

**VOLUNTARY CLEANUP CONTRACT
17-6460-RP**

**IN THE MATTER OF
SPARTANBURG TROLLEY SITE, SPARTANBURG COUNTY
and
DUKE ENERGY CAROLINAS, LLC**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and Duke Energy Carolinas, 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 facility known as the Spartanburg Trolley Site ("Site"). The Duke Energy Carolinas, LLC property is located at 353 Forest Avenue, Spartanburg, South Carolina ("Property"). The Property includes approximately 7.22 acres and is bounded generally by Glendale Road on the north and east; Forest Avenue on the west; and property owned by the City of Spartanburg beyond which is Union Street on the south. The Property is identified by the County of Spartanburg as Tax Map Serial Number 7-17-05-104.00. A legal description of the Property is attached to this Contract as Appendix A.

DEFINITIONS

1. Unless otherwise expressly provided, terms used in this Contract shall have the meaning assigned to them in CERCLA, the HWMA, and in regulations promulgated under the foregoing statutes, or the Brownfields/Voluntary Cleanup Program.
 - A. "Duke" shall mean Duke Energy Carolinas, LLC. Duke Energy Carolinas, LLC is a North Carolina Limited Liability Company authorized to do business in South Carolina, with its principal place of business located at 526 South Church Street, Charlotte, North Carolina.
 - B. "Contamination" shall mean impact by a Contaminant or Hazardous Substance.

- C. "Contract" shall mean this Responsible Party Voluntary Cleanup Contract.
- D. "Department" shall mean the South Carolina Department of Health and Environmental Control or a successor agency of the State of South Carolina that has responsibility for and jurisdiction over the subject matter of this Contract.
- E. "Hazardous Substance" shall have the same meaning as defined under subparagraphs (A) through (F) of Paragraph (14) of CERCLA § 101, 42 U.S.C. § 9601(14).
- F. "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

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- A, shall mean that portion of the Site, which is subject to ownership, prospective ownership, or possessory or contractual interest of Duke.
- 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. The Property was used as a light rail/trolley maintenance and repair facility by various companies from 1900 until 1935. The light rail/trolley system was operated by the following companies:
 - i. 1900–1912, Spartanburg Railway, Gas, and Electric Company;
 - ii. 1912-1922, South Carolina Light Power and Railway Company;
 - iii. 1922-1927, South Carolina Electric and Gas Company (SCE&G);

- iv. 1928-1935, Southern Public Utilities Company (later absorbed by Duke Power Company).
- B. The Property was used by Duke Power Company as a transmission and distribution field office until the mid-1980s and included fleet maintenance, storage of power poles and other equipment/supplies, and the storage/repair of electrical transformers.
 - C. On behalf of Duke, Arcadis U.S., Inc. (Arcadis) visited the Site in December of 2016 to perform reconnaissance and assess for potential environmental impacts related to historical property use.
 - D. Arcadis visited the Site on three occasions between January 3 and March 16, 2017 to evaluate the presence or absence of Chemicals of Concern (COC) in soil. Analytical results from soil samples taken at the Site indicated the following:
 - i. A total of 201 samples were analyzed for polychlorinated biphenyls (PCBs). Thirty-one (31) of the samples indicated the presence of polychlorinated biphenyls (PCBs) in concentrations greater than 1 mg/kg. The locations of these samples are limited to the central portion of the Site. Three of the samples contained PCBs at concentrations greater than 50 mg/kg.
 - ii. A total of 32 soil samples were analyzed for benzene, ethylbenzene, toluene, xylene and naphthalene. None of the compounds were detected in the samples above the residential U.S. Environmental Protection Agency Regional Screening Levels (RSL).
 - iii. A total of 32 soil samples were analyzed for poly aromatic hydrocarbons (PAH). Twenty-five of the soil samples had one or more PAH detected at concentrations above the residential RSL.
 - iv. A total of 32 soil samples were analyzed for total petroleum hydrocarbons (TPH). TPH was not detected above the

- laboratory reporting limit for 14 of the samples. Eighteen (18) of the samples had TPH detected above the residential RSL of 82 mg/kg.
- v. A total of 86 soil samples were analyzed for arsenic, barium, cadmium, chromium, lead, mercury, selenium and silver. Barium was detected above the residential RSL in one of the samples. Cadmium was detected above the residential RSL in three of the samples. Lead was detected above the residential RSL in eight of the samples. The maximum detected concentration of lead was 2,970 mg/kg. Arsenic was detected above the residential RSL in 71 of the soil samples. Seven of the soil samples had arsenic detected above the regional background concentration of 11 mg/kg (Canova, 1999).

RESPONSE ACTIONS

3. Duke 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 Duke's contact person for matters relating to this Contract. Duke will notify the Department in writing of changes in the contractor or laboratory. The Department will review the Work Plan and will notify Duke in writing of any deficiencies in the Work Plan, and Duke 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 a Remedial Investigation (RI) to determine the source,

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nature, and extent of Contamination at the Site.

- B. Submit to the Department an RI 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 RI 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 Duke, and Duke 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 Duke a letter indicating that revision of the report is necessary. Within thirty-(30)-days of receipt of such letter from the Department, Duke 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, and Duke may conduct interim remedial measures as approved by the Department.

4. Duke 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 Duke.

5. Duke 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 Duke pursuant to this Contract.

6. Within sixty (60) days of the execution date of this Contract and once a quarter thereafter, Duke 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) 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: Shelton Smalls
South Carolina Department Health & Environmental Control
Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201
smallssj@dhec.sc.gov

Duke: Stephen P. Barrick
Duke Energy
526 S Church Street, EC13K
Charlotte, NC 28202
Stephen.barrick@duke-energy.com

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), and not inconsistent with the National Contingency Plan. Duke will reimburse the Department's costs associated with public participation (e.g., publication of public notice(s), building and equipment rental(s) for public meetings, etc.).

RESPONSE COSTS

9. In accordance with §§ 44-56-200 and 44-56-740, Duke 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:

Duke: Stephen P. Barrick
Duke Energy
526 S Church Street, EC13K
Charlotte, NC 28202
Stephen.barrick@duke-energy.com

All of Duke'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

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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). Duke 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 Duke 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 Duke.

RESTRICTIVE COVENANT

11. If hazardous substances in excess of residential standards exist at the Property after Duke has completed the actions required under this Contract, Duke 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 Duke and witnessed, signed, and sealed by a notary public. Duke shall record this restrictive covenant with the Register of Deeds or Mesne Conveyances in Spartanburg 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 Duke or subsequent owners of the Property to modify the restrictive covenant if a significant change in law or circumstances requiring remediation occurs. Duke 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

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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 the Contract and who is not a signatory's parent, subsidiary, successor and 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 Duke for any matters not expressly addressed by and settled through this Contract.

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

Once the Department determines that Duke 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 Duke a Certificate of Completion that provides a covenant not to sue to Duke, its signatories, parents, subsidiaries, successors and assigns 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 Duke successfully and

completely complied with the Contract.

In consideration of the Department's covenant not to sue, Duke, 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. Duke 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 Duke 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 Duke, 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 Duke'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;

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or

- G. Failure by Duke to obtain the applicable permits from the Department for any Response Action or other activities undertaken at the Property.

18. Upon termination under Paragraph 16 or 17 of the Contract, the covenant not to sue will be null and void. Termination of this Contract by Duke or the Department does not end the obligations of Duke 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: Daphne G. Neel DATE: 5/31/17
Daphne G. Neel, Chief
Bureau of Land and Waste Management
Environmental Quality Control

Clair [Signature] DATE: 5/23/17
Reviewed by Office of General Counsel

DUKE ENERGY CAROLINAS, LLC

Larry E. Hatcher DATE: 5/16/2017
Signature

Larry E. Hatcher / VP of Environmental Services
Printed Name and Title

APPENDIX A

Legal Description of the Property

County of Spartanburg

Tax Map Serial Number 7-17-05-104.00

All that lot or parcel of land on which is located car barn; Beginning at a crossing of Union dirt road (Point of intersection) over the track of the Southern Railway (S.U.&C. Division) and also over the track of the Spartanburg Street Railway, being over the right of way line of both said Companies; thence S 81-10 E 90 feet to a point in Union road; thence with said Union road S 64-55 E 866 feet to a point in Union road; thence S 51-60 E 84 feet to a point in Union road; thence S 39-50 W to a point on the dividing line between the right of way of Spartanburg Street Railway and the Southern Railway; thence N 50-10 W 992 feet to a point of beginning, containing Three and Thirty-Five One hundredths (3.35) Acres, more or less, as shown by deed from D.R. Duncan to F.D. McEowen, dated January 16th, 1901, and recorded in Book XXX, Page 199, and transferred to Spartanburg Railway, Gas, and Electric Company by deed recorded in Book ZZ, Page 6, and to South Carolina Light, Power, and Railways Company by deed recorded in Book 5-H, Page 260.

And:

All that certain or parcel of land lying and being in Spartanburg County, South Carolina, known and shown as Lot No. 22 on a plat of the Duncan Park Subdivision of the D.R. Duncan Estate by W.N. Willis, C.E., dated October 3, 1923, and recorded in Plat Book 7, pages 173-175, R.M.C. Office for Spartanburg County, and more particularly shown and described on a plat of the property of the Marth N. Wannamaker Estate dated September 17, 1956, to be recorded herewith, as beginning at a stake near the edge of a county road (the old Spartanburg-Glenn Springs Road) near East Spartanburg, and running thence S. 49-36 E. 136.8 feet to a stake; thence S. 35-09 E. 212.9 feet to a stake in said road; thence S. 31-07 E. 403 feet to a stake in said road on the right-of-way of the old Spartanburg Street Railway trolley line; thence with the line of the old trolley line N. 48-40 W. 726 feet to a stake on the line of the property of Duke Power Company; thence with the line of Duke Power Company N. 39-24 E. 170 feet to the beginning corner.

ALSO, all that tract or parcel of land adjoining the above-described parcel and lying to the south and southwest thereof, being known and shown as the right-of-way of the old trolley line on said plat, and being 40 feet in width, more or less, having a length adjacent to the above-described property of 770 feet, more or less, and a length along the right-of-way of Southern Railway of 925 feet, more or less, and being bounded on the northeast by the above-described lot, and property of the Andrews Estate; on the southwest by the right-of-way of Southern Railway System, and on the northwest by property of Duke Power Company.

ALSO, all the right, title and interest of the grantor herein in and to the roadway lying to the north and east of the above-described property and between the above-described property and the property of the Andrews Estate, being known as the old Spartanburg-Glenn Springs Road; also, all the right, title and interest of the grantor herein, including reversionary interest, if any, in and to the right-of-way of the Spartanburg and Union Railroad (now Southern Railway-Carolina Division) lying to the south and southwest of the above-described property.