

**SETTLEMENT AGREEMENT BETWEEN THE STATE OF TEXAS AND
THE UNITED STATES OF AMERICA FOR CLAIMS RELATING TO
THE VODA PETROLEUM, INC., STATE SUPERFUND SITE**

The State of Texas ("State"), on behalf of the Texas Commission on Environmental Quality ("TCEQ"), an agency of the State, contends that it has claim(s) for relief under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. § 9607(a), against the United States of America ("United States") on behalf of several federal agencies (the "Federal PRP's"). (The State, including its agencies, and the United States, including the Federal PRP's, are collectively called herein the "Parties.") The State's claims are for the recovery of costs incurred by the TCEQ in responding to the Voda Petroleum, Inc., State Superfund Site, located in Gregg County, Texas ("the Site"). The federal agencies are alleged to have disposed of or to have arranged for the disposal of hazardous substances, or to have been an operator, at the Site.

The Parties, in consideration of the covenants set out herein, the sufficiency of which is hereby acknowledged, agree as follows:

I. BACKGROUND

1. The TCEQ issued an order naming certain federal agencies as "potentially responsible parties" ("PRP's") for solid waste and hazardous substances at the Site. *See* Tex. Comm'n on Env'tl. Quality, *In the Matter of the Site Known as Voda Petroleum, Inc., State Superfund Site*, Docket No. 2009-1706-SPF (Feb. 12, 2010) (the "Order"). Specifically, TCEQ's order identified the following federal agencies or agency components as PRP's: Fort Sill, Naval Air Station Dallas, Post Office Vehicle Maintenance Facility, Richards-Gebauer AFB and the United States Army Corps of Engineers Mat Sinking Unit. Subsequently, the TCEQ also identified Fort Polk and the Defense Reutilization and Marketing Office as PRP's. The United States Department of Defense (including but not limited to the Defense Logistics Agency and the Departments of the Army and the Navy) and the United States Postal Service therefore are known collectively as the "Federal PRP's."

2. The Order found that the Site had been used as a waste oil recycling facility. The Order stated that the Site was contaminated with various solid wastes and hazardous substances in the soil and groundwater, including cis-1,2 Dichloroethylene, Benzene, n-Propylbenzene, MTBE (methyl tertiary-butyl ether), Tetrachloroethylene, Toluene, 1,1,1-Trichloroethane, Trichloroethylene, 1,2,4-Trimethylbenzene, 1,3,5-

Trimethylbenzene, Vinyl chloride, m-Xylene, o-Xylene, p-Xylene, 1,1-Dichloroethylene and 1,2-Dichloroethane. (See Order, Ex. B.) The Site was proposed for listing on the State Registry of Superfund Sites. See 25 Tex. Reg. 11,594-95 (Nov. 17, 2000).

3. The TCEQ asserts that it has expended more than \$2.2 million in responding to the contamination at the Site through August 2011, and that it expects to spend more than \$300,000 in future Response Costs, including groundwater monitoring.

4. The Order also named other (non-federal) entities as PRP's. Some of those parties appealed the Order to the state district court. These appeals were consolidated into one case, styled *Young Chevrolet, Inc., et al., v. Texas Comm'n on Env'tl. Quality*, Cause D-1-GN-10-000772; in the District Court of Travis County, Texas, 345th Judicial District. Some of those parties have now agreed to a settlement with the State, which will be recorded as an Agreed Final Judgment in a severed action pursuant to the Texas Rules of Civil Procedure.

5. The United States asserted the defense of sovereign immunity with respect to the Order. Subsequently the TCEQ asserted that it has a CERCLA cause of action against the federal agencies with respect to its claim for recovery of Response Costs at the Site.

II. AGREEMENT

6. This Settlement Agreement applies to and is binding upon the United States and its agencies, and the State and its agencies. (In both cases, "agencies" shall include successor agencies.)

7. The entry of the United States into this Settlement Agreement does not constitute, and shall not be construed as, an admission or denial of any allegation asserted in this matter. This Agreement is consummated between the Parties without resolving any issue of fact or law.

8. This Settlement Agreement may be placed on the public record by filing it as an exhibit to an agreed final judgment in the State Court Action. Such filing is for purposes of public notice only, and this Settlement Agreement does not constitute a part of the judgment. The United States does not submit to the jurisdiction of the District Court of Travis County, Texas, in this matter.

9. Definitions. In addition to the words and phrases defined elsewhere in this Settlement Agreement, the following definitions shall apply:

a. "Agreed Final Judgment" shall mean the Agreed Final Judgment between the State and certain private (non-federal) entities named in the Order, which is intended to be filed in an action severed from *Young Chevrolet, Inc., v. Texas Comm'n on Env'tl. Quality*, Cause No. D-1-GN-10-000772, in the District Court of Travis County, Texas, subjected to public notice and comment, and executed contemporaneously with this Agreement.

b. "Agreement" shall mean this Settlement Agreement between the State of Texas and the United States.

c. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

d. "Contamination" shall mean any pollutant, contaminant, hazardous substance, solid waste, or hazardous waste, as those terms are defined under CERCLA, RCRA, or state law.

e. "Effective Date" shall mean the date of acceptance of this Settlement Agreement by the last Party to accept, as shown by the date of signing by the Party's representative on the signature page below.

f. "Matters Addressed" shall mean any and all claims or causes of action in law or in equity against the United States for injunctive relief, Response Costs or other monetary relief of any kind, whether known or unknown, that the State has or could have asserted based on CERCLA, RCRA, or any other federal law, state law or common law, arising out of or in connection with the presence of, the release or threatened release of, or the response to Contamination at or emanating from the Site, except that "Matters Addressed" shall not include claims or causes of action reserved by the State in Paragraph 13 or by the United States in Paragraph 14.c.

g. The "Order" shall mean the administrative order issued by the TCEQ as described in Paragraph 1 above.

h. "Party" or "Parties" to this Settlement Agreement shall mean the United States and the State.

i. "RCRA" shall mean the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. §§ 6901-6992k.

j. "Response Costs" shall mean "costs of removal or remedial action incurred by" the State that are "not inconsistent with the national contingency plan," within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

k. "Site" shall mean the Voda Petroleum, Inc., State Superfund Site, specifically defined as all of the property described in Paragraphs II.E and II.F of the Order.

l. "State" shall mean the State of Texas and each of its departments, agencies and instrumentalities, including but not limited to the Texas Commission on Environmental Quality.

m. "State Court Action" shall mean the lawsuit concerning the Site filed in state district court, cited in Paragraph 4 above, and the action severed from that lawsuit for the purpose of entering the Agreed Final Judgment.

n. "TCEQ" shall mean the Texas Commission on Environmental Quality.

o. "United States" shall mean the United States of America and each of its departments, agencies and instrumentalities, including but not limited to the Federal PRP's identified in Paragraph 1 of this Agreement.

10. Objectives of the Parties. The objectives of the Parties in entering into this Settlement Agreement are to reimburse a portion of the Response Costs incurred by the TCEQ at the Site, and to resolve the claims of the State that have been or could have been asserted against the United States regarding the Site.

11. Payment to the State. Within sixty (60) days after the Effective Date, or as soon thereafter as reasonably possible, the United States Postal Service shall pay the sum of \$935.56 on its own behalf, and the United States shall pay the sum of \$89,895.89 on behalf of the United States Department of Defense, to the State in compensation for the TCEQ's Response Costs incurred at the Site.

a. Instructions for Payment. All payments made to the State shall be made by Electronic Funds Transfer ("EFT") to the Comptroller of Public Accounts, State of Texas, for the Attorney General's Suspense Account, using the following instructions:

Financial Institution:	TX COMP AUSTIN
Routing Number:	114900164
Account Name:	Comptroller of Public Accounts Treasury Operations
Account Number to Credit:	463600001
Reference:	AG No. 09-3166726 (Voda Petroleum)
Attention:	Office of the Attorney General Chief, EPD Div. (512-463-2012)
Contact:	Abel Rosas, Fin. Rptg (512-475-4380)

b. Notification of Payment. At the time of payment, the United States shall send written confirmation of the Electronic Funds Transfer by email to Thomas.Edwards@TexasAttorneyGeneral.gov. The email shall state that the payment is made pursuant to this Settlement Agreement and shall reference the "Voda Petroleum State Superfund Site" and AG No. 09-3166726.

c. Interest. In the event payment is not made within sixty (60) days of the Effective Date, Interest on the unpaid balance shall be paid at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), commencing on the 61st day after the Effective Date and accruing through the date of the payment.

d. Compliance with the Anti-Deficiency Act. All payment obligations by the United States under this Settlement Agreement are subject to the availability of appropriated funds applicable for that purpose. No provision of this Agreement shall be interpreted as or constitute a commitment or requirement that the United States obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. §§ 1341-44 and 1511-19, or any other applicable provision of law.

12. Covenant by the State. In consideration of the payment that will be made by the United States under this Settlement Agreement, and except as specifically provided in Paragraph 13 below (State's Reservation of Rights), the State covenants not to sue the United States and releases, surrenders, and forever discharges any and all claims or causes of action against the United States for injunctive relief, Response Costs or other monetary relief of any kind, in law or in equity, whether known or unknown, that the

State has or could have asserted based on CERCLA, RCRA, or any other federal law, state law or common law, arising out of or in connection with the presence of, the release or threatened release of, or the response to Contamination at or emanating from the Site. The State's covenant shall take effect upon the receipt by the State of the payment required by Paragraph 11 (Payment to the State), including any Interest due thereon under Paragraph 11.c. The State's covenant is conditioned upon the satisfactory performance by the United States of its obligations under this Settlement Agreement. This covenant extends only to the United States and does not extend to any other person.

13. State's Reservation of Rights.

a. The State reserves, and this Settlement Agreement is without prejudice to, all rights against the United States with respect to:

- i. seeking judicial enforcement of the terms of this Settlement Agreement;
- ii. liability arising from the past, present, or future disposal, release, or threat of release of solid waste or hazardous substances, other than that on the Site or emanating from the Site;
- iii. liability based on the United States' ownership or operation of the Site when such ownership or operation commences after the Effective Date of this Settlement Agreement;
- iv. liability based on the United States' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of solid waste or hazardous substances to, at or in connection with the Site, commencing after the Effective Date of this Settlement Agreement;
- v. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; and
- vi. criminal liability.

b. Notwithstanding any other provision of this Settlement Agreement, the State retains all authority and reserves all rights to take any response actions authorized by law.

14. Covenants and Reservations by the United States.

a. Subject to the reservations in Paragraph 14.c, below, the United States

covenants not to sue and agrees not to assert any direct or indirect claim for contribution for the Response Costs incurred at the Site, pursuant to CERCLA Sections 107 or 113 or any other provision of law, against any party to the Agreed Final Judgment. This covenant shall take effect upon judicial approval of the Agreed Final Judgment.

b. Subject to the reservations in Paragraph 14.c, below, the United States covenants not to sue and agrees not to assert any claims or cause of action against the State arising out of or in connection with the presence of, the release or threatened release of, or the response to Contamination at or emanating from the Site, including but not limited to claims under CERCLA Sections 107 or 113, or any other provision of law. This covenant shall take effect on the Effective Date.

c. Reservations. The covenants in Paragraph 14.a, above, shall not apply to any party to the Agreed Final Judgment that brings an action against the United States for contribution related to the Response Costs incurred at the Site. The covenants in Paragraph 14.b, above, shall not apply if the State brings any judicial action against the United States related to the Site. Additionally, the United States reserves the right to assert against the State, or against any party to the Agreed Final Judgment, any claims or causes of action brought on behalf of the United States Environmental Protection Agency or a federal natural resources trustee. The United States reserves the right to seek judicial enforcement of the terms of this Settlement Agreement.

15. Effect of Settlement. Except as provided in Paragraph 14.a, above: (a) nothing in this Settlement Agreement shall be construed to create any rights or defenses in any person not a Party to this Settlement Agreement; and (b) each Party herein expressly reserves any and all rights (including, but not limited to, rights pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands and causes of action that the Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the State, pursuant to state law and Sections 107 and 113 of CERCLA, 42 U.S.C. § 9607 and 9613, to pursue any such persons to obtain additional Response Costs or response actions and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

16. Contribution Protection. The Parties acknowledge and agree that the United States is entitled, as of the Effective Date of this Settlement Agreement, to full and complete protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for the Matters Addressed in this Agreement, which

are defined in Paragraph 9.f, above. Matters Addressed in this Agreement do not include claims or causes of action reserved by the State in Paragraph 13 or by the United States in Paragraph 14.c.

17. No Use As Evidence. This Settlement Agreement shall not be admissible as evidence in any proceeding other than an action brought by a Party to enforce this Agreement, or any proceeding where the United States seeks to establish that it is entitled to contribution protection.

18. Governing Law. This Settlement Agreement shall be governed by and construed in accordance with federal law.

19. Severability. If any provision of this Settlement Agreement is deemed invalid or unenforceable, the balance of the Agreement shall remain in full force and effect.

20. Headings. Any paragraph headings or section titles to this Settlement Agreement are provided solely as a matter of convenience to the reader and shall not be construed to alter the meaning of any paragraph or provision of this Agreement.

21. Notice and Public Comment. This Settlement Agreement is a "voluntary settlement agreement" within the meaning of TEX. WATER CODE § 7.110. The Attorney General of Texas has published notice in the Texas Register of the terms set forth herein and has provided the public with an opportunity to comment for thirty (30) days prior to approval. Both the State and the United States reserve the right to withhold their consent if the comments regarding this Settlement Agreement disclose facts or considerations which indicate that the Settlement Agreement is inappropriate, improper, inadequate, or inconsistent with the provisions of the law.

22. Notice of Approval. Upon approval of this Settlement Agreement by the Attorney General of Texas, the State shall immediately provide notice to the United States, by email or fax, to the undersigned attorney for the United States at the address given in the attorney's signature block. The Parties shall then promptly execute the Agreement in accordance with Paragraph 25.

23. Complete Agreement. This Settlement Agreement constitutes the entire Agreement between Plaintiffs and the United States with respect to the subject matter addressed herein. All prior drafts or writings and all prior contracts, agreements, understandings, discussions or negotiations, oral or written, relating to the subject

matter hereof are specifically and fully superseded by this Agreement and may not be used to vary or contest the terms of this Agreement. There are no warranties or representations, oral or written, relating to the subject matter hereof that are not fully expressed or provided for herein. This Agreement may be executed in counterparts.

24. Modification. This Settlement Agreement shall not be modified or amended except by mutual written consent of the Parties.

25. Signatories. Each undersigned representative of the State, on behalf of the TCEQ, and the United States, on behalf of the Federal PRP's and all other departments, agencies, and instrumentalities of the United States, certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement, to execute this document and legally bind such Party to this document.

So Agreed:

FOR THE STATE OF TEXAS

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

JOHN B. SCOTT
Deputy Attorney General for Civil Litigation

JON NIERMANN
Chief, Environmental Protection Division



Date: July 16, 2012

THOMAS H. EDWARDS
Assistant Attorney General
Texas State Bar No. 06461800

OFFICE OF THE ATTORNEY GENERAL
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Tel: (512) 463-2012
Fax: (512) 320-0052
Thomas.Edwards@TexasAttorneyGeneral.gov

ATTORNEYS FOR THE STATE OF TEXAS, ON BEHALF OF
THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

FOR THE UNITED STATES OF AMERICA

IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division

By: 

Date: 7/17/2012

Heather E. Gange, Trial Attorney
D.C. Bar No. 452615
United States Department of Justice
Environmental Defense Section
P.O. Box 7611
Washington, D.C. 20044
Tel: (202) 514-4206
Fax: (202) 514-8865
Heather.Gange@usdoj.gov

ATTORNEY FOR THE UNITED STATES OF AMERICA