

**VOLUNTARY CLEANUP CONTRACT
21-4813-RP**

**IN THE MATTER OF
KERR MANUFACTURING PLANT SITE, GREENVILLE COUNTY
and
SILVER HAWK, LLC**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and Silver Hawk, LLC, 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 Silver Hawk, LLC Property ("Property") which includes a portion of the facility formerly known as the Kerr Manufacturing Plant (also known as Kerr-Renfrew Mill and Kerr Finishing) Site ("Site"). The Property is located off School Street, Travelers Rest, South Carolina ("Property"). The Property includes approximately 143 acres and is located west of US Highway 276 (Greer Highway), south of the former Renfrew Mill building, and north of the Hawk Valley Subdivision and the YMCA. The Property is identified by the County of Greenville as Tax Map Serial Number 0506060100142. 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. "Silver Hawk" shall mean Silver Hawk, LLC. Silver Hawk is a South Carolina limited liability company with its principal place of business located at 1203 Greer Highway, Travelers Rest, South Carolina 29690.

- B. "Contamination" shall mean impact by a Contaminant or Hazardous Substance.
- C. "Contract" shall mean this Responsible Party Voluntary Cleanup Contract.
- D. "Department" shall mean the South Carolina Department of Health and Environmental Control or a successor agency of the State of South Carolina that has responsibility for and jurisdiction over the subject matter of this Contract.
- E. "Hazardous Substance" shall have the same meaning as defined under subparagraphs (A) through (F) of Paragraph (14) of CERCLA § 101, 42 U.S.C. § 9601(14).
- F. "Pollutant" or "Contaminant" includes, but is not limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction, or physical deformations, in organisms or their offspring; "Contaminant" does not include petroleum, including crude oil or any fraction of crude oil, which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of paragraph (14) of CERCLA § 101, 42 U.S.C. §§ 9601 et seq. and does not include natural gas, liquefied natural gas, or synthetic gas of pipeline quality or mixtures of natural gas and such synthetic gas.
- G. "Property" as described in the legal description attached as Appendix A, shall mean that portion of the Site, which is subject to ownership, prospective ownership, or possessory or contractual interest of Silver Hawk.
- 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. Owners and Operators: The owners and operators of the Property include the following:

Fred Roach and J.H. McDaniel	Unknown to 1942
Brandon Corporation	1942 to 1949
Abney Mills	1949 to 1979
Allied Products Corp.	1979 to 1979
Greenville County	1979 to 1987
Rocky Mount Industries, Inc.	1987 to 1995
RFP, Inc. and/or Bobby L. Hawkins	1995 to 2005
Silver Hawk, LLC	2005 to Present

- B. Property and Surrounding Areas: The Property is located west of US Highway 276 (Greer Highway), south of the former Kerr-Renfrew Mill building and Renfrew, School, and Church Streets, and north of Hawk Valley Subdivision and YMCA property. The Kerr-Renfrew Mill operated

as a textile dyeing and finishing plant from the 1930s until 1988. Wastewater from facility operations was discharged to a wastewater treatment system located on the Property. The treatment system was comprised of nine unlined "lagoons" (two settling ponds, a dye lagoon, two aeration ponds, and four finishing ponds), a concrete clarifier, a concrete starch basin, a dry lagoon, and a weir. Treated wastewater was discharged to the Reedy River until the mid-1980s when it was discharged to the local publicly-owned treatment works. The former wastewater treatment units are located on the northern and eastern portions of the Property. The western portion of the Property is mostly wooded and undeveloped. The owner plans to develop this area as a residential subdivision.

- C. Investigations / Reports: The Department conducted a Preliminary Assessment in 1988-1989 and a Site Inspection of the manufacturing and wastewater treatment portions of the Kerr-Renfrew property in 2002. Various contaminants, including chromium, zinc, and several polycyclic aromatic hydrocarbons, were detected at concentrations above screening values in samples collected from sludge and some of the wastewater treatment units.
- D. Removal Action: In 1992, the Department conducted an immediate removal action at the main Kerr-Renfrew Mill building and the wastewater treatment plant. Waste streams removed included flammable liquids and solids, acids, corrosive bases, caustics, soda ash, and mercury. The Department incurred in excess of \$320,000.00 in response costs associated with the removal action.
- E. Pursuant to an August 2, 1994 Agreement with the Department, Silver Hawk's predecessor acquired the Property through the purchase of a judgment from the Department and subsequent foreclosure. The property was originally purchased by RFP, Inc., a S.C. Corporation owned solely by Bobby L. Hawkins on March 15, 1995. In 2002, Mr. Hawkins distributed a portion of the parcel (130.56 acres) from RFP, Inc.

to himself personally on February 4, 2002. The remaining portion of the parcel (approximately 40 acres), along with the larger 130.56 acres, was transferred to Silver Hawk, LLC in May 2005 with notes payable to Bobby L. Hawkins. In 2005, Mr. Hawkins gifted 45 percent of the assets in Silver Hawk, LLC to his two children, Bobby Randall Hawkins and Dana Hawkins Lang, equally. The parcel presently remains in the name of Silver Hawk, LLC.

- F. Closure Plans: Closure plans for the wastewater treatment units were developed in 2003 and 2004. Closure of the units occurred between 2007 and 2009 and included the consolidation of sludge and concrete from the wastewater units and the placement of this material within the footprint of the former settling basins. This area is now referred to as the "landfill." The closure requirements included provisions for the installation of monitoring wells and annual groundwater sampling. Based on declining concentrations of contaminants, sampling requirements have been modified to consist of only MW-2 for semi-volatile organic compounds.
- G. 2016 Sampling Event: In 2016, Silver Hawk conducted limited additional sampling of soil, surface water, and sediment within some of the former wastewater treatment system units. Based on the laboratory results, there did not appear to be any conditions which posed a risk to human health or the environment.
- H. The Department has incurred approximately \$360,000.00 in response costs since Fiscal Year 1991.

RESPONSE ACTIONS

3. Silver Hawk 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 Property 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 Silver Hawk's contact person for matters relating to this Contract. Silver Hawk will notify the Department in writing of changes in the contractor or laboratory. The Department will review the Work Plan and will notify Silver Hawk in writing of any deficiencies in the Work Plan, and Silver Hawk 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 to determine the source, nature, and extent of Contamination at the Property.
- B. Submit to the Department an investigation report (to include a brief 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 Silver Hawk and Silver Hawk shall subsequently conduct additional field investigation to further determine the source, nature, and extent of Contamination. If the Department determines the field investigation is complete but the report is incomplete, the Department shall send to Silver Hawk a letter indicating revision of the report is necessary. Within thirty (30) days of receipt of such letter from the Department, Silver Hawk 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. Silver Hawk 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 Silver Hawk.

5. Silver Hawk 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 Silver Hawk pursuant to this Contract.

6. Within ninety (90) days of the execution date of this Contract and once a quarter thereafter, Silver Hawk 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: Minda Hornosky
South Carolina Department Health & Environmental Control

Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201
hornoskms@dhec.sc.gov

B. Randall Hawkins
Silver Hawk, LLC
1203 Greer Highway
Travelers Rest, SC 29690

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 by Silver Hawk, the Department may seek public participation in accordance with S.C. Code Ann. § 44-56-740(D), and not inconsistent with the National Contingency Plan. Silver Hawk 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. Silver Hawk shall, within thirty (30) days of the execution date of this Contract, pay to the Department by certified or cashier's check the sum of twenty-six thousand two hundred dollars and forty-five cents (\$26,200.45) to reimburse estimated past response cost incurred by the Department through November 1, 2020 ("Past Costs") relating to the Site. Silver Hawk's payment for Past Costs should be submitted to:

The Department: Linda Jackson
South Carolina Department of Health & Environmental Control
Bureau of Land and Waste Management
2600 Bull Street
Columbia, SC 29201

In accordance with S.C. Code Ann. §§ 44-56-200 and 44-56-740, Silver Hawk shall, on a quarterly basis, reimburse the Department for Oversight Costs of activities

required under this Contract occurring after November 1, 2020. 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:

B. Randall Hawkins
Silver Hawk, LLC
1203 Greer Highway
Travelers Rest, SC 29690

All of Silver Hawk'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). Silver Hawk 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 Silver Hawk 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 Silver Hawk.

RESTRICTIVE COVENANT

11. If hazardous substances in excess of residential standards exist at the Property after Silver Hawk has completed the actions required under this Contract, Silver Hawk 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 Silver Hawk and witnessed, signed, and sealed by a notary public. Silver Hawk shall record this restrictive covenant with the Register of Deeds in Greenville County. The signed covenant shall be incorporated into this Contract as an Appendix. A Certificate of Completion shall not be issued by the Department until the restrictive covenant, if required, is executed and recorded. With the approval of the Department, the restrictive covenant may be modified in the future if additional remedial activities are carried out which meet appropriate clean-up standards at that time or circumstances change such that the restrictive covenant would no longer be applicable. The Department may require Silver Hawk or subsequent owners of the Property to modify the restrictive covenant if a significant change in law or circumstances requiring remediation occurs. Silver Hawk or subsequent owners of the Property shall file an annual report with the Department by May 31st of each year detailing the current land uses and compliance with the restrictive covenants for as long as the restrictive covenant remains in effect on the Property. The report must be submitted in a manner prescribed by the Department.

OBLIGATIONS AND BENEFITS

12. Nothing in this Contract is intended to be or shall be construed as a release or covenant not to sue for any claim or cause of action, past or future, that the Department may have against a responsible party who is not a signatory to this Contract and who is not a signatory's parent, subsidiary, successor, or assign.

13. Subject to the provisions of Paragraph 15, nothing in this Contract is intended to

limit the right of the Department to undertake future Response Actions at the Site or to seek to compel parties to perform or pay for costs of Response Actions at the Site. Nothing in this Contract shall in any way restrict or limit the nature or scope of Response Actions that may be taken or be required by the Department in exercising its authority under State and Federal law.

14. Subject to the provisions of Paragraph 15, nothing in this Contract is intended to be or shall be construed as a release or covenant not to sue for any claim or cause of action that the Department may have against Silver Hawk for any matters not expressly addressed by and settled through this Contract.

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

Once the Department determines that Silver Hawk 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 Silver Hawk a Certificate of Completion that provides a covenant not to sue to Silver Hawk 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 is contingent upon the Department's determination that Silver Hawk successfully and completely complied with this Contract.

In consideration of the Department's covenant not to sue, Silver Hawk 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. Silver Hawk 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 Silver Hawk 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 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 Silver Hawk 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 Silver Hawk '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 Silver Hawk 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, the covenant not to sue will be null and void. Termination of this Contract by Silver Hawk or the Department does not end the

obligations of Silver Hawk to reimburse Oversight Costs already incurred by the Department and payment of such costs shall become immediately due.

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

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

BY:  DATE: 10-4-2021
Henry J. Porter, Chief
Bureau of Land and Waste Management
S.C. Department of Health & Environmental Control

 DATE: 10/4/21
Reviewed by Office of General Counsel

SILVER HAWK, LLC

 DATE: 9-28-21
Signature

Bobby L HAWKINS
Printed Name and Title

APPENDIX A

Legal Description of the Property

County of Greenville

Tax Map Serial Number 0506060100142

All that certain piece, parcel or tract of land, together with all located thereon, situate, lying and being in the County of Greenville, State of South Carolina, containing 130.56 acres, more or less, as shown and designated on a plat entitled "Boundary of Survey for Bobby L. Hawkins", prepared by Robert A. Foster, RLS#11313, dated April 22, 1995 and amended September 5, 1998 and recorded in the Register of Deeds for Greenville County in Plat Book 54-C at Page 62 and having such metes and bounds as shown thereon, reference to said plat being made for a more complete description.

THIS is the same property conveyed to the Grantor herein by deed from RFP, Inc. recorded February 4, 2002 in Deed Book 1982 at Page 1413.

THIS conveyance is subject to all restrictions, setback lines, roadways, zoning ordinances, easements and rights-of-way appearing on the property and/or of record.