

THIS IS CERTIFIED AS A TRUE  
AND CORRECT COPY.

SIGNATURE David Wilkin

**VOLUNTARY CLEANUP CONTRACT  
17-6437-RP**

**IN THE MATTER OF  
MILLIKEN EXCELSIOR SITE, UNION COUNTY  
and  
MILLIKEN & COMPANY and  
PACOLET MILLIKEN ENTERPRISES, INC.**

This Contract is entered into by the South Carolina Department of Health and Environmental Control, Milliken & Company, and Pacolet Milliken Enterprises, Inc., 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. §§ 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 former Milliken Excelsior Facility (Excelsior Facility). The Milliken Excelsior Facility, which was demolished in 2011, was located at 138 Broad Street, Union, South Carolina. The Property, which is defined below and on which the Excelsior Facility was located includes approximately 43.18 acres and is bounded generally by Union Boulevard on the north; S. Pinckney Street and Hart Street on the east; Hart Street and US Highway 176 on the south; and US Highway 176 and S. Boyce Street on the west. The Property is identified by the County of Union as Tax Map Serial Numbers 083-04-11-017.000, 083-04-11-016.000, 083-04-11-020.000, 083-04-12-007.000. 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. "Respondents" shall mean Milliken & Company and Pacolet Milliken Enterprises, Inc. Milliken & Company is a Delaware corporation authorized to do business in South Carolina with its principal place

*David W. [Signature]*

of business located at 920 Milliken Rd, Spartanburg, South Carolina. Pacolet Milliken Enterprises, Inc. is a Delaware Corporation with its principal place of business located at 550 S. Main Street, Greenville, 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

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- A, shall mean that portion of the Site, which is or was at one time subject to ownership, prospective ownership, or possessory or contractual interest of Respondents.
- 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. On September 28, 2016, ERM NC, Inc. (ERM), on behalf of Milliken & Company (Milliken) submitted to the Department a Preliminary Environmental Site Assessment Report (ESA) for the Excelsior Facility.
- B. The Property was owned by Milliken beginning in 1946 and was operated as a textile mill. The former textile manufacturing activities conducted by Milliken included scouring, weaving, knitting, dry cleaning, dyeing, and finishing. The plant closed in 2007 and the facility buildings were demolished by 2012, leaving only concrete

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slabs and the exhaust stack formerly used for the boilers.

- C. In December 2007, the Property was transferred from Milliken to Pacolet Milliken Enterprises, Inc. (Pacolet) in connection with the "spin-out" of Pacolet from Milliken. Essentially, Milliken transferred certain of its assets (including the Property) into a newly-created, wholly-owned subsidiary (Pacolet), and then the stock of Pacolet was distributed by Milliken in a tax-free transaction to its shareholders (thereby resulting in Pacolet being owned by the shareholders of Milliken). For avoidance of doubt, Milliken and Pacolet have overlapping shareholders, but otherwise are completely separate companies and neither is a subsidiary of the other.
- D. The Property is surrounded by a mix of residential and commercial use properties.
- E. Historical information provided by Milliken to ERM shows that dry cleaning machines were located inside the southern portion of the former building. The former dry cleaning operations included the use of tetrachloroethene (PCE). One 2,000-gallon PCE-Syn blend aboveground storage tank (AST) was located inside the chemical room on the northeast side of the plant and one PCE AST was located outside the east side of the building.
- F. ERM conducted the ESA field activities in August 2016. Various soil, groundwater, and surface water samples were collected during the field activities. The analytical results indicated, in part, the following:
- I. Volatile Organic Compound (VOC) analyses indicated the presence of PCE in 3 of the 4 soil samples at concentrations above the generic protection of groundwater Regional Screening Levels (RSL). Cis-1,2-Dichloromethene and Trichloroethene were also detected above the RSL.
  - II. Acetone was detected in 2 of the 4 soil samples, but at concentrations below the RSL.

- III. VOC analyses indicated the presence of PCE in all 8 of the groundwater samples at concentrations above the South Carolina Maximum Contaminant Level (MCL). The highest PCE concentration in groundwater was 15,000 ug/l.
  - IV. Cis-1,2-Dichloroethene was detected in 3 of the groundwater samples above the MCL. The highest concentration detected was 510 ug/l.
  - V. Trichloroethene was detected in 6 of the groundwater samples above the MCL. The highest concentration detected was 610 ug/l.
  - VI. Vinyl Chloride was detected in 2 of the groundwater samples above the MCL. The highest concentration detected was 16 ug/l.
  - VII. Benzene was also detected in groundwater in one monitoring well at a concentration of 24 ug/l, which is above the groundwater MCL of 5 ug/l.
  - VIII. VOC analyses of on-site surface water samples indicated the presence of PCE in 1 sample at a concentration of 160 ug/l, which is above the MCL and the Ambient Water Quality Criteria.
- G. Pacolet sold the Property back to Milliken in May 2014 (Union County Deed Book 254, Page 9).

### RESPONSE ACTIONS

3. Respondents agree 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 Respondents' contact person for matters relating to this Contract. Respondents will notify the Department in writing of

SIGNATURE David Weber

changes in the contractor or laboratory. The Department will review the Work Plan and will notify Respondents in writing of any deficiencies in the Work Plan, and Respondents 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 investigation and assessment of the sources, nature, and extent of Contamination at the Site.
  - B. Submit to the Department an Investigation and Assessment Report (to include an evaluation of risk to human health and the environment, if necessary) setting forth the findings of the Investigation and Assessment Report. The Department shall review the report for determination of completion of the Site investigation and sufficiency of the documentation. If the Department determines that the field investigation is not complete, it will send written notification of such to Respondents, and Respondents shall subsequently conduct additional field investigation to further determine the sources, 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 Respondents a letter indicating that revision of the report is necessary. Within thirty-(30)-days of receipt of such letter from the Department, Respondents shall submit a revised report addressing the Department's comments.
  - C. If determined necessary by the Department, conduct an evaluation of remedial and/or removal alternatives for addressing Contamination at the Site.
4. Respondents shall prepare and submit under separate cover from the Work Plan,

David Weber

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 Respondents.

5. Respondents 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 Respondents pursuant to this Contract. The Department shall be responsible for the cost of collecting and analyzing any duplicate samples taken.

6. Within sixty (60) days of the execution date of this Contract and once a quarter thereafter, Respondents 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 which may be 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) 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:

*David Wilkin*

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

Milliken: Milliken & Company  
Lee Slusher, P.E.  
Sr. Environmental Engineer  
P.O. Box 1926, M-482  
Spartanburg, SC 29304  
Lee.Slusher@milliken.com

Pacolet: Pacolet Milliken Enterprises, Inc.  
William Crawford  
SVP/ General Counsel  
550 South Main Street, Suite 601  
Greenville, SC 29601  
William.Crawford@pacoletmilliken.com

All final work plans and reports shall include one (1) paper copy 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. Respondents 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 §§ 44-56-200 and 44-56-740, Respondents 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



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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:

Milliken & Company  
Lee Slusher, P.E.  
Sr. Environmental Engineer  
P.O. Box 1926, M-482  
Spartanburg, SC 29304

All of Respondents' 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, and 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). Respondents 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 Respondents are 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 Respondents.

### **RESTRICTIVE COVENANT**

11. If hazardous substances in excess of residential standards exist at the Property after Respondents have completed the actions required under this Contract, Respondents 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 Respondents and witnessed, signed, and sealed by a notary public. Respondents shall record this restrictive covenant with the Register of Deeds or Mesne Conveyances in Union County, or if Respondents are no longer in control of the Property, shall make arrangements with the current owner of record to enter and file a restrictive covenant. The signed restrictive 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 Respondents or subsequent owners of the Property to modify the restrictive covenant if a significant change in law or circumstances requiring remediation occurs. Respondents or subsequent owners of the Property shall file an annual report with the Department by May 31<sup>st</sup> 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, the Respondents, their signatories, parents, subsidiaries, successors and assigns shall be deemed to have resolved their liability to the State in an administrative settlement for purposes of, and to the extent authorized under 42 U.S.C. § 9613(f)(2), S.C. Code Ann. § 44-56-200, for the matters addressed in this Contract. "Matters addressed" are all Response Actions taken or to be taken at or in connection with this Site under this Contract and any subsequent amendments to this Contract, and all response costs incurred or to be incurred under this

David Wilkin

Contract and any subsequent amendments to this Contract. Further, by resolving its liability to the State for some or all of a Response Action in this administrative settlement, the Respondents may seek contribution to the extent authorized under 42 U.S.C. § 9613(f)(3)(B), S.C. Code Ann. § 44-56-200 from any person who is not a party to this administrative settlement. A thirty (30) day comment period shall be required prior to the Department's execution of this Contract, and shall commence upon publication of the notice of this 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 a responsible party who is not a signatory to this Contract and who is not a signatory's parent, subsidiary, successor and/or assign.

14. Subject to the provisions of 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 Respondents for any matters not expressly addressed by and settled through this Contract.

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

Once the Department determines that Respondents have 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 Respondents a Certificate of Completion that provides a covenant not to sue to Respondents, its signatories, parents, subsidiaries,

successors and assigns for the work done in completing the Response Actions specifically covered in this 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 Respondents successfully and completely complied with this Contract.

In consideration of the Department's covenant not to sue, Respondents, their 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.

17. Subject to express provisions to the contrary herein, Respondents and the Department each reserve the right to unilaterally terminate this Contract prior to Respondents completion of their obligations herein. 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 Respondents 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 Oversight Costs as defined in Paragraph 9 above;
- D. Additional Contamination or releases or consequences at the Site

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caused by Respondents, their parents, subsidiaries, successors and/or assigns;

- E. Providing the Department with false or incomplete information or knowingly failing to disclose material information regarding the subject matter of this Contract;
- F. Change in Respondents' or its parents', subsidiaries', successors' and/or assigns', business activities on the Property or uses by any of such parties of the Property that are inconsistent with the terms and conditions of this Contract; or
- G. Failure by Respondents to obtain the applicable permits from the Department for any Response Action or other activities undertaken at the Property.

19. Upon termination of this Contract under Paragraph 17 or 18, the covenant not to sue and administrative settlement for purposes of contribution protection shall be null and void. Termination of this Contract by Respondents or the Department does not end the obligations to reimburse 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 enter into this Contract on behalf of their respective parties.

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AND CORRECT COPY

SIGNATURE David Watkins

**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: 9/7/17

Claire W. Orr  
Reviewed by Office of General Counsel

DATE: 8/30/17

**MILLIKEN & COMPANY**

[Signature]  
Signature

DATE: 6/10/17

Paul Pruitt, Director/General Counsel  
Printed Name and Title

**PACOLET MILLIKEN ENTERPRISES, INC.**

[Signature]  
Signature

DATE: 6/14/17

William P. Crawford Jr., SVP/General Counsel  
Printed Name and Title

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SIGNATURE

*David Wilk*

## APPENDIX A

### Legal Description of the Property

County of Union

Tax Map Serial Number 083-04-11-017.000, 083-04-11-016.000,  
083-04-11-020.000, and 083-04-12-007.000

All those certain pieces, parcels or tracts of land located in the Town of Union, County of Union, State of South Carolina, containing a total of 43.18 acres, more or less, being more particularly shown on Composite Plat of Excelsior Mill, prepared by Piedmont Engineers and Architects dated October 3, 1973 with revision dates of April 26, 1974 and September 21, 1979 and recorded in the Office of the Clerk of Court for Union County in Plat Book 21 at Page 119. Said property has such courses, metes, measurements, and boundaries as appear thereon. The above described property includes a 40.92 acres tract; 0.21 acre tract; 0.127 acre tract; 0.25 acre tract; 0.50 acre tract; and lot 78 as shown on the aforesaid Composite Plat.

Together with all the estate, right, title and interest of PACOLET in and to all land within the lines of any and all streets, avenues, roads, lanes, or alleys, wholly or partly bounding the premises described above to the extent that the same abut thereon.

Derivation: This is a portion of the property conveyed to Pacolet Milliken Enterprises, Inc., a Delaware corporation by deed of Milliken & Company, effective as of the 2nd day of December, 2007 and recorded in the Office of the Clerk of Court for Union County, in Deed Book 235 at Page 667 on March 14, 2008.