

VCP-2

Last revised 12/18/13

OFFICE USE ONLY VCP Project number:
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RAILROAD COMMISSION OF TEXAS VOLUNTARY CLEANUP PROGRAM AGREEMENT

INTRODUCTION

This Agreement is entered into voluntarily between Fort Bend County (Applicant) and the Railroad Commission of Texas (Commission as defined by 16 TAC 4.405). This Agreement is not and shall not be construed as an admission of any liability under the Texas Natural Resource Code (NRC) or any other law or as a waiver of any defense to such liability. No approval hereunder or receipt of funds hereby shall be taken as a warranty as to sufficiency of the response action. The purpose of this Agreement is to detail the obligations and functions of each party, related to the voluntary response action process at the Chimney Rock Road Extension (Site), RRC Voluntary Cleanup Program (VCP) No. _____.

The activities conducted by the Applicant under this Agreement are subject to approval by RRC. The activities conducted by the Applicant shall be consistent with this Agreement, all applicable laws and regulations and any appropriate guidance documents. Applicant shall employ sound scientific, engineering and construction practices in executing its tasks under this agreement.

STATEMENT OF ELIGIBILITY

The Commission or its delegate has determined that the application submitted by the Applicant is complete and that the Site is eligible to participate in the VCP established under Chapter 91, Subchapter O of the NRC. If the RRC determines that the Applicant withheld or misrepresented information that would be relevant to the Site's eligibility, the Commission may exercise its right to withdraw from this Agreement.

PARTIES BOUND

This Agreement shall apply to and be binding upon the Applicant, its officers, directors, principals, employees, receivers, trustees, agents, successors, subsidiaries over which the Applicant exercises control and assigns, and upon the RRC, its employees, agents, assigns, and successors. The signatories to this Agreement certify that they are fully authorized to execute and legally bind the parties they represent. No change in ownership, corporate, or partnership status of

VCP Agreement
Version 2.0
Page 1 of 10

the Applicant shall in any way alter its status or responsibilities under this Agreement unless Applicant or RRC withdraws from this Agreement pursuant to the terms of this agreement.

The Applicant shall provide a copy of this Agreement to all subsequent business owners or business successors before ownership rights are transferred. If the Applicant is also the owner of the Site, the Applicant shall provide a copy of this Agreement to prospective purchasers of the Site prior to transfer of title. If the Applicant is not the surface owner, the Applicant shall provide a copy of this agreement to the surface owner. The Applicant shall provide a copy of this Agreement to all contractors, subcontractors, laboratories, and consultants which are retained to conduct any work performed under this Agreement, within 14 days after the effective date of this Agreement or within 14 days after the date of retaining their services, whichever is later.

DEFINITIONS

"Site" means the area described in the VCP application, attached and incorporated herein as Exhibit "A."

ADDRESSES FOR ALL CORRESPONDENCE

Documents, including reports, approvals, notifications, disapprovals, and other correspondence to be submitted under this Agreement, may be sent by regular mail, certified mail, return receipt requested, hand delivery, overnight mail or by courier service to the following addresses or to such addresses as the Applicant or RRC may designate in writing.

Documents to be submitted to RRC should be sent to:

Mailing Address

Overnight/Express Mail Address

Voluntary Cleanup Program
Site Remediation Section
Railroad Commission of Texas
P.O. Box 12967
Austin, TX 78711-2967

Voluntary Cleanup Program
Site Remediation Section
Railroad Commission of Texas
1701 N. Congress
Austin, TX 78701

DESIGNATED PROJECT MANAGER

On or before the effective date of this Agreement, the RRC and the Applicant shall each designate a project manager. Each project manager shall be responsible for overseeing the implementation of this Agreement. The RRC project manager will be the RRC-designated representative at the Site. To the maximum extent possible, communications between the Applicant and RRC and all documents (including reports, approvals and other correspondence) concerning the activities performed pursuant to the terms and conditions of this Agreement shall be directed through the project managers. During implementation of this Agreement, the respective project managers shall whenever possible, operate by consensus and shall attempt in good faith to resolve disputes informally through discussion of the issues. Each party has the right to change its respective project manager by notifying the other party in writing at least five days prior to the change.

COMPLIANCE WITH APPLICABLE LAWS

All work undertaken by the Applicant pursuant to this Agreement shall be performed in compliance with all applicable federal, state and local laws, ordinances, and regulations, including, but not limited to, Railroad Commission of Texas, Occupational Safety and Health Administration, Department of Transportation, Resource Conservation and Recovery Act, and the NRC. In the event of a conflict in the application of federal, state, or local laws, ordinances and regulations, the Applicant shall comply with the more/most stringent such laws, ordinances, or regulations, unless authorized otherwise in writing by RRC. Federal requirements shall be followed if they are the more/most stringent. However, as provided by NRC, Section 91.661 a state or local permit shall not be required, although the Applicant must coordinate with ongoing applicable programs and must comply with the substantive requirements of an otherwise required state permit. Where it is determined that a permit is required under federal law, the Applicant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. The Applicant shall be responsible for obtaining all federal permits which are necessary for the performance of any work hereunder.

APPLICABLE RULES AND REGULATIONS

The VCP Rule, 16 Texas Administrative Code (TAC) 4.401-4.450, Subchapter D, and the following rules, regulations, guidelines, protocol, or closure options are specifically designated as being directly applicable for the Site and must be followed. Please use the following check boxes below to specify the type of closure request being sought for this site.

☐ Cleanup to Background to receive a Final Certificate of Completion without conditions.

VCP-2

Last revised 12/18/13

- ☐ Risk-Based Cleanup to Residential levels to receive a Final Certificate of Completion without conditions.
- ☐ Risk-Based Cleanup to Commercial/Industrial levels to receive a Final Certificate of Completion relying on permanent institutional controls.
- ☐ Certificate of Completion, which is conditional upon maintaining institutional and/or engineering controls. Describe the type of control:

☒ **Other (Please describe).**

Analytical data indicates site soils meet Residential use PCLs, since there are no PCLs for chloride. However, the elevated chloride concentrations are having an adverse effect on the two wetlands. Applicant wishes to remove affected soils during construction and replace with clean fill.

SUBMITTALS AND SCHEDULES

In compliance with the aforementioned rules, regulations, guidelines, or protocol, the required submittals shall include a monthly status report, which describes all activities completed for the current month and those planned for the upcoming month. In order to complete the voluntary cleanup activities necessary for a Certificate of Completion, the following plans and reports will be submitted according to the schedule specified below (put anticipated date of submittal of report in blanks or NA if not applicable):

_____ Monthly Status Report will be submitted by the 10th of each month.

NA Groundwater Monitoring Reports, Identify schedule for submittal:
Quarterly ☐ Other ☐ explain _____

NA Site Investigation Report and Data Screening Evaluation

NA Site-Specific Risk Assessment Report

30 days from VCP acceptance Remedial Action Plan

60 days after corrective actions Closure Report

☒ **Other Reports (or indicate if detail attached):**

Phase I Environmental Site Assessment and Limited Phase II Environmental Site Assessment reports are enclosed

The RRC may terminate this Agreement if:

1. the aforementioned submittals are not submitted by the time frames stated above unless prior RRC approval of the revised schedule is granted and/or the amendment of this agreement is not executed; or
2. responses to RRC comments on the aforementioned submittals are not submitted in accordance with time frames provided in RRC comments letters.

Proposed future land use to be achieved:

- ☐ Residential (i.e., unrestricted)
☒ Non-residential (i.e., commercial/industrial)

ACCESS

To the extent that the Site or other areas where work is to be performed hereunder is presently owned or controlled by parties other than those bound by this Agreement, the Applicant shall obtain, or shall use its best efforts to obtain access agreements from the present owners. Best efforts shall include at a minimum, a certified letter from Applicant to the present owner of such property requesting an access agreement to permit Applicant, RRC, their authorized representatives and persons designated by the RRC in accordance with NRC, access to such property. Any such access agreement shall be incorporated by reference into this Agreement. Such an agreement shall provide access for Applicant, RRC and authorized representatives of RRC, and persons designated by the RRC in accordance with NRC, as specified below. In the event that such access agreement is not obtained, the Applicant shall so notify RRC, which may then, at its discretion, assist the Applicant in gaining access.

The Applicant shall provide authorized representatives of RRC access to the Site and other areas where work is to be performed at all reasonable times. Such access shall be related solely to the work being performed on the Site and shall include, but not be limited to inspecting records, operating logs and contracts related to the Site; reviewing the progress of the Applicant in carrying out the terms of this Agreement; conducting such tests, inspections, and sampling as RRC may deem necessary; using a camera, sound recording, or other documentary type equipment for field activities; and verifying the data submitted to RRC by the Applicant hereunder. The Applicant shall permit RRC's authorized representatives to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, which pertain to this Agreement and over which the Applicant may exercise control. All persons with access to the Site pursuant to this Agreement shall comply with submitted health and safety plans. The RRC does not approve health and safety plans.

DISPUTE RESOLUTION

This section (Dispute Resolution) shall apply to any dispute arising under any section of this Agreement, unless specifically excepted. It should be noted, that as provided for in the NRC, the Assistant Director and the Applicant in their respective sole discretion may terminate the Agreement by giving 15 days advanced written notice to the other party.

The parties shall use their best effort to, in good faith, resolve all disputes or differences of opinion informally. If, however, disputes arise concerning this Agreement, which the parties are unable to resolve informally, the Applicant may present written notice of such dispute to RRC and set forth specific points of dispute and the position of the Applicant. This written notice shall be submitted no later than five calendar days after the Applicant discovers the project managers are unable to resolve the dispute. The Applicant's project manager shall notify the RRC's project manager immediately by phone or other appropriate methods of communication prior to written notice, when he/she believes the parties are unable to resolve a dispute. Within ten days of receipt of such a written notice, the RRC will provide a written response to the Applicant setting forth its position and the basis regarding the dispute. During the five calendar days following the receipt of the response, the parties shall attempt to negotiate in good faith a resolution of their differences. If during this negotiation period, the RRC concurs with the position of the Applicant, the Applicant will be notified in writing and this Agreement shall be modified to include any necessary extensions of time or variances of work.

Following the expiration of the previously described time periods, if no resolution of the disputed issue(s) has been reached, the Commission shall make a determination regarding the dispute, based upon and consistent with the terms of this Agreement and will provide written documentation of such determination to the Applicant.

At this juncture, if dispute resolution fails and either or both parties exercise their right to withdraw from the Agreement by giving 15 days advance written notice to the other, only those costs incurred or obligated by the RRC before notice of termination of the Agreement are recoverable under the Agreement.

RESERVATION OF RIGHTS

RRC and Applicant reserve all rights and defenses they may have pursuant to any available legal authority unless expressly waived herein.

Nothing herein is intended to release, discharge, or in any way affect any claims, causes of action or demands in law or equity which the parties may have against any person, firm, partnership or corporation, not a party to this Agreement for any liability it may have arisen out of, or relating in any way to the generation, storage, treatment, handling, transportation, release or disposal of any materials, hazardous

substances, hazardous waste, contaminants or pollutants at, to or from the Site. The parties to this Agreement expressly reserve all rights, claims, demands, and causes of action they have against each other, and against any and all other persons and entities who are not parties to this Agreement.

The Applicant reserves the right to seek contribution, indemnity, or any other available remedy against any person, other than RRC, found to be responsible or liable for any amounts which have been or will be expended by the Applicant in connection with the Site.

During the term of this Agreement, RRC will not bring an enforcement action against Applicant for any violation of statutes or regulations for the specific releases that are being remediated by this Agreement, unless the Applicant or RRC withdraws from this Agreement prior to completion of the response action. However, a responsible person remains liable for contamination should response action standards change or additional contamination be discovered. As non-responsible persons, Applicants have a release from liability upon issuance of the Certificate of Completion subject to statutory conditions in the NRC.

ADMINISTRATIVE COSTS

Applicant A, unless indicated otherwise in Exhibit "A", agrees to reimburse RRC for all of its costs associated with implementation of this Agreement. RRC's costs may include direct and indirect costs of overhead, salaries, equipment, utilities, legal, management and support costs associated with the review of the Applicant's work plans and reports and oversight of field activities.

The RRC will track all costs to the RRC for review and oversight activities related to the Site and monthly quarterly invoices to the person responsible, per this Agreement for said costs. The application fee of one thousand (\$1,000) dollars and any surcharge amount will not be reimbursed. The Applicant shall pay any additional expenses as invoiced costs to the RRC within 30 days after the date the Applicant receives notice that these costs are due and owing. If payment is not made within 30 days after the date the second notice that these costs are due and owing is sent, the RRC will stop reviewing any site-related submittals. If payment is not made within 30 days after the date the third notice is sent, the RRC shall terminate this Agreement and request that the attorney general bring action to recover all costs allowed by law.

Checks shall be made payable to the Railroad Commission of Texas and be mailed along with a transmittal letter stating the Site name, five-digit VCP number, and addressed to the Railroad Commission of Texas; Attention: Cashier; P.O. Box 12967, Austin, Texas, 78711-2967.

In the event that this Agreement is terminated for any reason, Applicant A, unless otherwise indicated in the VCP Application and agreed to by all applicants, agrees to

reimburse RRC for all costs incurred or obligated by the RRC before notice of termination of the Agreement.

NOTICE OF BANKRUPTCY

As soon as Applicant has knowledge of its intention to file bankruptcy or no later than seven days prior to the actual filing of a voluntary bankruptcy petition, Applicant shall notify RRC of its intention to file a bankruptcy petition. In the case of an involuntary bankruptcy petition, Applicant shall give notice to the RRC as soon as it acquires knowledge of such petition.

7/11/ 4/30/18
AFC 4/30/18

INDEMNIFICATION

To the extent
allowed by law

The Applicant agrees to indemnify and save and hold the State of Texas, its agencies, successors, departments, agents and employees, harmless from any and all claims, damages or causes of action arising from or on account of performance of this Agreement, even if the claims, damages, or causes of action allege to negligence on the part of the RRC. By entering into this Agreement, the Applicant does not assume any liability arising from the acts or omissions of the RRC or its agents or employees in carrying out any activities pursuant to this Agreement.

EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

The effective date of this Agreement shall be the date on which this Agreement is signed by the Commission.

This Agreement may be amended by mutual agreement of RRC and the Applicant. Amendments shall be in writing and shall be effective when signed by the Commission of RRC.

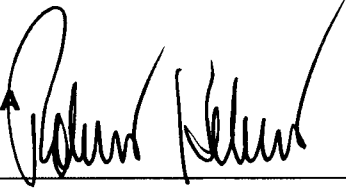
TERMINATION AND SATISFACTION

The provisions of the Agreement shall be satisfied when RRC gives the Applicant written notice in the form of a Final Certificate of Completion that the Applicant has demonstrated to RRC's satisfaction that all terms of this Agreement have been completed, including the selection and implementation of a response action, when appropriate.

Nothing in the Agreement shall restrict the State of Texas from seeking other appropriate relief to protect human health or the environment from pollution or contamination at or from this Site not remediated in accordance with this Agreement.

SIGNATURES

Applicant A

Signature: 

Name: Robert E. Hebert
(print or type)

Date: 5-22-18

Title: County Judge

Organization: Fort Bend County

Phone: (281) 341-8608

Applicant B

Signature: _____

Name _____
(print or type)

Date: _____

Title: _____

Organization: _____

Phone: () _____

Applicant C

Signature: _____

Name _____
(print or type)

Date: _____

Title: _____

Organization: _____

Phone: () _____

RRC Representative

Signature: _____
(signature of authorized representative)

Name _____
(print or type)

Date: _____

Title: _____

EXHIBIT A
COPY OF VCP APPLICATION