

**VOLUNTARY CLEANUP CONTRACT
19-7468-RP**

**IN THE MATTER OF
OCEANA RAPID SITE, GREENVILLE COUNTY
and
OCEANA RAPID, LLC**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and Oceana Rapid, LLC, pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. §§ 44-56-710 through 760 (2018), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601 to 9675, as amended, and the South Carolina Hazardous Waste Management Act (HWMA), S.C. Code Ann. § 44-56-200, with respect to the facility known as the Oceana Rapid Site ("Site"). The Oceana Rapid property is located at 1320 Hampton Avenue, Greenville, South Carolina ("Property"). The Property includes approximately 5.554 acres and is bounded generally by Norfolk Southern rail line to the northeast, Hampton Avenue Extension and Cedar Lane Court to the south, and the Swamp Rabbit Trail to the northwest. The Property is identified by the County of Greenville as Tax Map Serial Number 0139000100100. 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 pursuant to the Brownfields/Voluntary Cleanup Program, and if not set forth therein, shall have the meaning assigned to them pursuant to CERCLA, the HWMA, and in regulations promulgated under these statutes.

- A. "Oceana" shall mean Oceana Rapid, LLC. Oceana Rapid, LLC is a Limited Liability Company with its principal place of business located at 284 Oil Camp Road, Marietta, South Carolina.
- B. "Contamination" shall mean impact by a Contaminant or Hazardous Substance.

- 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. "Hazardous Substance" shall have the same meaning as defined under subparagraphs (A) through (F) of Paragraph (14) of CERCLA § 101, 42 U.S.C. § 9601(14).
- F. "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 (A) through (F) of paragraph (14) of CERCLA § 101, 42 U.S.C. §§ 9601, et seq. and does not include natural gas, liquefied natural gas, or synthetic gas of pipeline quality or mixtures of natural gas and such synthetic gas.
- G. "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 Oceana.
- H. "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.

- I. "Site" shall mean all areas where a Hazardous Substance, Pollutant or 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.
- J. "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 to 760, as amended.
- K. "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. Property Ownership Information:

Oceana Rapid, LLC	7/7/2015 – Present
Husky Construction Company, Inc.	8/13/1982 – 7/7/2015
J.P. Stevens & Company	4/7/1952 – 8/13/1982
R.C. McCall & Robert D. McCallum Trust	3/24/1952 – 4/7/1952
South Carolina Warehouse	8/19/1946 – 3/24/1952
Gulf Atlantic Warehouse Corporation	6/30/1943 – 8/19/1946
Southeastern Compress Company	1/7/1928 – 6/30/1943

- B. The Property consists of an approximate 5.554 acres. Two structures exist on the Property, consisting of one 50,030 square foot rectangular former cotton warehouse building (with a basement area of approximately 30,000 square feet) near the northwestern property line and one 18,219 square foot square former cotton warehouse building to the southeast of the 50,030 square foot building. The 1961 and 1969 Sanborn Maps show these buildings as "J.P. Stevens

& Company Finished Goods Warehouse” cotton warehouses. When Oceana purchased the Site in 2015, the onsite warehouse structures had reportedly been vacant for several years. Currently, there are businesses located in both structures.

RESPONSE ACTIONS

3. Oceana 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 Oceana's contact person for matters relating to this Contract. Oceana will notify the Department in writing of changes in the contractor or laboratory. The Department will review the Work Plan and will notify Oceana in writing of any deficiencies in the Work Plan, and Oceana will respond in writing to the Department's comments within thirty (30) days. 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 an Environmental Assessment to determine the source, nature, and extent of Contamination at the Site.
- B. Submit to the Department an Assessment 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 Assessment Work Plan. The Department shall review the report for determination of completion of the Assessment and sufficiency of the documentation. If the Department determines that the field investigation is not complete, it will send written notification of such to Oceana, and Oceana 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 Oceana a letter indicating that revision of the report is necessary. Within thirty (30) days of receipt of such letter from the Department, Oceana shall submit a revised report addressing the Department's comments.

- C. If determined necessary by the Department, conduct a Feasibility Study or other evaluation of remedial and/or removal alternatives for addressing Contamination at the Site.
4. Oceana 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 to the Department for information purposes only. The Department expressly disclaims any liability that may result from implementation of the Health and Safety Plan by Oceana.
5. Oceana 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 Oceana pursuant to this Contract.
6. Within sixty (60) days of the execution date of this Contract, and once a quarter thereafter, Oceana 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 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 by either party to the other 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) 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: Greg Cassidy
South Carolina Department Health & Environmental Control
Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201
cassidga@dhec.sc.gov

Oceana Rapid, LLC: Ashley Brown
EAS Professionals
405 North Maple Street, Suite A-6
Summerville, SC 29483
Office (864) 234-7368
Cell (864) 354-9423
abrown@eas-pro.com

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 by Oceana, 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. Oceana will reimburse the Department's costs associated with public participation (e.g., publication of public notice(s), building and equipment rental(s) for public meetings, etc.).

RESPONSE COSTS

9. In accordance with S.C. Code Ann. §§ 44-56-200 and 44-56-740, Oceana 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:

Oceana Rapid, LLC: c/o Simon Tuohy
Urban Realty Partners
950 Joseph E Lowery Blvd., Ste 25
Atlanta, GA 30318
stuohy@urbanrealtypartners.net

All of Oceana'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 Past Costs or 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). Oceana and subsequent owners of the Property shall 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 Oceana is unable to obtain access from the Property owner, the Department may obtain access and perform Response Actions. All of the Department's costs associated with access and said Response Actions will be reimbursed by Oceana.

RESTRICTIVE COVENANT

11. If hazardous substances in excess of residential standards exist at the Property after Oceana has completed the actions required under this Contract, Oceana shall enter and file a restrictive covenant. Upon the Department's approval of the items outlined therein, the restrictive covenant shall be signed by the Department and representatives of Oceana and witnessed, signed, and sealed by a notary public. Oceana shall record this restrictive covenant with the Register of Deeds in Greenville County. 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. Modification of the restrictive covenant may be required if a significant change occurs in the law or circumstances requiring remediation. Oceana 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. 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 a responsible party who is not a signatory to this Contract and who is not a signatory's parent, subsidiary, successor, or assign.

13. Subject to the provisions of Paragraph 15, 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.

14. Subject to the provisions of Paragraph 15, 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 Oceana for any matters not expressly addressed by and settled through this Contract.

15. Upon successful completion of the terms of this Contract, Oceana shall submit to the Department a request for a Certificate of Completion.

Once the Department determines that Oceana has successfully and completely complied with this Contract, the Department, pursuant to S.C. Code Ann. §§ 44-56-740(A)(5) and (B)(1), will give Oceana a Certificate of Completion that provides a covenant not to sue to Oceana, its signatories, parents, subsidiaries, successors, and assigns with respect to the Contamination that was the subject of this Contract and the work done in completing the Response Actions pursuant to this Contract and completed in accordance with the approved work plans and reports. The covenant not to sue is contingent upon the Department's determination that Oceana successfully and completely complied with this Contract.

In consideration of the Department's covenant not to sue, Oceana, its signatories,

parents, subsidiaries, successors, and assigns 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.

16. Oceana 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 Oceana 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.

17. 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 Oversight Costs as defined in Paragraph 9 above;
 - D. Additional Contamination or releases or consequences at the Site caused by Oceana, its parents, subsidiaries, successors, and assigns;
 - E. Providing the Department with false or incomplete information or knowingly failing to disclose material information;
 - F. Change in Oceana's or its parents', subsidiaries', successors', and assigns', business activities on the Property or uses of the Property that are inconsistent with the terms and conditions of this Contract;
- or

SIGNATURE *Crista Vincent*

that are inconsistent with the terms and conditions of this Contract;
or

- G. Failure by Oceana to obtain the applicable permits from the Department for any Response Action or other activities undertaken at the Property.

18. Upon termination of this Contract for any reason other than issuance of a Certificate of Completion, the covenant not to sue will be null and void. Termination of this Contract by Oceana or the Department does not end the obligations of Oceana to reimburse Oversight Costs already incurred by the Department and payment of such costs shall become immediately due.

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

**THE SOUTH CAROLINA DEPARTMENT OF HEALTH
AND ENVIRONMENTAL CONTROL**

BY: *Henry J. Porter* DATE: 4-19-2019
Henry J. Porter, Chief
Bureau of Land and Waste Management
S.C. Department of Health & Environmental Control

Karen Patricia DATE: 4/18/19
Reviewed by Office of General Counsel

THIS IS CERTIFIED AS A TRUE
AND CORRECT COPY

SIGNATURE Clisa Vincent

OCEANA RAPID, LLC

Robert Howell

Signature

DATE: 4/12/19

Robert Howell Authorized Member

Printed Name and Title

APPENDIX A

Legal Description of the Property

County of Greenville

Tax Map Serial Number 0139000100100

All that certain piece, parcel or tract of land, containing 5.29 acres, more or less, situate, lying and being at the Northeastern edge of the right of way for Cedar Lane Road (S-47), near the City of Greenville, County of Greenville, State of South Carolina, as shown on a plat entitled, "Property of J.P. Stevens & Co. Inc." dated June, 1982, prepared by Dalton & Neves Co., Engineers, and recorded in the ROD for Greenville County, SC in Plat Book 9A, at Page 48, and having the metes and bounds, courses and distances as upon said plat appear.

LESS HOWEVER, that certain portion of the property conveyed to the SCDOT by Consent Order of Dismissal and Condemnation Notice and Tender of Payment, South Carolina Department of Transportation v. Huskey Construction Co., Inc. recorded 08/24/2001 in Deed Book 1964, at Page 1871. As more recently shown on plat entitled, "Survey for Oceana Rapid, LLC" dated June 3, 2015 prepared by C.O. Riddle Co., and recorded in Plat Book 1212, at Page 0046, and having the metes and bounds, courses and distances as upon said plat appear.

This being the same property conveyed unto Oceana Rapid, LLC by deed from Huskey Construction Co., Inc., dated July 2, 2015, recorded July 7, 2015, in the Office of the Register of Deeds for Greenville County, SC, in Deed book 2468, at Page 4626.