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White County, Arkansas: Arkansas Department of Energy and Environment - Division of Environmental Quality and Ampler Development LLC Enter into Elective Site Cleanup Agreement

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The Arkansas Department of Energy and Environment – Division of Environmental Quality (“DEQ”) and Ampler Development LLC (“AD”) entered into a November 17th Electric Site Cleanup Agreement (“ESCA”). See LIS No. 21-118.

The ESCA addresses a facility located in Searcy, Arkansas (“Site”).

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

Various federal and state programs (including 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 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.) might be used to ensure continued adherence to the restrictions by the current and future real property owner.

The ESCA describes the Site as encompassing commercial property that contained a bulk oil station and possible aboveground storage tanks from 1945 through the 1960s. It is also stated to have included railroad tracks and spur from about 1913 to the early 2000s.

A Burger King restaurant is stated to have been constructed on the Site.

Ampler is stated to have provided its consultant, Environmental Works, Inc. (“EWI”), a Phase I Site Environmental Assessment (“ESA”) which identified recognized Environmental Conditions associated with the Site. Further EWI is stated to have completed a Limited Phase II ESA at the Site. Such Phase II is stated to have detected volatile organic compounds (“VOCs”) and Total Petroleum Hydrocarbons-Gasoline Range Organics (“TPHGRO”).

EWI on behalf of Ampler submitted a request to DEQ for entrance into an ESCA seeking environmental regulatory closure for activities related to the Site’s historical operations.

The ESCA provides sequential tasks for Ampler to undertake which include:

- Within 30 calendar days of the effective date of this ESCA submit to DEQ the Sampling and Analysis Plan (SAP) designed to determine the horizontal and vertical extent, rate of migration, type, and concentration of any hazardous substances or pollutants present in the environment
- Implement the SAP on receipt of written approval from DEQ and provide findings to DEQ
- Within 30 calendar days of receiving written notification from DEQ that the SAP fails to accomplish an adequate determination as referenced in the ESCA, amend the document to provide additional sampling and analysis to accomplish the objectives
- Implement the SAP amendment upon DEQ approval
- In the event the contamination is determined to have occurred, within 30 calendar days of notification by DEQ AD is required to submit a Remedial Action Plan (“RAP”) to control or remediate the contamination to the extent necessary to protect human and the environment using a risk-based approach (including an implementation schedule which shall be implemented upon written approval by DEQ)
- Within 30 calendar days of completion of remediation activities, a Completion Report is to be submitted to DEQ
- If DEQ determines the RAP implementation fails to accomplish remediation as provided in the ESCA, additional remedial activities that DEQ determines necessary are to be conducted
- Within 30 calendar days of written notification by DEQ, AD is to file a deed restriction for the Site if necessary (in a form acceptable to DEQ) which provides notice to successors in title that the use of the Site will be restricted to activities and uses that will protect the integrity of any remedial measures implemented on the Site
- Within 45 days of written notification by DEQ, a copy of the deed restriction must be submitted to DEQ
- Upon approval of the Completion Report and receipt of deed restriction (if required) DEQ will issue a “No Further Action” determination to CBC

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