



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

Property Assessment Oversight: Arkansas Department of Environmental Quality and Springdale, Arkansas Manufacturing Facility Enter Into Elective Site Clean-Up Agreement

Arkansas Environmental, Energy, and Water Law Blog

12/14/2015

The Arkansas Department of Environmental Quality (“ADEQ”) and Apex Tool Group, LLC (“Apex”) facility entered into an Elective Site Clean-Up Agreement (“ESCA”) in regards to a Springdale, Arkansas manufacturing facility. See LIS 15-138.

ADEQ describes the ESCA program as a means to allow participants to address historic contamination on their site without penalty and with known objectives.

The Apex ESCA is described as establishing:

... 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.

Various federal and state programs (including the ESCA and others in Arkansas) use risk-based corrective action remediation standards to tailor clean-up levels according to site-specific factors. Such programs often take into account factors such as to what the extent the site is characterized and/or the future land use. Typically, superimposed upon these various procedures are site-specific analyses and a requirement that the standards be protective of human health and the environment.

Agencies may be willing, in some circumstances, to provide “blessing” (subject to certain caveats) of a site’s conditions if they deem it adequately characterized and/or the contaminants are isolated from potential exposure. The approval of site conditions will likely be based on a combination of acceptability under applicable screening levels and/or whether the property uses are compatible with these conditions. A restrictive use may include the incorporation of enforceable institutional controls (i.e., deed restrictions, restrictive covenants or easements) or controls such as barriers (pavement in a certain area, etc.).

The Apex ESCA is described as a manufacturing facility located on approximately 53 acres and zoned as industrial.

The ESCA provides an explanation of both historical and current manufacturing and waste generation activities

Apex is stated to have submitted a letter of intent to ADEQ to enter into an ESCA for the Springdale site on August 18, 2015. The letter of intent included a “Focused Soil and Groundwater Assessment” (“FSGA”) that contains various information about conditions of the site and list six “Recognized Environmental Conditions.” Information generated includes soil borings and groundwater monitoring well results.

The ESCA provides that if the FSGA fails to accomplish an adequate determination of the extent, type, or concentration of a released hazardous substance or pollutants, Apex will submit a sampling analysis plan to ADEQ subject to the agency’s approval. Further, the ESCA provides that if ADEQ believes contaminants in the environment occurred, Apex will 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 ESCA provides for the possibility of the recording of a deed restriction if necessary to restrict activities and compatible uses that will protect the integrity of any remedial actions measures implemented on the property. Upon ADEQ approval of the previously referenced reports and receipt of a deed restriction (if required), the agency will issue a “No Further Action Determination” to Apex. This “No Further Action Determination” is qualified as being conditioned on a specific property use and potentially include land use controls.

[Click here to download a copy of the ESCA.](#)