

**VOLUNTARY CLEANUP CONTRACT
13 – 6188 - RP**

**IN THE MATTER OF
GRIFFIN RADIATOR PIEDMONT SITE, ANDERSON COUNTY
and
WILSON, INC. OF PIEDMONT**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and Wilson, Inc. of Piedmont, pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. §§ 44-56-710 through 760, as amended, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 42 §§ 9601 to 9675, as amended, and the South Carolina Hazardous Waste Management Act (HWMA), S.C. Code Ann. §§ 44-56-10 to 850, as amended, with respect to the facility known as the Griffin Radiator Piedmont Site located at 100 Hurricane Creek Road, Piedmont, South Carolina ("Site"). The Property includes approximately 6.0 acres and is bounded generally by Hurricane Creek Road and Interstate 85 on the east; Hurricane Creek Road and Hollow Road on the south; residential properties and Highway 17 on the west; and forested property along Frontage Road on the north. The Property is identified by the County of Anderson as Tax Map Serial Number 216-00-11-002-000; and a legal description of the Property is attached to this Contract as Appendix A.

DEFINITIONS

1. Unless otherwise expressly provided, terms used in this Contract shall have the meaning assigned to them in CERCLA, the HWMA, and in regulations promulgated under the foregoing statutes, or the Brownfields/Voluntary Cleanup Program.

- A. "Wilson" shall mean Wilson, Inc. of Piedmont. Wilson is a South Carolina corporation with its principal place of business located at 300A Shiloh Road, Piedmont, South Carolina.
- B. "Contamination" shall mean impact by a hazardous substance or Contaminant.
- C. "Contract" shall mean this Responsible Party Voluntary Cleanup

Contract.

- D. "Department" shall mean the South Carolina Department of Health and Environmental Control or a successor agency of the State of South Carolina that has responsibility for and jurisdiction over the subject matter of this Contract.
- E. "Pollutant" or "Contaminant" includes, but is not limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction, or physical deformations, in organisms or their offspring; "Contaminant" does not include petroleum, including crude oil or any fraction of crude oil, which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (i) through (vi) of Paragraph (D) of CERCLA § 101, 42 U.S.C. §§ 9601, et seq., as amended, and does not include natural gas, liquefied natural gas, or synthetic gas of pipeline quality or mixtures of natural gas and such synthetic gas.
- F. "Property," as described in the legal description attached as Appendix A, shall mean that portion of the Site, which is subject to ownership, prospective ownership, or possessory or contractual interest of Wilson.
- G. "Response Action" shall mean any assessment, cleanup, inspection, or closure of a site as necessary to remedy actual or potential damage to public health, public welfare, or the environment.
- H. "The Site" shall mean the Property and all areas where a Contaminant has been released, deposited, stored, disposed of, or placed, or otherwise comes to be located; "Site" does not include any consumer product in consumer use or any vessel, as defined in CERCLA.

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- I. "Voluntary Cleanup" shall mean a response action taken under and in compliance with the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. §§ 44-56-710, et seq., as amended.
- J. "Work Plan" shall mean the plan for additional response actions to be conducted at the Site as described in Paragraph 3 of this Contract.

FINDINGS

2. Based on the information known by or provided to the Department, the following findings are asserted for purposes of this Contract:

- A. According to the County of Anderson, Wilson is the current Owner of Record for the Property.
- B. Griffin Thermal Products used the Property as a radiator manufacturing facility from 1998 to 2011. Western Textile Products occupied the Property as a cutting operation dating back to 1994. Prior to Western Textile Products, a ladies apparel products distribution warehouse dating back to 1980 reportedly occupied the Property.
- C. Historical use of the property as light manufacturing facilities has impacted the soil and groundwater with hazardous substances and petroleum.
- D. Professional Service Industries, Inc. (PSI) prepared a Phase I Environmental Site Assessment (ESA) for Wilson at the Site in 2012. The ESA identified various recognized environmental conditions (REC) in connection with the Site, including:
 - i. Griffin Thermal Products operations historically generated various hazardous waste including ignitable and corrosive hazardous waste, spent halogenated solvents, trichloroethylene (TCE) waste, and tetrachloroethylene (PCE) waste.
- E. PSI conducted a Phase II ESA at the Site in May 2012, which

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included soil and groundwater sampling activities. The PSI Phase II ESA identified elements and compounds in groundwater and soil samples collected at the Site, including:

- i. Concentrations of arsenic, barium, chromium, mercury, ethylbenzene, naphthalene, TCE, and bis(2-ethylhexyl) phthalate were reported in soil samples above EPA published site screening levels for industrial sites..
- ii. Concentrations of lead and TCE were reported in groundwater samples above MCLs for drinking water.

RESPONSE ACTIONS

3. Wilson agrees to submit to the Department for review and written approval within thirty (30) days of the execution date of this Contract a Work Plan for the Site that is consistent with the technical intent of the National Contingency Plan. The Work Plan shall be implemented upon written approval from the Department. The Work Plan shall include the names, addresses, and telephone numbers of the consulting firm, the analytical laboratory certified by the Department, and Wilson's contact person for matters relating to this Contract. Wilson will notify the Department in writing of changes in the contractor or laboratory. The Department will review the Work Plan and will notify Wilson in writing of any deficiencies in the Work Plan, and Wilson will respond in writing within thirty (30) days to the Department's comments. The Work Plan and all associated reports shall be prepared in accordance with industry standards and endorsed by a Professional Engineer (P.E.) and/or Professional Geologist (P.G.) duly-licensed in South Carolina and shall set forth methods and schedules for accomplishing the following tasks:

- A. Conduct a Remedial Investigation (RI) to determine the source, nature, and extent of contamination at the Site, to include the RECs identified in Paragraph 2.
- B. Submit to the Department an RI Report (to include a Baseline Risk Assessment or other evaluation of risk to human health and the environment) in accordance with the schedule in the approved RI

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Work Plan. The Department shall review the report for determination of completeness of the RI and sufficiency of the documentation. If the Department determines that the field investigation is not complete, it will send written notification of such to Wilson, and Wilson shall subsequently conduct additional field investigation to further determine the source, nature, and extent of contamination. If the Department determines that the field investigation is complete but the report is incomplete, the Department shall send to Wilson a letter indicating that revision of the report is necessary. Within thirty (30) days of receipt of such letter from the Department, Wilson shall submit a revised report addressing the Department's comments.

- C. If determined necessary by the Department, conduct a Feasibility Study to evaluate remedial alternatives for addressing contamination at the Site.

4. Wilson shall prepare and submit under separate cover from the Work Plan, a Health and Safety Plan that is consistent with Occupational Safety and Health Administration regulations. The Health and Safety Plan is submitted for information purposes only to the Department. The Department expressly disclaims any liability that may result from implementation of the Health and Safety Plan by Wilson.

5. Wilson shall inform the Department in writing at least five (5) working days in advance of all field activities pursuant to this Contract and, if deemed necessary by the Department, shall allow the Department and its authorized representatives to take duplicates of any samples collected by Wilson pursuant to this Contract.

6. Within sixty (60) days of the execution date of this Contract and once a quarter thereafter, Wilson shall submit to the Department a written progress report that must include the following: (A) actions taken under this Contract during the previous reporting period; (B) actions scheduled to be taken in the next reporting period; (C) sampling, test results, and any other data, in summary form, generated during the previous reporting

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period, whether generated pursuant to this Contract or not; and (D) a description of any environmental problems experienced during the previous reporting period and the actions taken to resolve them.

7. All correspondence which may or are required or permitted to be given by either party to the other hereunder shall be in writing and deemed sufficiently given if delivered by (A) regular U.S. mail, (B) certified or registered mail, postage prepaid, return receipt requested, (C) nationally recognized overnight delivery service company, or (D) by hand delivery to the other party at the address shown below or at such place or to such agent as the parties may from time to time designate in writing.

Unless otherwise directed in writing by either party, all correspondence, work plans, and reports should be submitted to:

The Department: Carol Minsk
South Carolina Department Health & Environmental Control
Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201
minskcc@dhec.sc.gov

Wilson: James C. Wilson, Jr.
Wilson Inc. of Piedmont
P.O. Box 219
Piedmont, SC 29673

All final work plans and reports shall include two (2) paper copies and one (1) electronic copy on compact disk.

PUBLIC PARTICIPATION

8. Upon execution of this Contract, the Department will seek public participation in accordance with S.C. Code Ann. § 44-56-740(D), and not inconsistent with the National Contingency Plan. Wilson will pay costs of response associated with public participation (e.g., publication of public notice(s), building and equipment rental(s) for public meetings, etc.).

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COSTS OF RESPONSE

9. In accordance with S.C. Code Ann. §§ 44-56-200 and 44-56-740(C), Wilson shall, on a quarterly basis, reimburse the Department for Oversight Costs of activities required under this Contract. Oversight Costs include, but are not limited to, the direct and indirect costs of negotiating the terms of this Contract, reviewing Work Plans and reports, supervising corresponding work and activities and costs associated with public participation. Payments will be due within thirty (30) days of the Department's invoice date. The Department shall provide documentation of its Oversight Costs in sufficient detail so as to show the personnel involved, amount of time spent on the project for each person, expenses, and other specific costs. Invoices shall be submitted to:

Wilson: James C. Wilson, Jr.
Wilson Inc. of Piedmont
P.O. Box 219
Piedmont, SC 29673

All of Wilson's payments should reference the Contract number on page 1 of this Contract and be made payable to:

The South Carolina Department of Health & Environmental Control

If complete payment of the quarterly billing of Oversight Costs is not received by the Department by the due date, the Department may bring an action to recover the amount owed and all costs incurred by the Department in bringing the action including, but not limited to, attorney's fees, Department personnel costs, witness costs, court costs, and deposition costs.

ACCESS

10. The Department, its authorized officers, employees, representatives, and all other persons performing response actions will not be denied access to the Site during normal business hours or at any time work under this Contract is being performed or during any environmental emergency or imminent threat situation, as determined by the Department (or as allowed by applicable law). Wilson and subsequent owners of the Property shall

THIS IS CERTIFIED AS A TRUE
AND CORRECT COPY

SIGNATURE

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ensure that a copy of this Contract is provided to any lessee or successor or other transferee of the Property, and to any owner of other property that is included in the Site. If Wilson is unable to obtain access from the property owner, the Department may obtain access and perform response activities. All of the Department's costs associated with access and said response actions will be reimbursed by Wilson.

RESTRICTIVE COVENANT

11. If hazardous substances in excess of levels acceptable for unrestricted use exist at the Property after Wilson has completed the actions required under this Contract, Wilson shall enter and file a restrictive covenant, provided, however, that Wilson owns the Property at that time. If Wilson sells the Property prior to its completion of the actions required under this Contract, Wilson shall ensure that this requirement is imposed upon the purchaser of the Property through the sales/purchase contract. Upon the Department's approval of the items outlined therein, the restrictive covenant shall be signed by the Department and representatives of Wilson, or if the Property has been sold, the current owner of the Property, and witnessed, signed, and sealed by a notary public. Wilson shall file this restrictive covenant with the Register of Mesne Conveyance or Deeds in the county in which the Property is located. The signed covenant shall be incorporated into this Contract as an Appendix. A Certificate of Completion shall not be issued by the Department until the Restrictive Covenant, if required, is executed and recorded. With the approval of the Department, the restrictive covenant may be modified in the future if additional remedial activities are carried out which meet appropriate clean-up standards at that time or circumstances change such that the restrictive covenant would no longer be applicable. The Department may require Wilson or subsequent owners of the Property to modify the restrictive covenant if a significant change in law or circumstances requiring remediation occurs. Wilson or subsequent owners of the Property shall file an annual report with the Department by May 31st of each year detailing the current land uses and compliance with the restrictive covenants for as long as the restrictive covenant remains in effect on the Property. The report must be submitted in a manner prescribed by the Department.

OBLIGATIONS AND BENEFITS

12. Upon execution of this Contract by the Department, Wilson, its signatories, parents, subsidiaries, successors and assigns, shall be deemed to have resolved its liability to the State in an administrative settlement for purposes of, and to the extent authorized under 42 U.S.C. § 9613(f)(2) and § 9613(f)((3)(B), S.C. Code Ann. § 44-56-200 (2002), for the response actions specifically covered in the Contract including the approved Work Plan(s) and reports. A thirty (30) day comment period shall be required prior to the Department's execution of the Contract, and shall commence upon publication of the notice of the proposed Contract in the South Carolina State Register.

13. Nothing in this Contract is intended to be, or shall be construed as, a release or covenant not to sue for any claim or cause of action, past or future, that the Department may have against any person, firm, or corporation not a signatory of this Contract or a signatory's parent, successor, assign, or subsidiary.

14. Subject to Paragraph 16, nothing in this Contract is intended to limit the right of the Department to undertake future response actions at the Site or to seek to compel parties to perform or pay for costs of response actions at the Site. Nothing in this Contract shall in any way restrict or limit the nature or scope of response actions that may be taken or be required by the Department in exercising its authority under State and Federal law.

15. Subject to the provisions of Paragraph 16, nothing in this Contract is intended to be or shall be construed as a release or covenant not to sue for any claim or cause of action that the Department may have against Wilson for any matters not expressly included in this Contract.

16. Upon successful completion of the terms of this Contract and the approved Work Plan as referenced in Paragraph 3 above, Wilson shall submit to the Department a written notice of completion.

Once the Department determines that Wilson has successfully and completely complied with this Contract, the Department, pursuant to S.C. Code Ann. § 44-56-

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740(A)(5) and (B)(1), shall issue Wilson a Certificate of Completion that provides a covenant not to sue to Wilson, its signatories, parents, successors, subsidiaries, for the work done in completing the response actions specifically covered in the Contract and completed in accordance with the approved work plans and reports. The covenant not to sue and administrative settlement for purposes of contribution protection are contingent upon the Department's determination that Wilson successfully and completely complied with the Contract.

In consideration of the Department's covenant not to sue, Wilson, its signatories, parents, successors, assigns, and subsidiaries agree not to assert any claims or causes of action against the Department arising out of activities undertaken at the Site or to seek other costs, damages, or attorney's fees from the Department arising out of activities undertaken at the Site, except for those claims or causes of action resulting from the Department's intentional or grossly negligent acts or omissions.

17. Wilson and the Department each reserve the right to unilaterally terminate this Contract. Termination may be accomplished by giving a thirty (30) day advance written notice of the election to terminate this Contract to the other party. Should Wilson or subsequent owners of the Site elect to terminate, it must submit to the Department all data generated pursuant to this Contract, and certify to the Department's satisfaction that any environmental or physical hazard shall be stabilized and/or mitigated such that the Site does not pose a hazard to human health or the environment that did not exist prior to any initial response action addressing contamination identified in this Contract.

18. The Department may terminate this Contract only for cause, which may include but is not limited to, the following:

- A. Events or circumstances at the Site that are inconsistent with the terms and conditions of this Contract;
- B. Failure to complete the terms of this Contract or the Work Plan;
- C. Failure to submit timely payments for Past Costs and/or for Oversight Costs as defined in Paragraph 9 above;
- D. Additional contamination or releases or consequences at the Site



- caused by Wilson its parents, successors, assigns, and subsidiaries;
- E. Providing the Department with false or incomplete information or knowingly failing to disclose material information;
 - F. Change in Wilson's or its parents, successors, assigns, and subsidiaries business activities on the Property or use of the Property that are inconsistent with the terms and conditions of this Contract; or
 - G. Failure by Wilson to obtain the applicable permits from the Department for any response actions or other activities undertaken at the Property.

19. Upon termination of the Contract under paragraph 18 or 19, the covenant not to sue and administrative settlement for purposes of contribution protection shall be null and void. Termination of the Contract by Wilson or the Department does not end the obligations to pay Oversight Costs already incurred by the Department and payment of such costs shall become immediately due.

20. The signatories below hereby represent that they are authorized to and enter into this Contract on behalf of their respective parties.

THIS IS CERTIFIED AS A TRUE
AND CORRECT COPY

SIGNATURE _____

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THE SOUTH CAROLINA DEPARTMENT OF HEALTH
AND ENVIRONMENTAL CONTROL

BY: *Daphne G. Neel*
Daphne G. Neel, Chief
Bureau of Land and Waste Management
Environmental Quality Control

DATE: 10/2/13

Claire H. Purdie
Reviewed by Office of General Counsel

DATE: 9/27/13

WILSON INC. OF PIEDMONT

Jimmy Wilson
Signature

DATE: July 31, 2013

JIMMY WILSON, PRESIDENT
Printed Name and Title

THIS IS CERTIFIED AS A TRUE
AND CORRECT COPY

SIGNATURE

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APPENDIX A

Legal Description of the Property

County of Anderson

Tax Map Serial Number 216-00-11-002-000

All that certain piece, parcel or tract of land containing 8.47 acres as shown on that certain plat prepared for Wilson, Inc. by J. Don Lee, R.L.S., dated August 6, 1990, and recorded in the office of the RMC for Anderson County in ~~Plat Book 148~~ ^{Plat Book 148} at page ~~10-4~~. Said 8.47 acre tract being bounded and measuring as follows, to-wit: Beginning at a nail and bottlecap located on the southeastern most point of the property in County Road as shown on said plat, and thence running along properties of Wilson, Inc. N 62-49 W for a distance of 454.88 feet to an iron pin; thence turning and running N 19-05 E for a distance of 179.03 feet to an iron pin; thence continuing N 20-27 E for a distance of 330.22 feet to an iron pin; thence turning and running N 84-07 E for a distance of 594.73 feet to an iron pin; thence turning and running S 18-25 W for a distance of 66.05 feet to an iron pin; thence continuing S 12-15 W for a distance of 428.27 feet to a nail and bottlecap; thence turning and running S 43-10 W for a distance of 151.97 feet to a nail and bottlecap; thence continuing S 43-04 W for a distance of 212.61 feet to a nail and bottlecap, this being the point of beginning; be all measurements a little more or less.

LESS AND EXCEPT:

All that certain piece, parcel or tract of land situate, lying and being on the northwestern side of Hurricane Creek Road, in the County of Anderson, State of South Carolina and being shown and designated as 3.58 acres, more or less, on plat of survey entitled, "ALTA/ACSM Land Title Survey for Unitex USA" prepared by Site Design, Inc., dated September 20, 2010 and recorded in the Office of the Register of Deeds for Anderson County, South Carolina in Plat Slide 1893 at Page 1, reference to which is hereby craved for a metes and bounds description thereof.

This being a portion of the real property conveyed to Wilson, Inc. of Piedmont by deed from Piedmont-Anderson Warehouse, Inc. dated August 16, 1990 and recorded August 16, 1990 in Deed Book 1049, at page 159 in the Office of the Register of Deeds for Anderson County; however, due to a scrivener's error, the name of the grantee was incorrectly shown in such deed as Wilson, Inc.

A depiction of the Property described above is included on Appendix A-1 (outlined in bold), which is attached hereto and incorporated herein.

SIGNATURE _____



APPENDIX A-1

