

*David Wilkin*

**VOLUNTARY CLEANUP CONTRACT  
12-6083-RP**

**IN THE MATTER OF  
TCM AMERICA SITE, LEXINGTON COUNTY  
and  
TCM AMERICA, INC.**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and TCM America, 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, et seq. (as amended), and the South Carolina Hazardous Waste Management Act (HWMA), S.C. Code Ann. §§ 44-56-200 (as amended), with respect to the facility known as the TCM America Site located at 107 McQueen Street, West Columbia, South Carolina ("Site"). The Site includes approximately forty-three acres and is bounded generally on the north by a UPS distribution facility, on the west by vacant land, on the east by vacant land and the Anderson Windows distribution facility, and on the south by vacant land and flood plain for a local creek. The Property is identified by the County of Lexington as Tax Map Serial Numbers 006896-03-028 and 006896-03-037; 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, 42 U.S.C. §§ 9601, et seq. (as amended), the HWMA, S.C. Code Ann. §§ 44-56-10, et seq. (as amended), including any amendments, or in the regulations promulgated thereunder, or the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. §§ 44-56-710 through 760 (as amended).

A. "TCM" shall mean TCM America, Inc. TCM is a South Carolina corporation with its principal place of business located at 107 McQueen Street, West Columbia, South Carolina.

- B. "Contract" shall mean this Responsible Party Voluntary Cleanup Contract.
- C. "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.
- D. "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.
- E. "Contamination" shall mean the presence of a contaminant or hazardous substance.
- 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 TCM.
- G. "Oversight Costs" means those costs, both direct and indirect, incurred by the Department in implementing the voluntary cleanup program.
- 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. "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.
- 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, et seq. (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. In September 1988, TCM Manufacturing USA Inc. purchased the subject Property.
- B. The subject Property is comprised of a 170,000 square foot manufacturing facility and approximately 43 acres of land. TCM is currently using the facility as a forklift parts and truck distribution warehouse.
- C. After a February 2011 property transfer assessment indicated potential impact at select locations across the Property, soil and groundwater samples were collected from the potential areas of concern.
- D. Limited assessment activities conducted in September 2011 indicated arsenic, chromium, and bis (2-ethylhexyl) phthalate above regulatory levels.

### RESPONSE ACTIONS

3. TCM 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 TCM's contact person for matters relating to this Contract. TCM will notify the Department in writing of changes in the contractor or laboratory. The Department will review the Work Plan and will notify TCM in writing of any deficiencies in the Work Plan, and TCM 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 an investigation to determine the source, nature, and extent of contamination at the Site. Reports previously generated for the Property may be used to focus remedial efforts at the Site.
  
- B. Submit to the Department an investigation report (to include an evaluation of risk to human health and the environment) in accordance with the schedule in the approved Work Plan. The Department shall review the report for determination of completion of the 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 TCM, and TCM 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 TCM a letter indicating that revision of the report is necessary. Within thirty (30) days of receipt of such letter from the Department, TCM shall submit a revised report addressing the Department's comments.
  
- C. If determined necessary by the Department, conduct an evaluation of

*DWS*

remedial and/or removal alternatives for addressing contamination at the Site.

4. TCM 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 TCM.

5. TCM 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 TCM pursuant to this Contract.

6. Within sixty (60) days of the execution date of this Contract and once a month thereafter, TCM 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 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) or nationally recognized overnight delivery service company or 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: Angie R. Jones  
South Carolina Department Health & Environmental Control  
Bureau of Land and Waste Management  
2600 Bull Street  
Columbia, South Carolina 29201  
jonesar@dhec.sc.gov

TCM: Anna Newell  
107 McQueen Street  
West Columbia, SC 29172

All final work plans and reports shall include three (3) 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) (as amended). TCM 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.).

### **COSTS OF RESPONSE**

9. In accordance with §§ 44-56-200 (as amended) and 44-56-740(B) (as amended), TCM 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:

THIS IS CERTIFIED AS A TRUE  
AND CORRECT COPY

SIGNATURE \_\_\_\_\_

*AN*

TCM: Anna Newell  
107 McQueen Street  
West Columbia, SC 29172

All of TCM'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). TCM 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 TCM 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 TCM.

**RESTRICTIVE COVENANT**

11. If hazardous substances in excess of residential standards exist at the Property after TCM has completed the actions required under this Contract, TCM 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 TCM and witnessed, signed, and sealed by a notary public. TCM shall file this restrictive covenant

with the Register of Mesne Conveyance or Deeds in Lexington County. The signed covenant shall be incorporated into this Contract as an Appendix. 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 TCM or subsequent owners of the Property to modify the restrictive covenant if a significant change in law or circumstances requiring remediation occurs. TCM 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. The obligations of this Contract apply to and inure to the benefit of TCM's signatories, parents, successors, assigns, and subsidiaries.

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 TCM 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, TCM shall submit to the Department a written notice of completion.

Once the Department determines that TCM has successfully and completely complied with this Contract, the Department, pursuant to S.C. Code Ann. § 44-56-740(A)(5) and (B)(1) (as amended), will give TCM a Certificate of Completion that provides a covenant not to sue to TCM 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 is contingent upon the Department's determination that the responsible party successfully and completely complied with the Contract.

In consideration of the Department's covenant not to sue, TCM, 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. TCM 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 TCM 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 Oversight Costs as defined in Paragraph 9 above;
- D. Additional contamination or releases or consequences at the Site caused by TCM 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 TCM'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 TCM 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, the covenant not to sue will be null and void. Termination of this Contract by TCM or the Department does not end the obligations of TCM to pay Oversight Costs already incurred by the Department and payment of such costs shall become immediately due.

20. The parties to this Contract agree that this Contract governs TCM's liability to the Department for civil sanctions arising from the matters set forth herein and constitutes the entire agreement between the Department and TCM with respect to this Contract. The parties are not relying upon any representations, promises, understandings or agreements except as expressly set forth in this Contract.

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

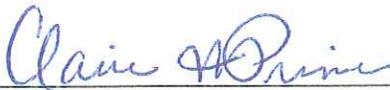
THIS IS CERTIFIED AS A TRUE  
AND CORRECT COPY

SIGNATURE DW

THE SOUTH CAROLINA DEPARTMENT OF HEALTH  
AND ENVIRONMENTAL CONTROL

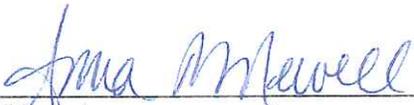
BY:   
Daphne G. Neel, Chief  
Bureau of Land and Waste Management  
Environmental Quality Control

DATE: 9/4/12

  
Reviewed by Office of General Counsel

DATE: August 30, 2012

TCM AMERICA, INC.

  
Signature

DATE: 08.27.2012

Anna M Newell, Human Resources Mgr  
Printed Name and Title

## APPENDIX A

### Legal Description of the Property

County of LEXINGTON

Tax Map Serial Numbers 006896-03-028 and 006896-03-037

All that certain-piece, parcel or lot of land, with any improvements thereon, located in Air South Industrial Park (which is in the southwest quadrant of the intersection of Dunbar Road and Interstate Highway 26) near the Town of Cayce, County of Lexington, State of South Carolina, shown on a plat prepared for Champion Road Machinery International Corporation by Palmetto Engineering Company, Inc., dated August 15, 1977, revised November 21, 1977 and recorded in the RMC Office for Lexington County in Plat Book 161G, pages 76 8,77, and being more particularly shown and designated as containing 43.167 acres upon plat prepared for TCM America (MBK), Inc. dated September 14, 1988, recorded in Plat Book 1193, page 350, and according to said latter plat, having the metes-and bounds, to wit:

Beginning at an iron which marks the northeastern most corner of the Tract, situate on the centerline of the 50 feet Railroad Right-of way shown on the plat, and running south 21 46' 26" East for a distance of 917.31 feet to an iron; thence turning and running south 21 39' 39" East for a distance of 1603.63 feet to an iron; thence turning and running south 54 16' 33" West for a distance of 47.96 feet to an iron; thence turning and running along the centerline of the creek for the following courses and distances:

South 65 25' 37" West for a distance of 111.69 feet;  
thence turning and running North 64 50' 09" West for a distance of 73.15 feet;  
thence turning and running North 57 02' 02" West for a distance of 226.13 feet;  
thence turning and running North 55 24' 14" West for a distance of 109 . 04 feet;  
thence turning and running South 89 34' 19" West for a distance of 98.75 feet;  
turning and running North 84 34' 11" West for a distance of 105.00 feet;  
thence turning and running North 83 17' 38" West. for a distance of 82.24 feet;  
thence turning and running North 77 33' 5B" West for a distance of 73.7 7 feet;  
turning and running South 79 06' 30" West for a distance of 108.70 feet;  
thence turning and running South 85 22' 30" West for a distance of 91.94 feet;  
thence turning and running North 70 50' 30" West for a distance of 121.05 feet;  
thence turning and running North 61 35' 30" West for a distance of 98.60 feet;  
thence turning and running North 02 00' 32" West for a distance of 279.74 feet;  
thence turning and running North 26" 28' 08" West for a distance of 124.81 feet;  
thence turning and running North 00 41' 35" East for a distance of L20.47 feet;  
thence turning and running North 12 56' 42" East for a distance of 151.90 feet;  
thence turning and running North 30 07' 53" West for a distance of 78.61 feet;  
thence turning and running North 10 36' 53" West for a distance of 54.34 feet;

thence turning and running North 14 29' 57" West for a distance of 109.99 feet;  
thence turning and running North 01 34' 03" East for a distance of 93.74 feet;  
thence turning and running North 23 11' 43" west for a distance of 43.05 feet;  
thence turning and running North 21 42' 38" West for a distance of 102.28 feet;  
thence turning and running North 72 19' 26" West for a distance of 112.78 feet;  
thence turning and running North 76 38' 41" West for a distance of 167.20 feet.;  
thence turning and running North 49 24' 15" West for a distance of 66.95 feet to a  
point;  
thence turning and leaving the creek bed and running North 45 42' 52" East along  
property N/F of Socol Company, Inc. (UPS) for a distance of 35.00 feet;  
thence turning and running North 45 42' 52" East for a distance of 669.80 feet to an  
iron;  
thence turning and running North 46 55' 30" West for a distance of 138.60 feet to an  
iron;  
thence turning and running North 43 13' 30" East for a distance of 50.27 feet to an iron;  
thence turning and running North 45 14' 00" East for a distance of 305.47 feet to an  
iron;  
thence turning and running North 60 27' 00" East for a distance of 154.73 feet to the  
point of beginning, be all measurements a little more or less.

**THIS IS CERTIFIED AS A TRUE  
AND CORRECT COPY**

SIGNATURE \_\_\_\_\_

*dw*