

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

PARTICIPANT:

APEX TOOL GROUP, LLC

REGARDING:

APEX TOOL GROUP FACILITY IN SPRINGDALE, AR

1609 N. OLD MISSOURI ROAD

SPRINGDALE, AR 72764

EPA ID No. ARD044484780

AFIN 72-00455

LIS 15- 138

ELECTIVE SITE CLEAN-UP AGREEMENT

This Elective Site Clean-up Agreement (hereinafter "ESCA") shall establish the investigation and remedial requirements for Apex Tool Group, LLC (hereinafter "Participant") associated with the elective site cleanup of the Apex Tool Group facility in Springdale, Arkansas. 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, Ark. Code Ann. § 8-7-201 *et seq.*, the Arkansas Remedial Action Trust Fund Act, Ark. Code Ann. § 8-7-501 *et seq.*, and Arkansas Pollution Control and Ecology Commission (hereinafter "APC&EC") Regulation No. 23, Hazardous Waste Management, (hereinafter "APC&EC Regulation No. 23"). Participant and ADEQ hereby agree and stipulate that the Findings of Facts be entered.

FINDINGS OF FACT

1. Participant's facility is located on approximately fifty-three (53) acres at 1609 N. Old Missouri Road, Springdale, Washington County, Arkansas (hereinafter "the Site"). The Site is zoned as industrial and is surrounded by industrial, commercial, and residential properties.

2. The Site contains a primary manufacturing facility (hereinafter, "main plant"), a raw-steel storage area, a waste oil storage building that contains an oil/water separator, a miscellaneous storage building, and a parking area, which are surrounded primarily by grass and other vegetation. Historical documents indicate the presence of a former surface impoundment pond where oily wastes, including parts washer, water soluble oils, hydraulic oils, alkaline cleaner, and miscellaneous plant wash waters, were disposed of from 1976 to 1980. The maximum volume of the pond was estimated to be 400,000 gallons.
3. The Site has been used to manufacture hand tools since 1969 and Respondent has been operating on-site since 2010. Respondent manufactures hand wrenches at the Site, which entails the use of a sodium hydroxide solution, hydrochloric acid, and nickel-chromium plating baths. Wastewaters from the manufacturing process are treated on-site at the wastewater treatment plant (hereinafter, "WWTP"). Sludge from the WWTP is dried into filter cakes that carry EPA hazardous waste code F006. Respondent generates waste solution carrying EPA hazardous waste code D007 from the removal of electroplating from off-spec wrenches.
4. Respondent is a Large Quantity Generator of hazardous waste. From the manufacturing process and through normal daily activities, Respondent generates characteristic and listed hazardous waste, including waste paint, spent aerosol cans from various lubricants, cleaners, paints, and polishes, the F006 waste filter cake, and the D007 waste solution described above.
5. Respondent is a Large Quantity Handler of universal waste due to spent lead acid batteries from forklifts that are generated on-site, spent lamps, and consumer electronic items.
6. Respondent generates used oil from the manufacturing process as well as from on-site equipment.
7. On August 18, 2015, Respondent submitted a letter of intent to enter an ESCA for the Site. The letter of intent included a report, dated July 2015, from a Focused Soil and Groundwater

Assessment (hereinafter "FSGA") that had been conducted at the Site following Phase I and II Environmental Site Assessments (hereinafter "ESA"). The letter of intent and FSGA Report, which are incorporated herein by reference, indicate that Respondent's consultants performed the following work and made the following conclusions about the Site:

- a. Based on current and historical operations at the Site, Recognized Environmental Conditions (hereinafter "REC") and potential constituents of concern (hereinafter "COCs") were identified. COCs include volatile organic compounds (hereinafter "VOCs"), semi-volatile organic compounds (hereinafter "SVOCs"), polychlorinated biphenyls (hereinafter "PCBs"), and metals associated with landfill, buried debris areas, degreasing operations, and grinding fluids. According to the FSGA, the six (6) identified REC areas include:

1. REC 1 – Staining around the base of the presses inside the main plant building and on the floor in the waste oil storage area.
2. REC 2 – Used quench oil observed in the secondary containment of the tank on the west side of the main plant building.
3. REC 3 – A former waste pond and disposal area where drums had reportedly been buried, of unknown location, but which are suspected to be located on the eastern portion of the Site.
4. REC 4 – An oil/water separator, two (2) 5,100-gallon aboveground oil storage tanks, and associated piping were located in the waste oil storage building on the north side of the Site. Waste oil spills of up to 200 gallons have occurred in this area within the last ten (10) years.
5. REC 5 – Chemical and waste handling and storage areas were located on the northwest side of the main plant building and in the waste storage building. Although no known spills have been reported, historical disposal practices are unknown.

6. REC 6 – This REC area was not assessed during the FSGA. The integrity of the floor drains, sumps, and unsealed concrete slabs located in the chemical storage and processing areas inside the main plant building could not be verified. No soil samples were collected from beneath the concrete floor slab of the main plant building.
- b. An electromagnetic survey was conducted and identified surface and buried metallic debris as well as the probable area of the suspected former waste pond.
- c. Twenty-two (22) soil borings were made in the exterior areas of the plant facility and twelve (12) test pits were excavated in the vegetated area east of the main plant building. According to the FSGA, VOCs, SVOCs, PCBs, and total petroleum hydrocarbons (hereinafter “TPH”) were not detected above screening criteria in the soil samples. Arsenic was detected in soil samples collected from the exterior areas of the facility above the screening criteria, but was within documented background ranges both regionally and at the site.
- d. Eight (8) temporary 1-inch and five (5) 2-inch groundwater monitoring wells (hereinafter, “MW”) were installed; seven (7) of these were used to collect samples for analysis. A hydrocarbon sheen was observed in one MW prior to, but not during, sampling. However, according to the FSGA, VOCs, SVOCs, and TPH were not detected in groundwater above screening criteria. TPH-Diesel Range Organics and TPH-Residual Range Organics were detected above ADEQ standards in samples collected from three (3) MWs but VOCs and SVOCs did not exceed ADEQ’s risk based screening level standards.

#### AGREEMENT

1. If ADEQ determines the FSGA failed to accomplish an adequate determination of the extent, type, or concentration of released hazardous substances or pollutants, Participants

agrees, within thirty (30) calendar days of receiving written notification from ADEQ, to submit a Sampling and Analysis Plan (hereinafter "SAP") to provide for additional sampling and analysis. The SAP shall include a schedule of implementation not to exceed ninety (90) calendar days from the date ADEQ issues a written approval of the SAP. Participant shall implement said SAP upon ADEQ approval and report the findings in accordance with the implementation schedule.

2. Within thirty (30) calendar days of notification by ADEQ that contamination of the environment has occurred, Participant shall submit a Clean-Up Plan to control or remediate such contamination to the extent necessary to protect human health and the environment using a risk-based approach. The Clean-Up Plan shall include an implementation schedule.
3. Within thirty (30) calendar days following completion of the clean-up, Participant shall submit a report documenting the results of the implementation of the Clean-Up Plan.
4. If ADEQ determines the Clean-Up Plan 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 release of hazardous substances or pollutants at or from the property.
5. Within thirty (30) calendar days of written notification by ADEQ, Participant shall file a deed restriction for the Property if necessary, in a 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.
6. *Within forty-five (45) calendar days of written notification by ADEQ that a deed recording is required, Participant shall submit a copy of the deed restriction to ADEQ.*
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 Clean-Up Plan 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. Participant shall submit to ADEQ one (1) electronic and one (1) hard copy of all reports, documents, plans or specifications required under the terms of this ESCA.
11. All submittals required by the ESCA shall be electronically emailed to [nicol@adeq.state.ar.us](mailto:nicol@adeq.state.ar.us) and submitted by Certified Mail or hand delivered to Julie Nicol,

Enforcement and Inspection Branch, ADEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317.

12. All submittals shall be subject to applicable review fees pursuant to APC&EC Regulation No. 23 § 6(t).
13. Participant hereby designates a Contact Person who shall be responsible for overseeing the implementation of this ESCA. Participant may change their Contact Person by providing written notice of such change to ADEQ. The initial Contact Person shall be:

Dean A. Rossi  
Apex Tool Group, LLC  
10130 Perimeter Parkway Suite 240  
Charlotte, NC 28216  
Ph No. (980) 209-8687  
dean.rossi@apextoolgroup.com
14. All requirements of this ESCA are subject to approval by ADEQ. In the event of any deficiencies, Participant shall submit any additional information or changes requested, or take additional actions specified by ADEQ to correct any such deficiencies within the timeframe specified by ADEQ. Failure to adequately respond in writing within the timeframe specified by ADEQ constitutes a failure to meet the deadline and subjects the Participant to possible removal from the ESCA Program.
15. If any event occurs, including but not limited to natural disasters, which causes or may cause a delay by Participant in achieving the requirements of this ESCA, Participant shall notify ADEQ in writing as soon as it is apparent that a delay may result. Such request shall be made prior to the deadline. The written notice shall describe in detail the anticipated length of delay, the precise cause of delay, the measures taken to address the delay and to be taken *to minimize the delay, and the timetable by which the delayed requirements of the ESCA will be met.*
16. 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.*

17. 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 Clean-Up Plan, 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.
18. This Agreement shall be effective upon the date of execution. Unless otherwise specified in this Agreement, all times for performance of activities under this Agreement shall be calculated from this effective date. 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 APC&EC initiative or in the event a petition to set aside this Agreement is granted by the Commission.
19. 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.
20. 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.

21. By virtue of the signature appearing below, the individual represents that he or she is a Managing Member of Participant, being duly authorized to execute and bind Participant to the terms contained herein. Execution of this Order by an individual other than a Managing Member of Participant shall be accompanied by a resolution granting signature authority to said individual as duly ratified by the governing body of the entity.

IT IS SO AGREED THIS 20 DAY OF November 2015.

Becky W Keogh

BECKY W. KEOGH  
DIRECTOR  
ARKANSAS DEPARTMENT OF  
ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

APEX TOOL GROUP, LLC

BY: Signature D.A. Rossi

Print or Type Name Dean A. Rossi

Title VP - Global EHS Compliance

Date 11/16/15