

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

In re:	§	Chapter 11
	§	
ASARCO, LLC, <i>et al.</i>	§	Case No. 05-21207
	§	
Debtors	§	

Agreed Order Regarding the Federated Metals State Superfund Site

I. Introduction

1. This Agreed Order Regarding the Federated Metals State Superfund Site (“Order”) is voluntarily entered into by and between the Texas Commission on Environmental Quality (“TCEQ”) and Environmental Liability Transfer, Inc. (“ELT”), ELT Houston, LLC (“ELT Houston”), and EnergySolutions, LLC (“ES”). Under this Order, the Performing Parties agree to perform or have performed the response actions specifically assigned to them pursuant to this Order at or in connection with the property generally located at 9200 Market Street in Houston, Harris County, Texas, known as the Federated Metals State Superfund Site (“Site”). If obligations under this Order are the responsibility of more than one of the Performing Parties, such responsibility shall be joint and several.

II. Jurisdiction

2. The Parties agree that the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. §§ 1334 and 157. Solely for the purposes of this Order, Performing Parties waive all objections and defenses that they may have to jurisdiction of the Court. Performing Parties agree not to challenge this Court’s jurisdiction to enter and enforce this Order.

III. Parties Bound; Succession and Assignment

3. This Order applies to, is binding upon, and shall inure to the benefit of the Parties hereto, their legal successors and assigns, and any trustee, examiner or receiver appointed in the ASARCO Bankruptcy Case. Any change in ownership or corporate status of either of the Performing Parties including any transfer of assets or real or personal property shall not alter such Performing Party’s responsibilities under this Order.

IV. Definitions

4. The following terms have the meanings set out below:

“Contractors”	The individual, company, or companies retained by one or both of the Performing Parties to undertake any or all phases of the Work.
“Day”	A calendar day.
“Effective Date”	This Order shall become effective upon both (1) the transfer of title to the Property to ELT Houston, LLC, and (2) receipt of payment of \$28,900,000 by ASARCO to the corporate trustee of the custodial trust for funds earmarked for ELT Houston, LLC (together, the “real estate closing”).
“Executive Director (ED)”	The Executive Director of the TCEQ or a designee.
“include”	Use of the term include, in all its forms, in this Order is intended to express an enlargement or illustrative application specifying a particular thing already included within the preceding general words. It is not used as a term of limitation.
“Institutional Control”	A legal instrument which indicates the limitations on or the conditions governing use of the property which ensures protection of human health and the environment in accordance with 30 TEX. ADMIN. CODE Chapter 350.
“Materials of Concern (MoC)”	Any chemical that has the potential to adversely affect ecological or human receptors due to its concentration, distribution, and mode of toxicity, including radioactive substances as defined in 30 TEX. ADMIN. CODE § 336.2(109).
“Paragraph”	A portion of this Order identified by an Arabic numeral or a lower case letter.
“Parties”	Collectively, the Performing Parties and the TCEQ.
“Performing Parties”	Collectively, Environmental Liability Transfer, Inc.; ELT Houston, LLC; and EnergySolutions, LLC.
“Performing Party”	Environmental Liability Transfer, Inc.; ELT Houston, LLC; or EnergySolutions, LLC, individually as the context indicates.

“Performing Party ELT”	Environmental Liability Transfer, Inc., and ELT Houston, LLC.
“Project Manager”	The individual designated by the ED to oversee implementation of the Work and to coordinate communications with the Performing Parties.
“Property”	That portion of the Site, encompassing approximately 22 acres, which is depicted in Exhibit A of this Order, attached hereto and incorporated herein by reference.
“Records”	Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. The term includes papers, books, accounts, drawings, graphs, charts, photographs, electronic or videotape recordings, data, and data compilations.
“Remedial Action (RA)”	Those activities undertaken at the Site, including on-site physical construction and any required institutional controls, to implement the Remedy. The areal extent of the RA is not limited to the Site. It includes all suitable areas in proximity to the Site necessary for implementation of the Work.
“Remedial Design (RD)”	Those activities during which engineering plans and technical specifications are developed for the Remedy.
“Remedy”	The Remedy selected for the Site by the ED to clean up or control exposure at the Site in accordance with all applicable laws and regulations and to be implemented in accordance with this Order.
“Response Action Objectives (RAO)”	Cleanup standards or other measures of achievement of the goals of the Remedy and other response actions, consistent with this Order and determined by the ED to be necessary at the Site to achieve and to maintain the Remedy and other response actions. The ED in his determination will at all times act in good faith consistent with applicable statutes, regulations, rules, and this Order.
“Samples”	Samples of environmental media taken pursuant to and in accordance with this Order.
“Sections”	Those major divisions of this Order designated by Roman numerals.
“Site”	The Federated Metals State Superfund Site, generally located at 9200 Market Street in Houston, Harris County, Texas. The Site includes the Property; the “Pickens Patton Property,” shown on Exhibit D of

this Order; and all properties onto, into, or upon which such contamination from the Property naturally or as a direct result of remediation activities spilled, migrated, or was deposited.

“Site Coordinator” The individual designated by the Performing Parties to oversee the Contractors and the implementation of the Work and to coordinate communications with the ED.

“TCEQ” The Texas Commission on Environmental Quality and any predecessor or successor departments or agencies of the State of Texas.

“Work” All activities to be undertaken or performed in accordance with and as required by this Order, but with respect to ES only the activities required by Article VII of this Order.

V. Order

5. As of the Effective Date, the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, hereby orders that Performing Parties comply with all aspects of this Order, including all attachments to this Order, all documents incorporated by reference into this Order, and all schedules and deadlines in this Order, attached to this Order, or incorporated by reference into this Order.

VI. Common Obligations of Performing Parties

6. Cooperation and Coordination. All Performing Parties must coordinate with and cooperate with any other Performing Parties in the performance of any and all of the Work.
7. Providing Copies of Order
 - a. Performing Parties that own or lease real property at the Site shall provide a copy of this Order to all of their lessees or sublessees of the Site until such time as this Order is terminated in accordance with its terms and to any prospective owners or successors before all or substantially all property rights, stock, or assets are transferred.
 - b. Performing Parties shall provide a copy of this Order to all contractors, subcontractors, laboratories, and consultants retained by Performing Parties to perform any or all of the Work within forty-five (45) Days after the Effective Date or on the date such services are retained, whichever date occurs later. Notwithstanding the terms of any contract, Performing Parties remain responsible for

compliance with this Order and for ensuring that their contractors and agents comply with this Order.

8. Transfer of Property. Not later than ninety (90) Days before any transfer of any property interest in any property included within the Site and in accordance with Paragraph 17 (Notices and Submittals), Performing Parties that own or lease such real property shall submit the transfer documents to the ED.
9. Compliance with Applicable Laws and Regulations
 - a. Performing Parties shall perform all actions pursuant to this Order in accordance with the requirements of all applicable or relevant and appropriate federal, state, and local laws and regulations.
 - b. Without limiting the preceding paragraph, Performing Parties shall at all times comply with the requirements of the Solid Waste Disposal Act, TEX. HEALTH & SAFETY CODE § 361.003, *et seq.*; 30 TEX. ADMIN. CODE Chapter 335, Subchapter K; and 30 TEX. ADMIN. CODE Chapter 350, as applicable. Additionally, decommissioning of the Site in regards to the radioactive material must follow the requirements of the Texas Radiation Control Act, TEX. HEALTH & SAFETY CODE § 401.003, *et seq.*; 30 TEX. ADMIN. CODE Chapter 336, Subchapter D, "Standards for Protection Against Radiation"; 30 TEX. ADMIN. CODE Chapter 336, Subchapter G, "Decommissioning Standards"; and 30 TEX. ADMIN. CODE Chapter 336, Subchapter F, "Licensing of Alternative Methods of Disposal of Radioactive Material," as applicable.
 - c. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.
 - d. All materials removed from the Site shall be disposed of or treated at a facility which is in compliance with all applicable or relevant and appropriate federal, state, and local laws and shall be disposed of or treated in accordance with all such requirements.
10. Project Manager, Site Coordinator, and Contractor(s)
 - a. Not later than the Effective Date, the ED will designate a Project Manager to oversee implementation of the Work and to coordinate communication between the ED and the Performing Parties. Performing Parties shall direct all communications regarding the Work, whether written or oral, at a minimum, to the Project Manager.
 - b. Within ten (10) Days after the Effective Date, each of the Performing Parties shall submit a written notice to the Project Manager containing:

- i. the Site Coordinator's address, email address, phone number, and/or pager number at which he/she may be contacted, including the means to contact the Site Coordinator at any time in case of emergency, and
 - ii. the name, title, qualifications, relevant licenses, and permits of the Contractor(s) proposed to be used in carrying out the Work. The Performing Parties shall demonstrate that each proposed Contractor has any licenses necessary to do business in the State of Texas and permits necessary to perform any or all of the Work. If at any time the Performing Parties propose to use a different Contractor, the Performing Parties shall notify the ED before the new Contractor performs any of the Work. A qualified Contractor shall direct and supervise all aspects of the Work.
 - c. The ED and the Performing Parties may change their respective Project Manager or Site Coordinator by written notice to each other of the name, address, and telephone number of the new Project Manager or Site Coordinator seven (7) Days prior to the change or, if seven (7) Days notice is not feasible, as soon as possible.
 - d. The Project Manager may assign other persons, including other TCEQ employees or contractors, to serve as representatives to oversee the response activities and may temporarily delegate his or her responsibilities to such representatives. The Project Manager will notify the Site Coordinator orally or in writing of such delegation.
 - e. The Project Manager and Site Coordinator shall hold meetings at least once per month to review the progress and details of the Work and to review and resolve any discrepancies in data. At the ED's discretion, these meetings may be held by telephone. At least seven (7) Days prior to each meeting, the Performing Parties shall deliver an agenda for the meeting and any documents to be discussed to the Project Manager.
11. The Parties agree that the Response Action Objectives ("RAO") for the Site are as follows:
- a. All soil with MoC concentrations in excess of the following criteria shall be removed from the Site and disposed of in permitted facilities.
 - i. Applicable protective concentration levels ("PCLs") under 30 TEX. ADMIN. CODE Chapter 350 (Texas Risk Reduction Program).
 - ii. Applicable contaminant levels under 30 TEX. ADMIN. CODE Chapter 336 (Radioactive Substance Rules).

- iii. TCEQ-approved dose modeling action levels to ensure achievement of 30 TEX. ADMIN. CODE Section 336.603 (Radiological Criteria for Unrestricted Use).
- b. All contaminated groundwater shall be remediated to:
 - i. prevent expansion,
 - ii. prevent migration off-site,
 - iii. prevent migration downward to the next groundwater bearing zone, and
 - iv. meet the PCLs under 30 TEX. ADMIN. CODE Chapter 350 (Texas Risk Reduction Program) and 30 TEX. ADMIN. CODE Section 290.108(b) (Radionuclides Other than Radon) within a reasonable timeframe but not to exceed thirty (30) years after completion of the groundwater treatment system, and
 - v. meet the requirements for unrestricted use under 30 TEX. ADMIN. CODE Section 336.603 (Radiological Criteria for Unrestricted Use).

12. Initial Submittals

- a. Within sixty (60) Days after the Effective Date, each Performing Party shall, with respect to its scope of Work hereunder, submit the following:
 - i. Field Sampling Plan (“FSP”),
 - ii. Quality Assurance Project Plan (“QAPP”), and
 - iii. Health and Safety Plan (“HASP”).
- b. The FSP and QAPP must describe the means of assuring quality during the performance of the Work and will specify a quality assurance official (“QA Official”), independent of any Contractor, to conduct a quality assurance program.
- c. The FSP and the “Texas Commission on Environmental Quality Superfund Cleanup Section, Remediation Division, Quality Assurance Project Plan for the Superfund Program” (“Program QAPP”), which is most current as of the Effective Date of this Order, will comprise the Sampling and Analysis Plan (“SAP”). The SAP will address sampling and analysis relating to environmental parameters which may present toxic risk to human health or the environment. Performing Parties and their

contractors and subcontractors, including analytical laboratories, shall strictly adhere to all requirements of the approved SAP.

- d. The Program QAPP text must not be altered. However, additions to the Program QAPP necessitated by project specific circumstances will be effected by appropriate notation in Section 8.0 "Exceptions, Additions and Changes to the Program QAPP." This portion of the QAPP must describe the activities necessary to ensure that the Work is performed to meet or exceed all criteria, plans, specifications, and all applicable objectives. The QAPP must address sampling and analysis relating to physical properties of constructed engineered controls which must meet specified criteria to ensure the long-term performance of those features (e.g., physical soil properties of soil backfill or constructed clay caps, physical properties of geotextiles and liner materials, leak testing of piping systems and containment vessels, etc.). At a minimum, the QAPP must include the following elements:
 - i. the responsibility and authority of organizations and key personnel involved in each phase of the Work;
 - ii. the qualifications of the QA Official(s) and supporting inspection personnel;
 - iii. the observations and tests that will be used to ensure that the Work meets or exceeds all criteria, plans, specifications, and all applicable goals;
 - iv. the sampling activities, sample size, methods for determining locations, frequency of sampling, acceptance and rejection criteria, and methods for ensuring that corrective measures are implemented; and
 - v. detailed reporting requirements.
- e. The FSP must include:
 - i. all data required by the Program QAPP and the contents outline attached as Exhibit B (Field Sampling Plan) to this Order and incorporated herein by reference;
 - ii. Data Quality Objectives ("DQOs") which provide for the collection and analysis of a sufficient quantity and quality of data to demonstrate attainment of the RAO and to demonstrate protection of off-site receptors from exposure to MoC during the Work. DQOs will be developed in accordance with EPA "Guidance for the Data Quality Objectives Process, EPA QA/G-4"; and
 - iii. a perimeter air monitoring plan including the action levels necessary to protect off-site receptors from exposure to the MoC; the MoC to be sampled;

the kinds of sampling techniques to be used; the number, type, and location of monitors; the calibration methods and schedule; and the sampling and reporting frequency.

- f. The HASP will specify the procedures that are sufficient to protect on-site personnel and the public from the physical, chemical, and/or biological hazards of the Site. The HASP will address all requirements of 29 C.F.R. Chapter XVII - "Occupational Safety and Health Administration (OSHA), Department of Labor"; 40 C.F.R. Section 35.6015(a)(21) "Health and Safety Plan"; and all applicable safety regulations, ordinances, and statutes pertaining to the safety of on-site personnel and the public. The HASP and any revisions or addenda will be reviewed and signed by a Board Certified Industrial Hygienist.

The TCEQ relies on the Performing Parties in the preparation of an adequate HASP. However, TCEQ reserves the right to review and provide comments on the Performing Parties' HASP. If TCEQ provides comments, they constitute only general safety guidelines which are not intended to cause the Performing Parties to reduce the level of protection. Any language in the comments or in this Order which appears to give the TCEQ the right to direct or control the Performing Parties' means, methods, and details of the Work shall be deemed to mean that the Performing Parties will follow TCEQ's desires only as to the results of the Work. The Performing Parties are solely responsible for preparing an adequate HASP, for complying with the work plan and the applicable safety laws and regulations, for performing the Work in a safe manner, and for protecting the health and safety of on-site personnel and the public. The Performing Parties shall address the TCEQ's comments and concerns and if necessary submit a revised HASP. TCEQ notation of "approval," "acceptance," or similar language in response to a HASP submittal for review shall not alter the responsibilities of the parties as described in this Section. In the event that TCEQ notes a HASP "approved" or "accepted" or uses similar language to indicate that there are no further comments, such notation shall be deemed to mean only:

We have reviewed your HASP under the Order provision reserving the right for TCEQ to review and provide comments constituting general safety guidelines (not intended to cause the Performing Parties to reduce the level of protection). The reviewer(s) might not be Board Certified Industrial Hygienist or any other type of safety professional. We have no comments (or further comments) at this time on your HASP. We recognize this HASP as your final HASP. If you change this HASP, you must submit a revision or addendum for review and potential comment in accordance with this Order.

Do not rely on TCEQ review or comments (or lack thereof) on your HASP for any purposes.

By telling you we have no comments (or further comments), we are not assuming responsibility for your means, methods, details, or sequences; nor are we assuming any duty of protection to you, your employees, your subcontractors, or suppliers, or their employees, or to any third party. Any language in the comments or in this Order which appears to give the TCEQ the right to direct or control your means, methods, and details of the Work shall be deemed to mean that you will follow TCEQ's desires only as to the results of the Work. You are solely responsible for preparing and implementing an adequate HASP; for complying with the work plan and the applicable safety regulations, ordinances, and statutes; for performing the Work in a safe manner; and for protecting the health and safety of on-site personnel and the public.

13. Laboratories. In regard to laboratories and laboratory analytical work, Performing Parties shall:
 - a. Ensure that all contracts with laboratories utilized by Performing Parties for analysis of Samples provide for access to those laboratories by the ED's personnel and the ED's authorized representatives to assure the accuracy of laboratory results related to the Site and
 - b. Ensure that each laboratory used is qualified to conduct the proposed work. This includes use of methods and analytical protocols for the MoC in the media of interest within detection and quantitation limits consistent with both QA/QC procedures and approved DQOs for the Site. Each Performing Party's QA Official shall provide written certification that it has reviewed the laboratory's quality assurance plan and capabilities and has determined that:
 - i. the laboratory has a documented quality assurance program in place that is generally consistent with National Environmental Laboratory Accreditation Conference (NELAC) standards;
 - ii. the laboratory has demonstrated and documented proficiency with each sample preparation and determinative combination to be used on the project;
 - iii. the laboratory has documented standard operating procedures for each of the methods required for the project; and
 - iv. the laboratory has the capability of meeting the analytical objectives for the project.

A table which presents the laboratory's method detection limits and quantitation limits and the preliminary cleanup goal for each analyte of concern, and a table that presents the laboratory's control limits for quality

control parameters (i.e., surrogates, matrix spike/matrix spike duplicate samples, and laboratory control samples) must be submitted along with the certification letter and must be submitted, attached, or inserted into the FSP.

- c. Ensure that all laboratories used for analysis of Samples are acceptable to the ED. A laboratory may be deemed unacceptable for any of the following reasons:
 - i. repeated or numerous deficiencies found in the laboratory quality assurance program during the TCEQ's or EPA's laboratory inspections,
 - ii. repeated or numerous deficiencies in laboratory performance,
 - iii. debarment by EPA, or
 - iv. failure to comply with any requirement or criteria of the QAPP or this Order.
- d. Ensure that all data submitted to the agency is produced by laboratories accredited by TCEQ according to 30 TEX. ADMIN. CODE Chapter 25 (relating to Environmental Testing Laboratory Accreditation and Certification), Subchapters A and B.

14. Samples

- a. The ED may take splits or duplicates of any Samples obtained by any Performing Party at the Site at anytime including during the implementation of any phase of the Work. The Performing Parties shall provide assistance necessary for the ED to take split or duplicate Samples.
- b. Performing Parties shall provide the ED with a schedule of routine sampling and notify the ED at least seven (7) Days before any non-routine sampling is conducted at the Site, except in the event of an emergency or immediate threat. Performing Parties shall collect and analyze all Samples in accordance with approved work plans developed pursuant to this Order and shall handle all Samples in accordance with the approved QAPP.

15. Cessation of Work

- a. The Project Manager has the authority to require that the Work is performed in accordance with all applicable statutes and regulations and with this Order and to require a cessation of the performance of any part or all of the Work that, in the Project Manager's opinion:
 - i. may present or contribute to an imminent and substantial endangerment to public health, welfare, or the environment because of an actual or threatened

release of solid wastes, hazardous substances, or radioactive material from the Site;

- ii. is not in conformance with any work plan developed in accordance with this Order; or
 - iii. is a violation of any work plan developed in accordance with this Order, HASP, or QAPP.
- b. Within 24 hours after the Project Manager issues an oral order to halt any or all of the Work, if time permits, the Project Manager will provide a brief explanation of the basis for the order. As soon as possible, but in any event no more than fourteen (14) Days after the initial order to halt any or all of the Work, the Project Manager will provide a written explanation of the basis for the order to halt any or all of the Work to the Site Coordinator. The Work may be resumed only after the basis for the order to halt any or all of the Work has been corrected and instructions to proceed have been provided to the Performing Parties by the Project Manager. All additional costs associated with the cessation of any or all of the Work will be borne by Performing Parties.

16. Endangerment and Immediate Threat

- a. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of a solid waste, hazardous substance, or radioactive material which may present an immediate threat to public health or welfare or the environment, Performing Parties shall, within twenty-four (24) hours after such event, take all appropriate action to prevent, abate, or minimize such release or threat and notify the Project Manager. Performing Parties shall also notify the TCEQ Emergency Response Unit, 1-800-832-8224, Region 12. Performing Parties shall take such action in accordance with all applicable provisions of the HASP. If Performing Parties fail to take appropriate response action as required by this Order and the TCEQ takes such action instead, Performing Parties shall reimburse the TCEQ all costs of the response action. Performing Parties shall make payments of such costs not later than forty-five (45) Days after the ED transmits a Demand Letter stating the amount owed.
- b. Nothing in the preceding paragraph will be deemed to limit any authority of the State of Texas to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of solid wastes, hazardous substances, or radioactive materials to the environment on, at, or from the Site.

17. Notices and Submittals

- a. Performing Parties shall submit all data, information, reports, schedules, and other documents required by this Order in hard copy format (two hard copies of draft submittals and three of final submittals) and in specific computer software format (one electronic copy of each draft and final submittal) as determined by the Project Manager.
- b. Performing Parties shall make all notices and submittals required by this Order in writing and in accordance with the contact information contained in this paragraph unless otherwise expressly authorized. All information required to be submitted pursuant to this Order, including data, documents, records, reports, approvals, and other correspondence, will be submitted to the following Parties at the addressees listed below or to such other addressees as such Party hereafter may designate in a written communication to all other Parties:

Environmental Liability Transfer, Inc.

For mail:

Environmental Liability Transfer, Inc.
1650 Des Peres Road, Suite 303
Saint Louis, MO 63131

ELT Houston, LLC

For mail:

ELT Houston, LLC
c/o Environmental Liability Transfer, Inc.
1650 Des Peres Road, Suite 303
Saint Louis, MO 63131

EnergySolutions, LLC

For mail:

EnergySolutions, LLC
423 West 300 South, Suite 200
Salt Lake City, UT 84101

Texas Commission on Environmental Quality

For mail:

Texas Commission on Environmental Quality
Remediation Division
Mail Code 221
P.O. Box 13087
Austin, TX 78711-3087
Attention: Project Manager Federated Metals State Superfund Site

For overnight express mail or delivery service:

Project Manager
Mail Code 221
Federated Metals State Superfund Site
TCEQ, Remediation Division
Building D, Floor 1, Room 184
12100 Park 35 Circle
Austin, TX 78753

By facsimile:

Project Manager
Federated Metals State Superfund Site
(512) 239-2450

- c. Unless specifically stated otherwise, Performing Parties shall submit responses, revisions, and/or modifications to address TCEQ comments within forty-five (45) Days after receiving the comments. For all responses, Performing Parties shall submit summary notes to an outline of TCEQ's comments.
18. Submittals Approved by the ED.
- a. Upon the ED's approval of a submittal, Performing Parties shall proceed to implement all actions required by the submittal according to the schedule approved by the ED.
 - b. Approved submittals may be modified upon agreement by the ED and the Performing Parties. The Performing Parties shall submit proposed modifications and obtain approval in accordance with the process for submittals specified in this Order generally. Upon approval of any modification, the modification is incorporated into the original submittal for all purposes.
 - c. The ED's approval of submittals or modifications is administrative in nature and allows the Performing Parties to proceed to the next steps in the Work. The ED's

approval does not imply any warranty of performance, does not imply that the Work will meet any particular standards or goals, nor does it imply that the Work will ultimately be accepted by the ED. Approval of a submittal in no way alters the scope of the obligations of the Performing Parties under this Order.

- d. All ED-approved final submittals required to be developed and approved by the ED pursuant to this Order are incorporated in and enforceable under this Order.

19. Records

- a. During the term of this Order and for a period of five (5) years following the termination of this Order, each of the Performing Parties shall, within twenty (20) Days of any written request from the ED therefor, provide to the ED all of its records related to the Site, other than legally privileged information or attorney work product, which are generated or obtained by such Performing Party.
- b. Subject to the confidentiality provisions set forth in the paragraph immediately below, all records developed pursuant to this Order or submitted by Performing Parties to the ED pursuant to this Order will be available to the public.
- c. Performing Parties may assert a claim of business confidentiality pursuant to the Texas Public Information Act as to any process, method, technique, or any description thereof that the Performing Parties claim constitutes proprietary or trade secret information developed by Performing Parties or developed by their contractors or subcontractors. If no confidentiality claim accompanies the process, method, technique, or description thereof when submitted to the ED, any such process, method, technique, or description thereof may be made available to the public by the ED or the State of Texas without further notice to Performing Parties. Performing Parties shall make business confidentiality determinations in good faith.
- d. Each Performing Party shall preserve and retain, and shall instruct its employees, agents, contractors, subcontractors, and anyone else acting on its behalf at the Site to preserve and retain, for the term of this Order and for a period of five (5) years from the date of termination of this Order, in the form of originals or copies, all records of whatever kind, nature, or description that relate in any way to the Site that are now or that come to be in its possession or control. Each Performing Party shall, within thirty (30) days after termination of this Order, provide the ED with a written list of all such records.
- e. Upon termination of this Order, each Performing Party shall notify the ED at least ninety (90) Days before any such record is destroyed. If the ED requests, Performing Parties shall, at no cost to TCEQ, provide the ED originals or copies of such records which are not protected by a privilege.

- f. Any Performing Party refusing to provide copies of any records based upon a claim of privilege shall identify the record and explain the basis for the claim. Notwithstanding the immediately preceding sentence, any record required to be developed or submitted pursuant to this Order will be available to the public.
- g. At any time prior to the completion of the Work, the ED may contact the Site Coordinator to determine the location and/or to obtain copies of any or all of the records developed in accordance with this Order. The Performing Parties shall provide copies of any such records to the ED at no cost to TCEQ.

20. Periodic Review

- a. Progress Reports
 - i. Performing Parties shall submit written monthly progress reports on the Work to the ED beginning on the tenth Day of the month following the Effective Date. These progress reports will describe the actions taken pursuant to this Order during the previous month, including a general description of activities and progress during the reporting period, activities projected to be commenced or completed during the next reporting period, and any problems encountered or anticipated by Performing Parties in commencing or completing the Work. Progress reports will include all data received during the reporting period and an up-to-date progress schedule. Progress reports will identify any violations of this Order and calculate any applicable stipulated penalty required under this Order. The requirement to submit these monthly progress reports will be terminated when the Order is terminated.
 - ii. If a progress report submitted by Performing Parties is deficient, the ED will provide written notice to the Site Coordinator. The notice will include comments and a description of the deficiencies.
 - iii. Within ten (10) Days of the ED providing the Site Coordinator with a notice of deficiency of a progress report, Performing Parties shall make such changes as the ED deems necessary and resubmit the progress report to the ED.

21. Access

- a. As of the Effective Date, any Performing Party that owns, in whole or in part, the Site, an off-site area that is to be used for access to the Site, property subject to or affected by the Work, or other property where documents generated in accordance with this Order are or come to be located shall provide access to such property to the ED; any federal, state, or local authorities and their contractors approved by the ED;

and other Performing Parties and their authorized representatives and contractors. Failure to provide such access may result in the imposition of statutory and/or stipulated penalties.

- b. If a person other than a Performing Party owns, in whole or in part, the Site, an off-site area that is to be used for access to the Site, property subject to or affected by the Work, or other property where documents generated in accordance with this Order are or come to be located, Performing Parties shall obtain, or use commercially reasonable efforts to obtain, Site access agreements from the then current owner(s) within ninety (90) Days of the Effective Date. Performing Parties shall secure agreements to provide access for the ED; federal, state or local authorities and their contractors as approved by the ED; and the Performing Parties and their authorized representatives and contractors. Performing Parties shall ensure that such agreements specify that TCEQ is not liable for any loss or claim arising out of any activities at the Site, on off-site areas to be used for access to the Site, on property subject to or affected by the Work, or on other property where documents generated in accordance with this Order are or come to be located. Performing Parties shall provide copies of such agreements to the ED before the Performing Parties initiate field activities. For purposes of this Paragraph 21.b. commercially reasonable efforts to secure Site access agreements shall include indemnifying current owners for losses resulting from a Performing Party's performance of the Work, paying all necessary and appropriate governmental fees, paying fees and personnel required by the railroad, and paying a current owner up to \$2,500 in aggregate remuneration for site access.
- c. Subject to the Performing Parties' reasonable safety and internal security requirements, the ED has the authority to enter, freely move about, and exit the Site, any off-site area that is to be used for access to the Site, property subject to or affected by the Work, or other property where documents generated in accordance with this Order are located or come to be located, for the purposes of: inspecting conditions at the Site, the Work and all information, documents, data, records, operating logs, and contracts related to the Site; reviewing the Performing Parties' progress in performing the Work; conducting such tests as the ED deems necessary; using a camera, sound recording device, or other documentary type equipment; verifying the data submitted to the ED by the Performing Parties; and performing any Work not being performed or not being satisfactorily performed by the Performing Parties. Nothing herein will be interpreted as limiting or affecting the ED's right of entry or inspection authority under state or federal law. All persons with access to the Site shall comply with the HASP.

22. Extension of Deadlines and Waiver of Requirements

- a. The Performing Parties may seek and the ED may grant an extension of any deadline contained in this Order or in any document submitted pursuant to this Order.

Performing Parties shall submit the request, in writing, for a deadline extension no later than seven (7) Days prior to the deadline date and shall substantiate good cause for extension of the deadline. The determination of what constitutes good cause and the length of any deadline extension will be at the ED's discretion. The foregoing provisions of this Paragraph 22.a. notwithstanding, each Performing Party, exercising its discretion, shall, upon seven (7) Days' prior written notification to the ED, have the right, without securing the ED's approval or consent, to extend one or more deadlines hereunder, provided that (i) any such extension does not present a risk to the environment or health or safety of any person, and (ii) all such extensions do not exceed, in the aggregate for all Performing Parties, one hundred eighty (180) Days.

- b. The ED may, in his discretion, waive, in writing, a requirement to submit any report, submittal, document, or plan otherwise required to be submitted by this Order.
23. Delay in Performance. Performing Parties shall notify the ED of any delay or anticipated delay in achieving compliance with any requirement of this Order. Such notification will be made by telephone to the Project Manager within forty-eight (48) hours after Performing Parties first knew or should have known that an event might cause a delay. Within seven (7) Days after notifying the Project Manager by telephone, Performing Parties shall provide written notification fully describing the cause of the delay, the anticipated duration of the delay, the measures taken and to be taken by Performing Parties, their contractors, or consultants, to prevent or minimize the delay, and the timetable by which these measures have been, are being, and will be implemented. A revised timetable will be implemented upon its approval by the ED.
24. Force Majeure
- a. If a delay in performance is caused (in whole or in part) by events beyond the reasonable control of a Performing Party, i.e., "force majeure," that failure will not be construed as a violation of this Order. Force majeure includes acts of God, fires, strikes and any other industrial, civil or public disturbance, terrorism, and any laws, orders, rules, regulations, acts or restraints of any government or governmental body or authority, civil or military. The burden of establishing that an event is beyond its reasonable control lies with the Performing Party. The Performing Party shall notify the ED in writing within seven (7) Days of the start of the force majeure event and within seven (7) Days of the end of the force majeure event. The Performing Party shall submit the notification as specified herein. Failure to so notify the ED will constitute a waiver of the claim of force majeure.

Within fourteen (14) Days of the start of the force majeure event, the Performing Party shall, in writing to the ED, describe in detail the cause of the delay, the anticipated duration of the delay to the best of the Performing Party's knowledge, the measures taken and to be taken by the Performing Parties, their contractors, or

consultants to prevent or minimize the delay, the timetable by which these measures have been, are being, and will be implemented. Measures to prevent or minimize the delay will be implemented upon the ED's written approval of the timetable. The Performing Parties shall also submit, for the ED's approval, a proposed schedule for subsequent Work for which deadlines have been affected by the Force majeure event. Neither the ED's approval of the timetable of measures to be taken to prevent or minimize delays or of the revised schedule of Work will be construed as excusing the delay or as a waiver of TCEQ's rights to enforce this Order.

Upon giving notice to the ED, such obligations or conditions under this Order, other than the obligation to pay money when due, shall be suspended, to the extent fulfillment is impeded by force majeure, from the start of the force majeure event until the end of the force majeure event, and Performing Parties shall be relieved of liability and shall suffer no prejudice under this Order for failure to perform the same during such period.

- b. Force majeure events will not include increased costs or expenses of any part or all of the Work, nor the financial inability of any Performing Party to perform any part or all of the Work.
- c. If the ED and the Performing Parties cannot agree that the cause for the delay was a force majeure event or cannot agree upon the schedule for subsequent Work, then the disagreement will be resolved according to Paragraph 26 (Resolution of Disagreements). The Performing Parties shall have the burden of demonstrating that force majeure is warranted.

25. Stipulated Penalties

- a. Subject to Paragraph 24 (Force Majeure) and Paragraph 26 (Resolution of Disagreements), noncompliance with this Order shall result in the imposition of stipulated penalties as set forth below.
- b. Penalties Related to Timeliness of Submittals Required by this Order

For failure to:

- i. meet the deadlines set forth in Section VI (Common Obligations of Performing Parties), Section VII (Obligations Related to Soils), and Section VIII (Obligations Related to Groundwater);
- ii. submit timely reports as set forth herein;

- iii. submit records in a timely fashion or provide timely notice as required by Section VI (Common Obligations of Performing Parties), Section VII (Obligations Related to Soils), and Section VIII (Obligations Related to Groundwater); or
- iv. resubmit a document within the timeframes specified herein;

Performing Parties shall pay stipulated penalties in the following amounts for each Day and part thereof during which any delay listed in this Paragraph b continues:

<i>Period of Delay</i>	<i>Amount/Day</i>
1st through 14th Day	\$500.00
15th through 45th Day	\$2,000.00
46th Day and beyond	\$3,000.00

c. Penalties Related to Competency of Submittals

This paragraph applies to submittals of any document required by Section VI (Common Obligations of Performing Parties), Section VII (Obligations Related to Soils), and Section VIII (Obligations Related to Groundwater) which fail to be responsive and acceptable. Performing Parties shall pay a stipulated penalty of \$5,000 for each week and part thereof that an acceptable and responsive document is not submitted. This penalty may be assessed in addition to any penalties assessed under Paragraph b above.

d. Penalties Related to Project Milestones

For failure to achieve any project milestones in accordance with any schedules approved under this Order, Performing Parties shall pay stipulated penalties in the following amounts for each Day and part thereof during which any delay continues:

<i>Period of Delay</i>	<i>Amount/Day</i>
1st through 14th Day	\$1,000.00
15th through 45th Day	\$3,000.00
46th Day and beyond	\$10,000.00

e. For disobeying an order to halt any or all of the Work under Section VI (Common Obligations of Performing Parties), Performing Parties shall pay stipulated penalties of \$10,000 per Day.

f. For failure to use commercially reasonable efforts to obtain Site access in accordance Section VI (Common Obligations of Performing Parties), Performing Parties shall pay a stipulated penalty of \$1,000 per Day.

- g. For denying access provided for in Section VI (Common Obligations of Performing Parties), Performing Parties shall pay stipulated penalties of \$10,000 per Day.
- h. Any Performing Party who fails to provide records within ten (10) Days after receipt of a written request from the ED or within such other period as specified herein shall pay a stipulated penalty of \$10,000 per Day.
- i. Performing Parties shall pay stipulated penalties assessed under this Order as specified below within sixty (60) Days after the ED transmits a demand letter stating that stipulated penalties have accrued or after resolution of a disagreement as specified in Paragraph 26 (Resolution of Disagreements), whichever comes later. Stipulated penalties will accrue from the date of noncompliance until the noncompliance is corrected, provided however, that if any Performing Party prevails in resolution of disagreements as specified in Paragraph 26 (Resolution of Disagreements), it shall have no liability to pay stipulated penalties with regard to those matters submitted for resolution of disagreements in accordance with Paragraph 26 in which it prevails.
- j. Performing Parties shall pay stipulated penalties to “General Revenue Fund of the State of Texas” and shall mail payments to:

Chief Fiscal Officer (MC 180)
Texas Commission on Environmental Quality
“Re: Federated Metals State Superfund Site”
P.O. Box 13088
Austin, Texas 78711-3088
- k. The requirement to pay stipulated penalties that have been incurred prior to the termination of this Order will survive termination of this Order.
- l. A single act or omission may be the basis for more than one type of stipulated penalty. A single act or omission may also be subject to more than one (1) Day of stipulated penalties. In cases where more than one stipulated penalty applies to a single act or omission, the ED may choose which stipulated penalties to assess.
- m. The ED has discretion to reduce or waive stipulated penalties and to do so as to specific Performing Parties.
- n. Stipulated penalties against Performing Parties will be in lieu of administrative and civil penalties for the same violation but will not prevent TCEQ from seeking enforcement of the ordering provisions by injunctive relief. Performing Parties are subject to administrative and civil penalties.

26. Resolution of Disagreements

- a. The Performing Parties and the ED shall attempt to resolve on an informal basis any issues arising under the Order on which there is disagreement. The Performing Parties shall commence informal negotiations by notifying the Project Manager in writing that there is a disagreement and that this Paragraph 26 is being invoked. Except as provided below, informal negotiations will not extend beyond forty-five (45) Days from the date the Project Manager receives such notification, unless the Performing Parties and the ED agree otherwise in writing.
- b. The Performing Parties shall notify the Project Manager within forty-five (45) Days after the Day the Performing Parties knew or should have known of the events giving rise to the disagreement. Should the Performing Parties fail to give such notice, the ED's decision on any disagreement will be binding.
- c. Notification of the Project Manager in accordance with the paragraph above will not by itself postpone the deadlines established in accordance with this Order or stay the accrual of any applicable stipulated penalties for the matter at issue. However, the obligation to pay any applicable stipulated penalties to the TCEQ will be stayed pending resolution of the disagreement in accordance with this Paragraph 26.
- d. If the ED makes a determination to perform a portion or all of the Work, the Performing Parties shall have five (5) Days after notification to the Site Coordinator to commence informal negotiations by notifying the Project Manager in accordance with this Paragraph 26. Informal negotiations will not extend beyond fifteen (15) Days from the date the ED receives notification, unless the Performing Parties and the ED agree otherwise in writing.
- e. Subsequent to informal negotiations, the Parties may pursue all remedies available to them at law for any resolution of disagreements in either the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, or Travis County District Court, both courts having concurrent jurisdiction to enforce this Order.
- f. Unless otherwise specifically set forth herein, the fact that resolution of disagreements is not specifically set forth in individual sections is not intended to and will not bar the Performing Parties from invoking this provision as to any disagreement arising under the Order, including any disagreement concerning the ED's exercise of discretion under the terms of this Order.

27. Indemnification. Performing Parties agree to indemnify and hold harmless TCEQ and its officers, employees, agents, principals, and assigns from and against all fines, penalties,

claims, damages, losses, demands, judgments, settlements, costs of suit, and attorneys fees that arise out of or result from:

- a. Performing Parties' performance of an inherently dangerous activity or handling of a solid waste, hazardous substance, or radioactive material related to the Site;
 - b. Performing Parties' negligent, reckless, or intentional acts or omissions or such acts or omissions of any of its agents or employees; and
 - c. The negligent, reckless, or intentional acts or omissions of any of Performing Parties' contractors or suppliers or their agents or employees.
28. Certification. By entering into this Order, Performing Parties certify that to the best of their knowledge and belief they have fully and accurately disclosed to the TCEQ all information known to Performing Parties and all information in the possession or control of their officers, directors, employees, contractors, and agents which relates in any way to any existing contamination or any past or potential future release of hazardous substances, solid wastes, or radioactive material at or from the Site and to their qualification for this Order. Performing Parties also certify that to the best of their knowledge and belief they have not caused or contributed to a release or threat of release of hazardous substances, solid wastes, or radioactive material at the Site.
29. Payment of Costs. If a court of competent jurisdiction enters a judgment concluding that Performing Parties failed to comply with the terms of this Order, they shall be liable for all litigation and other enforcement costs incurred by the State of Texas to enforce this Order or otherwise obtain compliance.

VII. Obligations Related to Soils

30. Remedial Investigation ("RI"). Some RI work has already been completed at the Site and the reports are available for review by the Performing Parties. Performing Parties shall complete the delineation of the nature and extent of the MoC in all soil and develop a supplemental RI report to conclude the RI. The supplemental RI report must be signed by a professional geoscientist or engineer licensed by the State of Texas and in good standing. The RI will be complete when the ED approves the supplemental RI report.
- a. Performing Parties shall submit a letter report within sixty (60) Days after the Effective Date of the Order. The letter report must identify the data gaps and areas requiring additional investigation and shall set forth the proposed scope of work for the field activities.
 - b. Performing Parties shall submit an RI work plan within forty-five (45) Days after receiving ED approval of the letter report. The RI work plan must include the

schedule for completion of the RI and shall set forth field activities necessary to complete the RI.

- c. Performing Parties shall mobilize equipment to the Site and commence the field activities within sixty (60) Days after receiving ED approval of the RI work plan. The Site Coordinator shall notify the ED in writing at least seven (7) Days prior to the start date of any field activities associated with the RI.
- d. Once Performing Parties start the field activities, Performing Parties shall provide the daily field activities summary to the ED on the following day. Performing Parties shall conduct weekly field activities progress meetings with the Project Manager at the date and time agreed to by the Project Manager.
- e. Performing Parties shall submit a supplemental RI report to complete the delineation of the nature and extent of the MoC in all soil within sixty (60) Days after the completion of the field activities.

31. Soil Removal Action

- a. Performing Parties shall conduct a removal action to remove and dispose of all contaminated soil in permitted facilities approved by the ED. The removal and disposal work will be initiated concurrently with the supplemental RI work. Performing Parties shall restore the Site back to the original grade without altering the surface water and groundwater flow direction. The final grade must have adequate controls to prevent erosion. The removal action will be complete when the ED approves the final soil removal report and final status survey ("FSS").
 - i. Performing Parties shall submit a DQOs report within sixty (60) Days after the Effective Date of the Order. The DQOs report must follow the "Guidance on Systematic Planning Using the Data Quality Objectives Process," EPA QA/G-4, to design the confirmation sampling strategies for the removal action.
 - ii. Performing Parties shall submit a FSS work plan pertaining to only radiologic contamination within one hundred twenty (120) Days after the Effective Date of the Order. The FSS work plan must follow the Multi-Agency Radiation Survey and Site Investigation Manual ("MARRSIM") for the closure process. In addition, the derived concentration guidance levels ("DCGLs") establishing that radioactive exposure to the critical receptor group will meet the 25 mrem per year requirement per 30 TEX. ADMIN. CODE Section 336.603 (Radiologic Criteria for Unrestricted Use) and are to be modeled in accordance with 30 TEX. ADMIN. CODE Section 336.603 (Radiologic Criteria for Unrestricted Use). If, based on the modeling, TCEQ determines that an

institutional control is necessary, Performing Party ELT shall file a deed restriction on the Property.

- iii. Performing Parties shall submit the soil removal work plan within forty-five (45) Days after the ED approves the DQOs summary. The removal work plan must include the schedule to complete the removal action; site specific health and safety plan for the removal action; DQOs for confirmation sampling; field activities sequence; storm water control; transportation route; monitoring plan for all media to ensure the field activities will not impose any health impact off-site; and other information associated with removal activities.
- iv. Performing Parties shall mobilize equipment to the Site and commence the field activities sixty (60) Days after receiving ED approval of the removal work plan. The Site Coordinator shall notify the ED in writing at least seven (7) Days prior to the start date of any field activities associated with the soil removal action.
- v. Once Performing Parties start the field activities, Performing Parties shall provide the daily field activities summary to the ED on the following day. Performing Parties shall conduct weekly field activities progress meetings with the Project Manager at the date and time agreed to by the Project Manager.
- vi. During the performance of the soil removal activities, Performing Parties shall submit excavation confirmation data for portions of the excavation periodically to the TCEQ for review and approval. TCEQ will review this data, and if the data is acceptable will provide approval to the Performing Parties to backfill the associated portion of the excavation to promote the efficient progression of the work. If the data is not acceptable, the TCEQ will provide comments regarding what additional data will be needed to obtain approval to backfill the associated portion of the excavation.
- vii. Performing Parties shall submit the soil removal report within sixty (60) Days after the completion of the field activities associated with soil removal work. The report must be signed and sealed by a professional engineer licensed by the State of Texas and in good standing. The report must include:
 - (1) Introduction
 - (a) Summary of remedy or work performed;
 - (b) Description of project, synopsis of scope of work, and completion certificate;
 - (c) Original remediation scope of work;

- (d) Summary of change orders;
- (e) Certificate of substantial completion;
- (2) Description of Activities
 - (a) Chronology of remedial activities;
 - (b) Summary of approved work plan;
 - (c) Summary of safety plan;
 - (d) Total volume of soil being removed and disposed of in the permitted facilities;
 - (e) Summary of confirmation sampling results after the removal action;
 - (f) Topographic map showing the final grade of the removal areas;
 - (g) Removal action cost summary;
 - (h) Non-construction issues;
 - (i) Summary of QA/QC activities;
- (3) Final Inspections Documentation
- (4) Recommended Post Construction Services Documentation Parameter for Treatment Plant Operation
- (5) Appendices
 - (a) Record drawings;
 - (b) Record copy of submittals;
 - (c) Contractor's daily reports;
 - (d) Analytical data;
 - (e) Data validation reports;
 - (f) Inspection reports; and
 - (g) CQC/CQA data.

viii. Performing Parties shall submit the FSS report within sixty (60) Days after the completion of the field activities associated with soil removal work.

VIII. Obligations Related to Groundwater

- 32. Performing Party ELT shall take title to the real property shown in Exhibit A. If title is transferred to any other entity during the course of this Order, that entity shall jointly share the same rights, duties and obligations as Performing Party ELT under this Order.
- 33. Remedial Investigation ("RI"). Some RI work has already been completed at the Site and the reports are available for review by the Performing Parties. Performing Party ELT shall complete the delineation of the nature and extent of the MoC in groundwater and develop a supplemental RI report to conclude the RI. The supplemental RI report must be signed by a professional geoscientist or engineer licensed by the State of Texas and in good standing. The RI will be complete when the ED approves the supplemental RI report.

- a. Performing Party ELT shall submit a letter report within sixty (60) Days after the Effective Date of the Order. The letter report must identify the data gaps and areas requiring additional investigation and shall set forth the proposed scope of work for the field activities.
 - b. Performing Party ELT shall submit an RI work plan within forty-five (45) Days after receiving ED approval of the letter report. The RI work plan must include the schedule for completion of the RI and shall set forth field activities necessary to complete the RI.
 - c. Performing Party ELT shall mobilize equipment to the Site and commence the field activities sixty (60) Days after receiving ED approval of the RI work plan. The Site Coordinator shall notify the ED in writing at least seven (7) Days prior to the start date of any field activities associated with the RI.
 - d. Once Performing Party ELT starts the field activities, Performing Party ELT shall provide the daily field activities summary to the ED on the following day. Performing Party ELT shall conduct weekly field activities progress meetings with the ED at the date and time agreed to by the ED.
 - e. Performing Party ELT shall submit a supplemental RI report to complete the delineation of the nature and extent of the MoC in all media except soil within sixty (60) Days after the completion of the field activities.
34. Feasibility Study (“FS”) for Groundwater.
- a. Performing Party ELT shall conduct an FS for the groundwater to develop remedial alternatives and ensure that the recommended Remedy will meet the RAO for the groundwater. The groundwater treatment system must be able to address both the radioactive material and chlorinated solvents as determined necessary based upon results of the supplemental RI report. The FS will be complete when the ED approves the FS report. The FS report must be signed by a professional engineer licensed by the State of Texas and in good standing.
 - b. Radioactive Material in Groundwater. Performing Party ELT shall conduct an FS to ensure that the active groundwater treatment system will meet the RAO for the groundwater as determined necessary based upon results of the supplemental RI report.
 - i. Performing Party ELT shall submit an FS memorandum within sixty (60) Days after the ED approves the RI report. The FS memorandum must include the schedule to complete the FS and a general description of additional

samples and/or studies required to identify the most feasible Remedy for the groundwater.

- ii. Performing Party ELT shall commence the studies and/or collect the samples within forty-five (45) Days after the ED approves the FS memorandum.
- iii. Performing Party ELT shall submit an FS report within sixty (60) Days after study completion and/or sample collection. The FS must include the evaluation and recommendation of the Remedy, including a minimum of three alternatives, that will meet the RAO for the groundwater and must also include the estimated cost for the remedial alternatives.

c. Chlorinated Solvents and Hydrocarbons. Performing Party ELT may use the "Draft Feasibility Study and Cost Estimate for Environmental Closure of the Chlorinated Volatile Organic Compound Groundwater Contamination, Federated Metals State Superfund Site, 9200 Market Street, Houston, Harris County, Texas" (SKA Consulting, L.P., April 2008) as the guidance to conduct pilot and/or field tests to select in-situ chemical oxidation or enhanced bioremediation as the best remedial alternatives to meet the RAO for the groundwater.

- i. Performing Party ELT shall submit an FS memorandum within sixty (60) Days after the ED approves the RI report. The FS memorandum must include the schedule to complete the FS and a general description of additional samples and/or studies required to identify the most feasible Remedy for the groundwater treatment system.
- ii. Performing Party ELT shall commence the studies and/or collect the samples within forty-five (45) Days after the ED approves the FS memorandum.
- iii. Performing Party ELT shall submit an FS report within sixty (60) Days after study completion and/or sample collection. The FS must include the evaluation and recommendation of the Remedy, including a minimum of three alternatives, that will meet the RAO for the groundwater and must also include the estimated cost for the remedial alternatives.

d. Performing Party ELT may elect to combine both the radioactive material and chlorinated solvent groundwater plumes into one report. Performing Party ELT shall notify TCEQ of this election prior to the submittal of the FS memorandum.

35. Public Participation

- a. Performing Party ELT shall not move forward with the Remedial Design and Remedial Action until TCEQ has held a public meeting concerning the Remedy for

the Site. After the meeting and a chance for public comment, the ED will select a Remedy for the Site.

- b. Performing Party ELT shall assist TCEQ in conducting this and other community outreach programs to keep the public informed about the Federated Metals State Superfund Site. Such assistance may include attendance or active participation in the public meetings.

36. Remedial Design (“RD”) and Remedial Action (“RA”) for Groundwater

- a. Performing Party ELT shall design and install the groundwater treatment system according to the Remedy approved by the ED from the FS for groundwater. The RD and RA of groundwater will be complete when the ED approves the final Remedial Action report for the groundwater.

- b. Performing Party ELT shall submit a groundwater work plan; long-term Operation & Maintenance (“O&M”) work plan; and revised groundwater work plan for when the Remedy fails to meet the RAO of groundwater within forty-five (45) Days after the ED approves the FS for groundwater.

- i. The groundwater work plan must be signed and sealed by a professional engineer licensed by the State of Texas and in good standing. The groundwater work plan must include:

- (1) A detailed description of the groundwater treatment system;
- (2) A layout and construction drawing of the groundwater treatment system;
- (3) The health and safety plan for the groundwater treatment system installation and future operation;
- (4) The monitoring plan to ensure that the field activities will not impose any health impact off-site;
- (5) A schedule to complete the RD & RA;
- (6) The procedure for the groundwater treatment system startup (initial treatment);
- (7) The procedure for the groundwater treatment operation and method to evaluate the effectiveness of the groundwater treatment operation; and
- (8) The estimated time to meet the RAO for groundwater.

- ii. The long-term O&M plan for the groundwater treatment system must be signed and sealed by a professional engineer licensed by the State of Texas and in good standing. The O&M plan must include:

- (1) An air emissions plan and procedure to ensure that the treatment system continuously meets the appropriate air quality standard;

- (2) The health and safety plan for O&M;
 - (3) The Standard Operating Procedure (“SOP”) regarding decontamination procedure;
 - (4) The SOP for groundwater monitoring events;
 - (5) The SOP for handling and disposing of contaminated waste; and
 - (6) A schedule for O&M.
- iii. Submission of a revised groundwater work plan is required in the event the initially proposed Remedy fails to meet one or more of the RAO for groundwater listed below. The revised groundwater work plan shall be signed and sealed by a professional geoscientist or engineer licensed by the State of Texas and in good standing. The revised groundwater work plan shall include the following:
- (1) Prevent Horizontal Expansion - In the event that MoC concentrations significantly increase, as determined by the TCEQ, within impacted monitor wells, or when MoC are detected in delineation wells and/or perimeter monitor wells, then plume expansion must be abated within ninety (90) Days of the determined expansion. The determination should be disclosed to the TCEQ as soon as these data are confirmed by the laboratory.
 - (2) Prevent Vertical Migration - In the event that MoC concentrations migrate below the vertical boundary as established in the ED-approved RI, then the expansion must be abated within ninety (90) Days of the determined expansion. The determination should be disclosed to the TCEQ as soon as these data are confirmed by the laboratory. In addition, a new vertical boundary must be established by sampling the underlying groundwater bearing unit (“GWBU”). The size of the monitor well network necessary to establish the new vertical boundary must be approved by the ED.

If vertical migration occurs and the newly impacted GWBU is currently being used for drinking water purposes, e.g., the lower Chicot Aquifer, then the abatement must involve hydraulically controlling the plume to prevent further expansion in any direction. This requirement is in addition to defining a new vertical boundary as described above.
- c. Performing Party ELT shall mobilize equipment to the Site and commence the field activities within sixty (60) Days after receiving the ED’s approval of the groundwater work plan, long-term O&M plan, and revised groundwater work plan for when the Remedy does not meet the RAO of groundwater. The Site Coordinator shall notify

the ED in writing at least seven (7) Days prior to the start date of any field activities associated with the groundwater work plan.

- d. Once Performing Party ELT starts the field activities, Performing Party ELT shall provide the daily field activities summary to the ED on the following day. Performing Party ELT shall conduct weekly field activities progress meetings with the Project Manager at the date and time agreed by the Project Manager.
- e. Performing Party ELT shall notify the ED when the groundwater treatment system is installed. Performing Party ELT shall notify the ED at least five (5) Days prior to the initial startup operation of the groundwater treatment system.
- f. Performing Party ELT shall submit the final Remedial Action report for groundwater within ninety (90) Days after the completion of the startup of the groundwater treatment system. The report must be signed and sealed by a professional engineer licensed by the State of Texas and in good standing. The report must include:
 - i. Introduction
 - (1) Summary of remedy or work performed;
 - (2) Description of project, synopsis of scope of work, and completion certificate;
 - (3) Original construction scope of work;
 - (4) Summary of change orders;
 - (5) Certificate of substantial completion;
 - ii. Description of Activities
 - (1) Chronology of remedial activities;
 - (2) Summary of approved work plan;
 - (3) Summary of safety plan;
 - (4) Remedial action cost summary;
 - (5) Non-construction issues;
 - (6) Summary of QA/QC activities;
 - iii. Final Inspections Documentation
 - iv. Recommended Post Construction Services Documentation Parameter for Treatment Plant Operation
 - v. Appendices
 - (1) Record drawings;
 - (2) Record copy of submittals;
 - (3) Contractor's daily reports;
 - (4) Analytical data;
 - (5) Data validation reports;
 - (6) Inspection reports; and
 - (7) QC/QA data.

37. Operation & Maintenance (O&M) of Groundwater

- a. Performing Party ELT shall operate and maintain the groundwater treatment system to ensure that the groundwater will meet the RAO of groundwater within a reasonable time not to exceed thirty (30) years after the completion of the groundwater treatment system installation. The O&M of groundwater will be complete when TCEQ accepts the closeout certification of the groundwater treatment and monitoring system. Performing Party ELT shall be responsible for the successful operation of the treatment system during the entire treatment operation such that:
 - i. The effectiveness of the groundwater treatment system will meet the estimated completion time stated in the groundwater work plan.
 - ii. The groundwater treatment system will be routinely maintained during the entire O&M.
- b. Scheduled groundwater monitoring events. Performing Party ELT shall notify TCEQ fifteen (15) Days prior to the scheduled groundwater monitoring event. Performing Party ELT shall submit the groundwater monitoring event report within sixty (60) Days after completion of the field activities of the groundwater monitoring event. The groundwater monitoring event report must include:
 - i. Summary of the groundwater treatment system operation since last monitoring event;
 - ii. Summary of field activities for the groundwater monitoring event;
 - iii. Groundwater data summary;
 - iv. Contaminated groundwater plume trend analysis;
 - v. Analytical data;
 - vi. Data validation reports;
 - vii. QA/QC data; and
 - viii. Conclusion and recommendation.
- c. TCEQ will consider the groundwater to meet the RAO for groundwater when the groundwater data meets the protective concentration level (PCL) under the Texas Risk Reduction Program for two consecutive annual groundwater monitoring events. When Performing Party ELT believes that the groundwater meets the RAO for groundwater, Performing Party ELT shall submit a groundwater closure request by providing the historical groundwater data and data summary for the most recent two consecutive annual groundwater monitoring events. Performing Party ELT shall decommission the groundwater treatment and monitoring system within ninety (90) Days after the ED approves the groundwater closure request. Performing Party ELT shall submit the closeout certification for the groundwater treatment and monitoring system within forty-five (45) Days after the completion of removing the groundwater treatment and monitoring system.

38. Institutional Controls. Pursuant to 30 TEX. ADMIN. CODE Section 350.111 and after obtaining any required written landowner consent, each Performing Party shall with respect to its scope of Work hereunder:
 - a. record a copy or copies of any required institutional controls in compliance with the requirements found in 30 TEX. ADMIN. CODE Section 350.111 in the appropriate local or county office where land ownership and transfer records are filed or recorded;
 - b. ensure that the recording of these documents is properly indexed and recorded to each and every property at the Site in the appropriate office where land ownership and transfer records are filed so as to provide notice to third parties concerning those properties; and
 - c. send evidence of such recording, landowner consent, and indexing to the ED.
39. Five Year Review. Performing Party ELT shall submit the Five Year Review to TCEQ by the date five (5) years after the ED approves the final Remedial Action report for groundwater. The Five Year Review must follow the U.S. Environmental Protection Agency's "Comprehensive Five-Year Review Guidance." Performing Party ELT shall provide a review every five (5) years until the closeout of the O&M groundwater phase.
40. Failure to Attain Response Action Objectives or Findings of Significant Difference
 - a. If at any point in the Work, a Performing Party shall conclude that its Work as implemented in accordance with this Order will not attain the RAO, or if the Performing Party finds that conditions at the Site differ from those that form the basis of the selected Remedy and significantly change the scope, performance, or cost of the Work, then the Performing Party shall take the actions specified in this Paragraph 40.
 - b. Within ten (10) Days after the Performing Party initially determines that a failure to attain RAO or that a significant difference in the scope, performance, or cost of the Work as described in this paragraph exists, said Performing Party shall notify the ED of that determination with a description of its basis.
 - c. Not later than sixty (60) Days after the initial assertion of a failure to attain RAO or of a significant difference in the scope, performance or cost of the Work, the Performing Party shall submit a failure evaluation report to the ED for his approval.
 - d. The Performing Party shall submit a failure evaluation report that meets the requirements of this paragraph. The failure evaluation report will include a discussion of the following: the data related to the failure to attain RAO or to the

assertion of a significant difference, conclusions concerning all such data, any known cause of the failure to attain RAO or of the significant difference, and a recommendation for any necessary additional studies. Data presented in the failure evaluation report will comply with the DQOs.

- e. The ED will not consider the failure of a design element or response action that is not required by this Order to be the basis for a failure to attain the RAO.
- f. The ED will consider differences in the quantity or extent of contaminants as the basis for a determination of a significant difference only when such differences are so significant as to cause the Remedy not to be the lowest cost alternative that is technologically feasible and reliable and that effectively mitigates and minimizes damage to and provides adequate protection of the public health and safety or the environment.
- g. After receipt of the failure evaluation report, the ED will notify the Site Coordinator of his approval or disapproval of the report with comments. If the ED determines that the basis of the Performing Party's assertion of a failure to attain RAO or of a significant difference is valid, no applicable stipulated penalties will be imposed for missed deadlines subsequent to the Performing Party's notification made in accordance with Paragraph b above, except for failure to submit documents pursuant to this paragraph. If the ED determines that the basis of a failure to attain RAO or of an assertion of a significant difference is not valid, the ED will direct that Work continue and that the Performing Party pay any applicable stipulated penalties for any missed deadlines.
- h. Unless the ED approves the failure evaluation report and/or directs continuation of Work, within forty-five (45) Days after the ED provides written comments to the Site Coordinator, the Performing Party shall resubmit the failure evaluation report, in both clean and redline, strikeout format, with a summary note which clearly and explicitly indicates how each of the ED's comments on the previous draft of the failure evaluation report has been satisfactorily addressed and which will also identify all other revisions or changes from the previous version of the failure evaluation report.
- i. The ED will notify the Site Coordinator of his approval or disapproval, with comments, of each resubmittal of the failure evaluation report. Each resubmittal will be submitted in accordance with Paragraph h above. Disapproval of the first resubmittal and each subsequent resubmittal is subject to assessment of stipulated penalties in accordance with Paragraph 25 (Stipulated Penalties).
- j. Not later than ninety (90) Days after a determination by the ED that the Remedy will not attain the RAO or a significant difference exists, the Performing Party shall submit to the ED for approval a written report evaluating alternatives to the Remedial

Activities and may submit a proposal for such alternative Remedial Activities as may be necessary to achieve the RAO. In addition, any proposed alternatives must comply with the remedy selection criteria contained in 30 TEX. ADMIN CODE Chapter 335, Subchapter K. The Remedy may be modified only as specified in 30 TEX. ADMIN. CODE Section 335.349.

IX. Liability

41. The State of Texas assumes no liability for any injuries or damages to persons or property resulting from acts or omissions of Performing Parties or their directors, officers, employees, agents, representatives, successors, assigns, contractors, or consultants in carrying out any of the Work. Neither TCEQ nor the State of Texas will be deemed a party to any contract entered into by any Performing Party or its directors, officers, employees, agents, successors, assigns, contractors, or consultants to perform any or all of the Work or any other activity at the Site.

X. TCEQ's General Reservation of Rights and Retention of Claims

42. Except as specified herein, nothing in this Order will constitute or be construed as a covenant not to sue by TCEQ or the State of Texas or a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation.

XI. Continuing Authority

43. The United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, and Travis County District Court, both courts having concurrent jurisdiction to enforce this order, specifically retain authority over Performing Parties for the duration of this Order for the purposes of issuing such further orders or directions as may be necessary or appropriate to construe, implement, modify, enforce, terminate, or reinstate the terms of this Order or for any further relief as the interest of the State of Texas may require.

XII. Enforcement

44. Nothing herein will preclude TCEQ from taking any enforcement actions against Performing Parties at any time including issuing such orders as TCEQ may deem necessary or from requiring Performing Parties to perform additional activities in the future and to completely perform all of the Work.

XIII. Computation of Time

45. Deadlines falling on a weekend or a State of Texas holiday will be extended until the next business day.

46. The terms “submit” and “provide” as used herein will refer to the date on which information, data, a document, or a record is to be received by the appropriate Party. Submittals received on the deadline date will be deemed timely.

XIV. Termination of the Order

47. When the Work has been completed in accordance with this Order, the ED will provide written notice to Performing Parties that Performing Parties have fully satisfied the requirements of this Order. Such notice will be issued within one hundred and eighty (180) Days after the Work has been completed in accordance with this Order. This notice will not, however, terminate Performing Parties’ obligations to comply with those provisions specified herein that are intended to survive this Order, including requirements regarding record preservation, stipulated penalties, liability, and continuing authority.

XV. Severability

48. The provisions of this Order are intended to be severable and are deemed severable. Should any provision of this Order be rendered unenforceable by a court of competent jurisdiction or other appropriate authority the remaining provisions will remain valid and enforceable.

XVI. Sovereign Immunity

49. The Parties hereby agree that nothing in this Order waives the State of Texas’ sovereign immunity relating to suit, liability, and the payment of damages. The Parties further agree that all claims, suits, or obligations arising under or relating to this Order are subject to and limited to the availability of funds appropriated by the Texas Legislature for that respective claim, suit or obligation.

XVII. Headings

50. Headings are included for convenience of reference only and will be disregarded in the construction and interpretation of any of the provisions of this Order.

XVIII. Rules of Construction

51. The masculine, feminine, and neuter gender will each include the other, and the singular and plural number will each include the other.

XIX. Counterparts

52. This Order may be executed in two or more counterparts each of which will be deemed an original but all of which together will constitute one and the same document.

XX. Order Effective

53. This Order shall become effective upon both (1) the transfer of title to the Property to ELT Houston, LLC, and (2) receipt of payment of \$28,900,000 by ASARCO to the corporate trustee of the custodial trust for funds earmarked for ELT Houston, LLC (together, the “real estate closing”). Within fifteen (15) Days after the real estate closing, ELT Houston, LLC, shall file in the Bankruptcy Court a Notice of Closing, which shall contain an affidavit stating the date the real estate closing occurred and reciting that this Order is fully operative.

XXI. Guarantee

54. Environmental Liability Transfer, Inc., agrees to guarantee the obligations of both ELT Houston, LLC, and EnergySolutions, LLC, under this Order. EnergySolutions, Inc., agrees to guarantee the obligations of EnergySolutions, LLC, under this Order.

XXII. Breach by a Performing Party

55. To the extent that TCEQ determines that any of the Performing Parties are in breach of this Order by reason of a material default of an obligation under this Order, the TCEQ will provide written notice to the Performing Parties.

Dated:

RICHARD S. SCHMIDT
UNITED STATES BANKRUPTCY JUDGE

Environmental Liability Transfer, Inc.

Thomas E. Roberts

Signature

THOMAS E. ROBERTS
MEMBER

Printed/Typed Name

Title

8.28.08

Date

ELT Houston, LLC

Thomas E. Roberts

Signature THOMAS E. ROBERTS
MEMBER

Printed/Typed Name

Title

8-28-08

Date

Energy Solutions, LLC

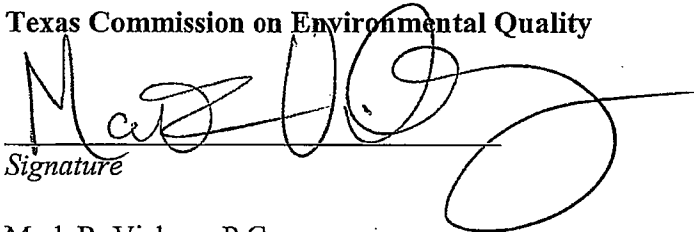
Val J. Christensen
Signature

Val J. Christensen
Printed/Typed Name

Executive Vice President
Title

August 20, 2008
Date

Texas Commission on Environmental Quality


Signature

Mark R. Vickery, P.G.
Printed/Typed Name

Executive Director
Title

August 28, 2008
Date

Exhibit A

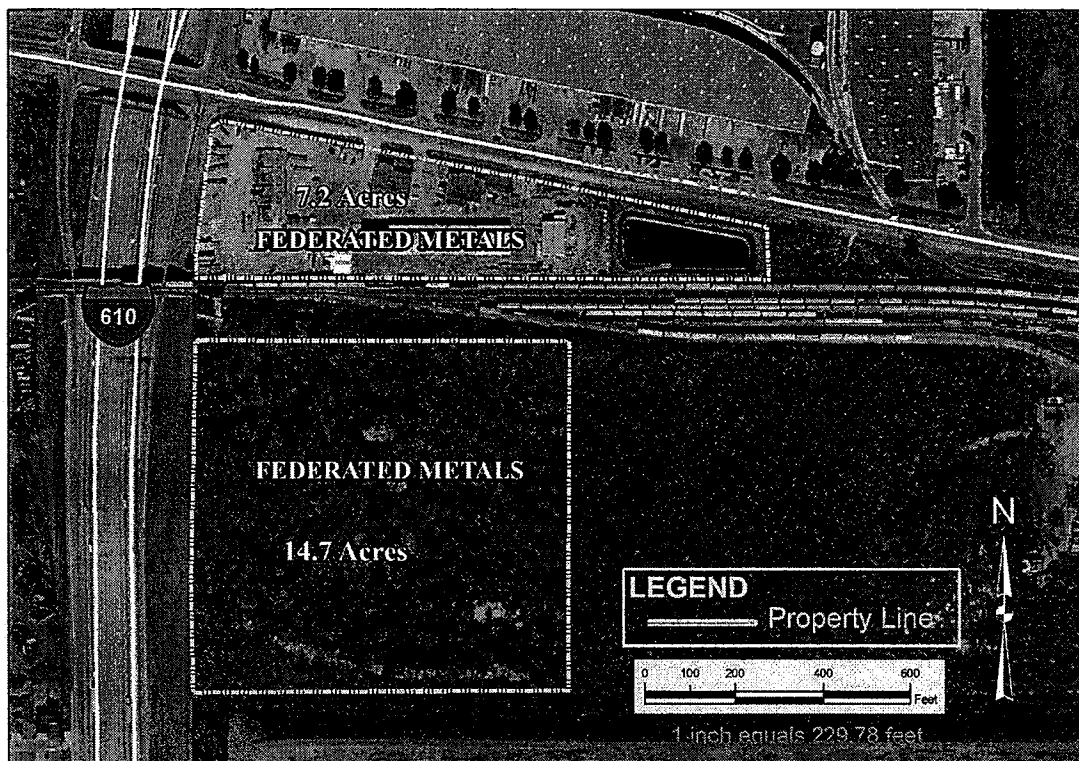


Exhibit B

FIELD SAMPLING PLAN

TABLE OF CONTENTS

Title and Approval Sheet

Distribution List

Table of Content

1.0 Introduction/Purpose

- **Investigation Phase: Purpose** - Briefly states the specific purpose of this FSP relative to the Quality Assurance Project Plan and Work Plan and/or other documents. A schematic presentation of the project documents and the location of key planning components should be presented.
- **RA Phase: Purpose** - Briefly states the specific purpose of this FSP relative to the RA Contract Document and Quality Assurance Project Plan and/or other documents and a schematic presentation of the project documents and the location of key planning components.
- **Project/Task Organization** - Identify the key individuals or organization participating in the project and their role(s) and responsibilities, and the organizational chart for the project. (Project specific information for QAPP Element A4) ¹

2.0 Site and Project Summary

- **Investigation Phase: Problem Definition/Background**- Briefly states the site description, surrounding area, historical information, previous investigation, suspected contamination source, a probable transport pathways and other site information. Most of this information are available from the Conceptual Site Model developed during the planning phase. Any specific data gaps and methods to fill the data gaps should also be discussed. State the specific problem to be solved or the decision to be made and identify the decision maker. (Project specific information for QAPP Element A5) ¹
- **RA Phase: Problem Definition/Background**- Briefly states the site description, historical information, previous investigation, a summary of the selected remedy, a brief discussion of the remedial action activities. State the specific problem to be solved or the decision to be made and identify the decision maker. (Project specific information for QAPP Element A5)
- **Project/Task Description and Schedule**- A summary of the project and the project tasks, the turn-around time for the project including the turn around time requirement of laboratory analysis. (Project specific information for QAPP Element A6) ¹
- Describe any special personnel and equipment required for the specific type of work being planned or measurement being taken. (Project specific information for QAPP Element A8)

- *Data Acquisition Requirement (Non-direct Measurement)-Define the criteria for the use of non-measurement source such as computer databases, programs, literature files, and historical databases. (Project specific information for QAPP Element B9) ¹*
- *Assessment Technique-Define the number, frequency, and type of quality assessments activities, the responsible staff, and the procedures to be performed during the life of the project are specified in this section and any special training/certification requirements. (Project specific information for QAPP Element C1) ¹*

3.0 Sampling Objectives / Data Quality Objectives

- *Data Quality Objectives - Summarize the project specific quality objectives and measurement performance criteria. This section should include the summary of the 7-Step DQO process or a systematic planning process used and should include reference to Appendix B for the complete details of the proposed DQOs document for the project. Designates and briefly describes sampling units (e.g. AOCs, surface soil to 6 inches). States objectives by sampling unit or media. The Project specific calculations or algorithms are also specified in this section. (Project specific information for QAPP Element A7) ¹*

4.0 Sampling Plan Design

- *Sampling Process Design - All the relevant components of the experimental design and the key parameters to be evaluated are included in this section. This section shall include the sampling activities, the rationale for the design (in terms of meeting the DQOs), the sampling design assumptions, the procedures for locating and selecting environmental samples, a classification of measurements as critical or noncritical, the type and number of samples required for the project including the required field QC samples, the sampling locations and frequency, the applicable sample matrices, and an identification of samples critical to the project. Most of this information should be available from the output from Step 7 of the DQO process. (Project specific information for QAPP Element B1) ¹*

- *Describe the sampling plan for each media as applicable, including figures and tables.*

Surface Soil

Subsurface Soil

Groundwater

Surface Water and Sediment

Air

Other Matrices

- *This section should also include a table summary containing a list of all chemicals of concern identified for the project with the corresponding Level of Required Performance (LORP) (e.g., action levels and preliminary remedial goals), analytical methods, including the preparation, analysis and cleanup methods, and the corresponding Method Detection Limit for all the analytes of concern.*

5.0 Sampling Method and Sample Handling

- *Sampling Method Requirements - Identify sampling methods and equipment and describe the procedures for sample collection, preparation, and decontamination. This section should reference the Standard Operating Procedures located in Appendix B. (Project specific information for QAPP Element B2) ¹*
- *Sampling Handling and Custody Requirements- This section shall include the required sample volumes, container types, and preservation requirements for non-standard analytical methods proposed for project work that are not listed in Table B2-1 of the site-specific QAPP. This section also includes the field sample handling and custody requirements for the project. (Project specific information for QAPP Element B3) ¹*
- *This section should also contain specific requirements for field instrument/equipment testing, inspection and maintenance for the project. Additionally, field instrument calibration and frequency requirements for water level, pH, temperature, conductivity, dissolved oxygen, redox potential, and turbidity measurements are contained in this section. This section also includes the critical field supplies, the inspection or acceptance testing requirements, and the acceptance criteria. (Project specific information for QAPP Element B6, B7, and B8) ¹*

6.0 Field Survey and Measurements

- *This section shall describe the sampling methods and criteria for field survey and measurements, such as land survey, hydrogeological tests and measurements, geophysical survey and or soil gas surveys, required for the project.*

7.0 Additional Field Activities

- *This section contains description and procedures for other field activities such as pre-sampling/mobilization activities, required notification, property access, site restoration and IDW handling and disposal.*

8.0 Exceptions, Additions and Changes to the TCEQ Superfund Program QAPP

List any exceptions, additions and changes to the Superfund Program QAPP in each of the appropriate sub-sections corresponding to the table of contents of the Program QAPP. Site specific information (e.g., Group A and Group B elements) specified above shall not be re-stated in this section. Please refer to the Program QAPP for details. This section should also include specifications for non-standard methods and other analytical methods not contained in the Program QAPP.)

GROUP A: PROJECT MANAGEMENT

- A.1 Title and Approval Sheet*
- A.2 Table of Contents*
- A.3 Distribution List*
- A.4 Project/Task Organization*
- A.5 Problem Definition/Background*
- A.6 Project/Task Description*

- A.7 *Quality Objectives and Criteria for Measurement Data*
- A.8 *Special Training Requirements/Certification*
- A.9 *Documentation and Records*
 - A.9.1 *Field Operation Records*
 - A.9.2 *Laboratory Records*
 - A.9.3 *Data Handling Records*
 - A.9.4 *Data Reporting Package Format and Documentation Control*
 - A.9.5 *Data Reporting Package Archiving and Retrieval*

GROUP B: MEASUREMENT/DATA ACQUISITION

- B.1 *Sampling Process Design*
- B.2 *Sampling Methods Requirements*
 - B.2.1 *Sample Containers*
 - B.2.2 *Sample Volumes, Container Types, and Preservation Requirements*
- B.3 *Sample Handling and Custody Requirements*
 - B.3.1 *Field Sample Handling and Custody Requirements*
 - B.3.2 *Laboratory Sample Handling and Custody Requirements*
- B.4 *Analytical Methods Requirements*
 - B.4.1 *Screening Methods*
 - B.4.2 *Definitive Preparation Methods*
 - B.4.3 *Definitive Analysis Methods*
 - B.4.4 *Non-standard Method Validation*
- B.5 *Quality Control Requirements*
 - B.5.1 *Definitive Analytical Methods*
 - B.5.2 *Screening Methods*
 - B.5.3 *Quality Control Measure Descriptions*
 - B.5.4 *Elements of Quality Control*
 - B.5.5 *Method Detection Limit and Sample Quantitation Limit*
- B.6 *Instrument/Equipment Testing, Inspection, and Maintenance Requirements*
 - B.6.1 *Maintenance Responsibilities*
 - B.6.2 *Maintenance Schedules*
 - B.6.3 *Spare Parts*
 - B.6.4 *Maintenance Records*
- B.7 *Instrument Calibration and Frequency*
- B.8 *Inspection/Acceptance Requirements for Supplies and Consumables*
- B.9 *Data Acquisition Requirements*
- B.10 *Data Management*
 - B.10.1 *Logbooks and Forms*
 - B.10.2 *Data Storage/Retrieval Requirements*

GROUP C: ASSESSMENT/OVERSIGHT

- C.1 *Assessments and Response Actions*
- C.2 *Reports to Management*

GROUP D: DATA VALIDATION AND USABILITY

D.1 Data Review, Validation, and Verification Requirements

D.2 Validation and Verification Methods

D.3 Reconciliation with User Requirements

List of Tables

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List of Appendices

- *Appendix A - Standard Operating Procedures*
- *Appendix B - Data Quality Objectives Document*
- *Appendix C- Z- Other supporting documents as necessary.*

Exhibit C

The following division of responsibilities is intended solely to clarify those responsibilities allocated to EnergySolutions, LLC ("EnergySolutions") as between EnergySolutions and Performing Party ELT. Nothing in this Exhibit C shall modify any rights of the TCEQ under this Order. In the event of any conflict between the following paragraphs and the provisions in the Order, the provisions in the Order shall control.

EnergySolutions is responsible for the following remediation services:

1. EnergySolutions will prepare and submit to TCEQ for approval an FSP, QAPP, HASP, Remedial Investigation Plan, and a Soil Removal Work Plan governing the EnergySolutions scope of work as required under this order.
2. EnergySolutions will apply its radiation protection program and procedures and its mobile U.S. Nuclear Regulatory Commission (NRC) radioactive material license for all radiological operations on this project.
3. EnergySolutions will excavate and remove contaminated soils from:
 - a. the 14.7- acre southern parcel of the Federated Metals property within its physical and geographic boundaries determined to contain environmental and chemical contaminant concentrations above the applicable Texas Risk Reduction Program ("TRRP") protective concentration levels ("PCLs"). This will include the area currently located outside of the northern fence line of the southern parcel and south of the Union Pacific right-of-way; and
 - b. any property onto, into, or upon which such contamination from the said sites naturally or as a direct result of remediation activities spilled, migrated, or was deposited.
4. EnergySolutions will excavate and remove contaminated soils from:
 - a. the 14.7- acre southern parcel of the Federated Metals property within its physical and geographic boundaries determined to contain radioactive contaminant concentrations above the applicable cleanup criteria of 30 Texas Administration Code ("TAC") 336.603 (Radiological Criteria for Unrestricted Use). This will include the area currently located outside of the northern fence line of the southern parcel and south of the Union Pacific right-of-way; and
 - b. any property onto, into, or upon which such contamination from the said sites naturally or as a direct result of remediation activities spilled, migrated, or was deposited.
5. EnergySolutions will prepare and implement the Remedial Investigation (RI) associated with the soils within:

- a. the 14.7-acre southern parcel, exclusive of groundwater. This will include the area currently located outside of the northern fence line of the southern parcel and south of the Union Pacific right-of-way; and
 - b. any property onto, into, or upon which such contamination from the said sites naturally or as a direct result of remediation activities spilled, migrated, or was deposited.
6. EnergySolutions will package, transport, and dispose of contaminated materials and soils at any suitable disposal site licensed or permitted to receive such waste and approved by TCEQ.
7. EnergySolutions will prepare a final status survey plan (FSSP) and perform a final status survey (FSS) of the entire Site including both the northern and southern parcels and obtain TCEQ approval thereof.
8. EnergySolutions will prepare and submit an RI Report and a final status survey report (FSSR) that certifies that the Site meets the cleanup criteria of 30 TAC 336.603 (Radiological Criteria for Unrestricted Use) and obtain TCEQ approval thereof. The derived concentration guidance level (DCGL) establishing that radioactive exposure to the critical receptor group is less than 25 mrem per year is to be modeled under 30 TAC 336.603 (Radiological Criteria for Unrestricted Use).
9. EnergySolutions will directly interface with TCEQ to ensure that TCEQ approves the final excavation and survey report for EnergySolutions associated scope.
10. EnergySolutions will backfill, grade, and re-seed the southern parcel areas subject to excavation to the extent necessary to stabilize and restore the original grade to the satisfaction of TCEQ.