

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

PARTICIPANT:

THE DOYLE ROGERS FAMILY LIMITED PARTNERSHIP

REGARDING:

COLONY SOUTH SHOPPING CENTER
8824 GEYER SPRINGS ROAD
LITTLE ROCK, ARKANSAS 72209
AFIN 60-04745

LIS 16- 086

ELECTIVE SITE CLEAN-UP AGREEMENT

This Elective Site Clean-up Agreement (ESCA) shall establish the investigation and remedial requirements for The Doyle Rogers Family Limited Partnership (Participant) associated with the elective site cleanup of the Colony South Shopping Center. This ESCA is entered into by the Participant and the Arkansas Department of Environmental Quality (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 (APC&EC) Regulation No. 23, Hazardous Waste Management, (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 a multi-tenant commercial retail shopping center located at 8824 Geyer Springs Road, Little Rock, Pulaski County, Arkansas (the Site).

2. The Site has been owned by Participant since 1994 and consists of approximately nine (9) acres of commercial property. Current tenants include a supermarket, a convenience store, a fast food restaurant, a gas station, a dry cleaners, and retail shops.
3. On February 17, 2016, ADEQ received a letter from Participant's consultant, The Southern Co. of North Little Rock, Inc. (SOCO), expressing Participant's intent to enter into an ESCA. The Letter of Intent is attached as Exhibit A. The Letter of Intent included a Phase II Environmental Site Assessment (ESA) Report dated June 19, 2015, a Site Investigation Activities Assessment (SIAA) Report dated August 22, 2015, a Sub-Slab Vapor Monitoring Report dated October 27, 2015, an Ambient Air Assessment Report dated October 27, 2015, and the laboratory results and summary from a Sub-Slab Monitoring Event on January 15, 2016. These documents are attached as Exhibits B – F, respectively.
4. The infrastructure installed onsite to date includes seven (7) groundwater monitoring wells, six (6) sub-slab vapor pins, and a sub-slab vapor extraction system with two (2) extraction points. Sampling that has been conducted at the site includes one (1) round of indoor air sampling, two (2) rounds of groundwater sampling, three (3) rounds of soil sampling, and five (5) rounds of sub-slab vapor sampling.
5. The June 19, 2015 Phase II ESA was prepared to identify potential impacts on soil and groundwater caused by chemicals of concern (COCs) from dry cleaning operations and to evaluate the intrusion of vapors from dry cleaning COCs that may be present beneath the building floor slab. The draft Phase I ESA identified recognized environmental conditions (RECs) of petroleum from the gas station and dry cleaning solvents from dry cleaning. The June 19, 2015 Phase II ESA identified COCs in groundwater above analytical detection limits including cis-1,2-Dichloroethylene, 1,2-Dichloroethene (total), Tetrachloroethylene, and Vinyl Chloride. This Phase II ESA

focused on the vicinity of the dry cleaning facility, currently Comet Cleaners, located in the northeastern corner of the Site.

- a. Ten (10) soil borings were drilled in the vicinity of Comet Cleaners and sampled for analysis of volatile organic compounds (VOCs), chlorinated solvents only. Cis-1,2-Dichloroethylene, Tetrachloroethylene, and Trichloroethylene were detected in four (4) soil boring locations, but in concentrations below EPA residential and industrial Regional Screening Levels (RSLs).
- b. Seven (7) of the soil borings near Comet Cleaners were converted to groundwater monitoring wells and sampled for analysis of VOCs, chlorinated solvents only. Cis-1,2-Dichloroethylene, Tetrachloroethylene and Trichloroethylene were above EPA RSLs in three (3) monitoring well locations. Additionally, trans-1,2-Dichloroethylene was detected, but below the EPA RSL. SOCO concluded that further investigation may be warranted to identify the source of groundwater contaminants.
- c. Sub-slab vapor samples were collected at four (4) locations in Comet Cleaners and neighboring businesses to evaluate for vapor intrusion caused by dry cleaning COCs. Samples were analyzed for VOCs, chlorinated solvents only. Tetrachloroethylene, Trichloroethylene, Chloroform and Vinyl Chloride were found in concentrations substantially higher than EPA Vapor Intrusion Screening Levels (VISLs), suggesting that the potential for vapor intrusion to indoor air could be an inhalation exposure risk. Additionally, cis-1,2-Dichloroethylene and trans-1,2-Dichloroethylene were detected, but below EPA VISLs. SOCO recommended the installation of a sub-slab depressurization system in order to eliminate the potential exposure pathway and that further investigation may be warranted.

6. The August 22, 2015 SIAA Report was prepared to assess the extent of contamination by chlorinated solvents in the northeastern corner of the Site, the excavation of suspected source soils, and the abatement of sub-slab vapors by a Sub-Slab Vapor Extraction system (SVE).
 - a. The SVE system was installed at the Site, beginning June 30, 2015, to abate the potential exposure pathway for sub-slab vapors from chlorinated solvents. The SVE removed an estimated forty-five (45) pounds of chlorinated solvent vapors. Sampling events conducted on July 24, 2015, and August 17, 2015, found Chloroform, cis-1,2-Dichloroethylene, trans-1,2-Dichloroethylene, Tetrachloroethylene, Trichloroethylene and Vinyl Chloride above EPA VISLs in three (3) tenant locations, warranting the continued operation of the SVE system.
 - b. On July 14, 2015, soil samples were collected immediately outside of Comet Cleaners. Sampling was limited to shallow soils due to restricted drilling access. Tetrachloroethylene and Trichloroethylene were above EPA Residential RSLs at depths of one (1) to two (2) feet. Additionally, Cis-1,2-Dichloroethylene was detected, but below the EPA Residential RSL. Approximately seventy-one (71) tons of soil was excavated from the northeastern corner of the Site. However, excavation was limited by the presence of fixed structures and equipment, so COC source soils may remain. Before and after excavation, the highest concentrations of COCs were against the exterior wall of the dry cleaning facility, suggesting that more contamination may be present underneath the building.
 - c. An August 18, 2015, groundwater monitoring event found concentrations of cis-1,2-Dichloroethylene, Tetrachloroethylene and Trichloroethylene above EPA RSLs in six (6) groundwater monitoring well locations. Trans-1,2-

Dichloroethylene was detected in two (2) monitoring well locations, but below the EPA RSL. Concentrations of COCs were observed to decrease with distance from Comet Cleaners.

7. The October 27, 2015 Ambient Air Assessment Report concluded, based on ambient air samples collected on August 14, 2015, that the levels of chlorinated solvents in the indoor ambient air in the facilities neighboring Comet Cleaners were below the most conservative EPA RSLs. Tetrachloroethene and Trichloroethene were detected in Comet Cleaners and Trichloroethene was above the most conservative EPA RSL.
8. The October 27, 2015 Sub-Slab Vapor Monitoring Report concluded, based on sub-slab vapor sampling on October 9, 2015, and prior sampling events, that Tetrachloroethene and Trichloroethene exceeded EPA commercial VISLs in three (3) tenant locations, and that Chloroform and Vinyl Chloride exceeded EPA commercial VISLs in one (1) tenant location each. Therefore, SOCO recommended continued operation of the SVE system.
9. The results from the January 15, 2015 Sub-Slab Monitoring Event indicate that Trichloroethylene exceeds the EPA commercial VISL in two (2) tenant locations and Tetrachloroethene exceeds the EPA commercial VISL in one (1) tenant location.

AGREEMENT

1. If ADEQ determines that the environmental assessments previously conducted at the Site fail to accomplish an adequate determination of the extent, type, or concentration of released hazardous substances or pollutants at the Site, within sixty (60) calendar days of the effective date of this ESCA, Participant shall submit a Sampling and Analysis Plan (SAP) to ADEQ designed to determine the horizontal and vertical extent, rate of migration, type, and concentration of any hazardous substance or pollutant present in the environment.

2. 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.
3. 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). Participant shall implement said SAP amendment upon ADEQ approval and report the findings thereof in accordance with an amended implementation schedule.
4. 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.
5. 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.
6. 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.
7. 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.

8. 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.
9. 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.
10. 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.
11. 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.

12. 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.
13. All submittals required by the ESCA shall be electronically emailed to nicol@adeq.state.ar.us and submitted by Certified Mail or hand delivered to Julie Nicol, Enforcement, Office of Land Resources, ADEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317.
14. All submittals shall be subject to applicable review fees pursuant to APC&EC Regulation No. 23 § 6(t).
15. 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 Persons shall be:

Alan Tegethoff
Doyle Rogers Company
111 Center Street, Suite 1510
Little Rock, Arkansas 72201
Ph. No. (501) 375-1662
Fax (501) 978-2510
ategethoff@doyle-rogers.com

and

Ben Reynolds, P.E.
The Southern Co. of North Little Rock, Inc.
1201 North Cypress Street
Little Rock, Arkansas 72114
Ph. No. (501) 904-2510
breyndols@thesoco.com

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 Property.
19. 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.
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 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.
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 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.

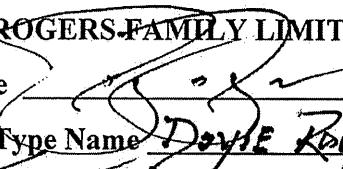
IT IS SO AGREED THIS 1st DAY OF November 2016.

Becky W Keogh

BECKY W. KEOGH
DIRECTOR
ARKANSAS DEPARTMENT OF
ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

THE DOYLE ROGERS FAMILY LIMITED PARTNERSHIP

BY: Signature 

Print or Type Name Doyle Rogers, Jr.

Title TRUSTEE

Date 10/25/16