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Colony South Shopping Center (Little Rock, Arkansas): Arkansas Department of Environmental Quality and Family Limited Partnership Enter into Elective Site Clean-up Agreement

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The Arkansas Department of Environmental Quality ("ADEQ") and the Doyle Rogers Family Limited Partnership ("Partnership") entered into a November 1st Elective Site Clean-up Agreement ("ESCA"). See LIS 16-086.

The ESCA addresses the Colony South Shopping Center ("Shopping Center") in Little Rock, Arkansas.

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

Various federal and state programs (including the ESCA and others in Arkansas) use risk-based correction action remediation standards to tailor clean-up levels according to site-specific factors. Such programs often take into account criteria such as to what extent the site is characterized and/or 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 contaminants adequately delineated and/or 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. 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.) may be used to ensure continued adherence to the restrictions by the current and future real property owner.

The Partnership ESCA describes the site as a multi-tenant commercial retail shopping center. Further, it provides both an explanation of the historical and current activities of the site.

ADEQ is stated to have received a letter from the Shopping Center's consultant expressing an intent to enter into an ESCA. The Letter of Intent is stated to have included a Phase II Environmental Site Assessment ("ESA"). A Site Investigation Activities Assessment ("SIAA"), Sub-Slab Vapor Monitoring Report, an Ambient Air Assessment Report, and the laboratory results and summary from a Sub-Slab Monitoring Event .

The sampling infrastructure and investigative techniques that were utilized are described. The ESCA references a dry cleaning facility at the Shopping Center as a focus of the Phase II. The results of the various investigative activities are also described.

The ESCA provides that 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 60 calendar days of the effective date of the documents, a Sampling and Analysis Plan ("SAP") will be submitted to the agency. The SAP is described as designed to determine the horizontal and vertical extent, rate of migration, type, and concentration of any hazardous substance or pollutant present in the environment.

The ESCA also includes an obligation to amend the SAP in the event there is not an adequate determination of the extent, type, or concentration of released hazardous substances or pollutants in the areas investigated along with 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) within 30 days of notification by ADEQ. Additional remediation activities may be required in the event the "Clean-up Plan" fails to accomplish remediation sufficient to protect human health and the environment.

Recording of deed restrictions are cited as a possibility (if necessary) to restrict activities and compatible uses that will protect the integrity of any remedial action measures implemented on the property. Upon ADEQ approval of the previously referenced requirements and receipt of a deed restriction (if required), the agency will issue a "No Further Action Determination" to the Partnership. This "No Further Action Determination" is qualified as being conditioned on a specific property use and potentially includes land use controls.

[A copy of the ESCA can be downloaded here.](#)