



Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

May 20, 2013

CERTIFIED MAIL - 9171999991703137207358

Don Havird
Havird Tire Company, Inc.
1650 Airport Boulevard
West Columbia, SC 29169

**Re: Responsible Party Voluntary Cleanup Contract;
Havird Tire Company Site;
Lexington County.**

Dear Mr. Havird:

Please find enclosed a Certified as True and Correct Copy of Responsible Party Voluntary Cleanup Contract 13-6162-Petroleum-RP which was executed by the Department on May 16, 2013.

Thank you for your patience and cooperation in this matter. The Department looks forward to working with Havird Tire Company to address this Site under the South Carolina Voluntary Cleanup Program. Should you wish to further discuss the terms of the contract, please telephone either Tim Hornosky at (803) 896-4017, or me at (803) 896-4168.

Yours very truly,

A handwritten signature in blue ink that reads 'David Wilkie'.

David Wilkie, Environmental Health Manager
Division of Site Assessment, Remediation & Revitalization
Bureau of Land and Waste Management

Enclosure

cc: Ken Taylor, L&WM
Tim Hornosky, L&WM
John Cresswell, L&WM
Harry Mathis, Director, EQC Region 2
Mark Berenbrok, L&WM
Pat Vincent, L&WM
Shawn Reed, L&WM
Linda Jackson, L&WM
BLWM File 413416

**VOLUNTARY CLEANUP CONTRACT
13 – 6162 - PETROLEUM RP**

**IN THE MATTER OF
HAVIRD TIRE COMPANY SITE, LEXINGTON COUNTY
and
HAVIRD TIRE COMPANY, INC.**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and Havird Tire Company, Inc., pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. §§ 44-56-710 through 760 (as amended) and the South Carolina Pollution Control Act (PCA), S.C. Code Ann. §§ 48-1-50 (as amended), with respect to the facility known as the Havird Tire Company Site located at 1650 Airport Boulevard, West Columbia, South Carolina. The facility property ("Property") includes approximately 4.35 acres and is bounded generally by industrial property and Williams Street to the north, industrial property and Airport Boulevard to the east, Airport Boulevard to the south, and industrial property and Glenn Street to the west. The Property is identified by County of Lexington as Tax Map Serial Number 005742-01-004 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 the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. §§ 44-56-710 through 760 (as amended) and the PCA, S.C. Code Ann. §§ 48-1-10 et seq., including any amendments, or in the regulations promulgated thereunder.

- A. "Havird" shall mean Havird Tire Company, Inc. Havird is a South Carolina corporation with its principal place of business located at 1650 Airport Blvd., 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

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South Carolina that has responsibility for and jurisdiction over the subject matter of this Contract.

- D. "Petroleum" and "petroleum product" means 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.
- E. "Contamination" means impact by a contaminant, petroleum, or petroleum product.
- 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 Havird Tire Company, Inc.
- G. "Response Action" shall mean any assessment, cleanup, inspection, or closure of a site as necessary to remedy actual or potential damage to public health, public welfare, or the environment.
- H. "The Site" shall mean the Property and all areas where petroleum has been released, deposited, stored, disposed of, or placed, or otherwise comes to be located;
- I. "Voluntary Cleanup" shall mean a response action taken under and in compliance with the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. §§ 44-56-710, et seq. (as amended).
- J. "Work Plan" shall mean the plan for additional response actions to be conducted at the Site as described in Paragraph 3 of this Contract.

FINDINGS

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

- A. The Property was owned by Jeff Hunt Machinery Company around 1969.



- Rick Hendrick Honda Cars acquired the Property on October 12, 1987 and was used as an automobile sales and service facility.
- B. Havird acquired the Property on June 20, 2008 and continues today as an automotive service business.
- C. A Phase I Environmental Site Assessment (ESA) was performed by Advent Environmental in 1987 and did not identify any hazardous substance releases. The ESA report did note the presence of an underground storage tank (UST) and underground lifts at the Property.
- D. Havird Phase I ESA Report by Compliance Center dated July 17, 2008 through July 24, 2008 noted the following:
- i. There were no known or suspect conditions that have resulted in a release or threatened release of hazardous substances and/or petroleum on, to, in, or at the Site.
 - ii. An abandoned UST (UST Permit #05945) was noted and was in compliance with Department regulations and no leaks were reported from the tank.
- E. Havird Limited Phase II ESA report by GS2 dated November 1, 2012 noted the following On-Site Recognized Environmental Conditions (REC):
- i. Fourteen in-ground hydraulic lifts with automotive repair bays.
 - ii. Floor drains in close proximity to the service area provided a route for fluids to enter sewer.
- F. The GS2 ESA also noted that numerous soil and groundwater samples were taken during the Phase II and noted the following conclusions:
- i. Analytical results indicated that no VOCs were detected in the six groundwater and one soil samples collected.
 - ii. Total Petroleum Hydrocarbons – Diesel Range Organics (TPH-DRO) compounds were detected in two soil samples ranging from 420 mg/Kg to 1,000 mg/Kg.
 - iii. It appears that the hydraulic systems in the bays of the garage have had a release into the surrounding soils.
- G. On January 10, 2013, Havird voluntarily agreed to enter the VCP.

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RESPONSE ACTIONS

3. Havird 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. 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 Havird's contact person for matters relating to this Contract. Havird will notify the Department in writing of changes in the contractor or laboratory. The Department will review the Work Plan and will notify Havird in writing of any deficiencies in the Work Plan, and Havird 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. If a remedial/removal action is required, a risk-based decision-making approach will be used and shall be consistent with the Department's guidance document titled *South Carolina Risk-Based Corrective Action For Petroleum Releases (5/15/2001)*.
- 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 Havird, and Havird 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 Havird a letter indicating that revision of the report is necessary. Within thirty (30) days of receipt of such letter from the Department, Havird 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.
- D. The Work Plan must include, but is not limited to, investigation of all on-site Recognized Environmental Conditions as referenced in Part 2 of this Contract.

4. Havird 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 Havird.

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

6. Within sixty (60) days of the execution date of this Contract, and once a month thereafter or as frequently as determined by the Department, Havird 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) nationally recognized overnight delivery service company or, (D) by hand delivery to the other party at the address shown below or at such place or to such agent as the parties may from time to time designate in writing.

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

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

Havird: Don Havird
Havird Tire Company, Inc.
1650 Airport Boulevard
West Columbia, SC 29169

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

PUBLIC PARTICIPATION

8. Upon execution of this Contract, the Department will seek public participation in accordance with S.C. Code Ann. § 44-56-740(D) Havird 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. As provided for by S.C. Code Ann. §§ 44-56-740(C) Havird shall, on a quarterly basis, reimburse the Department for oversight costs of activities required under this Contract. "Oversight Costs" shall mean those costs, both direct and indirect, incurred by the Department in implementing the Voluntary Cleanup Program as related to this Contract and any future amendments thereto. Oversight costs include, but are not limited to, the

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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 amount of time spent on the project for each activity and other specific costs. Invoices shall be submitted to:

Don Havird
Havird Tire Company, Inc.
1650 Airport Boulevard
West Columbia, SC 29169

All of Havird'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 of response 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). All of the Department's costs associated with access and said response actions will be reimbursed by Havird. Havird or 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 Havird is unable to obtain access from the Property owner or owners of other property within the Site, the Department may obtain access and perform

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response activities.

RESTRICTIVE COVENANT

11. If Contamination in excess of residential standards exists at the Property after Havird has completed the actions required under this Contract, Havird 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 Havird and, if the Property is not owned by Havird, the current owner of the Property, and witnessed, signed, and sealed by a notary public. Havird shall file this restrictive covenant with the Register of Mesne Conveyance or Deeds in the county in which the Property is located. The signed covenant shall be incorporated into this Contract as an Appendix. A Certificate of Completion shall not be issued by the Department until the Restrictive Covenant, if required, is executed and recorded. With the approval of the Department, the restrictive covenant may be modified in the future if additional remedial activities are carried out which meet appropriate clean-up standards at that time or circumstances change such that the restrictive covenant would no longer be applicable. The Department may require Havird or subsequent owners of the Property to modify the restrictive covenant if a significant change in law or circumstances requiring remediation occurs. Havird 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 covenant 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 terms, conditions, obligations and protections of this Contract apply to and inure to the benefit of Havird, its 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

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

A. If the Department determines that Havird has successfully and completely complied with this Contract and the petroleum chemicals of concern for soil, vapor or groundwater have decreased to the Risk-Based Screening Levels (RBSLs) for the Site, the Department, pursuant to S.C. Code Ann. § 44-56-740(A)(5) and (B)(1), shall issue Havird a Certificate of Completion that provides a covenant not to sue to Havird, its signatories, parents, successors, and 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.

B. If the Department determines that Havird has successfully and completely complied with this Contract, and the concentrations of petroleum chemicals of concern are at or below the Site-Specific Target Levels (SSTLs) but are still greater than the Risk-Based Screening Levels for the Site, the Certificate of Completion may be



issued with a covenant not to sue Havird, its signatories, parents, successors, and 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, subject to the following:

- i. Verification monitoring documents that natural attenuation is taking place, and that no risk to human health or environment will result;
- ii. Groundwater is not being used and will not be used in the future within the actual areas of the Site or in the predicted area of petroleum impact; and
- iii. Petroleum-impacted soil is not exposed at the Site.

Havird, its signatories, parents, successors, subsidiaries are required to notify the Department within thirty (30) days of unforeseen changes in items i, ii, or iii above. These requirements will remain in effect until all petroleum chemicals of concerns have attenuated by natural means to at or below the RBSLs. If Contamination from the release are detected at levels that present a risk to human health or the environment, the Department may amend this Contract to require additional Site assessment and remediation. The covenant not to sue shall be revoked if Havird or its signatories, successors, and subsidiaries do not satisfactorily complete the requirements of the Contract as provided in items i, ii, and iii above.

- C. In consideration of the Department's covenant not to sue, Havird 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

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acts or omissions.

17. Havird 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 Havird or subsequent owners of the Site elect to terminate, it must submit to the Department all data generated pursuant to this Contract, and certify to the Department's satisfaction that any environmental or physical hazard shall be stabilized and/or mitigated such that the Site does not pose a hazard to human health or the environment that did not exist prior to any initial response action addressing contamination identified in this Contract.

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

- A. Events or circumstances at the Site that are inconsistent with the terms and conditions of this Contract;
- B. Failure to complete the terms of this Contract or the Work Plan;
- C. Failure to submit timely payments for Past Costs and/or for oversight costs as defined in Paragraph 9 above;
- D. Additional contamination or releases or consequences at the Site caused by Havird 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 Havird'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 Havird 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 Havird or the Department does not end the obligations of

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Havird to pay oversight costs already incurred by the Department and payment of such costs shall become immediately due.

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

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APPENDIX A

Legal Description of the Property

County of Lexington

Tax Map Serial Number 005742-01-004

All that certain piece, parcel, or lot of land, with the improvements thereon, situate, lying and being in West Columbia, County of Lexington, State of South Carolina the same being shown on Plat of property surveyed for Jeff Hunt Machinery Company by B.P. Barber & Associates, Inc., dated July 3, 1969, and recorded in the Office of the Register of Mesne Conveyance for Lexington County in Plat Book 97-G at Page 103 and also being shown on a Plat prepared for Rick Hendrick Honda Cars Co., L.P. by Cox and Dinkins, Inc. dated October 12, 1987, and recorded December 2, 1987 in Book 221 at Page 70 and having the following metes and bounds as shown on latter Plat: BEGINNING at an iron 240 feet from the intersection of Glenn Street and Airport Boulevard and running N 29-31 W for a distance of 23.00 feet to an iron; thence turning and running N 02-48 W for a distance of 209.05 feet to an iron; thence running N 02-28 W for a distance of 770.44 feet to an iron; thence turning and running S 77-07 E for a distance of 221.80 feet to an iron; thence turning and running S 02-10 E for a distance of 786.20 feet to an iron; thence turning and running S 49-30 W for a distance of 251.68 feet to the POINT OF BEGINNING, being all measurements a little more or less.