

**ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY**

IN THE MATTER OF:

PARTICIPANT:

Ampler Development LLC

REGARDING:

**200 East Beebe Capps Expressway
Searcy, Arkansas**

**LIS-21 - 118
AFIN 73-01337**

ELECTIVE SITE CLEAN-UP AGREEMENT

This Elective Site Clean-up Agreement (ESCA) shall establish the investigation and remedial requirements for Ampler Development LLC (Participant) associated with the elective site clean-up of the Commercial Property at 200 East Beebe Capps Expressway, Searcy, White County, Arkansas. This ESCA is entered into by the Participant and the Division of Environmental Quality¹ (DEQ) voluntarily and pursuant to the authority of the Arkansas Hazardous Waste Management Act of 1979, Ark. Code Ann. § 8-7-201 *et seq.*, the Remedial Action Trust Fund Act, Ark. Code Ann. § 8-7-501 *et seq.*, and Arkansas Pollution Control and Ecology Commission (APC&EC) Rule No. 23, Hazardous Waste Management. Participant and DEQ hereby agree and stipulate that the following Findings of Fact be entered.

FINDINGS OF FACT

1. Participant's facility is located 200 East Beebe Capps Expressway, Searcy, White County, Arkansas (the Site).

¹ Pursuant to Act 910 of 2019, the Arkansas Transformation and Efficiencies Act, the former Arkansas Department of Environmental Quality is now the Division of Environmental Quality in the newly-created Department of Energy and Environment.

2. The Site encompasses commercial property that contained a bulk oil station and possible above ground storage tanks from about 1945 through the 1960s. The Site also included railroad tracks and spur from about 1913 to the early 2000s. A Burger King restaurant has been constructed on the Site.
3. Participant provided their consultant, Environmental Works, Inc. (EWI), a Phase I Environmental Site Assessment (ESA) which identified Recognized Environmental Conditions associated with the Site.
4. On January 22, 2021, EWI completed a Limited Phase II ESA at the Site. Soil samples detected Volatile Organic Compounds (VOCs) and Total Petroleum Hydrocarbons – Gasoline Range Organics (TPH-GRO).
5. On March 12, 2021, EWI, on behalf of Participant, submitted a request for entrance into an ESCA seeking environmental regulatory closure for activities related to its historical operations.

AGREEMENT

1. Within thirty (30) calendar days of the effective date of this ESCA, Participant shall submit to DEQ the Sampling and Analysis Plan (SAP) used to complete the Limited Phase II ESA.
2. Within thirty (30) calendar days of receiving written notification from DEQ that the SAP failed 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 determine the horizontal and vertical extent, rate of migration, type, and concentration of any hazardous substance or pollutant present in the environment. Participant shall implement said SAP amendment upon DEQ approval and report the findings thereof in accordance with an amended implementation schedule.

3. If it is determined that contamination of the environment has occurred, within thirty (30) calendar days of notification by DEQ, Participant shall submit a Remedial Action Plan (RAP) to control or remediate such contamination to the extent necessary to protect human health and the environment using a risk-based approach. The RAP shall include an implementation schedule and shall be implemented upon written approval by DEQ.
4. Within thirty (30) calendar days following completion of remediation activities, Participant shall submit a Completion Report documenting the results of the implementation of the RAP.
5. If DEQ determines the RAP implementation fails to accomplish remediation sufficient to protect human health or the environment, Participant shall, upon receiving written notification of this failure from DEQ, conduct any additional remedial activities DEQ determines necessary to protect human health and the environment from hazardous substances or pollutants at or from the Site.
6. Within thirty (30) calendar days of written notification by DEQ that a deed restriction is required, participant shall file a deed restriction in a form acceptable to DEQ, which provides notice to successors in title that use of the Site will be restricted to activities and uses that will protect the integrity of any remedial action measures implemented on the Site.
7. Within forty-five (45) calendar days of written notification by DEQ that a deed restriction is required, Participant shall submit a copy of the deed restriction to DEQ.
8. Upon approval of the Completion Report, and receipt of deed restrictions if required, DEQ will issue a "No Further Action" determination to the Participant. A No Further Action determination indicates that DEQ has no further requirements related to the specific scope of investigation of the identified area(s)

of concern as documented in the SAP and RAP. 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 preventing use of groundwater beneath the Site for any use.

9. 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 RAP submitted by the Participant and approved by DEQ. The Participant shall not use or redevelop the Site in a manner that differs from the terms or procedures established under this Agreement.
10. Nothing contained in this Agreement shall be construed as a waiver of DEQ'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.
11. Participant shall submit to DEQ one (1) electronic or one (1) hard copy of all reports, documents, plans or specifications required under the terms of this ESCA.
12. All submittals required by the ESCA shall be emailed to OLRenforcement@adeq.state.ar.us, or if necessary, submitted by Certified Mail

or hand-delivered to Gina Porter, Enforcement, Office of Land Resources, DEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317.

13. All submittals shall be subject to applicable review fees pursuant to APC&EC Rule No. 23 § 6(t).
14. All requirements of this ESCA are subject to approval by DEQ. In the event of any deficiencies, Participant shall submit any additional information or changes requested, or take additional actions specified by DEQ to correct any such deficiencies within the timeframe specified by DEQ. Failure to adequately respond in writing within the timeframe specified by DEQ constitutes a failure to meet the deadline and subjects the Participant to possible removal from the ESCA Program.
15. If any event occurs that causes or may cause a delay in Participant achieving the requirements of this ESCA, Participant shall notify DEQ 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 and 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 DEQ, to any and all subsequent owners of the Site.
17. Subsequent owners shall receive a copy of this ESCA from the Site owner and shall not develop or use the Site in a manner that is inconsistent with the terms or procedures contained herein unless agreed to by all Parties to this ESCA, including DEQ. In the event the intended use of the Site is to be altered from the use described in the SAP and RAP, DEQ 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 DEQ, 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. DEQ 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 APC&EC.
19. Participation in the Arkansas Elective Site Clean-up Program can be withdrawn by the Participant at any time upon written notification to DEQ. In turn, if the Participant fails to complete the terms and conditions set forth in this ESCA, DEQ reserves the right to deem the Participant in violation of this ESCA and Participant will be notified in writing that its enrollment in the Elective Site Clean-up Program is no longer valid.
20. Unless terminated earlier in writing by DEQ or the Participant, this ESCA shall be reviewed by DEQ on its third anniversary. At that time, if site remedial activities have not been completed, an extension may be granted if DEQ determines it is in the best interest of the Participant and DEQ to do so. Remediation progress 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 DEQ and site remediation activities will continue towards a “No Further Action” determination.

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 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.

SO ORDERED THIS 17TH DAY OF NOVEMBER, 2021.



JULIE LINCK, CHIEF ADMINISTRATOR OF ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

Ampler Development LLC


BY: _____
(Signature)

Nick Boyle

(Typed or printed name)

TITLE: President

DATE: 11/3/21