

**ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY**

**IN THE MATTER OF:**

**PARTICIPANT:**

**[PARTICIPANT NAME]**

**REGARDING:**

**[FACILITY NAME]**

**[FACILITY ADDRESS]**

**[CITY, STATE ZIP]**

**EPA ID No. [EPA ID No.]**

**AFIN [xx-xxxxx]**

**LIS 11-**

**ELECTIVE SITE CLEAN-UP AGREEMENT**

This Elective Site Clean-up Agreement (hereinafter "ESCA") shall establish the investigation and remedial requirements for [Participant Name] (hereinafter "Participant") associated with the elective site cleanup of the [Facility Name] facility located at [Facility Address] , [Facility City] , [County County, Arkansas (hereinafter the "Property"). This ESCA is entered into by the Participant and the Arkansas Department of Environmental Quality (hereinafter "ADEQ") voluntarily and pursuant to the authority of the Hazardous Waste Management Act (Act 406 of 1979, as amended; Ark. Code Ann. § 8-7-201 *et seq.*), the Arkansas Remedial Action Trust Fund Act (Act 479 of 1985, as amended; Ark. Code Ann. § 8-7-501 *et seq.*) and the Arkansas Pollution Control and Ecology Commission (hereinafter "APC&EC") Regulation Number 23, Hazardous Waste Management, (hereinafter "APC&EC Regulation No. 23"). The Participant and ADEQ hereby agree and stipulate that the Findings of Facts be entered herein.

## FINDINGS OF FACT

1. [Insert background information as necessary]

## AGREEMENT

1. The Participant shall submit to ADEQ a Sampling and Analysis Plan (hereinafter “SAP”) that shall include a site history, source(s) of contamination, exposure pathways, proposed cleanup objectives and intended future land use of the property. The SAP shall include, but not be limited to, a Scope of Work, Method of Implementation Plan, a Quality Control and Assurance Plan, and a Site Health and Safety Plan. Additionally, the SAP shall include a schedule of implementation not to exceed ninety (90) calendar days from the date ADEQ issues written approval of the SAP. Participant shall implement the SAP upon receipt of written approval from ADEQ and shall submit a Report of Findings to ADEQ within one hundred twenty (120) calendar days from the SAP approval date.
2. If ADEQ determines the SAP fails to accomplish an adequate determination of the extent, type, or concentration of released hazardous substances or pollutants in the areas investigated, Participant agrees, within thirty (30) calendar days of receiving written notification from ADEQ, to amend the SAP to provide for additional sampling and analysis to accomplish the requirements of paragraph 1. Participant shall implement said SAP amendment upon ADEQ approval and report the findings thereof in accordance with an amended implementation schedule.
3. Participant shall, within thirty (30) calendar days of notification by ADEQ that contamination of the environment has occurred, as determined through ADEQ's assessment and review of the findings resulting from the implementation of SAP, submit a Remedial Plan (hereinafter “RP”) to control or remediate such

contamination to the extent necessary to protect human health and the environment using a risk-based approach.

4. The RP shall be implemented by Participant upon receiving written approval from ADEQ. A completion report documenting the results of the implementation of RP shall be submitted to ADEQ within thirty (30) calendar days following completion of RP implementation.
5. If ADEQ determines RP implementation fails to accomplish remediation sufficient to protect human health or the environment based on a risk-based approach, Participant shall, upon receiving written notification of this failure from ADEQ, conduct any additional remedial activities ADEQ determines necessary to protect human health and the environment from releases of hazardous substances or pollutants at or from the property.
6. The Participant shall within thirty (30) calendar days of notification by ADEQ file a deed restriction for the Property, if necessary, in form acceptable to ADEQ that provides notice to successors in title that use of the Property is restricted to activities and compatible uses that will protect the integrity of any remedial action measures implemented on the Property.  

A copy of the deed restriction shall be submitted by the Participant within forty-five (45) calendar days of the date that ADEQ notifies the Participant that the deed recording is required.
7. Upon approval of the completion report, and receipt of the deed restriction if required, ADEQ will issue a "No Further Action Determination" to the Participant. A "No Further Action Determination" is a letter issued by ADEQ stating ADEQ has no further requirements related to the investigation of the identified area(s) of concern (AOC) of hazardous substances at the Property. Please be aware that a "No Further Action Determination" will be conditioned on a specific property use (residential, industrial or commercial) and might include land use controls that include, but are not limited to: 1) maintenance of existing pavement or ground cover; 2) use of air monitoring instruments during

excavation; and 3) a deed restriction on use of groundwater beneath the Property for any use.

8. Throughout the ESCA process, the Participant shall take all steps necessary to prevent aggravating or contributing to the contamination of the air, land, or water, including downward migration of contamination from any existing contamination on the site. The term “existing contamination” shall include any contamination set forth in the SAP and RP submitted by the Participant and approved by ADEQ. The Participant shall not use or redevelop the site in a manner that differs from the terms or procedures established under this Agreement.
9. Nothing contained in this Agreement shall be construed as a waiver of ADEQ’s enforcement authority over alleged violations not specifically addressed herein. Nothing contained herein shall relieve the Participant of any other obligations imposed by any local, state, or federal laws, nor shall this Agreement be deemed in any way to relieve the Participant of its responsibilities for obtaining or complying with any necessary permits or licenses. Nothing in this Agreement shall be construed as a waiver of liability for future contamination of the Property by the Participant, subsequent owners, or third-parties.
10. All submittals required by this ESCA shall be subject to applicable ADEQ staff Document Review Fees (currently \$89.31 per hour) for staff time spent on the project pursuant to the requirement of APC&EC Regulation No. 23, Section 6(t).
11. The Participant shall submit to ADEQ one electronic copy of all reports, documents, plans or specifications under the terms of this Agreement, by Certified Mail or hand delivered to [Enforcement Personnel Name] , Enforcement and Inspection Branch, Hazardous Waste Division, ADEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317, or submitted via email to [Enforcement Personnel Email] .

12. All submittal requirements of this ESCA are subject to approval by ADEQ. Unless otherwise specified herein, in the event of any deficiencies, the Participant shall, within the timeframe specified by ADEQ, submit any additional information or changes requested, or take additional actions as specified by ADEQ to correct any such deficiencies. Failure to adequately respond to the notice of deficiency within timeframe specified in writing by ADEQ constitutes a failure to meet a deadline and subjects the Participant to possible removal from the Elective Site Cleanup Program.
13. If any event occurs, including but not limited to Natural Disasters, which causes or may cause delay in the achievement of compliance by the Participant with the requirements of this ESCA, the Participant shall notify ADEQ, in writing, as soon as reasonably possible after it is apparent that a delay will result, but in no case after the deadline has passed. The written notice shall describe in detail the anticipated length of delay, and a timetable by which the delayed requirements of the ESCA will be met.
14. This ESCA, including all rights and clean up liabilities, is transferable, with written approval by ADEQ, to any and all subsequent owners of the Property.
15. Subsequent owners shall receive a copy of this ESCA from the Property owner and shall not develop or use the Property in a manner which is inconsistent with the terms or procedures contained herein unless agreed to by all Parties to this ESCA, including ADEQ. In the event the intended use of the Property is to be altered from the use described in the SAP and RP, ADEQ will evaluate the protectiveness of the remedial action to determine if the proposed use would be protective of human health and the environment. Absent such a determination by ADEQ, any liability assurances contained in this ESCA, and amendments thereto or "No Further Action Determinations" issued hereunder, shall be null and void.

16. This Agreement is subject to public review and comment. ADEQ retains the right and discretion to rescind this Agreement based on comments received within the thirty-day public comment period or based on any other considerations which may subsequently come to light. Additionally, this Agreement is subject to being reopened upon Arkansas Pollution Control & Ecology Commission initiative or in the event a petition to set aside this Agreement is granted by the Commission.
17. Participation in the Arkansas Elective Site Cleanup Program can be withdrawn by the Participant at any time upon written notification to ADEQ. In turn, if the Participant fails to complete the terms and conditions set forth in this ESCA, ADEQ reserves the right to deem the Participant in violation of this ESCA and Participant will be notified in writing that their enrollment in the Elective Site Cleanup Program is no longer valid.
18. Unless terminated earlier in writing by ADEQ or the Participant, this ESCA shall be reviewed by ADEQ on its second anniversary. At that time, if site remedial activities have not been completed, an extension may be granted if ADEQ determines it is in the best interest of the Participant and ADEQ to do so. Remediation progression as well as additional time needed to complete site remedial activities will be determining factors as to whether or not an ESCA extension is granted. If an ESCA extension is not granted, the Participant will be afforded the opportunity to enter into a no penalty Consent Administrative Order with ADEQ and site remediation activities will continue towards a "No Further Action" letter.

IT IS SO AGREED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2011.

---

**TERESA MARKS  
DIRECTOR  
ARKANSAS DEPARTMENT OF  
ENVIRONMENTAL QUALITY**

**APPROVED AS TO FORM AND CONTENT:**

**[PARTICIPANT]**

**BY: Signature** \_\_\_\_\_

**Print or Type Name** \_\_\_\_\_

**Title** \_\_\_\_\_

**Date** \_\_\_\_\_