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Pulaski County, Arkansas Property: Arkansas Department of Energy & Environment - Division of Environmental Quality and Terraforma Opportunity Zone Fund, LLC Enter into Elective Site Cleanup Agreement

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The Arkansas Department of Energy & Environment – Division of Environmental Quality (“DEQ”) and Terraforma Opportunity Zone Fund, LLC (“Terraforma”) entered into an April 30th Elective Site Cleanup Agreement (“ESCA”). See LIS No. 24-081.

The ESCA addresses a property in Pulaski County, Arkansas (“Site”).

The ESCA describes the Site as a 29.82-acre property that has historically been used as open public dumping, with residual soil and water contamination.

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 for 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 Terraforma ESCA states that in 2022 Phase I and Phase II site assessments were completed through the Pulaski County Brownfield Program.

Terraforma is required to undertake certain sequential tasks which include:

- Within 30 calendar days of the effective date of the ESCA, submitting a Sampling and Analysis Plan (“SAP”) to DEQ designed to determine the horizontal and vertical extent, rate of migration, type, and concentration of any hazardous substance or pollutant present in the environment.
- Implement the SAP upon receipt of written approval from DEQ.
- If DEQ notifies Terraforma the SAP fails to accomplish an adequate determination of the referenced issues, amend the SAP to provide additional sampling and analysis to accomplish the requirements of Paragraph 1 of the section and submit to DEQ within 30 calendar days and subsequently implement the SAP amendment upon DEQ approval.
- Submission of progress and findings reports.
- Upon determination that contamination of the environment has occurred, within 30 calendar days of notification by DEQ, 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.
- Complete remediation activities in accordance with the RAP’s schedule and submission of a completion report.
- If DEQ determines that the RAP implementation failed to accomplish remediation sufficient to protect human health or the environment, conduct additional remedial activities as to the extent DEQ determines necessary to protect public health and the environment.
- Submit an Amendment to the Completion Report within 30 calendar days following completion of the additional remediation.
- File deed restriction for the Site if necessary upon written notification by DEQ.
- Submit a draft copy of the deed restriction to DEQ for review and approval within 45 calendar days of written notification.

Upon approval of the Completion Report and receipt of a file-marked copy of the deed restriction (if required), DEQ will issue a No Further Action determination to Terraforma.

The ESCA provides that unless terminated earlier in writing by DEQ or Terraforma, the document will be reviewed by DEQ on its fifth anniversary.

Terraforma is required to take all steps necessary to prevent aggravating or contributing to the contamination of the air, land, or water in terms of the existing contamination.

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