SC, AND RECEIVED OWNERSHIP OF ALL OF THE PHILLIPS 152 ACRES OF LAND AND \$4.4 MILLION DOLLARS ON DECEMBER 31, 2003. THE DEEDS TO MOST OF THIS PROPERTY WAS SIGNED OVER TO THE TRUSTEE OF THE TRUST FUND BY BRIAN RECATTO, PRESIDENT OF THERMALKEM ALTHOUGH THERMALKEM DID NOT DECLARE BANKRUPTCY. IT WAS PHILLIPS SERVICES THAT DECLARED BANKRUPTCY. WHERE IS THE PROOF THAT DHEC AND EPA INVESTIGATED AND DETERMINED THAT THIS QUICKLY FORMED, LLC WAS IN FACT "NON AFFILIATED" AS REQUIRED BY CERCLA? ALL THE OTHER COMPANIES INVOLVED AT THIS SITE, STABLEX, NUKEM, THERMALKEM, PETRO CHEM, PIEDMONT ANALYTICAL, AND PHILLIPS SERVICES WERE ACTUALLY ALL THE SAME COMPANY UNDER DIFFERENT CORPORATION NAMES, BUT ONLY PHILLIPS SERVICES DECLARED BANKRUPTCY. THEY SIMPLY CHANGED NAMES AND OWNERSHIP WITH \$5-\$10 MONEY EXCHANGES. HOW DID DHEC INVESTIGATE AND APPROVE ALL THESE EXCHANGES? WHY DID THEY INDICATE TO THE COMMUNITY THAT THESE WERE NEW AND MORE RESPONSIBLE COMPANIES?

RESTORATION AND REDEVELOPMENT SOLUTIONS, IS OWNED BY KLEIN ACCESS WHICH WAS STARTED BY ERIC KLEIN AFTER HIGH SCHOOL AS A LAWN AND LANDSCAPING BUSINESS IN OHIO. IT IS NOW OWNED BY YAK ACCESS. IT IS CALLED KLEIN AND YAK AND IS LOCATED IN CANTON, OHIO. THEY DEVELOPED KLEINS RESTORATIVE SERVICES IN 2012.

WHAT SUPERFUND SITES HAVE THEY REMEDIATED, AND WHAT ARE THEIR CREDENTIALS TO PERFORM THESE TASKS?

WHERE ARE THESE SITES IF ANY LOCATED?

WAS THE "NO AFFILIATION CLAUSE" FOR Bona Fide Prospective Purchasers (BFPP) REQUIRED UNDER CERCLA. 104(4) B APPLIED TO THIS COMPANY? WHERE IS THE INFORMATION THAT DHEC DID OR SHOULD HAVE COLLECTED FOR THE RESTORATION AND REDEVELOPMENT SOLUTIONS LLC THAT WAS FORMED ON DECEMBER 3 2004 AND RECEIVED OVER 150 ACRES OF LAND FOR \$5 AND TRUSTEESHIP OF MILLIONS OF DOLLARS ON DECEMBER 31, 2004?

THIS CONSENT AGREEMENT POSSIBLY VIOLATES CERCLA, FOI, NCP, OSHA, AND THE SC POLLUTION CONTROL ACT MAY ALSO BE VIOLATED.

LOCAL RESIDENTS HAVE NOT FORGOTTEN THE MONEY OWED TO CCAW AND NAZARETH BAPTIST CHURCH. WHAT HAPPENED TO THE \$25,000 PER YEAR THAT THERMALKEM SIGNED OFF IN 1995 TO PAY TO CITIZENS FOR CLEAN AIR AND WATER (CCW) WHICH INCLUDED THE NAZARETH BAPTIST CHURCH, WHEN THEY WERE NEGOTIATING TO HAND OFF THE SITE TO PHILLIPS SERVICES FOR 5\$??? TO DATE THE ACCUMULATED DEBT IS \$1,615,100. WE WANT THE AGREEMENT MADE AND NOTARIZED BY THERMALKEM AND APPROVED BY DHEC TO BE HONORED AND MADE A PART OF THIS CONSENT ORDER (see attachment). IN 1995 THERMALKEM HAD A WRITTEN AGREEMENT WITH CCAW MEMBERS WHO HAD BEEN FIGHTING THE INCINERATOR IN THEIR COMMUNITY FOR YEARS. THEY AGREED IN A LEGAL DOCUMENT TO GIVE THE ORGANIZATION, WHICH INCLUDED THE NAZARETH BAPTIST CHURCH DIRECTLY ACROSS THE ROAD FROM THE TOXIC SITE, \$25,000 A YEAR TO SPEND ON ENVIRONMENTAL ISSUES AND LEGAL FEES IN RETURN FOR THEIR NOT OBJECTING TO THE TRANSFER OF OWNERSHIP TO PHILLIPS SERVICES, AND THEY WOULD ALSO SHUT DOWN THE EXISTING INCINERATOR. THEY NEVER PAID 1 CENT AND NOW THE CHURCH AND GROUP MEMBERS ARE OWED THE MONEY PLUS 6% INTEREST FOR THE 27 YEARS OF BACK PAYMENTS. THIS IS OVER \$1.6 MILLION DOLLARS. DHEC HAS A COPY OF THIS DOCUMENT, BUT THIS IS NOT ADRESSED IN THIS AGREEMENT. WHAT IS ADRESSED IS MAKING SURE THE WORK PARTNERS AND THE DHEC REGULATORS ARE COMPENSATED FOR THEIR INVOLVEMENT AS DESCRIBED IN ARTICLE XV59(c)(i) OF THE CONSENT DECREE, BY GIVING THE WORK PARTNERS THE ABILITY TO GO AFTER THOUSANDS OF NONCOMPLIANT PRPs, HAVING A MULTIMILLION DOLLAR INTEREST BEARING ESCROW ACCOUNT, AND PAYMENTS TO DHEC FOR ALL PAST, PRESENT AND FUTURE DHEC COSTS.

DANGER TO COMMUNITY LEFT BEHIND

UNDER 12.0 OF THE ROD, PRINCIPAL WASTE THREAT, IT STATES "THAT THE THERMAL TREATMENT WILL NOT BE APPLIED TO LOW OR MODERATE CONTAMINATED SOURCES AND SOIL AND SUBSURFACE SOIL CONCENTRATIONS NOT GREATLY ABOVE REFERENCE DOSE LEVELS OR THAT PRESENT AN EXCESS CANCER RISK NEAR THE ACCEPTABLE RANGE WERE EXPOSURE WERE TO OCCUR." UNDER STATUTORY DETERMINATION OF 12.0 IT STATES "BECAUSE THIS REMEDY WILL RESULT IN HAZARDOUS SUBSTANCES, POLLUTANTS, OR CONTAMINANTS REMAINING ONSITE ABOVE LEVELS THAT FOR UNRESTRICTED EXPOSURE, A STUTORY REVIEW WILL BE CONDUCTED WITHIN 5 YEARS." THIS WILL BE DONE BY THE SAME PEOPLE GETTING PAID BY THE WORK PARTNERS AND HAVE BEEN TOTALLY INEFFECTIVE SINCE 1966.

PAGE 87 (e) iii OF THE CONSENT DECREE STATES THAT THERE "WILL BE NO LIABILITY ARISING FROM PAST PRESENT OR FUTURE DISPOSAL, RELEASE, OR THREAT OF RELEASE OF HAZARDOUS SUBSTANCES OUTSIDE THE SITE."

SELECTED REMEDIATION, ALTERNATIVES AND SITE CHARACTERISTICS

THE CHOSEN in-situ thermal REMEDY IS AN INCINERATOR PER EPA. What OTHER REMEDIATION PROCESSES DID DHEC CONSIDER? ACCORDING TO THE JOURNAL OF ENVIRONMENTAL ENGINEERS PUBLISHED ON FEB. 2022 A SORBANT BASED REMEDIATION GRANULAR BIOCHEM AMENDMENT AND MAGNETIC SEPARATION METHOD RESULTS IN A 40 TO 90% RATE OF REMEDIATION EFFICIENCIES FOR ORGANIC COMPONENTS, AND 30-60% OF HEAVY METALS. HOW DOES THIS COMPARE WITH THE in situ thermal PROCESS YOU CHOSE?

COMPOSITE SAMPLING AND SEQUENCING

ROD PAGE 3 11-0 SAYS \$35,854 IS THE PROBABLE COST ESTIMATE FOR WATER TREATMENT. IT IS BASED ON 11 YEAR OLD FEASIBILTY STUDY AND IS THE COST FOR THE WATER CLEANUP AT THIS SITE. IN ADDITION THE SOIL CLEANUP WAS ESTIMATED AT ABOUT \$34 MILLION. THIS DOCUMRNT IS VERY VAGUE ABOUT THE TREATMENT OF THE SITE STATING "THESE AREAS WILL BE REFINED DURING REMEDIAL DESIGN. THE IMPLEMENTATION OF THIS ALTERNATIVE WILL INCLUDE SEQUENCING OF VARIOUS ELEMENTS SO THAT THE ANTICIPATED BENEFITS ASSOCIATED WITH ONE ELEMENT CAN BE EVALUATED AND TAKEN INTO ACCOUNT IN THE IMPLEMENTATION OF SUBSEQUENT STAGES, THE PRECISE SEQUENCING WILL BE DESCRIBED AND JUSTIFIED DURING THE DESIGN PROCESS CONDUCTED PRIOR TO REMEDY INPLEMENTATION". COMPOSITE SAMPLING, WHICH HAS PREVIOUSLY BEEN APPROVED BY DHEC, SHOULD BE PROHIBITED AT THIS SITE FOR WATER OR SOIL SAMPLES.

HISTORY OF THE SITE INCLUDES MUCH MORE THAN IS IN THIS CONSENT ORDER

1966 WALTER AND PEGGY NEAL BOUGHT 45 ACRES ACROSS THE STREET FROM NAZARETH BAPTIST CHURCH FORMED IN 1859 BY THE SLAVE ANCESTORS OF TODAY'S MEMBERS, AND OPENED A SOLVENT RECYCLING BUSINESS. HE MADE A FOREIGN AMMENDMENT TO ALLOW FOREIGN MONEY INTO HIS SC CORP.

1976 CONGRESS PASSED THE RESOURCE CONSERVATION AND RECOVERY ACT (RICRA). IT RECOMMENDED INCINERATION OVER LAND DISPOSAL OF TOXIC WASTES. IT TOOK 4 YEARS FOR EPA TO WRITE REGULATIONS GOVERNING INCINERATION.DURING THIS TIME NEAL GOT AN INTERIM PERMIT TO BURN TOXIC WASTES AT THE ROBERTSON ROAD SITE, GOT A SMALL BUSINESS LOAN, AND BOUGHT AN INCINERATOR ABOUT THE SIZE OF A LITTLE WOOD HEATER THAT WAS NEVER USED.

1979 A SPECTACULAR FIRE LAUNCHED HUNDREDS OF EXPLODING BARRELS INTO THE NIGHT SKY. NEARLY 75 RESIDENTS NEARBY WERE EVACUATED, AND THE FIRE DAMAGED THE NAZARETH BAPTIST CHURCH ACROSS THE STREET.

DEC12, 1982 QUALITY DRUM AN INDUSTRIAL CHEMICAL MERGED AND 5 MONTHS LATER SOLD TO STABLEX CORP. DHEC TRANSFERRED NEAL'S PERMIT TO STABLEX, AND DEHEC ALLOWED IT TO BUILD THE LARGE INCINERATOR THAT IT USED UNTIL IT CLOSED IN 1995.

MAY 1983 STABLEX SC ACQUIRED THE FACILITY AND 26,000 DRUMS AND 200,000 GALLONS OF TOXIC WASTES, BUT MOST IMPORTANT, IT GOT THE VALUABLE PERMIT THAT EPA AND DEHEC HAD ISSUED TO NEAL.

JUNE 6 1983 STABLEX FILED AS A CORPORATION IN DELAWARE AND GOT PERMISSION TO SELL 1,000 SHARES AT \$1.00 A SHARE AND STABLEX SC ACQUIRED ALL 4 PARCELS OF THE FACILITY ABOUT 45 ACRES.

JULY 22, 1983 STABLEX RECEIVED THEIR CORP AS STABLEX SC

FEB 9 1986 OFFICERS OF STABLEX VOTED TO CHANGE THEIR NAME TO THERMALKEM

NOV 17 1986 AMERICAN NUKEM PURCHASED THE STOCK OF STABLEX FOR \$10 NUKEM DIDN'T HAVE ANY INCINERATOR EXPERIENCE WHEN IT BOUGHT THE ROCK HILL SITE. THE COMPANY DID HAVE QUITE A RECORD HANDLING NUCLEAR MATERIAL IN EUROPE. IN 1988, THE GERMAN GOVERNMENT TIED THE COMPANY TO MORE THAN \$10 MILLION IN BRIBES AND ILLEGAL SHIPMENTS OF WEAPONS GRADE NUCLEAR MATERIAL TO PAKISTAN AND LYBIA. NUKEM WAS FOUND TO BE AT THE CENTER OF A CRIMINAL ENTERPRISE TO FIX PRICES AND DIVERT NUCLEAR MATERIALS TO 3RD WORLD MARKETS. THE INVESTIGATION ENDED WITHOUT CONVIVTIONS AFTER NUKEM EXECUTIVE IN CHARGE COMMITTED SUICIDE WHILE IN JAIL

JAN 6 1987 STABLEX SC BEGAN OPERATING UNDER THE SC AMMENDED CERTIFICATE OF INCORTORATION FOR STABLEX, S C ASSUMED NAME OF THERMALKEM, OPERATED AS A HAZARDOUS WASTE INCINERATOR AND STORAGE FACILITY.UNDER RICRA INTERIM STATUS EPA I.D. NO SC044442333.

AUG 02/1990 THERMALKEM, STILL OPERATING UNDER THE OLD INTERIM PERMIT, FILED FOR A 2ND PERMIT AND PURCHASED 108.308 ACRES 603-02-01-003 AND 25 ACRES FROM STAR PAPER TUBE CO. 523-01-01-006 IN THE NAME OF PIEDMONT ANALYTICAL CORP. IN AUGUST1990, DHEC OVERSIGHT CONSISTED OF AN ANNUAL INSPECTION THAT WAS PRESCHEDULED WITH THERMALKEM MANAGEMENT. THAT AUGUST.EPA CONDUCTED A SURPRISE INSPECTION.UPON FINDING VIOLATIONS, EPA TURNED THE ENFORCEMENT ACTION OVER TO DEHEC. UNDER PRESSURE FROM EPA, DHEC ISSUED THE FIRST CIVIL PENALTY AGAINST THE COMPANY. THIS WAS \$90,000FOR OVERFEEDING THE INCINERATOR AND FOR HAVING TOO MANY EMERGENCY RELEASES.

1992 EPA SUED THERMALKEM FOR OVERFEEDING TOXIC METALS INTO THE INCINERATOR.

SEPT 1994 DHEC FINED THERMALKEM \$535,000 FOR A LAUNDRY LIST OF VIOLATIONS;

JAN 14, 1995 1,879 DRUMS OF TOXIC WASTES STORED AT THE SITE WENT UP IN SMOKE IN A MASSIVE FIRE, THERMALKEM REPORTED 500 DRUMS AND WHEN CONFRONTED WITH THE FACTS, A THERMALKEM SPOKESMAN SAID THEY JUST FORGOT ABOUT THE OTHER 1,379 DRUMS. NEIGHBORS COMPLAINED OF TOXIC FUMES BURNING THEIR EYES AND NOSES. A NEIGHBORING EMPLOYEE VIDEO TAPED THE FIRE LATER USED IN COURT BY CCAW/NAZARETH BAPTIST RESIDENTS.

JULY 1995 EPA FINED THERMALKEM \$750,000 FOR EXCEEDING LEVELS OF TOXIC METALS THAT COULD BE INCINERATED ON 478 DAYS. THIS STARTED IN 1989 AND THE FINE COULD HAVE BEEN \$12 MILLION.

SEPTEMBER 1995 CITIZENS FOR CLEAN AIR AND WATER/NAZARETH BAPTIST SIGNED AN AGREEMENT WITH THERMALKEM TO CLOSE THE INCINERATOR PART OF THE FACILITY AND RECEIVE \$25,000 A YEAR FOR ENVIRONMENTAL AND LEGAL WORK IF THEY DID NOT OBJECT TO THE PHILLIPS ACQUISITION.

NOV/1995 PHILLIPS SERVICES CORPORATION PURCHASED THE STOCK OF STABLEX/THERMALKEM AND ITS SUBSIDIARY, PETROCHEM, AND TOOK OVER OPERATION AND MANAGEMENT OF THE FACILITY. THE PRICE WAS \$5

12/1995 PSC CEASED OPERATION OF THE HAZARDOUS WASTE INCINERATOR

1998 PSC SUBMITTED AN INCINERATOR CLOSURE PLAN

9/20/1999 PHILLIPS SERVICES CORP DISSOLVED THEIR SC CORPORATION

FEB.1/2000 PSC AMMENDED A CERTIFICATE OF BANKRUPTCY OF NOV 1999 BANKRUPTCY IN DELAWARE

JUNE 2003 PSC FILED FOR BANKRUPTCY IN TEXAS WHERE THEY PUT UP \$4.3 MILLION FOR ENVIRONMENTAL ACTIVITIES. MOST OF THE LAND (ABOUT 108 ACRES) WAS SIGNED OVER TO RESTORATION AND REDEVELOPMENT SOLUTIONS LLC BY THE PRESIDENT OF THERMALKEM BRIAN RECATTO.

PROBLEMS WITH THE AGREEMENT

1. No permits are required for thermal treatments or other remediation at the site.
2. No permits required to haul off contaminated soil and debris to ANY regulated C&D landfill, This puts the nearest C&D landfill owned and operated by York County (about 12 miles away) at risk.
3. No information is allowed under FOI. All information will go into a secure server at DHEC. None will go to the local library. All will be considered "business confidential and privileged documents.
4. Reporting requirements for emergency releases at the site will be 15 days to report accidents.
5. The PRP companies that created the hazardous wastes will hire people to work at the site and choose the labs to evaluate the samples. There is no prohibition against mixing and creating composite samples. This process has been approved by DHEC in the past.
6. DHEC will be both a recipient of money and the regulator of the decisions made by the PRPs. This is a conflict of interest.
7. No mention of Nazareth Baptist Church, which is directly across the street from this site, is in this document. All maps and deeds leave this information off even though this church has been there for 150 years.
8. Judicial review is limited to the Administrative record.
9. This agreement was proposed first in 2005 by the PRPs. That was 17 years ago. THE PROBLEMS AT THIS SITE HAVE CONTINUED THROUGHOUT THIS TIME.
10. This agreement ends all past, present, and future claims at this site, however the site will continue to have contamination after remediation according to the agreement. No lawsuits will be allowed.
11. The mutual covenant not to sue, eliminates any redress if this agreement falls through as so many have in the past. Pg. 31 refers to potential vapors risk to workers which means the Neighbors may also be at risk.
12. There is mention of vendors who will use specialty construction methods at the site It states that this is a limited number of companies, but none are listed although they will actually be doing the work. Who are the vendors and what is their history of past endeavors of this kind?

13. DHEC will use legal authority to compel access to property not owned by ThermalKem.
(eminent domain)

14. Debris hauled from the site can be sent to any regulated C&D landfill. And no records are required for shipments of 10 cubic yards or less. This may well in up in the York County C&D landfill that is the closest to this site, thus transferring liability to York County residents.

15. Under "Statutory Determination", it says "The selected remedy attains the mandates of CERCLA & 121 and to the extent practicable, the NCP (National Contingency Plan) BUT on page 31 #13, it states that the agreement supersedes CERCLA (Comprehensive Environmental Response Liability Act) if there is an inconsistency. In the Declaration Record of Decision or ROD it states the document was developed "to the extent practicable, the NCP. So which is it?

16. With the Financial Assurance Mechanism, after 1 year the PRPs can lower or adjust the amount of escrow money. Work Parties have control of the trustee of the escrow account. The Work Parties can go after non-compliant companies who sent even small amounts of waste to the incinerator. They can also collect legal and collection costs. This in effect gives DHEC's regulatory powers over to these large private companies. Smaller companies may well be at risk for sending their waste to a site permitted by EPA and DHEC and who were told it was safe and legal.

17. Restoration and Redevelopment Solutions, LLC acquired the 152 acre Phillips/ThermalKem site through a custodial Trust Agreement from the bankruptcy court on December 31, 2003 Early in 2004 they began reimbursing DHEC the response costs the agency had incurred. The trust became title owner on February 12, 2004 after having reimbursed the agency \$3,140,430.13 and \$21.23 of a portion of a total owed of \$8,665,961.87 with \$5,516,341.90 in unrecovered costs. In addition the Work Parties list their costs as of November 2021 was \$4,286,513.40. This almost \$14 Million spent on this site so far mostly on paperwork, legal fees, and bureaucratic actions. CERCLA passed in 1960 and was amended in 1980 and 2002. It imposed liability on the person or entity that actually owns the contaminated facility. Section 107 (a) of CERCLA states "corporate officers and directors can be held accountable" for the superfund site. This is codified in 42 USC Chapter 103. It also states an owner (BFPP -Bona Fide Prospective Purchasers (in this case Restoration and Redevelopment Solutions, LLC) MUST PASS "all approspective inquiries" and MUST take "Reasonable steps" to stop ANY continuing releases and PREVENT any threatened FUTURE releases. Regulators can place a "WINDFALL LIEN" on the property.

18. Possible Federal Laws that will be circumvented by this agreement are CERCLA, FOI, NCP, OSHA, and SC Pollution Control Act.

MONEY OWED TO CCAW AND NAZARETH BAPTIST CHURCH

PAYMENT	AMOUNT	YEARLY INTEREST	TOTAL OWED
1	\$25,000	\$1,500	\$26,500
2	\$25,000	\$3,090	\$54,590
3	\$25,000	\$4,775	\$84,365
4	\$25,000	\$6,562	\$115,927
5	\$25,000	\$8,455	\$149,386
6	\$25,000	\$10,463	\$184,848
7	\$25,000	\$12,590	\$222,439
8	\$25,000	\$14,846	\$262,285
9	\$25,000	\$17,237	\$304,522
10	\$25,000	\$19,771	\$349,293
11	\$25,000	\$22,457	\$396,750
12	\$25,000	\$25,305	\$447,055
13	\$25,000	\$28,323	\$500,378
14	\$25,000	\$31,523	\$556,900
15	\$25,000	\$34,914	\$616,814
16	\$25,000	\$38,509	\$641,814
17	\$25,000	\$40,008	\$706,822
18	\$25,000	\$43,909	\$775,731
19	\$25,000	\$48,044	\$848,775
20	\$25,000	\$52,426	\$926,201
21	\$25,000	\$57,072	\$1,008,273
22	\$25,000	\$61,996	\$1,095,269
23	\$25,000	\$67,215	\$1,187,485
24	\$25,000	\$72,749	\$1,285,234
25	\$25,000	\$78,614	\$1,388,848
26	\$25,000	\$84,831	\$1,498,679
27	\$25,000	\$91,421	\$1,615,100

Attachment 1

Cox Email

March 28, 2022 - Email from Christi Cox to Gary Stewart and Carol Crooks (Crooks email address was incorrect)

March 29, 2022 — Crooks email response to March 28, 2022 Cox email. Acknowledged the receipt of her email.

March 30, 2022 – Crooks email to Cox. Provided the Power Point presentation from the March 22, 2022 public meeting.

May 5, 2022 -- Crooks email to Cox. Completed all responses and request from Cox March 28 email

#1 Attachment

From: Stewart, R. Gary <stewarrg@dhec.sc.gov>
Sent: Monday, March 28, 2022 3:43 PM
To: Crooks, Carol <Crookscl@DHEC.SC.GOV>
Subject: Fwd: Thermalkem/PSC Site

Sent from my Verizon, Samsung Galaxy smartphone
Get [Outlook for Android](#)

From: Christi Cox [REDACTED]
Sent: Wednesday, March 23, 2022 12:33:33 PM
To: Stewart, R. Gary <stewarrg@dhec.sc.gov>; crookscl@dhec.gov <crookscl@dhec.gov>
C [REDACTED]
< [REDACTED]>
j [REDACTED]
r [REDACTED]
Subject: Thermalkem/PSC Site

*** Caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

Gary/Carol:

Following the meeting last night and per my email below, I wanted to follow up with you directly on my questions and requests for information I sent a month ago as well as follow up with the concerns I raised last night at the meeting. Since there was no way to record the public concerns expressed at the meeting, I am highlighting my concerns in this email and ask they be included in the dhec record. I also have additional requests for information that I would ask be expedited since there is a such a short time for public comment.

- 1) I remain concerned about adequate public notice of this issue, especially given the complexity of the issues and the learning curve needed to even understand the legal and technical considerations involved. There are thousands of pages to digest and while DHEC has its own lawyer representing its individual interests, the residents do not. The lawyer stated last night that he could not help answer the public's legal questions as he did not represent the residents. The residents also do not have access to specialists and technical experts to evaluate the impact of proposal. Several residents publicly raised this same concern last night and some even indicated that they felt as though they needed time to hire legal counsel—especially those from the Nazareth Baptist Church. **As such, I do not think you have provided sufficient time to allow the public to understand what is at risk to meaningfully comment. I would therefore ask that this period of time for public comment be extended to May 30, 2022 and a meeting set before then to hold meeting to allow public comment to be transcribed.**
 - a. As I mentioned last night, the direct mailing notices that I requested be sent out to advise the community of the DHEC meeting and extended comment period, were not delivered until yesterday, the day of the meeting. The postage on these mailers was not even marked until March 16, 2022—and I am not sure when they were actually deposited in the mail, but it couldn't have been before March 16 which is less than 6 days before the meeting. People can not be expected to digest hundreds/thousands of legal and technical documents on such short notice. Yesterday was the first day the adjacent residents were actually provided any written notice of this situation.
 - b. The informational link that you placed on the mailers was not working properly. I went to the website personally before and the day of the meeting and the main link to the proposed

consent decree was not active and had a “whoops...” warning notice that the documents could not be accessed, which I communicated and showed to DHEC reps last night. The DHEC representative who was at the back of the meeting room specifically acknowledged that there were technical issues and that would be reviewed and corrected.

- c. Even our elected state representatives who were present for this meeting, Rep. John King and Rep Randy Ligon expressed concerns about DHEC’s communication and lack information/notice concerning their own notice from DHEC about the meeting last night. It is my understanding the earliest they were even sent any information about this issue at all was March 17 2022, and some of them did not receive it and heard about this from a resident.
 - d. As chair of the York County council and representative for this district, I was never informed from DHEC about this issue. I heard about it from a resident and immediately asked DHEC to hold a meeting and extend public comment.
- 2) As I understand it, one of the components that is required to be considered by the Court to approve any settlement is whether the public had adequate time to comment and whether their comments were adequately addressed. In addition to lack of notice, I am concerned people do not understand how to make their comments recorded in the record sufficiently to ensure DHEC has made an adequate and good faith response. I am also concerned that DHEC has not done enough to make sure these comments are sufficiently recorded. Since the meeting last night did not allow the public’s comments to be recorded or transcribed (as I have seen done in other situations) and since DHEC did not provide cards to allow the public to write their comments for the record or otherwise educate them about this process, none of the comments from the 3 hour meeting were recorded in any fashion. I renew my request last night that SCDHEC have a meeting that has a stenographer transcribe the process or that DHEC do a better job explaining that their comments are not recoded unless they are in writing
 - 3) SCDHEC has a financial interest in seeing that this consent order is approved, and that is a concern that I and others expressed at the public meeting. I heard the public express several times that they lack trust to begin with given how DHEC failed to adequately responded to this catastrophic situation and allowed this facility to continue operating, refusing to shut it down for years until it ultimately blew up. People died, were sick and their property suffered, yet there is no mechanism in this proposal to protect them or their interest and their damages. DHEC historically failed to protect the public interest for many years and I object to them receiving ANY MONEY as reimbursement from this deal. ANY AND ALL MONEY should go to the community residents and betterment of the community.
 - 4) At the meeting, I asked what was done to determine the cost of remediation as the consent decree proposes only \$24M be set aside for remediation costs. This amount is more than \$10M less than what the soil excavation costs and offsite disposal ALONE was estimated to be over 7-10 years ago years ago and the costs for hazardous waste disposal have certainly not dropped in the last 7 years. This doesn’t even address the ground-water remediation costs that were estimated at over \$32M 7-10 years ago. This remediation cost set aside is woefully inadequate to ensure proper cleanup and is NOT protective of the public health, welfare or the environment, and is inappropriate, improper, or inadequate. The contamination was so severe that nobody can be on the property and you are recommending deed restrictions on the property forever such that DHEC recommends no water use or people or houses on the property forever. Yet you are also allowing part of the property to be carved out and sold off to build a massive housing development that SCDHEC will financially benefit from the sale.
 - 5) I am concerned about activity on the site causing a spread of the contamination and disturbance will leak through the water table and would like an explanation of that. I heard the Nazareth Baptist church residents raise serious concerns about drainage during rains of the contamination flowing on their property. I do not think the response from DHEC was adequate to address their concerns.
 - 6) No property owned by PSP or its affiliated entities should be sold for a housing development.
 - 7) I would like to know what monitoring wells were placed on the property that is purported to be carved out and sold for a housing development.
 - 8) All of DHEC’s services are provided via taxpayer funds already, I do not see how they should be entitled to take money to “reimburse themselves” instead of that money going to the community, the surrounding residents. I object to the proposal that SCDHEC get any money at all for this, especially

since the remediation costs have risen. All assets and the entire property owned should be committed to community use, not private housing development.

- 9) Under FOIA, I am asking for access and copies to the following documents/information—I would ask that you please provide me with copies as soon as possible given your public comment period ends very soon, and if I need to direct these requests to someone else, please let me know that immediately as well:
- a. Copy of the Powerpoint presented by DHEC to the public last night.
 - b. Documents reflecting the names/addresses of the individuals who were mailed the meeting notice for the public meeting yesterday.
 - c. Copies of remediation cost estimations made after the 2016 proposal.
 - d. Copies of DHEC communications about this proposed consent decree.

From: Christi Cox
Sent: Sunday, February 27, 2022 7:05 PM
To: stewarrg@dhec.sc.gov
Subject: Fwd: Thermalkem Site/Phillip Services

Sent this last Friday after our call. Please confirm receipt.
Sent from my iPhone

Begin forwarded message:

Sent this last Friday after our call. Please confirm receipt.
Sent from my iPhone

Begin forwarded message:

From: Christi Cox [REDACTED]
Date: February 25, 2022 at 10:33:00 AM EST
To: stewarrg@dhec.sc.gov
Subject: Thermalkem Site/Phillip Services

I serve on the York County Council and represent individuals living around the Thermalkem site. I also live at 755 East Rambo Road, Rock Hill SC and have a personal interest in this issue.

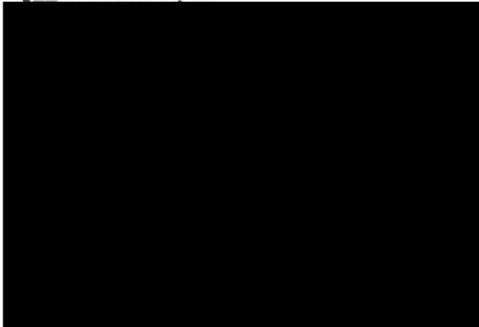
I have just been informed that there is a proposed settlement agreement between SCDHEC and the property owner to address the clean-up. I have never seen this and would like a copy of the proposal and related documents. I understand there was never any direct notice provided to anyone or to any adjacent property owners and this was only published in the newspaper. I am requesting that a public hearing/community meeting be scheduled to educate the public about the proposal and that the public comment period be extended until such time that can happen. I would also ask that the adjacent property owners be given written notice of this proposal and be invited to any proposed meeting.

I also understand there is a proposed developer under contract to buy part of the adjacent property that was previously owned by this same group that contaminated the property, and they intend to carve out the property that has the contaminated the wells and put in a sizeable subdivision. I would like information on this deal and would like to know whether the prospective buyers of these parcels will be given notice of the contamination.

I am also requesting under FOIA to be provided all documents related to this proposal, any documents regarding Parcel 5320101005, Parcel 6030201003, to specifically but not exclusively include the proposed consent clean up agreement.

Thank you,
Christi Cox

CHRISTI PORTER COX
HAMILTON MARTENS, LLC



THIS MESSAGE IS INTENDED SOLELY FOR THE ADDRESSEES AND MAY CONTAIN CONFIDENTIAL AND PRIVILEGED INFORMATION. IF YOU HAVE RECEIVED THIS MESSAGE IN ERROR, PLEASE NOTIFY ME IMMEDIATELY BY ELECTRONIC MAIL OR TELEPHONE.

Re: Thermalkem/PSC Site

Crooks, Carol <Crookscl@DHEC.SC.GOV>

Tue 3/29/2022 4:15 PM

To: christi.cox [REDACTED]

Cc: Stewart, R. Gary <stewarrg@dhec.sc.gov>

Hello Ms. Cox,

I wanted to respond to your email from last Wednesday. For clarification, I didn't receive the email until late yesterday afternoon. My email address was missing the "sc" in the dhec.sc.gov part of the address.

I plan to provide you with two of your requested FOIA items tomorrow morning. I can email you the Powerpoint presentation and the information that you have requested on the remediation cost estimations. I did just check our webpage for The Philips Services Site and I see the links under documents for the Feasibility Study and Record of Decision are working, however, I also see the Proposed Plan link is not. These are the documents that contain information of estimated remediation cost. I'll contact the appropriate technical person to get the Proposed Plan document correctly linked for viewing.

I should be also able to address some of your other concerns from your email tomorrow morning:

1. Monitoring Wells on the other side of Wild Cat Creek from the facility property.
2. Cost estimates for remediation. These cost are in the documents I have listed above but I can also include a summary of that information in my next email.
3. Information on Nazareth Baptist Church in regards to proximity to the PSC Site.

I'll discuss and coordinate with Gary on your other request for information.

Thanks,

Carol

Carol L. Crooks
Project Manager
State Remediation Section
Bureau of Land and Waste Management
S.C. Dept. of Health & Environmental Control
Office: (803) 898-0810
Connect: www.scdhec.gov [Facebook](#) [Twitter](#)



Re: Thermalkem/PSC Site

Crooks, Carol <Crookscl@DHEC.SC.GOV>

Wed 3/30/2022 1:35 PM

To: christi.cox [REDACTED]

Cc: Stewart, R. Gary <stewarrg@dhec.sc.gov>

📎 1 attachments (520 KB)

PowerPointPrt.3.22.22.pdf;

Ms. Cox,

Attached is a copy of the Power Point presentation for the Philip Services Site from March 22, 2022.

I'm working on some of the other information that you requested in your March 23, 2022 email (that I received on March 28th due to an email address error). If it is acceptable, I will supply responses to your request as I am able to gather the needed information and not wait until I have all responses prepared to answer your questions. I think this approach will provided you with information in a more expedited manner.

Thanks,

Carol

Carol L. Crooks
Project Manager
State Remediation Section
Bureau of Land and Waste Management
S.C. Dept. of Health & Environmental Control
Office: (803) 898-0810
Connect: www.scdhec.gov [Facebook](#) [Twitter](#)



From: Stewart, R. Gary <stewarrg@dhec.sc.gov>

Sent: Monday, March 28, 2022 3:43 PM

To: Crooks, Carol <Crookscl@DHEC.SC.GOV>

Subject: Fwd: Thermalkem/PSC Site

Sent from my Verizon, Samsung Galaxy smartphone
Get [Outlook for Android](#)

Response to your March 23, 2022 Email

Crooks, Carol <Crookscl@DHEC.SC.GOV>

Thu 5/5/2022 5:18 PM

To: christi.cox

C
<
<
<

📎 4 attachments (713 KB)

Response to Questions.docx; Mailing List3.22.22(B).pdf; Selected Remedy Revised Cost Estimate Jan2020 (C).pdf; Questions.docx;

Mrs. Cox,

I have attached our responses to your questions, included in your March 23, 2022 email, addressed to myself and Gary Stewart. Additionally, there are two other attachments in response to your FOIA request within the same email. I had previously sent the March 22, 2022 meeting Power Point presentation so did not include it in this email.

Also, for convenience to anyone copied that might not have the original questions handy, I have attached a copy of your questions.

I hope these responses are helpful.

Respectfully,

Carol

Carol L. Crooks
Project Manager
State Remediation Section
Bureau of Land and Waste Management
S.C. Dept. of Health & Environmental Control
Office: (803) 898-0810
Connect: www.scdhec.gov [Facebook](#) [Twitter](#)



Gary/Carol:

Following the meeting last night and per my email below, I wanted to follow up with you directly on my questions and requests for information I sent a month ago as well as follow up with the concerns I raised last night at the meeting. Since there was no way to record the public concerns expressed at the meeting, I am highlighting my concerns in this email and ask they be included in the dhec record. I also have additional requests for information that I would ask be expedited since there is a such a short time for public comment.

- 1) I remain concerned about adequate public notice of this issue, especially given the complexity of the issues and the learning curve needed to even understand the legal and technical considerations involved. There are thousands of pages to digest and while DHEC has its own lawyer representing its individual interests, the residents do not. The lawyer stated last night that he could not help answer the public's legal questions as he did not represent the residents. The residents also do not have access to specialists and technical experts to evaluate the impact of proposal. Several residents publicly raised this same concern last night and some even indicated that they felt as though they needed time to hire legal counsel—especially those from the Nazareth Baptist Church. As such, I do not think you have provided sufficient time to allow the public to understand what is at risk to meaningfully comment. I would therefore ask that this period of time for public comment be extended to May 30, 2022 and a meeting set before then to hold meeting to allow public comment to be transcribed.
 - a. As I mentioned last night, the direct mailing notices that I requested be sent out to advise the community of the DHEC meeting and extended comment period, were not delivered until yesterday, the day of the meeting. The postage on these mailers was not even marked until March 16, 2022—and I am not sure when they were actually deposited in the mail, but it couldn't have been before March 16 which is less than 6 days before the meeting. People can not be expected to digest hundreds/thousands of legal and technical documents on such short notice. Yesterday was the first day the adjacent residents were actually provided any written notice of this situation.
 - b. The informational link that you placed on the mailers was not working properly. I went to the website personally before and the day of the meeting and the main link to the proposed consent decree was not active and had a "whoops..." warning notice that the documents could not be accessed, which I communicated and showed to DHEC reps last night. The DHEC representative who was at the back of the meeting room specifically acknowledged that there were technical issues and that would be reviewed and corrected.
 - c. Even our elected state representatives who were present for this meeting, Rep. John King and Rep Randy Ligon expressed concerns about DHEC's communication and lack information/notice concerning their own notice from DHEC about the meeting last night. It is my understanding the earliest they were even sent any information about this issue at all was March 17 2022, and some of them did not receive it and heard about this from a resident.
 - d. As chair of the York County council and representative for this district, I was never informed from DHEC about this issue. I heard about it from a resident and immediately asked DHEC to hold a meeting and extend public comment.

- 2) As I understand it, one of the components that is required to be considered by the Court to approve any settlement is whether the public had adequate time to comment and whether their comments were adequately addressed. In addition to lack of notice, I am concerned people do not understand how to make their comments recorded in the record sufficiently to ensure DHEC has made an adequate and good faith response. I am also concerned that DHEC has not done enough to make sure these comments are sufficiently recorded. Since the meeting last night did not allow the public's comments to be recorded or transcribed (as I have seen done in other situations) and since DHEC did not provide cards to allow the public to write their comments for the record or otherwise educate them about this process, none of the comments from the 3 hour meeting were recorded in any fashion. I renew my request last night that SCDHEC have a meeting that has a stenographer transcribe the process or that DHEC do a better job explaining that their comments are not recorded unless they are in writing
- 3) SCDHEC has a financial interest in seeing that this consent order is approved, and that is a concern that I and others expressed at the public meeting. I heard the public express several times that they lack trust to begin with given how DHEC failed to adequately responded to this catastrophic situation and allowed this facility to continue operating, refusing to shut it down for years until it ultimately blew up. People died, were sick and their property suffered, yet there is no mechanism in this proposal to protect them or their interest and their damages. DHEC historically failed to protect the public interest for many years and I object to them receiving ANY MONEY as reimbursement from this deal. ANY AND ALL MONEY should go to the community residents and betterment of the community.
- 4) At the meeting, I asked what was done to determine the cost of remediation as the consent decree proposes only \$24M be set aside for remediation costs. This amount is more than \$10M less than what the soil excavation costs and offsite disposal ALONE was estimated to be over 7-10 years ago years ago and the costs for hazardous waste disposal have certainly not dropped in the last 7 years. This doesn't even address the ground-water remediation costs that were estimated at over \$32M 7-10 years ago. This remediation cost set aside is woefully inadequate to ensure proper cleanup and is NOT protective of the public health, welfare or the environment, and is inappropriate, improper, or inadequate. The contamination was so severe that nobody can be on the property and you are recommending deed restrictions on the property forever such that DHEC recommends no water use or people or houses on the property forever. Yet you are also allowing part of the property to be carved out and sold off to build a massive housing development that SCDHEC will financially benefit from the sale.
- 5) I am concerned about activity on the site causing a spread of the contamination and disturbance will leak through the water table and would like an explanation of that. I heard the Nazareth Baptist church residents raise serious concerns about drainage during rains of the contamination flowing on their property. I do not think the response from DHEC was adequate to address their concerns.
- 6) No property owned by PSP or its affiliated entities should be sold for a housing development.
- 7) I would like to know what monitoring wells were placed on the property that is purported to be carved out and sold for a housing development.
- 8) All of DHEC's services are provided via taxpayer funds already, I do not see how they should be entitled to take money to "reimburse themselves" instead of that money going to the community, the surrounding residents. I object to the proposal that

SCDHEC get any money at all for this, especially since the remediation costs have risen. All assets and the entire property owned should be committed to community use, not private housing development.

- 9) Under FOIA, I am asking for access and copies to the following documents/information—I would ask that you please provide me with copies as soon as possible given your public comment period ends very soon, and if I need to direct these requests to someone else, please let me know that immediately as well:
- a. Copy of the Powerpoint presented by DHEC to the public last night.
 - b. Documents reflecting the names/addresses of the individuals who were mailed the meeting notice for the public meeting yesterday.
 - c. Copies of remediation cost estimations made after the 2016 proposal.
 - d. Copies of DHEC communications about this proposed consent decree.

Response to Email from Christi Cox to Gary Stewart and Carol Crooks sent on Wednesday, March 23, 2022.

Response to #1

DHEC acknowledges there were problems with the notices that were mailed out for the March 22 meeting. Because of that issue and the requests of you and other members of the community, DHEC held a second community meeting on May 3 and extended the comment period through May 6, 2022.

Response to #2

A court reporter transcribed the May 3 meeting.

Response to #3

Since December 2003 settlement in the Philip Services Corporation bankruptcy, DHEC has expended a significant amount of money responding to conditions at the site. These response actions were funded by the South Carolina Hazardous Waste Contingency Fund (HWCF). The HWCF is NOT funded by taxpayers, but rather by companies who generate hazardous waste in South Carolina. By statute, any funds that are recovered must be put back into the HWCF to ensure funds are available to address other uncontrolled hazardous waste sites in South Carolina.

Answer to question #4

The consent decree does provide that initially the PRP group will set aside \$24 million for remediation costs. However, the PRP group is responsible for providing all funding necessary to complete the remedial alternatives as described in the Record of Decision (ROD). Should more than \$24 million be necessary to complete the cleanup the PRP group will need to provide additional funding. The selected alternative as described in the 2016 ROD had an estimated cost of \$35.9 million. This estimate was based on an assumed size of the thermal treatment zone. Some pre-design work has been completed by the PRP group that has indicated the actual treatment zone will be smaller than the original estimate such that the cost will be less than \$35.9 million. However, regardless of the cost, the PRP group will be obligated under the Consent Decree to pay all cost necessary to complete the remedies as selected in the Record of Decision.

Deed restrictions on the property will be determined at the completion of the cleanup. In general, many of the properties with similar contamination can be used for many purposes once a cleanup is complete. However, it is common to have restrictions on using groundwater as a drinking water source or for residential housing. The site is not a danger to walk on or even for environmental personnel working at the site. Our waste water operator is on the property multiple days a week and I have spent time at the

property during sampling events. Residential use risk is quite different as they consider children playing in soil and even ingesting certain amounts of soil in the process.

The property that you refer to as being sold is not part of the Philip Services State Superfund Site. It was a wooded parcel owned by the former Philips Services Corporation when they went bankrupt but it was never part of the operations of the facility. There is no contamination on the property from the facility operations.

Answer to question #5:

No remedial activities will cause any further migration of contamination. Each remedy is designed to extract contamination from where it exists on the surface or subsurface for treatment. Ground water contamination already exists at the site and by not treating the groundwater contamination the contaminants could migrate. At this time, groundwater extraction wells are in operation to hold and keep water from migrating further. The treatment options planned for the site that will remove contamination:

1. Soil removal
2. Thermal treatment by the heating of volatile chemicals in soil and groundwater and collecting the vapors created for treatment.
3. Multi-phase extraction which will extract the layer of contamination that currently exists in the fuel oil area from the top of the soil/groundwater interface

Or control further migration:

1. Hydraulic containment (extraction wells as currently in use)

Nazareth Baptist Church – The Department (Carol Crooks) went to Rock Hill on April 22, 2022 and met with church members on the church property. We discussed the members concerns and agreed the Department would collect (3) soil samples in an area prone to flooding and (1) surface water sample from the creek. The Department (Carol Crooks) returned to the church property on April 28, 2022 and collected the samples as had been agreed upon. A church Trustee and a Deacon were present during sampling. The laboratory has processed the samples and data should be available very soon.

Response to #6:
Comment noted.

Answer to question #7:

No monitoring wells will be included in a sale of the wooded parcel. All property with monitoring wells will remain held by the PSC Bankruptcy Trust.

Answer to question #8:

This question was addressed in the response to question #3.

FOIA request are attached.

- a. The March 22, 2022 Powerpoint was previously send via email
- b. A PDF of names on the Department mailing list for the March 22, 2022 meeting is attached. FOIA instructed us that we are not allowed to send addresses with an FOIA request.
- c. Attached. This is a Settlement Privileged Document from a January 9, 2020 meeting.
- d. It is our understanding that Mr. Lowry has contacted you to discuss this request.

**Mailing List for March 22, 2022 Philip Services Corporation Site Meeting
(Mailing addresses deleted as instructed by FOIA office)**

List #1 Based on proximity to the Site

Owner1	Owner2
JOHNSTON, GARY R & SUSAN M	
GREER, OTTIS DEFOE	
COGUM GLOBAL	
SCHUSTER, ELLEN L	
KERBER, CARL J	KERBER, DONNA F
ROBERTS, CHARLES M	
CHURCH NAZARENE BAPTIST OF ROCK HILL	
BLACK, ROBERT B & MARY S	
MERRILL ,ROBERT K JR	
WARD, RONNIE DALE	
GULLEDGE, ANN	
MOORE,ANGELA Y & MICHAEL N	
WILLIAMS, CHANCE MICHAEL	
EMERINE, ANTHONY J & ETELVINA	
BOULWARE, RONALD & SANDRA	
JACKSON, RICHARD B	
WARD, BRENDA B TRUSTEE	
SOUTHEASTERN RECYCLING SOLUTIONS	
POLK, MARCIA D	
JOHNSON, QUITTIE	JOHNSON, VERONICA
COX, MICHAEL L	COX, CHRISTI P
THOMAS, JULIA W & J ROBERT	
ALLEMAN, STEVEN E	
GULLEDGE, PAULINE	
BOWERS, CHARLES EDWARD	BOWER MARY ADAMS
YOUNGBLOOD, JAMES L	
TIERNEY, JOHN A	
STARNES, MATTHEW T	
EDWARDS, EDWARD D	EDWARDS, SARAH F
POLK, ROY B JR	
CLARK, JOHN JR & MICHELLE	
OSMOSE WOOD PRESERVING INC	
WHITE, SIDNEY	
BEHR, JON T	

LYNCH, DAVID B
RAWLS, FREDDIE SUZANNE
DUMAS, BURSHA
CAUDLE, CHRIS & SANDRA
WOMACK, MECO B
BUFF, TERESA M
KALWEIT, ROBERT
JENKINS, SARA P
BROWN, RHONDA M
LANGLEY, BOYCE N & ELIZABETH M
JACKSON, WALTER LEROY
MORGAN, HARVEY H JR
LEE, JUSTIN B & JENNIFER D
STARNES, KATHERINE W
MERGEN, THALER FLORIAN
BELCHER, RUSSELL L
GARDNER, CORA BELL H & DANNY

STEVENS, CRAIG
RAMSEY, JORDAN LINDSEY
DIXON, BETTY A
HENSON, SHIRLEY W
SHUGART, JOEL ANTHONY JR
COGUM GLOBAL
MORALES-RAILEY, CAMILA ROSARIO
COPELAND, GREGORY D & DEBORAH J
WINCHESTER, JAMES M
WEST, TAMMY S &
SFFAB PROPERTIES LLC
ROBERTS, CHARLES M
DICKMAN, KYLE R
LEAZER, REBECCA J
DEJESUS, ANDRES
PARISE, MATTHEW & SARA
BUTCHER, JANICE M
US BANK TRUST NA AS TRUSTEE
BURRIS, CLEVELAND O
BEAUFORT, MICHELLE
PERRI, FRANK S

MERGENTHALER PIA

STEVENS MARY
FRANCES

DEJESUS HEATHER H

MOORE, ALONZO JR
GARRISON, WAYNE
TRUJILLO, SERGIO & MA ELVIA
THOMASON, LINDA S
CAUDLE, SUZANNE & JOHN E
BURRIS, ALPHONZO
STEWARD, SCOTT
SOUTHEASTERN RECYCLING SOLUTIONS
STARNES, KATHERINE W
CM TUCKER LUMBER OF ROCK HILL
WALLACE, ALVIN & ROSEMARY
GULLEDGE, JOHN MICHAEL & GLENDA
POLK, ROBERT J
WILLIAMS, PATRICIA F
HOWE, PHILLIP LEE
EBENEZER 7 LLC
DILLINGHAM, MICHELLE C & CLINT
RIZZI, MICHAEL D OR LYSBETH D
WHITE, SIDNEY A
DUBOSE, BILLY A
HARTNESS, THOMAS S II
POLK, BARBARA B
BRYANT, REBECCA R
FOSNOW, RYAN T ETAL

BRYANT MAX W III

List #2

**Based on names added for contact from
previous public meeting.**

Randle and Bobbie J. Moxley
James D. and Teresa W. Clanton
Thomas M and Frieda W. Murphy
Walter D. Neal Jr.
Julian P. and Susan R. Rogers III
Rock Hill Industries LLC
Richard L. and Philsonia L. Burris
Tommy H. and Connie P. Elkins
Police Chief – Chris Watts
Fire Chief – Mike Blackmon
Steven Hamel
Emily Sherlock
Robin Joas

Todd Bernard
Hazel Reed
Melvin McCullough
Annie Williams
Susan Miller
Gary Cavanaugh
Wayne and Erlene Garrison
Thomas L. Williams
Shaw Environmental & Infrastructure Group
– William Daddono
David Clark Gloves, Inc.
Julie Cathcart
Carol Van Buren
Cathy Warner
Tom Adams
Roger Craig
Kathryn Higbee
Jamie Van Buskirk
Timothy Garvey
Ray Hopkins
Robbie Boyd
Katie Jo Wheeler
Cindy Cambron & John Cailase
Claudette Stiue
Randy Smith
Charles Williams
Childs Thrasher
Jerry McCullough

List #3

Legislative

State Senators

Wes Climer

Mike Fanning

State Representatives

Bruce Bryant

Raye Felder

John Richard King

Thomas "Randy" Ligon

Brandon Newton

Tommy Pope

Gary Simrill

US Congress

Senator Tim Scott

Senator Lindsey Graham

Representative Ralph Norman

CONFIDENTIAL
COMMUNICATED AS PART OF SETTLEMENT NEGOTIATIONS-
INADMISSIBLE PURSUANT TO RULE OF EVIDENCE 408

Attachment 1

Work Parties' Calculation of Revised Estimated Cost of the Work

Based upon the "source areas" DHEC provided in a technical meeting with the Work Parties on March 26, 2018 (see attached map), the Work Parties created a revised cost estimate for the proposed thermal treatment areas. Based upon information from DHEC, the Work Parties understand the source area map (2.8 acres) was derived from pre-2018 soil and groundwater concentrations using roughly 1 ppm total VOCs in soil or groundwater samples. A thermal treatment area of 7.9 acres was originally used in the Feasibility Study (FS) to estimate the remedial cost for the selected remedy, Alternative 3 (Hydraulic Containment, SVE, Thermal-Enhanced MPE, and In Situ Thermal Treatment). This FS cost estimate was \$35,854,000.00. The attached map includes an overlay of the FS map (7.9 acres) and the March 26, 2018 source area map (2.8 acres) that is Attachment B to the current draft of the SOW.

The Work Parties used the revised source areas size of 2.8 acres as the basis to revise the cost estimate. The new cost estimate was calculated using a straight reduction of 65% $((7.9-2.8)/7.9)$ of the FS estimates, as shown in the attached tables. The line items impacted by the reduced areas were primarily Thermal Enhanced MPE and In Situ Thermal. The thermal specific items were Subsurface Installation and Surface Installation Startup because those tasks would require less equipment, materials and labor. The reductions totaled \$4,529,362.00.

The other capital cost line item reduction was SVE remedial technology in the Burn Pits Area as a direct result of the March 2017 Preliminary Design Investigation Report and August 2018 Additional Soil and Groundwater Assessment Report that indicated COCs are not elevated within the soil in the Burn Pits Area (SWMU-41). The Burn Pits Area cost reduction was \$243,500.00.

The subtotal for Capital Expenses was then revised to \$5,478,835.00 (including Contractor Fees, Legal Fees, Engineering Costs and 25% Contingency) from \$11,683,555.00, a reduction of approximately 53%. The Operation and Maintenance Costs were reduced using similar logic. The Thermal and Post-Thermal Operation and Electrical Energy was reduced by 65% and the SVE system was reduced to zero. The O&M reductions totaled \$11,828,476.00, compared to \$21,250,000.00, a reduction of 44%.

The total revised cost estimate was \$18,677,000.00. The total cost estimate was then increased for annual inflation from 2011 to present, increasing the cost estimate to \$21,542,000.00. The final adjustment, based on experience from other thermal projects, was to increase the overall cost by 10% due to a loss of "Economy of Scale" from large to small quantities resulting in a final cost estimate of \$24 MM (rounded).

Revised FS Costs

Revised cost estimate includes the following assumptions:

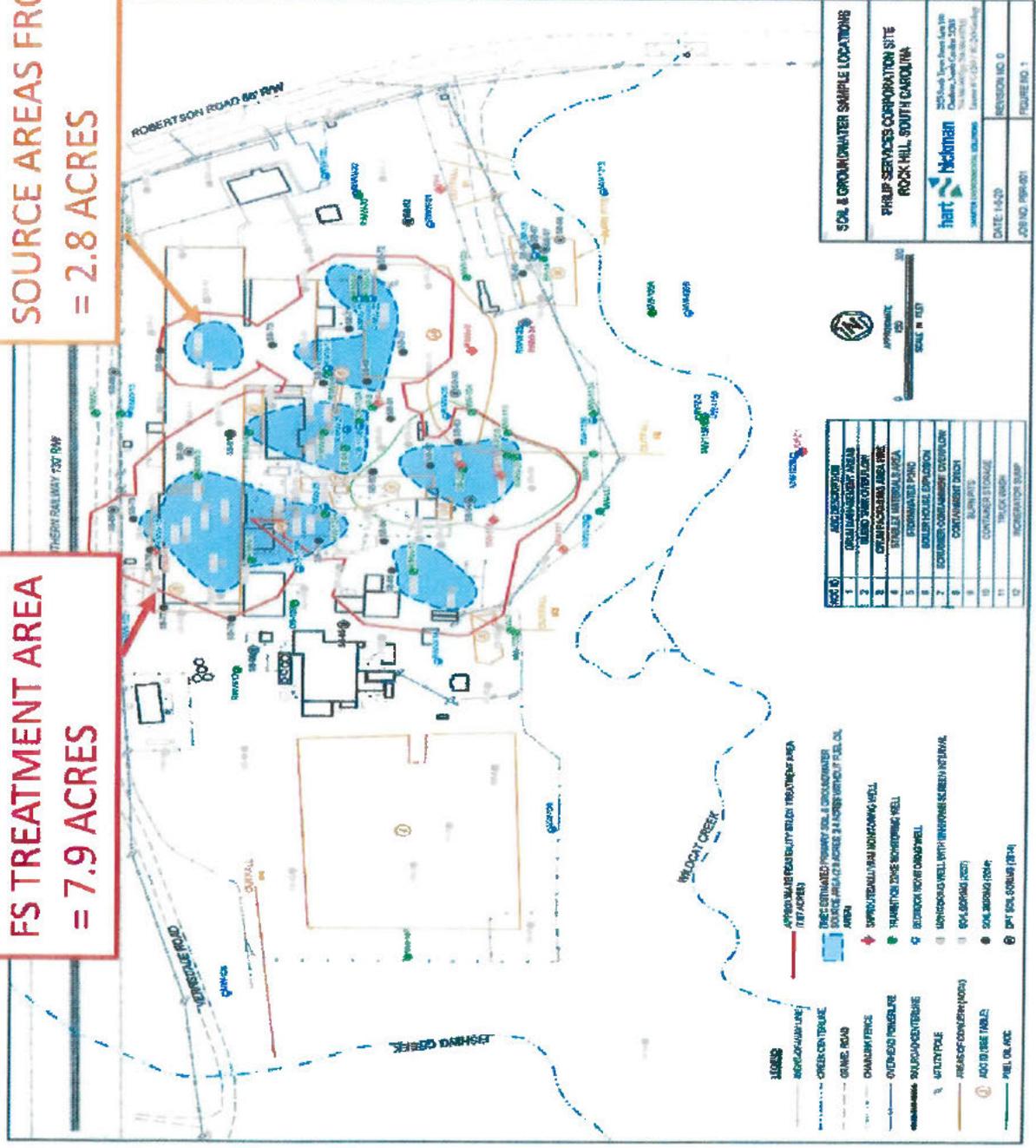
- Remove SVE due to PDI sample results
- Reduced cost estimate based on straight ratio of areas from 7.9 to 2.8 acres
- Revised cost estimate includes an inflation of average of 1.8% from 2011 to 2019
- Economies of scale would increase the cost to implement thermal from the larger to smaller – roughly 10% or \$2.2 M

Revised Cost
Estimate
\$24M

THERMAL TREATMENT AREAS

**FS TREATMENT AREA
= 7.9 ACRES**

**SOURCE AREAS FROM 3/18 MTG
= 2.8 ACRES**



Revised FS Costs Based upon Reduced Source Areas

ITEM DESCRIPTION	QTY	UNIT PRICE (\$/LBS)	TOTAL COST (\$/LBS)	REVISD COST BASED UPON REDUCED SOURCE AREAS (\$/LBS)	NOTES	OPERATION AND MAINTENANCE COST						REVISD COST BASED UPON REDUCED SOURCE AREAS	NOTES
						UNIT PRICE (\$/LBS)	QTY	UNIT PRICE (\$/LBS)	QTY	UNIT PRICE (\$/LBS)	QTY		
GENERAL CONTRACTOR (G.C.)	1	\$10,000	\$10,000	\$10,000		1	\$10,000	\$10,000	1	\$10,000	\$10,000		
OPERATION AND MAINTENANCE COST													
ALTERNATIVE 2: Hydraulic Containment (Length and Volume), SVE (Sun Pit Area), Thermal-Enhanced MFE (Foot 01 Area), and In-Situ Thermal Treatment (as per Appendix B) GROUP													
PSI-SITE													
Induction Rate	30%												
Road Overhead Price	7%												
3.0% Bonding Discount Rate													
SVE ANNUAL O&M	1	\$10,000	\$10,000	\$10,000		1	\$10,000	\$10,000	1	\$10,000	\$10,000		No SVE in Sun Pit
Thermal-Enhanced MFE	1	\$10,000	\$10,000	\$10,000		1	\$10,000	\$10,000	1	\$10,000	\$10,000		
Thermal-Enhanced MFE	1	\$10,000	\$10,000	\$10,000		1	\$10,000	\$10,000	1	\$10,000	\$10,000		
Thermal-Enhanced MFE	1	\$10,000	\$10,000	\$10,000		1	\$10,000	\$10,000	1	\$10,000	\$10,000		
TREATMENT SYSTEM O&M	1	\$10,000	\$10,000	\$10,000		1	\$10,000	\$10,000	1	\$10,000	\$10,000		
Cation Regenerant	4	\$15,000	\$60,000	\$60,000		4	\$15,000	\$60,000	4	\$15,000	\$60,000		
Additional Power Requirements	30,000	\$1.00	\$30,000	\$30,000		30,000	\$1.00	\$30,000	30,000	\$1.00	\$30,000		
Monthly O&M	12	\$8,000	\$96,000	\$96,000		12	\$8,000	\$96,000	12	\$8,000	\$96,000		
ENVIRONMENTAL MONITORING OF GROUNDWATER & SURFACE WATER													
Site Monitoring Plan (5 Years)	1	\$20,000	\$20,000	\$20,000		1	\$20,000	\$20,000	1	\$20,000	\$20,000		
Environmental Sampling/Assessment (Yearly)	1	\$40,000	\$40,000	\$40,000		1	\$40,000	\$40,000	1	\$40,000	\$40,000		
Report Preparation (Yearly)	1	\$20,000	\$20,000	\$20,000		1	\$20,000	\$20,000	1	\$20,000	\$20,000		
SITE INSPECTIONS & MAINTENANCE													
Cost Estimation/Complexion	1	\$5,000	\$5,000	\$5,000		1	\$5,000	\$5,000	1	\$5,000	\$5,000		
Project Inspection/Management	1	\$5,000	\$5,000	\$5,000		1	\$5,000	\$5,000	1	\$5,000	\$5,000		
Monthly	12	\$500.00	\$6,000	\$6,000		12	\$500.00	\$6,000	12	\$500.00	\$6,000		
Process Maintenance	1	\$4,000	\$4,000	\$4,000		1	\$4,000	\$4,000	1	\$4,000	\$4,000		
Subtotal													
Electrical Energy	30	\$14,400	\$432,000	\$432,000		30	\$14,400	\$432,000	30	\$14,400	\$432,000		
Contractor Fee (10% of O&M Cost)													
Legal Fees, Licenses & Permits (5% of O&M Cost)													
Contingency (25% of O&M Cost)													
TOTAL													

REVISD COST BASED UPON REDUCED SOURCE AREAS	\$ 10,677,000
FOR PRESENT WASTE QUANTITY TO BE RECOVERED	\$ 10,677,000

REVISD COST INCREASED BY 10% TO ACCOUNT FOR INCREASED WASTE QUANTITY TO BE RECOVERED

\$ 11,744,700

REVISD COST INCREASED BY 10% TO ACCOUNT FOR INCREASED WASTE QUANTITY TO BE RECOVERED

\$ 12,718,170



**RESPONSES TO WRITTEN COMMENTS FOR PHILIP SERVICES CORPORATION SITE
SUBMITTED DURING THE PUBLIC NOTICE PERIOD
FOR THE PROPOSED SETTLEMENT AGREEMENT**

The South Carolina Department of Health and Environmental Control (the “Department”) created this document to provide a complete record and to address written questions submitted by members of the public during the public notice period related to the proposed settlement agreement for the Philip Services Corporation (PSC) Site to the extent that any questions had not been previously answered.

The following list includes outstanding responses needed after the public meeting held May 3, 2022. The page and line numbers correspond to the public meeting transcript.

Responses to the comment letter from Mary Ann Connolly dated May 6, 2022:

1. Ms. Connolly first inquired about the notice provided for the public meeting held by the Department on August 26, 2014, to discuss the Site and the Department’s response to the contamination. The public meeting in 2014 was properly noticed and conducted in conformance with applicable state and federal law, and documentation of the notice is part of the historical record. Whether or not there was confusion about the subject of the meeting within the community, the notice posted by the Department about the meeting was proper.

2. Next, Ms. Connelly asked whether the York County construction and demolition landfill would be receiving waste from cleanup activities at the Site. The cleanup of the PSC Site will be conducted pursuant to the requirements of CERCLA. Under Section 121(d)(3), CERCLA wastes (i.e., any hazardous substance, pollutant, or contaminant) transferred offsite may only be placed in a facility operating in compliance with the Resource Conservation and Recovery Act (RCRA) or other applicable Federal or State requirements. That section of CERCLA further prohibits the transfer of CERCLA wastes to a land disposal facility that is releasing contaminants into the environment. These principles are interpreted in the Off-Site Rule (OSR), set forth in the National Oil and Hazardous Substances Pollution Contingency Plan (“NCP”) at 40 CFR Part 300.440. The OSR established the criteria and procedures for determining whether facilities are acceptable for the receipt of CERCLA wastes. The Offsite Rule does not apply to non-CERCLA wastes such as building debris or other uncontaminated materials that could potentially be disposed in a regulated C&D landfill.

3. In her third comment, Ms. Connolly asserted that there was no information comparing the selected remedy to other methodologies. In fact, when determining which remedy it would implement at the Site, the Department considered six alternative treatment methodologies for groundwater, six alternative treatment methodologies for soil, and three combined methodologies for soil and groundwater together. Record of Decision (“ROD”), Section 9. The agency carefully considered each alternative, individually

and combined in various appropriate iterations, and selected Combined Alternative 3: Hydraulic Containment, SVE, Thermal-Enhanced MPE, and *In Situ* Thermal Treatment. ROD, Section 10 and 11. The assertion that “*In Situ* Thermal Treatment” equates to “an incinerator” is erroneous. The only commonality they share is that they both produce heat, although not in the same way. *In situ* thermal treatment at PSC will involve the use of electricity at various depths underground to volatilize the chemicals of concern and move them towards wells where they are collected and piped to the surface for treatment. It does not include the use of burners to incinerate materials. There will be no incineration unit utilized as part of the remedy at the Site.

4. In her fourth comment, Ms. Connolly stated that the Site would not be cleaned up and that the Department was “lean[ing] toward eventually allowing uses at this Site including residences.” Each of these concerns are addressed in turn. The contention that the Site will not be completely cleaned up is erroneous. The remedial goals (RGs) contained in the ROD are set at levels which are intended to provide long-term protection of human health and the environment. The RGs are set at the same level as the maximum allowable contaminant level (groundwater) and the applicable soil screening levels (soil) in both DHEC and EPA regulations. Any Site in the State of South Carolina would be considered “clean” if it exhibited contamination levels that low. *See Tables 3.4 and 3.5, ROD.*

With regard to residences being located on the Site, there is no evidence in the record to support a conclusion that the agency is “leaning towards” allowing residences. On the contrary, the record clearly reflects the agency’s intention to require institutional controls on the Site to ensure that human health and the environment are protected, and that exposure pathways are minimized or eliminated entirely. These institutional controls typically involve deed restrictions prohibiting any use that could pose an unacceptable risk to human health or the environment. These issues are addressed expressly in the ROD:

6.2.6 Current and Future Land Use. The Site is located in an industrial area of Rock Hill, South Carolina. Previous use of the facility as a Hazardous Waste Treatment, Storage, and Disposal facility included a hazardous waste incinerator. Future use of the former PSC property is expected to remain industrial. Deed restrictions will be placed on the property upon completion of the cleanup restricting the future land use.

5. Ms. Connelly questioned whether composite samples are appropriate at the Site. Composite samples are standard practice in environmental testing in appropriate circumstances. Composite sampling is an efficient and cost-effective method for demonstrating representative contaminant concentrations across a wide area rather than at just one point. They are used at the state and federal level throughout the United States. Their use has been tested and upheld in administrative and judicial fora.

6. Ms. Connolly questioned the adequacy of emergency response timing and process. The Work Parties must immediately address any event that cause an actual or threatened release of Hazardous Substances and must report the event to DHEC immediately unless immediate notification is impractical due to hazardous or other conditions, in which case the verbal notification shall be made as soon as practicable. Other events that are reportable under CERCLA but do not constitute an emergency or do not present an immediate threat to human health or the environment must be addressed within 24 hours. The fifteen-day period referred to in the comment only relates to the obligation of the Work Parties to submit a formal report regarding the situation. Emergency release response and reporting are addressed in Section 4.3 of the SOW as follows:

4.3(b). Emergency Response and Reporting. If an event occurs during performance of the RD/RA that causes a release or threatened release of Hazardous Substances on, at, or from the Site and that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, the Work Parties shall: (1) *immediately take appropriate action to prevent, abate, or minimize such release or threat of release;* (2) *immediately notify the authorized Department officer (as specified in ¶ 4.3(c)) orally, unless immediate notification is impractical due to hazardous or other conditions, in which case the verbal notification shall be made as soon as practicable;* and (3) *take such actions in consultation with the authorized Department officer and in accordance with applicable provisions of the HASP, the Emergency Response Plan, and other applicable deliverable(s) approved by the Department under the SOW.* (emphasis added)

4.3(c) Release Reporting. Upon the occurrence of an event during performance of the RD/RA that the Work Parties are required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, *the Work Parties shall, in addition to the required notifications, within 24 hours notify the authorized Department officer orally as identified in ¶ 4.3(c).* (emphasis added)

7. Ms. Connelly stated that the \$24,000,000 payment by the PRPs into the trust account established for this purpose would not be sufficient to complete implementation of the remedy at the Site. This statement evinces a misunderstanding of the structure and function of the payments required under the Consent Decree. The initial \$24 million payment under the settlement agreement is designated for future cleanup work to be conducted under the settlement agreement. This amount is in addition to the approximately \$4.1 million the parties will pay toward the Department's past costs. The estimated cost for the entire cleanup is exactly that: an estimate. Regardless of what it costs, the Work Parties are obligated to pay for and perform the actions necessary to achieve the Remedial Goals. *See generally, Article IV, CD.* If they fail to do so, the Department is authorized to take over the Work as needed, and the Work Parties will be jointly and severally liable for all costs. Moreover, depending upon the

circumstances, they could be held in contempt in federal court if the failure meets the relevant standard. Additional sampling conducted since 2014 has allowed for significant refinement of the estimated costs for completing the remedy.

8. In her eighth comment, Ms. Connolly stated that “[n]o permits will be required for any work done on Site.” This comment regarding permits is correct: there are no permits required for Work performed entirely on the Site. This is consistent with state and federal statutes and the National Contingency Plan. *See Section 15, CD (excerpt below)*. For any work not entirely on-Site, the Work Parties will have to obtain any applicable permit. *Id.*

15. Permits. (a) As provided in CERCLA § 121(e), 42 U.S.C. § 9621(e), and NCP § 300.400(e), no permit shall be required for any portion of the Work conducted entirely on-Site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). In order to demonstrate compliance with the substantive provisions of permitting regulations, the Work Parties may be required to submit applications, work plans, and other information to the Department. Where any portion of the Work that is not on-Site requires a federal, state, or local permit or approval, the Work Parties shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. To the extent any required state permit or approval must be issued by the Department, the Department will not unreasonably deny the issuance of, and shall promptly issue, such state permits or approvals. *Section 15(a), CD.*

9. In her ninth comment, Ms. Connolly states that the administrative record is the only record that can be reviewed, and questions whether this is proper, particularly as it relates to prior sales and purchases of the Site over time. Limiting review to the administrative record is appropriate under applicable state and federal laws. Allegations of fraudulent transfers of ownership at the facility are not supported by the record and are not properly before the agency or the court and are not germane to the present review.
10. Ms. Connolly states that she has concerns about whether the parties responsible for the waste contaminating the Site should be the parties performing the cleanup of the Site. State and federal statutes clearly require the responsible parties to fund and, when appropriate, perform the work required to achieve the remedial goals. This is a bedrock principle in CERCLA and has been reviewed and upheld by federal courts in every federal circuit in the United States. *See CERCLA §§107 and 113.*
11. In her eleventh comment, Ms. Connolly The limitation on public access referred to this comment applies only to the Waste-In Database, and in particular, to the coding

of hazardous waste manifests for the Waste-In Database, the search function of the Waste-In Database, and the secure password for the Waste-In Database. This database is the intellectual property of the PRP Group and is owned entirely by them. The Department has access to the database under a license from the PRP Group, but it is not required for the Department's statutory obligations. To the extent that other Records are protected by confidentiality (e.g., business confidential records or records subject to attorney-client privilege or other cognizable privilege recognized by state or federal courts or statutes), these protections are established in statute or common law. The PRP Group must demonstrate that the privilege applies should they choose to assert it. If it does not, the information is subject to FOIA.

12. Ms. Connolly suggests that the proposed consent decree violates federal law. Nothing in the consent decree contains a provision authorizing the federal court to "circumvent federal law." On the contrary, the consent decree explicitly incorporates and makes the parties subject to any and all applicable state and federal laws including but not limited to CERCLA, HWMA, PCA, and RCRA. *See Recitals, Sections A, B, and C.* To the extent that the CD contains terms that are broader than those contained in the statute, the broader definition will apply. Rather than circumventing federal law or restricting its application, this strengthens it and expands the universe of contaminants the Work Parties will have to address.

13. Finally, Ms. Connolly states that there is no mention of the Nazareth Baptist Church located across the street from the Site. She also states that there have been legal confrontations between the church and various operators of the facility located on the Site. Firstly, the Department notes that the church's history with the previous operators of the facility prior to its shuttering are not germane to the consent decree. Nonetheless, the Department notes that it considered the church along with all other persons and properties adjacent to or proximate to the Site when determining the remedy and all procedures to be followed in implementing the remedy. All appropriate safeguards have been included. Secondly, the Department has no authority to assist the church in enforcing an alleged settlement between the church and the past operators of the facility at the Site.