

White County, Arkansas Facility: Arkansas Department of Environmental Quality and Kohler Co. Enter into Elective Site Clean-Up Agreement



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The Arkansas Department of Environmental Quality (“ADEQ”) and Kohler Co. (“Kohler”) entered into an October 23rd Elective Site Clean-Up Agreement (“ESCA”). See LIS 17-096.

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

ADEQ 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 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 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 Kohler ESCA describes the Site as having been originally constructed in 1965 by another company. It was stated to have been subsequently purchased by Kohler in 1986. At that point, Kohler is stated to have begun manufacturing stainless steel sinks.

Kohler’s manufacturing process is stated to have generated industrial non-hazardous wastes such as polishing fines, used oil, and oil absorbents. The Site is stated to be currently vacant as Kohler ceased manufacturing operations in 2009. It is described as consisting of:

. . . One (1) single-story building situated on approximately twelve (12) acres that is currently zoned by the City of Searcy, Arkansas for heavy industrial use. The building is approximately two hundred thousand (200,000) square feet in size.

ADEQ is stated to have received a letter from Kohler expressing its interest in entering into an ESCA. The August 29th letter from Kohler is stated to have indicated that Phase I and II Environmental Site Assessments (“ESAs”) had been conducted by Environmental Services Company, Inc. to determine if the Site had been impacted from past industrial operations. The Phase I and Phase II ESAs were described in Kohler’s letter as indicating hazardous constituents are present at the Site at concentrations above relevant United States Environmental Protection Agency Regional Screening Levels (“RSL”). It further noted that Environmental Resource Management had been retained to further investigate environmental impacts and to develop a Sampling and Analysis Plan (“SAP”).

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

- Within 15 calendar days of the effective date of the ESCA, submit all reports, summaries, and analytical data from previous investigations conducted at the Site (including the Phase I and II ESAs)
- Within 30 calendar days of the effective date of the ESCA, submit the previously referenced SAP which must be 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 ADEQ and submit a report of findings to the agency within 120 calendar days from the SAP approval date
- Within 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 substance or pollutants in the areas investigated, Kohler is required to amend this document to provide for additional sampling and analysis to accomplish these requirements and implement the SAP amendment upon agency approval
- Within 30 calendar days of notification by ADEQ that contamination of the environment has occurred, Kohler 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 (including an implementation schedule)
- Within 30 calendar days following completion of the clean-up, a report must be submitted to the agency documenting the results
- Failure of the Clean-Up Plan to accomplish remediation sufficient to protect human health or the environment (based on a risk-based approach) may generate a requirement from ADEQ to conduct any additional remedial activities necessary to protect human health and the environment from the release of hazardous substances or pollutants at the Site
- Within 30 days of written notification by ADEQ, Kohler is required to file a deed of restriction for the Site if necessary (in a form acceptable to the agency), which provides notice to successors in title that use of the Site is restricted to activities and compatible uses that will protect the integrity of any remedial action measures implemented on the Site
- Deed restrictions are required to be submitted to ADEQ within 15 calendar days of filing

Upon approval of the completion report, and receipt of the deed restriction if required, ADEQ will issue a “No Further Action Determination” to Kohler (which is related to the identified areas of concern and conditioned on specific Site uses). Kohler is required to take all steps necessary during the ESCA process 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 [existing contamination is defined]).

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