

IN THE MATTER OF:)	SETTLEMENT AGREEMENT
)	FOR RECOVERY OF RESPONSE
)	COSTS
Bennett Landfill Fire Superfund Site)	
Chester, Chester County, South Carolina)	U.S. EPA Region 4
)	Docket No. CERCLA-04-2022-2518(b)
)	
W.R. Floyd Services, Inc., d/b/a)	
J. F. Floyd Mortuary,)	PROCEEDING UNDER
)	SECTION 122(h)(1) OF CERCLA
Settling Party)	42 U.S.C. § 9622(h)(1)

**CERCLA SECTION 122(h)(1) SETTLEMENT AGREEMENT
FOR DEMAND AMOUNT**

1. This Settlement Agreement for Recovery of Response Costs (“Settlement”) is entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders) and redelegated through the Director, Superfund Division, through the Deputy Director, Superfund Division, to the Chief, Superfund Enforcement and Community Engagement Branch, which has been renamed the Enforcement Branch of the Superfund and Emergency Management Division.

2. This Settlement concerns the Bennett Landfill Fire Superfund Site (“Site”) located at 4399 Pinckney Road in Chester, Chester County, South Carolina. EPA alleges that the Site is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

3. This Settlement is made and entered into by W.R. Floyd Services, Inc., d/b/a J. F. Floyd Mortuary (“Respondent”) and EPA. Respondent consents to and will not contest EPA’s authority to enter into this Settlement or to implement or enforce its terms. Respondent agrees to undertake all actions required by this Settlement. This Settlement is binding upon EPA and upon Respondent and its heirs, successors, and assigns.

4. A fire occurred at the Site. Responding to the fire were local firefighters and other first responders, and the South Carolina Department of Health and Environmental Control (“DHEC”) emergency personnel. DHEC requested EPA assistance. Given the presence of asbestos in the landfill, which is a listed hazardous substance, EPA determined that Site

conditions met criteria specified at 40 C.F.R. §300.415 of the National Oil and Hazardous Substances Pollution Contingency Plan for initiation of a removal action.

5. Improper disposal of asbestos containing materials (“ACM”) at the Site left significant quantities of ACM with high asbestos concentrations exposed to the elements, which were being transported by wind and weather. Improper Site operations left significant quantities of ACM with high asbestos concentrations scattered across the entire landfill surface. Without action, deteriorating conditions would have caused additional asbestos transport.

6. In response to the release or threatened release of hazardous substances at or from the Site, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, EPA undertook response actions at the Site including the following:

- a. The use of heavy equipment to uncover and extinguish burning portions of the landfill. Local firefighters and EPA extinguished the fire after five days of operations. Bulk solid samples confirmed that 4 out of 5 samples contained asbestos.
- b. Approximately one month after the initial response to the fire, smoke and smoldering debris were again observed at the Site, and DHEC requested that EPA perform a follow-up investigation. EPA, DHEC, and local emergency management officials conducted a Site walkthrough and observed erosion throughout the asbestos disposal cell. Deep rills were observed across the entire surface of the cell, which cut through the soft non-vegetated cover, thereby exposing asbestos waste at the bottom of the rills. Pieces of torn asbestos disposal bags and broken pieces of bulk material were observed scattered throughout the Site.
- c. EPA subsequently conducted a Removal Site Evaluation which documented that the fire was expanding. Landfill measurements indicated that up to 714,000 cubic yds. of potential fuel was available to fuel the fire which could persist for several years if not immediately addressed.
- d. EPA signed an Action Memorandum authorizing the expenditure of funds for a time-critical removal action at the Site, which has been completed.

7. In performing the response action, EPA has incurred response costs at or in connection with the Site.

8. Crisis Hill, Inc., the property owner, and Bennett’s Landfill, Inc., the landfill operator, both entirely owned by Ronald Olsen, declined to participate in the removal action.

9. EPA alleges that Respondent is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is liable for EPA’s Past Response Costs incurred at or in connection with the Site.

10. Under this Settlement, “EPA’s Past Response Costs” shall mean all costs, including but not limited to direct and indirect costs, that EPA or the U.S. Department of Justice on behalf of EPA has spent at or in connection with the Site through the Effective Date of this Settlement. Pursuant to EPA’s Superfund Cost Recovery Package Imaging and On-Line System summary, the EPA’s past costs through April 27, 2022, are \$5,358,528.87.

11. EPA and Respondent recognize that this Settlement has been negotiated in good faith and that this Settlement is entered into without the admission or adjudication of any issue of fact or law. The payments made by Respondent in accordance with this Settlement do not constitute an admission of liability by Respondent. Respondent does not admit and retains the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this Settlement, the validity of the facts or allegations contained in this Settlement.

12. Within 30 days after Respondent receives notice from EPA that EPA has signed the Settlement and that the Attorney General or his designee has approved the Settlement, Respondent shall pay to EPA \$6,718.62.

13. Respondent shall make payment by check to “EPA Hazardous Substance Superfund.” The check, or a letter accompanying the check, shall identify Respondent’s name and address, the Site name, the EPA Region and Site/Spill ID Number B44Y and the EPA docket number for this matter, CERCLA-04-2022-2518(b), and shall be sent to:

U.S. Environmental Protection Agency
Superfund Payments – Region 4
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000

Alternatively, Respondent may make its payment online through the Department of Treasury at www.pay.gov and enter “sfo 1.1” in the search field. Respondent will then click on “EPA Miscellaneous Payments - Cincinnati Finance Center” and enter the information on the electronic form before payment can be made by bank account (ACH) or debit or credit card.

14. EPA will deposit each Respondent’s total payment into the EPA Hazardous Substance Superfund. At the time of payment, Respondent shall send notice that payment has been made to EPA Region 4, and to the EPA Cincinnati Finance Center (CFC), by email to the addresses below except that any notice that cannot be electronically submitted via email shall be provided by mail to the addresses below. Such email or mail notice shall reference Site/Spill ID Number B44Y and the EPA docket number for this matter, CERCLA-04-2022-2518(b):

EPA R4 by email: painter.paula@epa.gov

EPA R4 by mail: Paula Painter, Program Analyst
Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street S.W.
Atlanta, GA 30303

EPA CFC by email: cinwd_acctsreceivable@epa.gov

EPA CFC by regular mail: EPA Cincinnati Finance Center
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268

15. If Respondent fails to make the payment required by Paragraph 12 above by the required due date, Interest shall accrue on the unpaid balance from the date that payment required by Paragraph 12 was due through the date of payment.

16. Under this Settlement, "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

17. If any amounts due to EPA under Paragraph 12 above are not paid by the required due date, Respondent shall also pay to EPA a stipulated penalty of \$100 for each day that payment is late for the first day through twentieth day, and \$250 for each day for the twenty-first day and beyond.

18. Any such Interest and stipulated penalties as set forth in Paragraphs 15 through 17, above, are due and payable within 30 days after the date of demand for payment by EPA. Interest and penalties shall accrue as provided above regardless of whether EPA has notified the Respondent, but payment of penalties need only be made upon demand. Respondent shall make all payments in accordance with the instructions in Paragraph 13, above.

19. Except as specifically provided in Paragraph 20, EPA covenants not to sue or take administrative action against Respondent under Section 107(a) of CERCLA to recover EPA's Past Response Costs, as defined in Paragraph 10. This covenant is effective on the Effective Date and is conditioned on Respondent's performance of its obligations under this Settlement. This covenant extends solely to Respondent and does not extend to any other person or entity.

20. Except as specifically provided in Paragraph 19, EPA reserves all rights against Respondent with respect to all other matters, including, but not limited to: (a) liability for failure to make payment as required by this Settlement; (b) liability for costs incurred or to be incurred by the United States that are not within the definition of EPA's Past Response Costs, as defined in Paragraph 10, including costs incurred after the Effective Date of this Settlement; (c) liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42

U.S.C. § 9606; (d) criminal liability; and (e) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments. EPA further reserves all rights as to any matter relating in any way to the Site against any person or entity who is not a party to this Settlement.

21. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States (including its departments, agencies, and instrumentalities), or its contractors or employees, with respect to EPA's Past Response Costs, as defined in Paragraph 10, or EPA's response action taken at the Site, or this Settlement, including, but not limited to:

- a. Any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of CERCLA or any other law;
- b. Any claims arising out of the response actions at the Site for which EPA's Past Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State of South Carolina, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; and
- c. Any claim under Section 107 or 113 of CERCLA, 42 U.S.C. § 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law for EPA's Past Response Costs.

22. This Settlement does not constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. §9611, or 40 C.F.R. §300.700(d).

23. Respondent agrees not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that it may have:

- a. For response costs relating to the Site against any other Potentially Responsible Party under CERCLA with respect the Site, who has entered or in the future enters into a final settlement with EPA regarding the Site.
- b. The waivers under this Paragraph 23 shall not apply with respect to any defense, claim, or cause of action that Respondent may have against any person otherwise covered by such waiver if such person asserts a claim or cause of action relating to the Site against Respondent.

24. The Parties agree that this Settlement constitutes an administrative settlement under which Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions

or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Settlement. The “matters addressed” in this Settlement are EPA’s Past Response Costs, as defined in Paragraph 10. The Parties further agree that this Settlement is an administrative settlement under which Respondent has, as of the Effective Date, resolved liability for EPA’s Past Response Costs to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. §9613(f)(3)(B).

25. Effective upon signature of this Settlement by Respondent, Respondent agrees that the time period commencing on the date of its signature and ending on the date EPA receives from Respondent the payment(s) required by Paragraph 12 and, if any, Paragraph 15 shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the matters addressed in Paragraph 24, and that, in any action brought by the United States related to the “matters addressed,” Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Respondent that it will not make this Settlement effective, the statute of limitations shall begin to run again commencing 90 days after the date such notice is sent by EPA.

26. Each signatory to this Settlement certifies that he or she is authorized to enter into this Settlement and to legally bind the party he or she represents.

27. This Settlement shall be subject to a public comment period of at least 30 days under Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may withhold its consent or seek to modify this Settlement if comments received disclose facts or considerations that indicate that this Settlement is inappropriate, improper, or inadequate.

28. The Attorney General or his designee has approved the settlement embodied in this Settlement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).

29. The Effective Date of this Settlement shall be the date upon which EPA issues written notice that the public comment period under Paragraph 27 has closed and the United States has determined not to withhold its consent or seek to modify this Settlement based on the comments received, if any. On such date, EPA will notify Respondent by email or mail that payment is due in accordance with Paragraph 12.

IT IS SO AGREED:

**Signature Page for Settlement Agreement Regarding
the Bennett Landfill Fire Superfund Site**

U.S. Environmental Protection Agency

By: _____

Date: _____

Maurice L. Horsey, IV, Manager*
Enforcement Branch**
Superfund & Emergency Management Division
EPA Region 4

* This title has been updated from *Chief* to *Manager*

** This branch name has been updated from *Superfund Enforcement and Community Engagement Branch* to *Enforcement Branch*

**Signature Page for Settlement Agreement Regarding
the Bennett Landfill Fire Superfund Site**

**FOR W.R. FLOYD SERVICES, INC.,
d/b/a J. F. FLOYD MORTUARY:**

10/18/2022
Dated

Russel Floyd - President

Russel Floyd

President

W.R. Floyd Services, Inc., d/b/a J. F. Floyd Mortuary

235 N. Church St.

Spartanburg, SC 29306