

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

**PARTICIPANT:
KOHLER CO.**

**REGARDING:
KOHLER CO.
920 EAST LINCOLN AVENUE
SEARCY, ARKANSAS 72143**

**EPA ID No. ARD006561518
AFIN 73-00161**

LIS 17-096

ELECTIVE SITE CLEAN-UP AGREEMENT

This Elective Site Clean-up Agreement (ESCA) shall establish the investigation and remedial requirements for Kohler Co. ("Participant") associated with the elective site cleanup of the Kohler Co. facility located in Searcy, Arkansas. This ESCA is entered into by the Participant and the Arkansas Department of Environmental Quality (ADEQ or "Department") 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 (APC&EC) Regulation No. 23, Hazardous Waste Management, (APC&EC Regulation No. 23). Participant and ADEQ hereby agree and stipulate that the following Findings of Fact be entered.

FINDINGS OF FACT

1. Participant's facility is located at 920 East Lincoln Avenue, Searcy, White County, Arkansas ("the Site").
2. The Site was originally built in 1965 by Polar Stainless Company, a company owned by Vollrath Company (Vollrath). In 1986, Participant purchased the Site from Vollrath and began manufacturing stainless steel sinks at the Site.

3. As a result of its manufacturing process, Participant generated industrial non-hazardous wastes such as polishing fines, used oil, and oil absorbents.
4. Participant ceased manufacturing operations at the Site in December 2009, after which the Site has remained vacant.
5. The Site consists of one (1) single-story building situated on approximately twelve (12) acres that is currently zoned by the City of Searcy, Arkansas for heavy industrial use. The building is approximately two hundred thousand (200,000) square feet in size.
6. ADEQ received a letter from Participant, dated August 29, 2017, expressing its interest in entering into an ESCA.
7. According to Participant's letter, Phase I and II Environmental Site Assessments (ESA) were conducted by Environmental Services Company, Inc. to determine if the Site has been impacted from past industrial manufacturing operations. The Phase I ESA was completed on June 23, 2017, and the Phase II ESA was conducted on July 15, 2017. Although Participant did not submit the Phase I and II ESAs to ADEQ, Participant's letter indicates that hazardous constituents are present at the Site at concentrations above relevant EPA Regional Screening Levels (RSL).
8. Participant's August 29, 2017 letter also indicates that Environmental Resource Management (ERM) has been contracted to further investigate environmental impacts and to develop a Sampling and Analysis Plan (SAP).
9. The information that has been submitted by Participant to ADEQ has not been reviewed by ADEQ technical staff and therefore has not yet been confirmed for accuracy or sufficiency.

AGREEMENT

1. Within fifteen (15) calendar days of the effective date of this ESCA, Participant shall submit all reports, summaries, and analytical data from previous investigations conducted at the

- Site, including the Phase I and II ESAs referenced in paragraph 7 of the Findings of Fact, to ADEQ.
2. Within thirty (30) calendar days of the effective date of this ESCA, Participant shall submit the SAP, referenced in paragraph 8 of the Findings of Fact, to ADEQ. This SAP shall be designed to determine the horizontal and vertical extent, rate of migration, type, and concentration of any hazardous substance or pollutant present in the environment.
 3. 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.
 4. Within thirty (30) calendar days of receiving written notification from ADEQ that 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 to amend the SAP to provide for additional sampling and analysis to accomplish the requirements of paragraph one (1) of this section. Participant shall implement said SAP amendment upon ADEQ approval and report the findings thereof in accordance with an amended implementation schedule and shall be implemented upon approval by ADEQ.
 5. 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.
 6. 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.
 7. 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 the release of hazardous substances or pollutants at or from the Site.

8. Within thirty (30) calendar days of written notification by ADEQ, Participant shall file a deed restriction for the Site if necessary, in a form acceptable to ADEQ, which provides notice to successors in title that use of the Site is restricted to activities and compatible uses that will protect the integrity of any remedial action measures implemented on the Site.
9. If Participant files a deed restriction, a copy of the deed restriction shall be submitted to ADEQ within fifteen (15) calendar days of filing.
10. 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 Site. Please be aware that a "No Further Action Determination" will be conditioned on a specific Site 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 Site for any use.
11. 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.
12. 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 Site by the Participant, subsequent owners, or third-parties.

13. 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.
14. All submittals required by the ESCA shall be electronically emailed to hesselbein@adeq.state.ar.us and submitted by Certified Mail or hand delivered to Josh Hesselbein, Enforcement, Office of Land Resources, ADEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317.
15. All submittals shall be subject to applicable review fees pursuant to APC&EC Regulation No. 23 § 6(t).
16. 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.
17. 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.

18. This ESCA, including all rights and clean up liabilities, is transferable, with written approval by ADEQ, to any and all subsequent owners of the Site.
19. Subsequent owners shall receive a copy of this ESCA from the Site owner and shall not develop or use the Site 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 Site 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.
20. 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.
21. 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.
22. Unless terminated earlier in writing by ADEQ or the Participant, this ESCA shall be reviewed by ADEQ on its third 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.

23. 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 ESCA 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 23rd DAY OF OCTOBER 2017.

Becky W. Keogh

BECKY W. KEOGH
DIRECTOR
ARKANSAS DEPARTMENT OF
ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

KOHLER CO.

BY: Signature [Signature]

Print Name JEFF PLASS

Title Kohler Co. Dir. Global EHS

Date OCT. 23, 2017