

**VOLUNTARY CLEANUP CONTRACT  
20-4920-RP**

**IN THE MATTER OF  
CLEMSON UNIVERSITY LANDFILL SITE, ANDERSON COUNTY  
and  
CLEMSON UNIVERSITY**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and Clemson University, 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, the South Carolina Hazardous Waste Management Act (HWMA), S.C. Code Ann. § 44-56-200, and the South Carolina Pollution Control Act, S.C. Code Ann. § 48-1-10 *et seq.*, with respect to the facility known as the Clemson University Landfill Site ("Site"). The Site is located at the intersection of U.S. Highway 76 and West Queen Street, Pendleton, South Carolina ("Property"). The Property includes approximately 40 acres and is bounded generally by undeveloped land to the north, West Queen Street to the south, Eighteen Mile Creek to the east, and U.S. Highway 76 to the west. The Property is identified by the County of Anderson as the portion of Tax Map Serial Number 230001002 northwest of the intersection of U.S. Highway 76 and West Queen Street. The area of interest on the Property is a landfill/disposal area, which is a fenced area of 300' by 300' and encompassing approximately 1.32 acres of the Property. 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. "Clemson" shall mean Clemson University. Clemson University is a body politic under the laws of the State of South Carolina with its principal place of business located at Sikes Hall, 101 Calhoun Drive, Clemson, South Carolina.
- B. "Contamination" shall mean impact by a Pollutant or Contaminant, Petroleum and Petroleum Product, 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. "Petroleum" and "Petroleum Product" shall mean crude oil or any fraction of crude oil, which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds for each square inch absolute), including any liquid, which consists of a blend of petroleum and alcohol and which is intended for use as a motor fuel.
- G. "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.

- H. "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 Clemson.
- I. "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.
- J. "Site" shall mean all areas where a Hazardous Substance, Petroleum, Petroleum Product, 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.
- K. "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.
- L. "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:           Clemson University  
  12/25/54 – Present

B. The disposal area site is located approximately 1.25 miles west of the Town of Pendleton in Anderson County and approximately 1,500 feet southeast of the border between Pickens and Anderson Counties. Access to the disposal area is made from U.S. Highway 76 via a gravel drive secured by

a locked chain barrier. The disposal area is a fenced area that is approximately 300' by 300' and encompassing approximately 1.32 acres.

- C. In the late 1950s or early 1960s, Clemson constructed and operated a landfill at the disposal area pursuant to the South Carolina Pollution Control Act (formerly Sections 70-100 *et seq.* of the 1952 S.C. Code of Laws and Sections 63-195 *et seq.* of the 1962 S.C. Code of Laws). The landfill was used to dispose of pesticide and laboratory waste generated by Clemson. A series of parallel trenches were used for disposal of the waste. During March 1976, Clemson prepared a Hazardous Waste Disposal Plan for the landfill. As part of that plan, Clemson had Froehling & Robertson (F&R) drill and install an observation well in the east central portion of the site. The borehole for the observation well was drilled to 29.5 feet below the ground surface, where refusal to auger advancement was encountered.
- D. In May 1976, prior to the enactment of the federal Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901 *et seq.*, the Department issued a permit (Permit No. IWP-129) to Clemson to operate a hazardous waste disposal facility at the Site pursuant to S.C. Regulation 61-66. Waste in the landfill included pesticides, volatile organic compounds, and possible explosive materials. The volume of waste in the landfill is unknown; however, according to the March 10, 1976 application for Permit No. IWP-129, Clemson disposed of approximately one to two cubic yards of waste in the landfill each year.
- E. According to Department reports on the landfill, Clemson discontinued its disposal of waste in the landfill in October 1979 prior to the promulgation of S.C. Regulation 61-79 and federal hazardous waste regulations in 1980. Pursuant to the Interim Final Rule establishing Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities (40 C.F.R. Part 264) promulgated by the United States Environmental

Protection Agency ("EPA") on July 26, 1982, a landfill which discontinues receipt of waste prior to January 26, 1983, is not a regulated landfill subject to the permitting requirements of RCRA, Subtitle C. In November 1987, the Department wrote to Clemson notifying them that the Department considered the landfill closed unless it received notification from Clemson to the contrary. According to Department records, Clemson did not provide notification disputing the closed status of the landfill.

- F. In 1989, the Department conducted a Site Screening Investigation of the Site pursuant to CERCLA and submitted its report to EPA on March 30, 1990. In 1994, the Department prepared a Site Inspection Prioritization Report based on the Site Screening Investigation and concluded the Site was a low priority under the State CERCLA Program.
  
- G. Davis & Floyd (D&F) conducted several phases of environmental assessment including direct push borings in proximity to the landfill in the early 2000s. The D&F assessment included installing several well pipes around the fenced perimeter of the landfill due to the uncertainty of the nature and extent of buried waste within the fence. D&F concluded from these sampling activities that groundwater had been impacted by compounds leaching from the trenches into the groundwater.
  
- H. During the course of an internal environmental compliance review in early Spring 2019, Clemson determined that post-closure activities may not have been fully performed and notified the Department of its findings. After consultation with the Department, in Summer 2019, S&ME assessed the disposal area by using geophysical methods, direct push borings, and monitoring well installation. The geophysical assessment was used to evaluate the subsurface disposal trenches and to screen for possible buried debris. Three (3) monitoring wells were planned; however, only one was installed to completion due to auger refusal prior to reaching groundwater

in the other locations. This assessment was submitted to the Department in September 2019. The Department reviewed the assessment report and determined that additional assessment was needed at the Site. On March 20, 2020, after consulting with the Department, S&ME submitted a Supplemental Site Assessment proposing replacement of an existing monitoring well and installation of six (6) additional monitoring wells to assess the lateral extent of compounds detected in groundwater during the 2019 assessment.

### RESPONSE ACTIONS

3. Clemson 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 Clemson's contact person for matters relating to this Contract. Clemson will notify the Department in writing of changes in the contractor or laboratory. The Department will review the Work Plan and will notify Clemson in writing of any deficiencies in the Work Plan, and Clemson 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 additional Environmental Assessment as reasonably necessary to determine the source, nature, and extent of Contamination at the Site and to evaluate the integrity of the final cover on the landfill to provide long-term minimization of migration of liquids through the landfill.

- 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 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 Clemson, and Clemson 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 Clemson a letter indicating that revision of the report is necessary. Within thirty (30) days of receipt of such letter from the Department, Clemson 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. Clemson 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 Clemson.
5. Clemson 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 Clemson pursuant to this Contract.

6. Within sixty (60) days of the execution date of this Contract and once a quarter thereafter, Clemson 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

Clemson University: Mr. Jim Grieger, CIH, CSP, CHMM, Executive Director  
Clemson University  
Occupational and Environmental Safety  
391 College Avenue, Suite 104  
Clemson, South Carolina 29631  
jgriega@clemson.edu

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 Clemson, 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. Clemson 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, Clemson 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:

Clemson University: Mr. Jim Grieger, CIH, CSP, CHMM, Executive Director  
Clemson University  
Occupational and Environmental Safety  
391 College Avenue, Suite 104  
Clemson, South Carolina 29631  
jgrieger@clemson.edu

All of Clemson'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). Clemson 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 Clemson 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 Clemson.

### RESTRICTIVE COVENANT

11. If hazardous substances in excess of residential standards exist at the Property after Clemson has completed the actions required under this Contract, Clemson 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 Clemson and witnessed, signed, and sealed by a notary public. Clemson shall record this restrictive covenant and a survey plat indicating the location and dimensions of the landfill with the Register of Deeds in Anderson 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. The Department may require Clemson or subsequent owners of the Property to modify the restrictive covenant if a significant change in law or circumstances requiring remediation occurs. Clemson 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. 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 Clemson for any matters not expressly addressed by and settled through this Contract.

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

Once the Department determines that Clemson 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 Clemson a Certificate of Completion that provides a covenant not to sue to Clemson, 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 Clemson successfully and completely complied with this Contract.

In consideration of the Department's covenant not to sue, Clemson, 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. Clemson 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 Clemson 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 Clemson, 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 Clemson'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
- G. Failure by Clemson 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 under Paragraph 16 or 17, the covenant not to sue and administrative settlement for purposes of contribution protection shall be null and void. Termination of this Contract by Clemson 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.

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

SIGNATURE E. Vincent

THE SOUTH CAROLINA DEPARTMENT OF HEALTH  
AND ENVIRONMENTAL CONTROL

BY: [Signature]  
Henry J. Porter, Chief  
Bureau of Land and Waste Management

DATE: 10-15-2020

[Signature]  
Reviewed by Office of General Counsel

DATE: 10/14/20

CLEMSON UNIVERSITY

[Signature]  
Signature

DATE: 10-6-2020

Anthony E. Wagner - V.P. for Finance and Operations  
Printed Name and Title

**APPENDIX A**

**Legal Description of the Property**

County of Anderson

Portion of Tax Map Serial Number 230001002

All that certain piece, parcel or lot of land situate, lying and being in the County of Anderson, in the State of South Carolina, and being more particularly shown and designated as "Portion of Anderson County TMS # 230001002 1,741,178.24 SQ FT 39.97 ACRES" on a plat entitled "CLEMSON UNIVERSITY LANDFILL SITE," prepared by Clemson Facilities dated September 22, 2020, and having such boundaries and measurements as shown on said plat, which is attached hereto.

Portion of Tax Map Serial Number 230001002

