

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

EVADALE PRODUCTS COMPANY, LLC

PARTICIPANT

REGARDING:

**PRODUCERS MID-SOUTH, EVADALE PLANT
5765 SOUTH HIGHWAY 61
WILSON, MISSISSIPPI COUNTY, ARKANSAS
AFIN: 47-00915**

LIS No. - 10-194

IMPLEMENTING AGREEMENT

This Implementing Agreement (hereinafter "IA") shall establish remedial requirements and financial liabilities of Evadale Products Company, LLC (hereinafter the "PARTICIPANT") associated with the Property located at 5765 South Highway 61, Wilson, Mississippi County, Arkansas (hereinafter the "Property"). This IA is entered into by the PARTICIPANT and the Arkansas Department of Environmental Quality (hereinafter "ADEQ") pursuant to the authority of the Hazardous Waste Management Act (Act 406 of 1979, as amended; A.C.A. §§ 8-7-201 et. seq.), the Arkansas Remedial Action Trust Fund Act (Act 479 of 1985, as amended; A.C.A. §§ 8-7-501 et. seq.), the Arkansas Pollution Control and Ecology Commission (APC&EC) Regulation Number 23, Hazardous Waste Management, (hereinafter "Regulation 23"), the Arkansas Voluntary Cleanup Act (Act 1042 of 1997) (as amended), (A.C.A. §§ 8-7-1101 et. seq.) (hereinafter the "Arkansas Brownfields Program"), and the APC&EC Regulation Number 29, Brownfields Redevelopment.

FINDINGS OF FACT

1. The Property is located at 5765 South Highway 61, Wilson, Mississippi County, Arkansas. The legal description of the 17.14-acre tract, which comprises five parcels is:

Parcel A: A 12.25 acre parcel of land lying in the NE ¼ of Section 26, Township Eleven North (T-11-N), Range Nine East (R-9-E), Mississippi County, Arkansas,

Osceola District, being more particularly described as: Commencing at the corner of Sections 23, 24, 25, and 26, in T-11-N, R-9-E, thence South along the East line of Section 26, 290 feet to the South side of the Delta Valley & Southern Railroad Company right-of-way to the point of beginning, thence South 577.2 feet to the right-of-way of Highway #61, running North and South through Mississippi County, thence along said right-of-way of said Highway South 66 degrees 8 minutes West 759.04 feet, thence North 5 degrees 27 minutes west 814.41 feet to the South side of the right-of-way of the Delta Valley & Southern Railroad Company, thence along the right-of-way of said railroad company North 84 degrees 33 minutes East 775 feet to the point of beginning, and containing 12.25 acres, more or less.

Parcel B: A 3.38 acre parcel of land lying in the NE ¼ of Section 26, Township Eleven North (T-11-N), Range Nine East (R-9-E), Mississippi County, Arkansas, Osceola District, being more particularly described as: Beginning at the corner of Sections 23, 24, 25, and 26, in T-11-N, R-9-E, thence South along the East line of Section 26 190 feet to the North line of the right-of-way the Delta Valley & Southern Railroad Company, thence along said right-of-way South 84 degrees 33 minutes West 775 feet, thence North 190 feet, thence North 84 degrees 33 minutes East 775 feet to the point of beginning, containing 3.38 acres, more or less.

Parcel C: A 0.38 acre parcel of land lying in the NE ¼ of Section 26, Township Eleven North (T-11-N), Range Nine East (R-9-E), Mississippi County, Arkansas, Osceola District, being more particularly described as: Beginning at the Northeast corner of Section 26, T-11-N, R-9-E, thence South along the East line of Section 26 a distance of 190 feet to the point of beginning, said point on the North right-of-way of said railway, thence South 84 degrees 33 minutes West along said right-of-way 775.0 feet, thence South 21.27 feet, thence North 84 degrees 33 minutes East parallel with the Railway Right of Way line 775.0 feet, thence North 21.27 feet to the point of beginning, containing 0.38 acre, more or less.

Parcel D: A 0.67 acre parcel of land lying in the NE ¼ of Section 26, Township Eleven North (T-11-N), Range Nine East (R-9-E), Mississippi County, Arkansas, Osceola District, being more particularly described as: Beginning at the Northeast corner of Section 26, T-11-N, R-9-E, thence South along the East line of Section 26 a distance of 256.04 feet to the point of beginning, thence South along said Section line a distance of 34.41 feet to a point on the South right-of-way line, thence South 84 degrees 33 minutes West along said South right-of-way line 775.0 feet, thence North 5 degrees 27 minutes West perpendicular with the right-of-way 41.0 feet to a point which is 0.13 feet North of the Westward extension of the Metal Building, thence North 84 degrees 33 minutes East on a line that is parallel with the right-of-way lines and is North of the Metal Building along the entire length of the Building a distance of 423.3 feet, thence South 5 degrees 27 minutes East 8.75 feet, thence North 84 degrees 33 minutes East 13.2 feet, thence North 5 degrees 27 minutes West 2.0 feet, thence North 84 degrees 33 minutes East 338.5 feet to the point of beginning, containing 0.67 acre, more or less.

Parcel E: A 0.46 acre parcel of land lying in the NE ¼ of Section 25, Township Eleven North (T-11-N), Range Nine East (R-9-E), Mississippi County, Arkansas, Osceola District, being more particularly described as: Beginning at a point 290.0 feet South of the Section corner common to Sections 23, 24, 25, and 26, thence continue South along the West line of Section 25, 253.20 feet to a point, thence North 84 degrees 33 minutes East, 80.0 feet to a point, thence North 255.30 feet to a point on the South right-of-way line of the D.V. & S. Railroad, thence South 84 degrees 33 minutes West, 80.23 feet along said right-of-way lines to the point of beginning containing 0.46 acre, more or less. This property is subject to all easements and rights-of-way of record.

2. PARTICIPANT meets the requirements for participation in the Arkansas Brownfields Program as described in Arkansas Code Annotated (A.C.A.) § 8-7-1104(a) and is competent and authorized to execute this IA.
3. The property is currently occupied by Producers Mid-South Cotton Seed Oil Mill (Producers). Producers has only used the facility for seed storage and transfer since it purchased the property in August of 1999. The buildings currently used on site are the Seed Houses, the Hull House (for storage), the Office Building and the General Office Building. The Delta Valley and Southern Railroad Spur lies between the Hull House and the Baled Linter Storage Building. This Railroad Spur is the property of the Lee Wilson Company and still serves to transport cotton seed from the mill. No oil extraction currently takes place at the facility.
4. In September of 2006, the PARTICIPANT submitted a letter of intent, which set forth the Participant's desire to take title to the Property and retain eligibility for participation in the Brownfields Program as described in A.C.A. § 8-7-1101 (8).
5. In September of 2006, ADEQ sent a letter declaring the PARTICIPANT's eligibility for participation in the Arkansas Brownfields Program as described in A.C.A. § 8-7-1104 (a), therefore authorizing the PARTICIPANT to acquire title to the Property and still retain its eligibility for the Arkansas Brownfields Program.

6. The PARTICIPANT warrants it is not responsible for any preexisting pollution at or contamination on any of the Property. Additionally, the PARTICIPANT did not, by act or omission, cause or contribute to any release or threatened release of hazardous substance on or from the Property and is not otherwise considered to be a responsible party pursuant to A.C.A. § 8-7-512(a)(11).
7. The PARTICIPANT agrees the Property will not, at any time, be transferred to any party responsible for such pollution or contamination on the Property. If such transfer is made, the IA and any certificate of completion issued hereunder shall be null and void.
8. In the spring of 2010, SEAS Inc., on behalf of the Participant, completed a Comprehensive Site Assessment (CSA) on the Property as part of the requirements of the Arkansas Brownfields Program.

Based on the results of soil and groundwater sampling, Polycyclic Aromatic Hydrocarbons (PAHs) have been found above Maximum Contaminant Levels (MCLs) and/or tap water screening levels for human health evaluation in groundwater and surface water within Evadale property boundaries. In addition, analytical data for naphthalene shows a practical quantitation limit (PQL) above regional screening levels for the protection of groundwater in subsurface soils. One half of the PQL was taken in consideration and that concentration also exceeded the screening level for this constituent. Therefore, naphthalene should be considered a Chemical of Concern (COC) in subsurface soils. For purposes of risk, PAHs are also considered COCs for the Evadale site.

9. The ADEQ Hazardous Waste Division personnel reviewed the CSA, dated February 19, 2010, and the findings and report were approved April 14, 2010.
10. Consequently, the PARTICIPANT has committed to a particular future land use of the Property, specifically intending to develop the Property for use as commercial/industrial activity only.

AGREEMENT

The issues herein, as they pertain to the Property, having been settled by the agreement of the PARTICIPANT and ADEQ, it is hereby agreed and stipulated by all Parties the IA be entered herein and that the PARTICIPANT comply with the following provisions.

1. The PARTICIPANT, within ten (10) days of the effective date of this IA, shall public notice this IA in a newspaper of general circulation that serves the City of Wilson area. The notice shall identify the Property, the intended future land use, and the nature of the activities to be conducted on the Property. The PARTICIPANT shall provide proof of this publication to ADEQ within thirty (30) days of the effective date of this IA.
2. The PARTICIPANT shall submit a Property Development Plan (PDP) to ADEQ within forty-five (45) days of the effective date of the IA for review and approval. The approved PDP shall become an amendment to this IA.
3. ADEQ shall issue a Property Development Decision Document (PDDD), as necessary, to address any contamination identified in the CSA. Pursuant to Ark. Code Ann. §8-7-1104(h)(1), ADEQ shall provide public notice and opportunity for hearing on the PDDD.
4. ADEQ shall issue a final PDDD, considering all comments submitted, pursuant to the public notice discussed in paragraph 3 above. The approved final PDDD shall become an amendment to this IA.
5. The PARTICIPANT shall complete remedial action activities, as addressed in the final PDDD.
6. The PARTICIPANT shall file, within thirty (30) days of the effective date of this IA, or within thirty (30) days of acquiring legal title to the site, a notice of the IA with the clerk of the Circuit Court in Mississippi County, Real Estate Section. Notice of any amendments to this IA also shall be filed by PARTICIPANT with the clerk of the Circuit Court in Mississippi

County within thirty (30) days after their effective dates. The clerk of the Circuit Court shall docket and record the notices so they appear in the purchaser's chain of title. A file marked copy shall be submitted to ADEQ, within forty-five (45) days of this IA.

7. The PARTICIPANT shall submit a completion report to ADEQ within forty-five (45) days of completing the remediation work associated with the PDP and the PDDD. The completion report should include information to document the site has been redeveloped according to the provisions mutually agreed upon in the IA, the approved PDP and the PDDD. After ADEQ receives this information and verifies the work has been completed, a Certificate of Completion will be issued.
8. The PARTICIPANT shall file a deed restriction for the Property, as determined by ADEQ, to restrict the use of the Property to activities and compatible uses which will protect the integrity of any remedial action measures implemented on the Property.
9. The PARTICIPANT shall provide a copy of this IA to all prospective owners or successors before the Property is transferred to the prospective owner or successor.
10. 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 CSA approved by ADEQ.
11. The PARTICIPANT shall not use or redevelop the site in a manner that differs from the terms or procedures established under this IA.
12. The PARTICIPANT shall not be responsible for paying any fines or penalties related to the past contamination of the Property. The term "past contamination" shall include any contamination set forth in the CSA approved by ADEQ.

13. Nothing in this IA shall be construed as a waiver of liability for future contamination of the Property by the PARTICIPANT, subsequent owners, or third-parties.
14. This IA, including all rights and clean-up liabilities, is transferable, with written approval by ADEQ, to any and all subsequent owners of the Property who did not, by act or omission, cause or contribute to any release or threatened release of hazardous substances on the Property.
15. Subsequent owners shall receive a copy of the IA 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 IA, including ADEQ. In the event the intended use of the Property is to be altered from the use described in the IA, PDP and PDDD, 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 IA and amendments thereto or certificates of completion issued hereunder, shall be null and void.

16. Participation in the Arkansas Brownfields 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 IA, and at the time of withdrawal has acquired the property and is considered to be the legal owner of the property, the ADEQ reserves the right to deem the PARTICIPANT in violation of this IA and the PARTICIPANT will be notified in writing that their enrollment in the Arkansas Brownfields Program is no longer valid and the PARTICIPANT will be liable for any past contamination found on the site.

17. This IA shall become effective upon the signature of the Director of ADEQ.

IT IS SO AGREED.

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

By: Teresa Marks

Date: 11/9/10

Director
Teresa Marks

PARTICIPANT
EVADALE PRODUCTS COMPANY, LLC

By: Steve G. Wilson

Date: 9/15/10

Title: Manager