

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

PARTICIPANT:

Arkansas Refrigerated Services, Inc.

REGARDING:

Arkansas Refrigerated Services, Inc.
205 North 1st Street
Fort Smith, AR 72901

LIS 24-146
AFIN 66-01883

ELECTIVE SITE CLEANUP AGREEMENT

This Elective Site Cleanup Agreement (ESCA) shall establish the investigation and remedial requirements associated with the continued voluntary Site cleanup of Arkansas Refrigerated Services, Inc. (Participant) in Fort Smith, Arkansas.

This ESCA is entered into by Participant and the Division of Environmental Quality (DEQ) voluntarily and pursuant to the authority of the Arkansas Hazardous Waste Management Act of 1979, Ark. Code Ann. § 8-7-201 *et seq.*; the Remedial Action Trust Fund Act, Ark. Code Ann. § 8-7-501 *et seq.*; and Arkansas Pollution Control and Ecology Commission (APC&EC) Rule No. 23, Hazardous Waste Management. Participant and DEQ hereby agree and stipulate that the following Findings of Fact be entered.

FINDINGS OF FACT

1. Participant's facility is located at 205 North 1st Street, Fort Smith, Arkansas (Site) as identified on Figure 1, outlined in red and yellow.
2. From the late 1800s to at least 1950, the Site property has been described as partially occupied by a manufactured gas plant. From the late 1800s through the 1960s, the Site had previously been in operation as an ice, cooler, and coal company. The Site is currently in operation as a cold storage warehouse since 1990.

3. On May 6, 2020, BBG Assessments, LLC conducted an Environmental Site Assessment (ESA) at the site. BBG recommended a limited sub-surface investigation be conducted to determine if historical or current on-site operations have impacted the property.

4. In Summer of 2023, a second ESA was conducted by Arcadis. Soil borings did not produce water, therefore five (5) groundwater monitoring wells were installed to maximum depth of 40 feet. Groundwater results indicate the presence of TPH-DRO in exceedance of DEQ screening criteria in three (3) groundwater wells.

AGREEMENT

1. Within thirty (30) calendar days of the effective date of this ESCA, Participant shall submit a Sampling and Analysis Plan (SAP) to DEQ designed to determine if any hazardous substance or pollutant is present in the environment within the area identified in the Findings of Fact, Paragraph 1.

2. Participant shall implement the SAP upon receipt of written approval from DEQ.

3. In the event DEQ notifies Participant the SAP implementation fails to accomplish an adequate determination of the extent, type, or concentration of released hazardous substances or pollutants in or from the areas investigated, Participant agrees to amend the SAP to provide for additional sampling and analysis to accomplish the requirements of paragraph 1 of this section and submit it to DEQ within thirty (30) calendar days of receiving the written notification. Participant shall implement said SAP amendment upon DEQ approval.

4. Participant shall submit progress and findings reports, as agreed upon in the SAP schedule, to DEQ for a period lasting until this Agreement is closed.

5. If it is determined that contamination of the environment has occurred, within thirty (30) calendar days of notification by DEQ, Participant shall 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. The RAP shall include an implementation schedule and shall be implemented upon written approval by DEQ.
6. If DEQ determines the RAP implementation fails to accomplish remediation sufficient to protect human health or the environment, Participant shall, upon receiving written notification of this failure from DEQ, conduct any additional remedial activities DEQ determines necessary to protect human health and the environment from hazardous substances or pollutants at or from the Site.
7. Within thirty (30) calendar days of written notification by DEQ, Participant shall submit for review a deed restriction for the Site, if necessary, which provides notice to successors in title that use of the Site will be restricted to activities and uses that will protect the integrity of any remedial action measures implemented on the Site.
8. Within forty-five (45) calendar days of written approval by DEQ of the draft deed restriction, Participant shall file the restriction on the deed and submit a file marked copy of the deed restriction to DEQ.
9. Upon approval of the Completion Report, and receipt of deed restrictions if required, DEQ will issue a "No Further Action" (NFA) determination to Participant. A NFA determination indicates that DEQ has no further requirements related to the specific scope of investigation of the identified area(s) of concern as documented in the SAP and RAP. A NFA determination will be conditioned on a specific site-use (residential, industrial or commercial) and might include land use controls that include but are not

limited to: 1) maintenance of existing pavement or ground cover; 2) use of air monitoring instruments during excavation; and 3) a deed restriction preventing use of groundwater beneath the Site for any use.

10. Unless terminated earlier in writing by DEQ or Participant, this Agreement shall be reviewed by DEQ on its fifth anniversary. At that time, if the Site remedial activities have not been completed, an extension for five (5) years may be granted if DEQ determines it is in the best interest of Participant and DEQ to do so. Remediation progress as well as additional time needed to complete the Site remedial activities will be determining factors as to whether or not an ESCA extension is granted. If an ESCA extension is not granted, Participant will be afforded the opportunity to enter into a no penalty Consent Administrative Order (CAO) with DEQ, and the Site remediation activities will continue towards a NFA determination.

11. Throughout the ESCA process, Participant shall take all steps necessary 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. The term "existing contamination" shall include any contamination set forth in the SAP and RAP submitted by Participant and approved by DEQ. Participant shall not use or redevelop the Site in a manner that differs from the terms or procedures established under this Agreement.

12. Nothing contained in this Agreement shall be construed as a waiver of DEQ's enforcement authority over current or future alleged violations not specifically addressed herein. Nothing contained herein shall relieve Participant of any other obligations imposed by any local, state, or federal laws, nor shall this Agreement be deemed in any way to

relieve Participant of its responsibilities for obtaining or complying with any necessary permits or licenses. Nothing in this Agreement shall be construed as a waiver of liability for future contamination of the Site by Participant, subsequent owners, or third-parties during or after completion of the Agreement.

13. Participant shall submit to DEQ one (1) copy of all reports, documents, plans or specifications required under the terms of this ESCA. All submittals required by this ESCA shall be emailed to OLRenforcement@arkansas.gov, submitted by Certified Mail, or hand delivered to the Enforcement Branch, Office of Land Resources, DEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317.

14. All requirements of this ESCA are subject to approval by DEQ. In the event of any deficiencies, Participant shall submit any additional information or changes requested, or take additional actions specified by DEQ to correct any such deficiencies within the timeframe specified by DEQ. Failure to adequately respond in writing within the timeframe specified by DEQ constitutes a failure to meet the deadline and subjects Participant to possible removal from the ESCA Program.

15. All submittals shall be subject to applicable review fees pursuant to APC&EC Rule No. 23 § 6(t).

16. If any event occurs that causes or may cause a delay in Participant achieving the requirements of this ESCA, Participant shall notify DEQ in writing as soon as it is apparent that a delay may result. Such request shall be made prior to the deadline. The written notice shall describe in detail the anticipated length of delay, the precise cause of delay, the measures taken to address and minimize the delay, and the timetable by which the delayed ESCA requirements will be met.

17. This ESCA, including all rights and liabilities, is transferable, with written approval by DEQ, to any and all subsequent owners of the Site.

18. Subsequent owners shall receive a copy of this ESCA from the Site owner and shall not develop or use the Site in a manner that is inconsistent with the terms or procedures contained herein unless agreed to by all Parties to this ESCA, including DEQ. In the event the intended use of the Site is to be altered, DEQ will evaluate the protectiveness of the remedial action to determine if the proposed use would be protective of human health and the environment.

19. This Agreement shall be effective upon the date of execution. Unless otherwise specified in this Agreement, all times for performance of activities under this Agreement shall be calculated from this effective date. This Agreement is subject to public review and comment. DEQ retains the right and discretion to rescind this Agreement based on comments received within the thirty (30)-day public comment period or based on any other considerations which may subsequently come to light. Additionally, this Agreement is subject to being reopened upon APC&EC initiative or in the event a petition to set aside this Agreement is granted by the APC&EC.

20. Participation in this ESCA can be withdrawn by Participant at any time upon written notification to DEQ. In turn, if Participant fails to complete the terms and conditions set forth in this ESCA, DEQ reserves the right to deem Participant in violation of this ESCA, and Participant will be notified in writing that its enrollment in this Agreement is no longer valid.

21. By virtue of the signature appearing below, the individual represents that he or she is an Officer of Participant, being duly authorized to execute and bind Participant to the

terms contained herein. Execution of this ESCA by an individual other than an Officer of Participant shall be accompanied by a resolution granting signature authority to said individual as duly ratified by the governing body of the entity.

SO ORDERED THIS 2 DAY OF October, 2024.

Bailey Taylor
BAILEY TAYLOR
CHIEF ADMINISTRATOR OF ENVIRONMENT AND DEQ DIRECTOR
ARKANSAS DEPARTMENT OF ENERGY & ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

ARKANSAS REFRIGERATED SERVICES

BY: Jason Bailey
(Signature)

Jason Bailey
(Typed or printed name)

TITLE: CEO

DATE: 9-20-24