

SAN ANGELO ELECTRIC SERVICE COMPANY

PROPOSED STATE SUPERFUND SITE

AGREED ADMINISTRATIVE ORDER

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



DOCKET NUMBER 2006-0880-SPF

IN THE MATTER OF THE § **BEFORE THE**
SITE KNOWN AS THE §
SAN ANGELO ELECTRIC § **TEXAS COMMISSION ON**
SERVICE COMPANY §
PROPOSED STATE SUPERFUND SITE § **ENVIRONMENTAL QUALITY**

AGREED ADMINISTRATIVE ORDER

I. INTRODUCTION

On September 20, 2006, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the Executive Director's (ED) allegations of the existence of a release or threatened release of the substances listed in Exhibit A into the environment on, at, or from the San Angelo Electric Service Company Proposed State Superfund Site (Site) that may pose an imminent and substantial endangerment to the public health and safety or the environment pursuant to the Texas Solid Waste Disposal Act, TEX. HEALTH & SAFETY CODE, Chapter 361 (Act), and the ED's requested relief, including issuance of a Commission order to require Respondents to conduct a Remedial Investigation and Feasibility Study (RI/FS), as authorized by Sections 361.185, 361.133(c), and 361.272 of the Act.

After proper notice, the Commission makes the following Findings of Fact and Conclusions of Law:

II. FINDINGS OF FACT

A. The potentially responsible parties (PRPs) listed in Exhibit B.1. enter into this Agreed Administrative Order (AO) as Respondents (Respondents) and agree to entry of this AO but do not admit liability except for the purpose of enforcing this AO. De Minimis Settlers listed in Exhibit B.2. (De Minimis Settlers) also agree to the entry of this AO and do not admit liability except for the purpose of

enforcing this AO. By entering into this AO, no Respondent admits any liability arising out of the transactions or occurrences alleged to have resulted in the release or threatened release of solid waste or hazardous substances at or from the Site, and the execution of this AO does not constitute an admission that a Respondent or De Minimis Settlor is a responsible party.

- B. The portion of the Site used for ranking on the State Registry of Superfund Sites (the State Registry) covers approximately six acres and has a physical address of 926 Pulliam Street between Browning Street and the AT&SF Railroad in San Angelo, Tom Green County, Texas. Its geographic coordinates are 31° 28' 15.2" north latitude and 100° 25' 19.4" west longitude.
- C. The Site consists of the area listed in Paragraph B above. In addition, the Site also includes any area outside the area described in Paragraph B upon which those substances listed in Exhibit A were processed, deposited, stored, disposed of, or placed or otherwise came to be located as a result, either directly or indirectly, of releases of hazardous substances or solid wastes from the area described in Paragraph B. The Site also includes all contiguous land, including structures, appurtenances, and other improvements on the land, which may include one or more landfill units, surface impoundment units, or combination of units, used for processing, storing, or disposing of the substances listed in Exhibit A.
- D. The Site was proposed for listing on the State Registry of Superfund Sites in the Texas Register, 30 Tex. Reg. 8209-8210, on December 2, 2005.
- E. The Site has a Hazard Ranking System score of 12.64, determined in accordance with 30 TEX. ADMIN. CODE (TAC) Section 335.343.
- F. Potential chemicals of concern (COCs) at the Site include those listed in Exhibit A. Substances listed in that exhibit have been processed, deposited, stored, disposed of, or placed or have otherwise come to be located on the Site.
- G. The substances listed in Exhibit A have been documented in the soils and groundwater at the Site.
- H. The substances listed in Exhibit A may include:
 - 1. substances designated under Section 311(b)(2)(A) of the Federal Water Pollution Control Act (33 United States Code (U.S.C.) Section 1321);
 - 2. elements, compounds, mixtures, solutions, or substances designated under Section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Section 9602);
 - 3. hazardous wastes having the characteristics identified under or listed under Section 3001 of the federal Solid Waste Disposal Act (42 U.S.C.

Section 6921), excluding wastes the regulation of which has been suspended by Act of Congress;

4. toxic pollutants listed under Section 307(a) of the Federal Water Pollution Control Act (33 U.S.C. Section 1317);
 5. hazardous air pollutants listed under Section 112 of the federal Clean Air Act (42 U.S.C. Section 7412);
 6. any imminently hazardous chemical substances or mixtures with respect to which the administrator of the Environmental Protection Agency (EPA) has taken action under Section 7 of the Toxic Substances Control Act (15 U.S.C. Section 2606); or
 7. chemicals of concern as defined in 30 TAC Section 350.4.
- I. The substances listed in Exhibit A also include one or more of the following: garbage; rubbish; refuse; sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility; and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities, or hazardous substances, for the purposes of Sections 361.271 through 361.277 and 361.343 through 361.345 of the Act.
 - J. Substances at the Site listed in Exhibit A are or threaten to be spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.
 - K. Potential exposure pathways for human health and the environment to the substances listed in Exhibit A include inhalation, dermal exposure, and ingestion.
 - L. Exposure to the substances listed in Exhibit A potentially poses an unacceptable carcinogenic, toxic, or physical risk.
 - M. Exposure of persons or the environment to the substances listed in Exhibit A from the Site is more likely than not to occur in the absence of preventative action, given the entire circumstances surrounding the Site. Harm to public health and safety or the environment that would result from exposure to substances listed in Exhibit A at the Site could cause adverse environmental or health effects, given the current state of knowledge about the Site and of scientific knowledge. *See* 30 TAC, Section 335.342(9).
 - N. Respondents and De Minimis Settlers are potentially responsible as persons that may fall within one or more of the following categories: persons that may own or operate the Site; persons that may have owned or operated the Site at the time of processing, storage or disposal; persons that may have arranged to process, store,

or dispose of the substances listed in Exhibit A at the Site; or persons that may have arranged with a transporter for transport to process, store, or dispose of the substances listed in Exhibit A at the Site.

- O. The ED, on behalf of the Commission, provided each identified PRP written notification of the proposed listing of the Site on the State Registry, an opportunity to request a public meeting on that listing, and the opportunity to conduct or fund an RI/FS.
- P. The PRPs listed in Exhibit B.2. agree to this AO as De Minimis Settlers.

III. CONCLUSIONS OF LAW

- A. The substances listed in Exhibit A are either hazardous substances as defined in Section 361.003(11) of the Act or solid wastes as defined in Section 361.003(34) of the Act.
- B. Hazardous substances and solid wastes were processed, deposited, stored, disposed of, placed or otherwise came to be located at the Site.
- C. The Site is a "facility" within the meaning of Sections 361.181 and 361.003(36) of the Act.
- D. Based upon information regarding the Site to date, there is an actual release or threatened release of hazardous substances and solid wastes from the Site that may constitute or present an imminent and substantial endangerment to the public health and safety or the environment.
- E. The actions required by this AO meet the requirements of the Act and of 30 TAC Chapter 350.
- F. The actions required by this AO are approved by the Commission and are reasonable and necessary to address a release or threatened release of hazardous substances or solid wastes at the Site.
- G. The Site is ineligible for listing on the National Priorities List (NPL).
- H. Funds from the Federal Government are unavailable for the Site because it is ineligible for listing on the NPL.

IV. EXHIBITS AND DEFINITIONS

- A. The following exhibits are incorporated by reference into this AO:

- Exhibit A List of Hazardous Substances & Solid Wastes
- Exhibit B.1. List of Respondents with Consent Forms
- Exhibit B.2. List of De Minimis Settlers with Consent Forms
- Exhibit C Minimum Site Fencing and Signage Requirements
- Exhibit D Schedule of Submittals
- Exhibit E Operations, Monitoring and Maintenance

B. The following terms shall have the meaning set forth below:

- Day A calendar day.
- De Minimis Settlers Those persons listed in Exhibit B.2.
- Defaulting Respondents Any Respondent that fails to comply with the terms and conditions of this AO as per Section XX (Defaulting Respondents).
- Deputy Director The Deputy Director of TCEQ's Office of Permitting, Remediation and Registration and her/his designee.
- Effective Date The Day that is ten (10) Days after the issue date of this AO.
- Executive Director (ED) The Executive Director of the TCEQ or his staff.
- Include Use of the term "include" in all its forms in this AO 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.
- Parties The Respondents, the De Minimis Settlers, and the Commission.
- Potentially Responsible Parties (PRPs) Persons potentially responsible for the solid waste and hazardous substances at the Site under Section 361.271 of the Act.

Project Manager	The individual designated by the ED to oversee implementation of this AO on behalf of the Commission and to coordinate communications with Respondents. This term also includes persons designated by the Project Manager.
Remedial Action	Those actions taken at the Site consistent with Section 361.003(29) of the Act.
Respondents	Those persons listed in Exhibit B.1. that are not Defaulting Respondents as per Section XX (Defaulting Respondents).
San Angelo Electric Service Company (SESCO) Site Working Group	A group of PRPs who agreed to undertake certain interim activities at the Site pursuant to a Memorandum of Agreement with the Office of the Attorney General and who made a good faith offer to conduct the RI/FS at the Site pursuant to Section 361.185 of the Act.
Sections	Those major divisions of this AO designated by Roman numerals.
Site Coordinator	The individual designated by Respondents to oversee the Work on behalf of Respondents and to coordinate communications and deliverables with the ED.
Site Representative	Those persons designated by the TCEQ Project Manager as authorized to conduct oversight activities pursuant to this AO.
Submittals	Any Submittals, data, information, document, records, plan, report or other item required pursuant to this AO and requiring review or approval of the ED. All Submittals and drafts thereof are to be submitted to the ED in writing unless otherwise expressly provided in this AO or expressly agreed to by the ED. Submittals may be made by email, but only if three (3) hard copies of the Submittals are received by the Project Manager within seven (7) Days after the email Submittal. Provided that the provisions of this section are met, the date of the submittal by email for purposes of this AO shall be the date on which the Project Manager receives the subject email.
Work	All activities to be undertaken or performed in accordance with and as required by this AO.

V. **ORDER**

Therefore, the Commission orders:

- A. This AO shall apply to and be binding upon Respondents and their respective heirs, successors, and assignees. Respondents are jointly and severally responsible for performing the Work. No change in ownership or corporate status and no acquisition of any Respondent shall alter the responsibilities under this AO. Except as provided for in Section XX (Defaulting Respondents), Respondents shall not be liable to the Commission for oversight costs of the RI/FS.
- B. Any Respondent that owns or leases the Site shall provide a copy of this AO to all current and future lessees of the Site during the pendency of this AO and to any prospective owners or successors before all or substantially all property rights, stock, or assets are transferred. Respondents shall provide a copy of this AO to all contractors, subcontractors, laboratories, and consultants retained by Respondents to perform any Work within thirty (30) Days after the Effective Date or the date such services are retained, whichever date is later. Notwithstanding the terms of any contract, Respondents are responsible for compliance with this AO and for ensuring that their contractors and agents comply with this AO.
- C. Respondents may not substantially change the manner in which the Site is used without notifying the ED in accordance with Section 361.186(b) of the Act and receiving written approval from the ED for the change. A substantial change in use is defined as per Section 361.186 of the Act and 30 TAC Section 335.342.
- D. Not later than ninety (90) Days before any transfer of any property interest in any property included within the Site, any Respondent that owns or leases real property at the Site shall submit the transfer documents to the ED.
- E. Respondents shall file a notice in the real property records of Tom Green County within twenty-one (21) Days after the Effective Date. The notice shall identify the Site as one proposed for listing on the State Registry in accordance with Section 361.184(f) of the Act. Respondents shall provide a certified copy of the notice to the Project Manager within ten (10) Days from filing such notice.
- F. The terms of Sections VI (Fencing Requirements), VII (Removals), VIII (Remedial Investigation and Feasibility Study (RI/FS)), XIX (Stipulated Penalties), and Exhibit E (Operations, Monitoring and Maintenance) may be amended or waived upon proposal by the ED or Respondents and upon the parties' written concurrence. No other term of this AO may be amended without written Commission approval.
- G. The De Minimis Settlor Consent Form, attached to this AO as Exhibit B.2., is hereby incorporated by reference and made a part of this AO for all purposes.

Within thirty (30) Days after the Effective Date of this AO, the San Angelo Electric Service Company (SESCO) Site Working Group shall pay to the State of Texas an amount equal to \$438,832.32. The payment shall be paid by cashiers check, money order, or electronic deposit to "The Hazardous and Solid Waste Remediation Fee Account (Fund 550) of the State of Texas" and shall be mailed to: Chief Fiscal Officer, TCEQ, Re: SESCO Site Administrative Order, P.O. Box 13088, Austin, Texas 78711-3088.

- H. Respondents shall utilize the funds acquired from the De Minimis Settlers identified in Exhibit B.2. only for any costs and expenses related to the Site, including but not limited to the costs and expenses arising from or relating to: RI/FS activities, settlement and cost recovery activities, necessary professional services (e.g. legal, accounting and consulting services), and reimbursements of prior payments to SESCO Site Working Group Members.

VI. FENCING REQUIREMENTS

- A. Respondents shall maintain the existing fence and warning signs on the fence according to the standards contained in Exhibit C until satisfaction of this AO under Section XXXIII (Termination and Satisfaction) to prevent unauthorized entry into the Site. For the purpose of this AO, the existing sheet metal fence located along the southwest portion of the Site is deemed equivalent to the chain link fence standard in Exhibit C. For the existing fence, any existing permanent structures, including utility poles, monitoring wells, buildings, storage tanks, and other permanent fixtures, are excluded from the 10-foot wide clearance area specified in Exhibit C. Existing gates, which do not meet the minimum 24-foot width requirement, are excluded from the minimum gate width specifications in Exhibit C, provided, however, that Respondents shall maintain at least one gate of sufficient width to allow necessary equipment (for example, drill rigs) access to all portions of the Site.
- B. Except as noted in paragraph VI.A., above, the fence shall conform to the specifications listed in Exhibit C. All gates shall be kept locked, and the Project Manager shall be given the combination to the locks immediately upon request.
- C. Respondents shall provide, attach, and maintain warning signs on the fence every one hundred feet around the perimeter of the Site. The signs shall be made of steel, aluminum, or plastic impregnated with UV inhibitors and shall conform to the colors, dimensions, and detail listed in Exhibit C. Respondents shall provide the Project Manager with a sample of the warning signs for ED approval prior to use.
- D. In accordance with the schedule in Exhibit D, Respondents shall submit a drawing (the Fence Location Drawing) to the Project Manager showing the location of the fence no later than forty-five (45) Days after the Effective Date. Any new fence

construction may not begin until the ED has provided Respondents written approval of the proposed location. Respondents shall submit an updated Fence Location Drawing after completion of any new fence construction, in accordance with the schedule in Exhibit D.

VII. REMOVALS

- A. In the event that the ED determines that a removal action, as defined in Section 361.003(30) of the Act, is necessary and appropriate to protect human health or the environment or to facilitate the RI, the ED will provide written notification to Respondents. If Respondents choose to conduct the removal action, Respondents shall proceed in accordance with this section. If Respondents do not agree, within ten (10) Days after receipt of written notice, to conduct the requested removal action, the ED may conduct the removal action and seek recovery of costs associated with the removal action under the authority of the Act.
- B. Respondents may also request that the ED approve removal actions, as defined in Section 361.003(30) of the Act, to be carried out by Respondents at the Site as necessary and appropriate to protect human health or the environment or to facilitate the RI.
- C. In the event any removal action is to be carried out by the Respondents, the schedule for submittals of deliverables for such removal is as follows:
 - 1. Removal Action Work Plan (RAWP)

In accordance with the schedule in Exhibit D, Respondents shall submit a Removal Action Work Plan (RAWP) to the ED for review and approval. The RAWP shall, at a minimum, include the following:

- a. A description of the areas of concern or storage units from which material will be removed;
- b. A site-specific Health and Safety Plan (HASP), as defined in Section VIII;
- c. A description of removal and monitoring procedures to be used;
- d. Estimated volume of material to be removed;
- e. A description of manifesting procedures. TCEQ will not sign manifests and is not to be identified as the generator on waste manifests; therefore, manifesting requirements shall be Respondents' responsibility;

- f. An identification of any transporter and disposal facility proposed to be used (including their respective registration and/or permit numbers);
- g. Procedures to be implemented during and following the removal to ensure that no release or increased threat of release to the environment will occur as a result of the removal;
- h. Procedures proposed for sampling and analyzing materials remaining on Site (e.g., soil, groundwater);
- i. A description of any other removal activities to take place on Site; and
- j. A schedule outlining the major tasks to be completed during the removal, including specific time frames for completing the identified tasks.

2. Removal Action Report (RAR)

In accordance with the schedule in Exhibit D, Respondents shall submit a Removal Action Report (RAR) to the ED for review and approval.

The RAR shall, at a minimum, include the following:

- a. A description of all removal and sampling activities that have been performed at the Site;
- b. Results of all sample analyses and conclusions regarding remaining constituents at the Site;
- c. Documentation of proper transport and disposal of materials, including copies of all manifests; and
- d. Certificates of Destruction.

VIII. REMEDIAL INVESTIGATION AND FEASIBILITY STUDY (RI/FS)

- A. Respondents shall perform the RI/FS in a manner designed to complete an investigation and evaluation in accordance with applicable provisions of 30 TAC Chapter 335 Subchapter K and 30 TAC Chapter 350. The RI/FS shall consist of the planning, field implementation, laboratory analyses, data assessment, and reporting to provide sufficient information to allow the ED to select an appropriate Remedial Action. The ED acknowledges that data generated in connection with (a) TCEQ- or EPA-sponsored investigations or removal/remedial

actions at the Site and (b) Respondent-sponsored work in connection with the Memorandum of Agreement (collectively, Existing Data) was, for each COC tested, properly collected, analyzed and reported, and meets the data quality requirements for the purposes for which it was originally collected and used. Respondents may use the Existing Data where it is reasonably appropriate to do so in fulfilling the objectives set forth in this AO. In addition, Respondents shall collect sufficient additional data during the RI to delineate the horizontal and vertical extent, velocity, and direction of all potential COCs, hazardous substances, and solid wastes released or threatened to be released at, from, or to the Site. The investigation shall continue both horizontally and vertically to the appropriate Assessment Level (AL) in accordance with 30 TAC Section 350.51; provided however that Respondents are not required to perform RI/FS activities pursuant to this AO in connection with: (a) fill material placed in or around the Site by either the TCEQ, EPA, or their respective contractors, or (b) specific COCs for specific exposure pathways in areas in which TCEQ, EPA or their respective contractors have sampled and have previously determined in writing that no further action is required with respect to such specific COCs for such specific exposure pathways. The RI/FS shall, at a minimum, include the following Submittals:

1. Preliminary Site Assessment (PSA)

The purpose of the PSA is to compile and review information needed to develop the Phase 1 Work Plan. This information includes:

- a. Available aerial photography illustrating changes in infrastructure in/around the Site, including applicable dates.
- b. Site's operational history including details associated with, but not limited to, the transformer repair, sandblasting, painting, and plating processes.
- c. Historical information and previous studies compiled by EPA, TCEQ, and the SESCO Site Working Group.
- d. Land use patterns (current and relevant historical) of contiguous properties.
- e. Regional geologic information with respect to descriptions, compositions, and thicknesses of expected formations.
- f. Regional hydrogeologic information including descriptions of regional aquifers and confining units.

- g. Preliminary identification of federal, state, and local applicable or relevant and appropriate standards, requirements, criterion, or limitations (ARARs) with respect to the Site.

The results of the PSA will be compiled in a summary report which will discuss and present findings of the PSA. The PSA will be prepared in accordance with the schedule in Exhibit D.

2. Phase 1 RI Work Plan (Phase 1 Work Plan)

The Phase 1 Work Plan shall meet the applicable requirements of 30 TAC Chapter 335 Subchapter K and 30 TAC Chapter 350. The initial Submittals and any subsequent Submittals of the Phase 1 Work Plan shall be made in accordance with the schedule in Exhibit D. The Phase 1 Work Plan will be developed from the information obtained during the PSA and shall, at a minimum, consist of the following:

a. Conceptual Site Model (CSM)

The CSM shall be based on existing data and shall be developed and refined through the investigation process. The CSM shall include:

- (1) A site profile that includes chemical processes and waste management practices that occurred or are occurring at the Site, and identifies both historical and current Site structures, process areas, waste management units, property boundaries, and features that may affect Site characterization, remedy selection, or implementation and that may have impacted actual or potential releases;
- (2) Land use and exposure profiles that include current land uses of the Site and adjacent properties, emphasizing specific uses (e.g., single-family homes, retail shopping, agriculture, etc.), actual resource use locations (water supply wells, surface water intakes, etc.), subpopulation types and locations (schools, hospitals, daycare centers, etc.), potential exposure scenarios (residential, industrial, subsistence farming, or subsistence fishing, etc.), and potential exposure pathways identifying the potential sources, release and migration mechanisms, exposure media, exposure routes, and receptors;
- (3) A preliminary ecological profile that identifies ecological habitats on or near the Site;

- (4) A physical profile that includes topographical features (e.g., hills, gradients, surface vegetation, pavement, etc.), surface water features such as drainage routes, surface water bodies, wetlands, and watershed parameters and characteristics, surface geology including soil types and parameters, outcrops, and faulting, subsurface geology including stratigraphy, continuity, and connectivity, hydrogeologic information identifying the water-bearing zones, hydrologic parameters, and impermeable strata, and soil boring and monitoring well logs and locations; and
- (5) A release profile that includes identification of potential COCs including transformation and companion products, potential source locations where no releases have occurred, source locations where a release has been confirmed, delineation of potential and known areas of potential COC contamination, distribution and magnitude of potential COCs, known or potential migration routes, fate and transport modeling parameters, identification of preliminary Critical Protective Concentration Levels (Critical PCLs) and ALs in accordance with 30 TAC Chapter 350 or other legally applicable standards for the potential COCs. The preliminary Critical PCLs and ALs under Chapter 350 shall be the values in effect as of the Effective Date from the Texas Risk Reduction Program.

b. Phase 1 Field Sampling Plan (Phase 1 FSP)

The Phase 1 FSP shall provide the specific methods by which Respondents propose to determine the nature and extent of the release of hazardous substances and solid wastes in the air, soils, ground water, surface water, and sediments at the Site and shall include:

- (1) A description and evaluation of existing data and information pertinent to the Site including historical use and previous investigations;
- (2) A list of analytical chemistry methods that will be used and an indication of the analytical methods proposed for each sample. These methods shall be chosen in accordance with 30 TAC 350.54(e)(6) or other legally applicable methods;
- (3) For each analytical method, a list of target analytes (i.e. a list of potential COCs which will be analyzed for);

- (4) In order to address sensitivity requirements, Respondents shall select a standard available analytical method that provides a method quantitation limit (MQL) below the necessary level of required performance (LORP) for each analyte. For purposes of investigation in accordance with 30 TAC Chapter 350, the AL, described in 30 TAC Sections 350.4(a)(3) and 350.51(b-f), is the necessary LORP;
- (5) The rationale for the sampling design, including the number, location, type of samples and the intended use of each sample datum;
- (6) Identification of potential ARARs;
- (7) A description of the sampling equipment and techniques, the number, sample collection and preservation procedures, and chain of custody procedures;
- (8) A scaled drawing of the Site, showing approximate locations of proposed samples and site features (fences, buildings, structures, wells, drainage features, etc.);
- (9) The last section of the Phase 1 FSP shall be entitled "Exceptions, Additions and Changes to the State Superfund Program QAPP for the San Angelo Electric Service Company State Superfund Site" and the first sentence in this section shall state "This Phase 1 Field Sampling Plan and the State Superfund Program QAPP (document number 200919.3), including the exceptions and additions below, shall constitute the Sampling and Analysis Plan for the San Angelo Electric Service Company State Superfund Site."

c. Quality Assurance Project Plan (QAPP)

- (1) The QAPP shall meet the requirements specified in the State Superfund Program QAPP (document number 200919.3), as amended with approved site-specific exceptions and additions. The State Superfund Program QAPP shall be adopted by reference in the Phase 1 FSP.
- (2) All exceptions and additions to the State Superfund Program QAPP shall be included under Section B of the Phase 1 FSP.

d. Standard Operating Procedures (SOPs) for Field Procedures

The Respondents shall include SOPs for all field procedures proposed with the Phase I Work Plan. The TCEQ State Superfund Program has developed a library of SOPs on field activities which may be utilized by Respondents. The use of these SOPs may significantly reduce TCEQ review time and Respondents are encouraged to use them. However, Respondents may choose to develop SOPs themselves. If the Respondents develop and submit SOPs, the format established in the TCEQ State Superfund SOP library shall be used. Respondents shall develop and submit for review and approval any necessary field SOPs not covered in the TCEQ State Superfund SOP Library.

e. Phase 1 RI Data Quality Objectives Documentation (Phase 1 DQOD)

Respondents shall prepare and submit a Phase 1 DQOD which records significant decision items that form the basis of the sampling design. Respondents shall develop and document the seven step DQO process for each different sampling strategy, in accordance with *Guidance for the Data Quality Objectives Process*, EPA QA/G-4. The Phase 1 DQOD shall describe the process of determining the quantity and quality of data collection needed for Phase 1 of the investigation.

f. Preliminary Tier 1 Exclusion Criteria Checklist (Tier 1 Checklist)

The preliminary Tier 1 Checklist shall be completed in accordance with 30 TAC Section 350.77 and shall be based on the data available at the time that the Phase 1 RI Technical Memorandum is prepared.

g. Phase 1 RI Schedule

The Phase 1 Schedule shall outline the major tasks to be performed as part of the Work including, without limitation, a Gantt or other similar chart demonstrating the specific time frames for completing the identified tasks and shall be submitted as part of the Phase 1 Work Plan.

h. Health and Safety Plan (HASP)

The HASP shall include all appropriate measures to provide personnel safety and protection as per 29 Code of Federal Regulations (CFR) Parts 1910 and 1926. Additionally, the HASP

shall address all necessary site security measures including fencing, sign posting, and temporary control of potential COC releases. In accordance with 30 TAC Section 335.348(i), the HASP shall also address the protection of the public from potential hazards including fugitive dusts or volatiles, drainage and other releases of potential COCs, excessive noise, and physical aspects of heavy equipment associated with the investigation.

3. Phase 1 RI Technical Memorandum (Phase 1 TM)

The Phase 1 TM shall be completed in accordance with 30 TAC Chapter 350 Subchapter C and shall include a comprehensive evaluation of all data collected during implementation of the Phase 1 Work Plan.

4. Phase 2 RI Work Plan (Phase 2 Work Plan)

The Phase 2 Work Plan, if necessary, shall meet the applicable requirements of 30 TAC Chapter 335 Subchapter K and 30 TAC Chapter 350. The initial Submittals and any subsequent Submittals of the Phase 2 Work Plan shall be made in accordance with the schedule in Exhibit D. The Phase 2 Work Plan shall, at a minimum, consist of the following:

a. Phase 2 RI Field Sampling Plan (Phase 2 FSP)

The Phase 2 FSP shall provide the specific methods by which Respondents propose to determine the nature and extent of the release of hazardous substances and solid wastes in the air, soils, ground water, surface water, and sediments at the Site and shall include:

- (1) A description and evaluation of existing data and information pertinent to the Site including historical use and previous investigations;
- (2) A list of analytical chemistry methods that will be used and an indication of the analytical methods proposed for each sample;
- (3) For each analytical method, a list of target analytes (i.e. a list of potential COCs which will be analyzed for);
- (4) In order to address sensitivity requirements, Respondents shall select a standard available analytical method that provides a method quantitation limit (MQL) below the necessary level of required performance (LORP) for each analyte. For purposes of investigation in accordance with

30 TAC Chapter 350, the AL, described in 30 TAC Sections 350.4(a)(3) and 350.51(b-f), is the necessary LORP;

- (5) The rationale for the sampling design, including the number, location, type of samples and the intended use of each sample datum;
- (6) Identification of potential ARARs;
- (7) A description of the sampling equipment and techniques, the number, sample collection and preservation procedures, and chain of custody procedures;
- (8) A scaled drawing of the Site, showing approximate locations of proposed samples and site features (fences, buildings, structures, wells, drainage features, etc.);
- (9) The last section of the Phase 2 FSP shall be entitled "Exceptions, Additions and Changes to the State Superfund Program QAPP for the San Angelo Electric Service Company State Superfund Site" and the first sentence in this section shall state "This Phase 2 RI Field Sampling Plan and the State Superfund Program QAPP (document number 200919.3), including the exceptions and additions below, shall constitute the Sampling and Analysis Plan for the San Angelo Electric Service Company State Superfund Site."

b. Phase 2 RI Data Quality Objectives Documentation (Phase 2 DQOD)

Respondents shall prepare and submit a Phase 2 DQOD which records significant decision items that form the basis of the sampling design. Respondents shall develop and document the seven step DQO process for each different sampling strategy to be utilized in Phase 2, in accordance with *Guidance for the Data Quality Objectives Process*, EPA QA/G-4. The Phase 2 DQOD shall describe the process of determining the quantity and quality of data collection needed for Phase 2 of the investigation.

c. Phase 2 RI Schedule

The Phase 2 Schedule shall outline the major tasks to be performed as part of the Work including a Gantt or other similar chart demonstrating the specific time frames for completing the

identified tasks. It shall be submitted as part of the Phase 2 Work Plan.

5. Phase 2 RI Report (Phase 2 Report)

The Phase 2 Report shall be completed in accordance with 30 TAC Chapter 335 Subchapter K and 30 TAC Chapter 350 Subchapters C and E. The Phase 2 Report shall include a comprehensive evaluation of all data collected during implementation of the Phase 2 Work Plan.

6. Final Tier 1 Exclusion Criteria Checklist (Tier 1 Checklist)

The final Tier 1 Checklist shall be completed in accordance with 30 TAC Section 350.77 and shall be based on the data available after the completion of the Phase 2 Report. If the ED determines that it is appropriate, based on the results of the preliminary Tier 1 Checklist or the Respondents' intent to complete a Tier 2 or Tier 3 ecological evaluation, Respondents may forgo the submittal of the final Tier 1 Checklist.

7. Tier 2: Screening-Level Ecological Risk Assessment (SLERA)

Respondents shall submit the SLERA if the ED determines that a Tier 2 SLERA is necessary or appropriate. The SLERA shall be completed in accordance with 30 TAC Section 350.77 and associated TCEQ ecological guidance documents. If necessary, ecological PCLs shall be developed and considered in the determination of final Critical PCLs and in the selection and design of any Remedial Action.

8. Tier 3: Site Specific Ecological Risk Assessment (SSERA)

Respondents shall submit the SSERA if the ED determines that a Tier 3 SSERA is necessary or appropriate. The SSERA shall be completed in accordance with 30 TAC Section 350.77 and associated TCEQ ecological guidance documents. If necessary, ecological PCLs shall be developed and considered in the determination of final Critical PCLs and in the selection and design of any Remedial Action.

9. Protective Concentration Levels Document (PCLs Document)

Respondents shall determine PCLs and Critical PCLs in accordance with the requirements of 30 TAC Chapter 350 or other legally applicable standards. The PCLs Document shall include, without limitation: an identification of all complete exposure pathways and all exposure pathways reasonably anticipated to be completed; an identification of other exposure pathways evaluated in accordance with 30 TAC Section 350.71(c)(8) and an explanation of why those pathways were not

considered to be complete or were not reasonably anticipated to be completed; documentation that the data necessary to support the development of PCLs and remedy selection have been adequately and appropriately collected; and documentation of the derivation of all Risk-based Exposure Limits (RBELs) and PCLs and the determination of the Critical PCLs for environmental media including all associated assumptions and calculations.

The PCLs Document, which is submitted separately as shown in Exhibit D, shall be incorporated into the Phase 2 Report upon its approval by the ED.

10. Feasibility Study and Presumptive Remedy Document (FS/PRD)

The FS/PRD shall be submitted in accordance with the schedule in Exhibit D and shall comply with 30 TAC Sections 335.348 and 350.94(a), (b), (c), (j) and (l). It shall include, at a minimum, the following:

a. Data on Environmental Media, Solid Wastes and/or Hazardous Substances Requiring Remedial Action

Respondents shall provide data on the type, location, and estimated volume of environmental media, solid wastes and/or hazardous substances requiring Remedial Action. Respondents shall provide sufficient information to allow the ED to select a Remedial Action in accordance with the Act;

b. Proposed and Alternative Remedial Actions

In accordance with 30 TAC Chapter 335.348(k), Respondents shall develop alternative Remedial Actions and recommend the proposed Remedial Action;

c. Cost Information

The FS/PRD shall include cost information for the proposed Remedial Action as well as for alternative Remedial Actions; and

d. Professional Engineer's Seal

The FS/PRD shall be signed and sealed by a professional engineer licensed in the State of Texas.

B. The ED or his Site Representatives may take splits or duplicates of any samples obtained by Respondents or their Site Coordinators at the Site during the Work and shall provide the analytical results to Respondents within a reasonable time

after receipt of final, validated results. Respondents shall provide assistance necessary for the ED to take any such split or duplicate samples. Additionally, Respondents may take splits or duplicates of any samples obtained by the ED or his Site Representatives and shall provide the analytical results to the ED within a reasonable time after receipt of final, validated results.

- C. In the event that the Respondents obtain a Municipal Setting Designation applicable to the Site, the terms of Section 361.808 of the Act (relating to investigation requirements within a MSD), as interpreted by the ED, shall prevail over any conflicting terms of this AO; provided, however, that Respondents may appeal the ED's interpretation pursuant to Section XXIII, Resolution of Disagreements.

IX. NOTICE OF FIELD ACTIVITIES

- A. Except with respect to activities described in Exhibit E (Operation, Monitoring and Maintenance) and Section XIII (Endangerment and Emergency Response), Respondents shall provide written notification to the ED and shall provide oral notification to the Project Manager at least fourteen (14) Days prior to initiating any field activities conducted pursuant to this AO. All such notices shall include a list of those field activities covered by the notice. Subsequent field activities not covered by previous notices must also be noticed to the ED at least fourteen (14) Days prior to initiation.
- B. If for any reason field activities cannot begin on the date set forth in the notice, Respondents shall immediately provide revised written and oral notice as described above and indicate the anticipated start date of such activities.
- C. If failure to provide adequate notice under this section results in the inability of the ED to oversee field activities, the Respondents will provide such information and documentation necessary to assure the ED that field activities have been conducted in accordance with ED approved plans and procedures. Should Respondents be unable to provide such assurance, the ED may require Respondents to take such actions as the ED reasonably determines appropriate, including requiring repeat performance of any Work performed without the ED's oversight.

X. PROGRESS REPORTS

- A. Beginning on the fifteenth Day of the month following the Effective Date, Respondents shall submit written monthly progress reports to the ED describing all Work undertaken during the preceding month. Respondents' obligation to submit monthly progress reports continues until the ED notifies Respondents, in writing, under Section XXXIII (Termination and Satisfaction) that the Work has

been completed to the ED's satisfaction. For the purposes of a removal action, the ED may request and the Respondents shall submit reports on a more frequent basis.

- B. These progress reports shall, at a minimum, include: 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 Respondents in performing or completing the Work; a description of all data received during the reporting period; and an up-to-date progress schedule. Progress reports shall identify any violations of this AO and calculate any applicable stipulated penalty required under Section XIX (Stipulated Penalties).
- C. If a progress report submitted by Respondents is deficient, the ED will notify Respondents within ten (10) Days of receipt of such progress report by the ED. The notice will include comments and a description of the deficiencies.
- D. Within ten (10) Days of Respondents' receipt of a notice of deficiency, Respondents shall make such changes as the ED reasonably deems necessary and resubmit the progress report to the ED.

XI. DESIGNATED PROJECT MANAGER/SITE COORDINATOR

- A. No later than the Effective Date, the ED will designate a Project Manager.
- B. All communications, whether written or oral, from Respondents to the ED shall be directed, at a minimum, to the designated Project Manager.
- C. Within ten (10) Days after the Effective Date, Respondents shall appoint a Site Coordinator and provide written notice to the Project Manager containing the Site Coordinator's name, address, phone number, facsimile number, pager number (if applicable) and e-mail address (if applicable) at which he or she may be contacted in case of emergency. The Site Coordinator shall be responsible for notifying the ED in accordance with Section IX (Notice of Field Activities).
- D. The Project Manager shall have the authority to require that the RI/FS be performed in accordance with all applicable statutes and regulations and this AO and to require a cessation of the performance of any part or all of the Work that:
 - 1. In the Project Manager's opinion, 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 hazardous substances or solid wastes from the Site; or

2. In the Project Manager's opinion, is not in conformance with any approved work plan; or
 3. In the Project Manager's opinion, is a violation of any work plan, HASP, or QAPP developed under this AO.
- E. 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 such order. As soon as possible, but in no event more than fourteen (14) Days after the initial order, a written explanation of the basis for such order will be provided to the Site Coordinator. Work may be resumed only after the basis for the cessation has been corrected and instructions to proceed have been provided by the Project Manager. All additional costs associated with such cessation of Work are Respondents' responsibility.
- F. During the RI/FS, the Project Manager and Site Coordinator shall hold meetings or teleconferences at least bi-monthly, or as otherwise appropriate, to review the progress and details of the RI/FS and to review and resolve any discrepancies in data. At least five (5) Days prior to each meeting, Respondents shall deliver an agenda for the meeting and any documents to be discussed to the Project Manager. The Project Manager may add items to the agenda, but shall give Respondents at least two (2) business days notice prior to such meeting of any such additions.
- G. The ED and Respondents may change their respective Project Manager or Site Coordinator by informing the other Party of the name, address, and telephone number of the new Project Manager or Site Coordinator in writing at least seven (7) Days prior to the change.
- H. The Project Manager may assign other persons, including other TCEQ employees or contractors, to serve as a Site Representative and may temporarily delegate her or his responsibilities to such Site Representative. The Project Manager shall notify the Site Coordinator orally or in writing of such delegation.

XII. SUBMITTALS REQUIRING THE EXECUTIVE DIRECTOR'S APPROVAL

- A. The following Submittals, including parts thereof, require review and approval by the ED in accordance with this AO:

Certified Copy of Notice in Real Property Records;

Fence Location Drawing;

Removal Action Work Plan [if removal action occurs];

Removal Action Report [if removal action occurs];

Preliminary Site Assessment;

Phase 1 Remedial Investigation Work Plan;

Phase 1 Remedial Investigation Technical Memorandum;

Phase 2 Remedial Investigation Work Plan [if Phase 2 occurs];

Phase 2 Remedial Investigation Report [if Phase 2 occurs]; and

Feasibility Study/Presumptive Remedy Document.

- B. Respondents shall submit three (3) hard copies of any draft Submittal and shall provide electronic versions of any draft Submittal in the format designated by the ED. All such Submittals shall comply with the respective requirements of this AO.
- C. Respondents shall submit three (3) hard copies of any final Submittal and shall provide electronic versions of any final Submittal in the format designated by the ED. All such Submittals shall comply with the respective requirements of this AO.
- D. Initial Submittals and any subsequent Submittals shall be submitted to the ED in accordance with the schedule in Exhibit D.
- E. The ED will review the initial Submittal and all subsequent Submittals and will provide written notification to the Site Coordinator of his approval or disapproval.
- F. If the ED approves the Submittal, the ED will provide written notification to the Site Coordinator and the Respondents shall proceed with completion of the next established milestone indicated in Exhibit D.
- G. If the ED disapproves the Submittal, the ED will provide written comments to the Site Coordinator. After receiving written comments from the ED, Respondents shall submit a revised Submittal and a revised Submittal in redline, strikeout format in accordance with the schedule established in Exhibit D. Respondents shall also submit a discussion which clearly and explicitly indicates how each of the ED's comments on the previous Submittal has been satisfactorily addressed and discusses all other revisions or changes made to the previous Submittals.
- H. Any subsequent Submittal thereafter shall also be submitted in accordance with the schedule established in Exhibit D.

- I. Upon the ED's approval of a Submittal, it shall be incorporated into this AO for all purposes and shall be enforceable pursuant to this AO.
- J. Any approved Submittal may be modified as per Section XVIII (Modification and Deadline Extensions).
- K. The ED's approval of Submittals or modifications is administrative in nature and allows Respondents to proceed to the next step in the RI/FS. The ED's approval does not imply any warranty of performance.
- L. Respondents shall provide written notice to the ED immediately upon generating or obtaining any monitoring, testing, analytical, inspection, or site characterization data related to the Site, not otherwise required by this AO, that indicates an imminent and substantial endangerment to human health or the environment. Respondents shall provide written notice to the ED within a reasonable timeframe upon generating or obtaining any other monitoring, testing, analytical, inspection, or site characterization data related to the Site, not otherwise required by this AO. All such data shall be provided in writing to the ED within twenty (20) Days of any written request from the ED.
- M. Except as provided by the Public Information Act, Texas Government Code Chapter 552, all data, records, reports, plans, information, and documents submitted to the ED by Respondents in accordance with Paragraph L and pursuant to this AO and all Submittals shall be available to the public.

XIII. ENDANGERMENT AND EMERGENCY RESPONSE

- A. In the event of any action or occurrence during the performance of the Work that causes or threatens a release of a hazardous substance or solid waste that may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate and practicable action to prevent, abate, or minimize such release or endangerment and shall immediately notify the Project Manager. Respondents shall also notify the Commission's Emergency Response Unit, Region 8. Respondents shall take such action in accordance with all applicable provisions of the HASP. If Respondents fail to take appropriate response action as required by this Section and the Commission takes such action instead, Respondents shall reimburse the Commission all costs of the response action. Payment of such costs shall be made to the Hazardous and Solid Waste Remediation Fee Account within sixty (60) Days of receipt of a demand letter from the ED stating the amount owed.
- B. Nothing in the preceding paragraph shall 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 hazardous substances or solid wastes to the environment from the Site.

XIV. NOTICES AND SUBMITTALS

All notices required by this AO shall be in writing unless otherwise expressly authorized by this AO or by the Project Manager. All such notices and all Submittals shall be submitted to the following addressees or to such other addressees as the Parties may designate by written notice to all other Parties:

As to the Texas Commission on Environmental Quality:

For mail:

Texas Commission on Environmental Quality
Remediation Division
Environmental Cleanup Section (MC127)
P.O. Box 13087
Austin, TX 78711-3087
Attention: Project Manager/San Angelo Electric Service Company
Proposed State Superfund Site

For overnight express mail or delivery service:

Texas Commission on Environmental Quality
Project Manager (MC127)
San Angelo Electric Service Company Proposed State Superfund Site
Environmental Cleanup Section
Building D, Floor 2, Room 211
12100 Park 35 Circle
Austin, TX 78753

By Facsimile:

Project Manager
San Angelo Electric Service Company Proposed State Superfund Site
Environmental Cleanup Section
(512) 239-2449

As to Respondents:

Chairman, SESCO Site Working Group Technical Committee
c/o Steve Morton
Jenkins & Gilchrist
Suite 2500 Frost Bank Tower

401 Congress Avenue
Austin, Texas 78701

(512) 499-3856
By Facsimile: (512) 499-3810
By Email: smorton@jenkens.com

XV. RECORDS

- A. Respondents shall preserve, and shall instruct their contractors and subcontractors and anyone else acting on their behalf at the Site to preserve, either the originals or copies of all data, records, plans, reports, documents, and information of whatever kind, nature, or description required to be generated or submitted pursuant to this AO, including Submittals (collectively, Records). Notwithstanding anything to the contrary in this AO, all Submittals shall be available to the public.
- B. All Records in Respondents' possession, custody or control, at any time prior to the termination of this AO shall be preserved for a minimum of ten (10) years after the Site has been deleted from the State Registry in accordance with Section 361.189 of the Act. After this ten (10) years, each Respondent shall notify the ED at least ninety (90) Days before destroying any Record. If the ED requests that any Record be saved, Respondents shall, at no cost to the Commission, give the ED the Record or copies of the Record.
- C. At any time prior to ten (10) years after the Site has been deleted from the State Registry in accordance with Section 361.189 of the Act, the ED may contact the Site Coordinator to determine the location and/or to obtain copies of any or all Records. Within thirty (30) Days of the ED's written request, Respondents shall provide copies of all requested Records to the Project Manager or his or her representatives at no cost to TCEQ.
- D. Any Respondent refusing to provide copies of any Record based upon a claim of privilege shall identify the Record and explain the basis for the claim. Until this AO is terminated in accordance with Section XXXIII (Termination and Satisfaction) Respondents shall maintain an index of Records that Respondents claim contain privileged information. The index shall contain, for each Record, the date, author, addressee, and subject of the Record. Respondents shall submit a copy of the index to the ED within ten (10) Days after the ED submits a written request.
- E. Subject to any claims of privilege, Respondents agree to provide the ED, upon request, an electronic copy of the job ticket database utilized by the Respondents to create the De Minimis Allocation Contribution Table referenced as Attachment 1 in AO Exhibit B.2.

XVI. ACCESS

- A. Respondents shall provide access or obtain written access agreements to the Site within thirty (30) Days of the Effective Date. If a person other than a Respondent owns, in whole or in part, the Site or other property subject to or affected by this AO, then Respondents shall obtain or use their best efforts to obtain written Site access agreements from the present owner(s) within sixty (60) Days of the Effective Date. Such agreements shall provide access for the Commission and EPA and their employees, contractors, and oversight officials; the State or local authorities and their contractors as approved by the ED; and Respondents and Respondents' authorized representatives and contractors (collectively the Authorized Representatives). The Respondents shall, by certified mail, inform the Bankruptcy Trustee for the Site, and any person(s) that purchases the Site during the term of this AO, that the Commission is not liable for any loss or claim arising out of the Work and that Respondents are not the Commission's representatives with respect to liability for any activities conducted by Respondents on or at the Site. Copies of such agreements shall be provided to the ED before Respondents initiate field activities. Respondents' best efforts shall include, if necessary, providing reasonable compensation to any property owner. If access agreements are not obtained within the time referenced above, Respondents shall immediately notify the ED of their failure to obtain access. If Respondents have made best efforts but failed to obtain access pursuant to this AO, Respondents shall provide TCEQ written evidence of their best efforts to secure access. Respondents' inability to obtain such access, as determined by the ED in his sole discretion, shall be considered reasonable grounds for extending affected deadlines pursuant to Section XVIII (Modifications and Deadline Extensions).
- B. Subject to Respondents' reasonable safety and internal security requirements, the Commission and its Authorized Representatives shall have the authority to enter, move freely about, and exit the Site and those areas where documents required to be prepared or maintained by this AO are located, for the purposes of: inspecting conditions, activities, the results of activities, Records, operating logs, and contracts related to the Work; reviewing the Respondents' progress in carrying out the terms of this AO; conducting tests that the ED or his Authorized Representatives deem necessary; using a camera, sound recording device or other documentary type equipment; and verifying data submitted to the ED by Respondents. Respondents shall allow the ED and his Authorized Representatives to inspect and copy all Records, files, photographs, documents, sampling and monitoring data, and any other writings or information required by this AO. Nothing in this AO shall be interpreted as limiting or affecting the Commission's right of entry or inspection authority under state or federal law.

XVII. DELAY IN PERFORMANCE

Except as specified in Section IX (Notice of Field Activities) and Section XXII (Force Majeure) Respondents shall notify the ED of any delay or anticipated delay in achieving compliance with any requirement of this AO. Such notification shall be made by telephone to the Project Manager within forty-eight (48) hours after Respondents first knew or should have known that an event might cause a delay. Within seven (7) Days after notifying the ED by telephone, Respondents 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 Respondents to prevent or minimize the delay, and the timetable by which these measures have been and are being implemented and will propose future measures and a timetable for implementing such future measures. The proposed measures and timetable shall be implemented upon the ED's written approval.

If, due to such delay, Respondents wish to modify any Submittal or extend any schedule, Respondents shall, in accordance with Section XVIII (Modifications and Deadline Extensions) submit a written request to the Project Manager for such modification or extension.

XVIII. MODIFICATIONS AND DEADLINE EXTENSIONS

- A. Respondents may seek and the ED may grant an extension of any deadline contained in this AO or in any Submittal. The request for a deadline extension shall be submitted to the Project Manager no later than seven (7) Days prior to the deadline. The ED may, in his sole discretion, determine whether to extend any such deadline and the length of any deadline extension. Upon the ED's written approval, the deadline is extended and the revised deadline becomes incorporated for all purposes into the original Submittal and this AO. Respondents shall continue to adhere to all other deadlines in this AO and in any Submittal.
- B. Respondents may request and the ED may, in his sole discretion, approve a modification of any Submittal other than a deadline extension specified in Paragraph A. Respondents shall submit a written request for such modification to the Project Manager. Upon the ED's written approval, the modification becomes incorporated into the original Submittal and this AO for all purposes.

XIX. STIPULATED PENALTIES

- A. Subject to Section XXII (Force Majeure) and Section XXIII (Resolution of Disagreements) noncompliance with this AO shall result in the imposition of stipulated penalties as set forth below. Prior to the imposition of stipulated penalties, the ED shall provide notice to Respondents of any alleged noncompliance with this AO. Respondents shall pay stipulated penalties in the

following amounts for each violation for each Day and part thereof during which Respondents are not in compliance with this AO:

<i>Period of Delay</i>	<i>Amount/Day</i>
1 st through 14 th Day	\$1,100.00
15 th through 30 th Day	\$2,250.00
31 st Day and beyond	\$3,500.00

For purposes of this section, noncompliance with this AO includes, without limitation: failure to timely submit any Submittal; failure to meet any deadline or schedule established by this AO, except as otherwise expressly excused by or in accordance with this AO; failure to timely provide notice required by this AO; and failure to timely pay stipulated penalties.

- B. For each Submittal subsequent to the first draft of such Submittal that does not comply with the minimum requirements of this AO, Respondents shall pay a stipulated penalty of \$3,500.
- C. For denying access provided for in Section XVI (Access) Respondents shall pay stipulated penalties of \$10,000 per Day.
- D. For failure to use best efforts to obtain Site access in accordance with Section XVI (Access) Respondents shall pay stipulated penalties of \$1,000 per Day.
- E. For disobeying an order to halt work under Section XI (Designated Project Manager/Site Coordinator) Respondents shall pay stipulated penalties of \$10,000 per Day.
- F. For failure to provide records in response to a written request in accordance with this AO, Respondents shall pay stipulated penalties of \$1,000 per Day.
- G. All penalties represent joint and several, not individual, obligations of each Respondent except for penalties incurred pursuant to Paragraph F of this section.
- H. Except as otherwise provided in this AO, Respondents shall pay stipulated penalties within sixty (60) Days of receipt of a demand letter or after resolution of disagreements in favor of the Commission pursuant to this AO, whichever comes later, and stipulated penalties shall accrue from the first Day of noncompliance. If Respondents' position with respect to a disagreement subject to stipulated penalties is sustained, Respondents shall have no liability to pay stipulated penalties with regard to matters which have been submitted in accordance with Section XXIII (Resolution of Disagreements) and upon which Respondents prevail.

- I. Stipulated penalties shall be paid to "General Revenue Fund of the State of Texas" and payment shall be mailed to:

Chief Fiscal Officer
Texas Commission on Environmental Quality
"Re: San Angelo Electric Service Company State Superfund Site Agreed Order"
P.O. Box 13088
Austin, Texas 78711-3088

- J. Nothing in this AO shall preclude the ED, in his sole discretion, from reducing or waiving stipulated penalties either in whole or in part as to any or all Respondents.
- K. The requirements to pay stipulated penalties which attach prior to the termination of this AO in accordance with Section XXXIII (Termination and Satisfaction) shall survive termination of this AO.
- L. Stipulated penalties shall be in lieu of enforcement penalties for the same violation of this AO but shall not prevent the Commission from seeking enforcement of the ordering provisions by injunctive relief.

XX. DEFAULTING RESPONDENTS

- A. Upon the failure of any Defaulting Respondent to comply with the terms and conditions of this AO, such Defaulting Respondent shall cease to be a Respondent and all such rights and privileges as inure to Respondents pursuant to this AO shall immediately terminate as to such Defaulting Respondent. At that time all responsibilities and obligations that attach to PRPs in addition to those which attach to Respondents shall attach to Defaulting Respondents that are subsequently determined to be responsible persons (RPs) as defined in Section 361.271 of the Act. TCEQ may assess the ED's full statutory costs against the Defaulting Respondents that are determined to be RPs.
- B. Notwithstanding anything to the contrary in this AO, Respondents shall bear no costs for any fines or penalties resulting from Defaulting Respondents' actions or inactions.
- C. If actions required by this AO are delayed or are not timely completed because of acts or omissions of one or more Defaulting Respondents, Respondents may request a time extension in accordance with Section XVIII (Modifications and Deadline Extensions).
- D. At the time the FS/PRD is submitted to the ED, Respondents shall provide the ED with a certified list of names of those Respondents that complied with the terms

and conditions of this AO. Respondents shall not be liable for, and are released from liability for, the Commission's oversight costs for the RI/FS.

XXI. COMPLIANCE WITH APPLICABLE LAWS

- A. All actions by Respondents pursuant to this AO shall be performed in accordance with the requirements of all ARARs, including the Act; the Texas Hazardous Substances Spill Prevention and Control Act; and the Texas Water Code. This AO is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.
- B. All materials removed from the Site shall be disposed of or treated at a facility in accordance with all applicable or relevant and appropriate federal, state, and local requirements.

XXII. FORCE MAJEURE

- A. If a delay in performance is caused (in whole or in part) by events beyond Respondents' reasonable control, such delay shall not be construed as a violation of this AO. Respondents have the burden of establishing that an event is beyond their reasonable control. Respondents shall notify the ED in writing within seven (7) Days of becoming aware of such delaying event. Failure to so notify the ED shall constitute a waiver of the claim of Force Majeure.
- B. Respondents' notice claiming Force Majeure shall describe in detail the cause of the delay, the anticipated duration of the delay, the measures taken and to be taken by Respondents to prevent or minimize the delay, and the timetable by which these measures have been and are being implemented and will propose future measures and a timetable for implementing such future measures. The proposed measures and timetable shall be implemented upon the ED's written approval.
- C. Force Majeure events shall not include increased costs or expenses of any of the Work or Respondents' financial inability to perform the Work.
- D. If the Parties cannot agree that the reason for the delay was a Force Majeure event or cannot agree upon the amount of additional time necessary to complete the affected Work, then the disagreement shall be resolved in accordance with Section XXIII (Resolution of Disagreements).

XXIII. RESOLUTION OF DISAGREEMENTS

- A. The Parties shall attempt to resolve, on an informal basis, any issues arising under Sections V through XXXVIII on which there is disagreement. This section may

be invoked by the ED upon written notice to the Site Coordinator or by Respondents upon written notice to the Project Manager that there is a disagreement and that this section is being invoked. Except as provided in Paragraph D of this section, informal negotiations shall not extend beyond fifteen (15) Days from the date the Project Manager or the Site Coordinator receives written notification from the other invoking this section, unless the Parties agree otherwise in writing. If such informal negotiations are unsuccessful, the position advanced by the ED shall prevail. Respondents may elevate the dispute by providing written notice to the Deputy Director within thirty (30) Days of completion of informal negotiations. The decision of the Deputy Director on the dispute shall be deemed final agency action subject to judicial review pursuant to Subchapter K of the Act.

- B. Respondents shall notify the ED in accordance with Paragraph A of this section within thirty (30) Days of the Day Respondents knew or should reasonably have known of the events giving rise to the disagreement. Should Respondents fail to give such notice, the ED's decision on such disagreement shall be binding.
- C. Neither having invoked the dispute resolution provisions of this section nor the outcome of the negotiations provided for in this section shall extend any deadline or timeline contained in this AO or any Submittals unless, and then only to the extent that, any such deadline or timeline is the subject of and is modified by such dispute resolution. However, the obligation to submit any applicable stipulated penalties to the Commission shall be stayed pending resolution of the disagreement.
- D. Notwithstanding anything to the contrary in this AO, if the ED decides to perform a portion or all of the RI/FS, Respondents shall have five (5) Days to dispute this determination and commence dispute resolution by notifying the ED in accordance with Paragraph A of this section and proceeding in accordance with this section.
- E. The procedure for any resolution of disagreements subsequent to informal negotiations is found in Subchapter K of the Act.
- F. Unless otherwise specifically set forth herein, the fact that resolution of disagreements is not specifically set forth in the individual sections is not intended to and shall not bar the Parties from invoking this section as to any disagreement arising under Sections V through XXXVIII.

XXIV. ADDITIONAL PRPs

The TCEQ may, at any time and in its sole discretion, identify other PRPs in addition to the Respondents.

XXV. LIABILITY

The TCEQ, by issuing this AO, assumes no liability for any injuries or damages to persons or property resulting from acts or omissions of Respondents or their officers, directors, employees, agents, representatives, receivers, trustees, successors, assigns, contractors, or consultants in carrying out any or all of the Work. Respondents agree that neither the Commission nor the State of Texas may be deemed to be a party to any contract entered into by Respondents or their employees, officers, directors, representatives, trustees, receivers, agents, successors, assigns, contractors, or consultants in carrying out any or all of the Work.

XXVI. SEVERABILITY

The provisions of this AO are intended to be severable and are deemed severable and, should any provision of this AO be rendered unenforceable by a court of competent jurisdiction or other appropriate authority, the remaining provisions shall remain valid and enforceable.

XXVII. INDEMNIFICATION

- A. Notwithstanding anything to the contrary, Respondents indemnify, save, and hold harmless the State of Texas, its agencies, departments, officials, agents, contractors, subcontractors, employees, and representatives from all claims or causes of action including costs, fines, penalties, damages, losses, demands, judgments, settlements, costs of suit, and attorneys' fees: (A) arising from, or on account of, negligent, reckless or intentional acts, or omissions of Respondents, Respondents' officers, heirs, directors, employees, agents, contractors, subcontractors, receivers, trustees, successors, assigns, or contractors' or subcontractors' agents or employees, in performing any or all of the Work; and (B) arising from or on account of any contract, agreement, or arrangement between any Respondent and any person(s) for performance of any or all of the Work, including claims on account of construction delays. Respondents shall not indemnify, save, and hold harmless the State of Texas, its agencies, departments, officials, agents, contractors, subcontractors, employees, and representatives from claims or causes of action including, but not limited to, costs, fines, penalties, damages, losses, demands, judgments, settlements, costs of suit, and attorneys' fees arising from, or on account of, negligent, reckless or intentional acts, or omissions of the State of Texas, its agencies, departments, officials, agents, contractors, subcontractors, employees, and representatives related to the performance of the Work.

- B. Respondents waive all claims against the State of Texas for damages or reimbursement of or set-off of any payments made or to be made to the State of Texas, arising from or on account of any contract, agreement, or arrangement

between any Respondent and any person(s) for performance of any or all of the Work, including claims on account of construction delays.

XXVIII. SECTION HEADINGS

The section headings and the Table of Contents are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this AO.

XXIX. CONTINUING AUTHORITY

The Commission specifically retains authority over all PRPs for the purposes of issuing such further orders or directions as may be necessary or appropriate to supplement, construe, implement, modify, enforce, terminate, or reinstate the terms of this AO or for any further relief as the interest of the State of Texas may require.

XXX. RESERVATION OF RIGHTS/RETENTION OF CLAIMS

- A. Except as provided in Section XIX (Stipulated Penalties), nothing in this AO shall preclude the Commission from taking any additional enforcement actions including issuing such additional orders as the Commission may deem necessary or from requiring Respondents in the future to perform additional activities not inconsistent with this AO.
- B. Except as specifically provided in this AO, nothing in this AO shall constitute or be construed as a covenant not to sue or release from any claim, cause of action, or demand in law or equity against any person, as defined in Section 361.003(23) of the Act, for any liability it may have arising out of or relating in any way to the Site.
- C. Provided that Respondents fully satisfy the terms of this AO as described in Section XXXIII (Termination and Satisfaction), this AO is an administratively approved settlement agreement of the Respondents' liability to the State of Texas for the costs of the RI/FS under the Act and as described in 42 U.S.C. 9613(f)(3)(B).

XXXI. COMPUTATION OF TIME

- A. Deadlines falling on a weekend or State of Texas holiday shall be extended until the next business day.

- B. The terms "submit" and "provide" as used herein shall refer to the date on which required documents, data, records, plans, reports, or information are to be received by the appropriate Party. Submittals received by the ED through the Project Manager on the deadline date shall be deemed timely.

XXXII. OPPORTUNITY TO CONFERENCE

- A. Respondents may, within twenty (20) Days after the Effective Date, submit a written request to the Project Manager for a conference to discuss implementation of this AO. Any such conference shall occur at the Commission's Austin Headquarters.
- B. The purpose and scope of the conference shall be limited to issues involving implementation of the RI/FS.

XXXIII. TERMINATION AND SATISFACTION

Except as provided in this section, the provisions of this AO shall be deemed satisfied with regard to Respondents and Respondents will be released from this AO when the ED notifies Respondents, in writing, that Respondents have demonstrated, to the ED's satisfaction, that all terms of this AO, as they may come to be amended or modified, have been completed. Such notice will be issued within one hundred and eighty (180) Days after completion of the Work. This notice shall not, however, terminate Respondents' obligations to comply with record preservation and other provisions intended to survive this AO.

XXXIV. RULES OF CONSTRUCTION

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

XXXV. SOVEREIGN IMMUNITY

The State of Texas, by entering into this AO, does not waive and Respondents agree that this AO does not waive the State of Texas' sovereign immunity relating to suit, liability, and the payment of damages. Respondents further agree that all claims, suits, or obligations against the State of Texas arising under or relating to this AO are subject to and limited by the availability of funds appropriated by the Texas Legislature for that respective claim, suit, or obligation.

XXXVI. CONSENT FORM

Respondents and De Minimis Settlers have indicated their agreement with and acceptance of this AO by signing a counterpart of the Consent Form, attached hereto in Exhibits B.1. and B.2. Any executed counterpart to the Consent Forms may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

XXXVII. OPERATION, MONITORING AND MAINTENANCE

Respondents shall conduct the operations, monitoring and maintenance activities set out in Exhibit E to this AO.

XXXVIII. COUNTERPARTS

This AO may be executed in multiple counterparts, each of which constitutes an original AO.

The Chief Clerk shall send a copy of this order to all parties.

Issue date: **SEP 22 2006**
Texas Commission on Environmental Quality

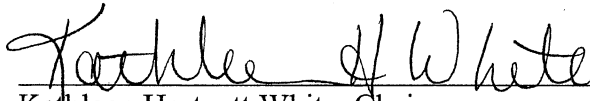

Kathleen Hartnett White, Chairman

EXHIBIT A

LIST OF HAZARDOUS SUBSTANCES AND SOLID WASTES
DOCUMENTED AT THE
SAN ANGELO ELECTRIC SERVICE COMPANY
STATE SUPERFUND SITE

Volatile Organic Compounds

Acetone
Benzene
sec-Butylbenzene
Total Butylbenzene
Chlorobenzene
Chloroform
1,3-Dichlorobenzene
1,4-Dichlorobenzene
1,1-Dichloroethane
cis-1,2-Dichloroethene
trans-1,2-Dichloroethene
Ethylbenzene
2-Hexanone (Methyl Butyl Ketone)
Isopropylbenzene (Cumene)
4-Isopropylbenzene
n-Isopropylbenzene
p-Isopropyltoluene (Cymene)
Methyl Ethyl Ketone
Methylene Chloride
MTBE (Methyl Tert-Butyl Ether)
n-Propylbenzene
Tetrachloroethene
Toluene
1,2,4-Trichlorobenzene
Trichloroethene
1,2,4-Trimethylbenzene
1,3,5-Trimethylbenzene
Vinyl Acetate
Vinyl Chloride
Xylenes

Semi-Volatile Organic Compounds

Benzoic Acid
Bis (2-Ethylhexyl) Phthalate
2,4-Dichlorophenol
2-Methylnaphthalene
Naphthalene
Phenanthrene
Phenol

PCBs (Polychlorinated biphenyls)

PCBs
Aroclor 1016
Aroclor 1260

Metals

Antimony
Arsenic
Barium
Chromium
Lead
Mercury
Selenium
Tin
Vanadium