

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

In the Matter of the Development and Implementation of a
Remedial Investigation for an Inactive Hazardous Waste
Disposal Site under Article 27, Title 13 of the Environmental
Conservation Law

by

ELG Utica Alloys, Inc.

Respondent.

**ORDER ON CONSENT
and
ADMINISTRATIVE
SETTLEMENT**

Index # A6-0793-12-08

Site # 633009
Universal Waste Site

WHEREAS,

1. A. The New York State Department of Environmental Conservation (“Department”) is responsible for inactive hazardous waste disposal site remedial programs pursuant to Article 27, Title 13 of the Environmental Conservation Law (“ECL”) and Part 375 of Title 6 of the Official Compilation of Codes, Rules and Regulations (“6 NYCRR”) and may issue orders consistent with the authority granted to the Commissioner by such statute.

B. The Department is responsible for carrying out the policy of the State of New York to conserve, improve and protect its natural resources and environment and control water, land, and air pollution consistent with the authority granted to the Department and the Commissioner by Article 1, Title 3 of the ECL.

C. This Order is issued pursuant to the Department’s authority under, inter alia, ECL Article 27, Title 13 and ECL 3-0301, and resolves Respondent’s liability to the State as provided at 6 NYCRR 375-1.5(b)(5).

2. ELG Utica Alloys, Inc. (“Respondent”) is the successor-by-merger of Universal Waste, Inc, and Clearview Acres, Inc., and is the owner of a property known as the Universal Waste inactive hazardous waste disposal site located at Leland and Wurz Avenues, Utica, Oneida County, New York (hereinafter the “Site”). Exhibit “A” is a map of the Site showing its general location.

3. The Site is listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 633009 with a Classification “2” pursuant to ECL 27-1305.

4. Respondent commenced an Article 78 Proceeding (ELG Utica Alloys, Inc. v. DEC, Index No. 886-12 (Albany Co. Sup. Ct.)) (the “Article 78”) challenging the validity of the Site’s designation as a Class 2 site, and seeking reclassification as Class 3. The Department requires that a remedial investigation must be developed for the Site notwithstanding the Article 78. The Parties have entered into this Order providing for a limited on-Site Remedial Investigation (“RI”), subject to

Respondent's unilateral right to terminate as set forth in Subparagraph XIII.D of this Order. Execution of this Order creates no additional legal obligations for Respondent.

5. Respondent consents to the issuance of this Order without (i) an admission or finding of liability, fault, wrongdoing, or violation of any law, regulation, permit, order, requirement, or standard of care of any kind whatsoever; (ii) an acknowledgment that there has been a release or threatened release of hazardous waste at or from the Site; and/or (iii) an acknowledgment that a release or threatened release of hazardous waste at or from the Site constitutes a significant threat to the public health or environment.

6. Solely with regard to the matters set forth below, and subject to Respondent's reservation of rights set forth in Subparagraph VII.B, Respondent hereby waives any right to a hearing as may be provided by law, consents to the issuance and entry of this Order, and agrees to be bound by its terms. Except as provided in Subparagraph VII.B., Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms or the validity of data submitted to the Department by Respondent pursuant to this Order.

NOW, having considered this matter and being duly advised, IT IS ORDERED THAT:

I. Initial Submittal

Within ninety (90) Days after the effective date of this Order, Respondent shall submit to the Department a Records Search Report prepared in accordance with Exhibit "B" attached hereto, however, Respondent shall not be required to submit its Records Search Report until sixty (60) days after it has received a complete response to its outstanding Freedom of Information Law ("FOIL") request, such that it has all relevant and material information regarding the Site in its possession and control. The Records Search Report can be limited if the Department notifies Respondent that prior submissions satisfy specific items required for the Records Search Report.

II. Development, Performance, and Reporting of Work Plans

A. Work Plans

All activities at the Site that comprise any element of an Inactive Hazardous Waste Disposal Site Remedial Program shall be conducted pursuant to one or more Department-approved work plans ("Work Plan" or "Work Plans") and this Order and all activities shall be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. Part 300, as required under CERCLA, 42 U.S.C. § 9600 et seq. The Work Plan(s) under this Order shall address on-Site conditions and shall be developed and implemented in accordance with 6 NYCRR § 375-1.6(a). All Department-approved Work Plans shall be incorporated into and become enforceable parts of this Order. Upon approval of a Work Plan by the Department, Respondent shall implement such Work Plan in accordance with the schedule contained therein. Nothing in this Subparagraph shall mandate that any particular Work Plan be submitted. The Parties expressly agree that Respondent's sole obligation under this Order is to prepare and implement a Remedial Investigation Work Plan (the "RI

Work Plan”) for the work described in the Department-approved “Draft On-Site Remediation Investigation Scope of Work,” dated September 17, 2012, and prepared by EHS Support, Inc. (“SOW”), which is attached hereto and incorporated herein, as Exhibit “C.” The Parties further agree that execution of this Order creates no obligation for Respondent to prepare any other and further work plan(s) beyond the RI Work Plan.

Each Work Plan submitted shall use one of the following captions on the cover page:

1. Remedial Investigation Work Plan: a Work Plan whose objective is to perform a Remedial Investigation;
2. Interim Remedial Measure (“IRM”) Work Plan: a Work Plan whose objective is to provide for an Interim Remedial Measure;

B. Submission/Implementation of Work Plans

1. (a) The RI Work Plan shall be submitted to the Department by not later than October 5, 2012.

(b) The Department may request that Respondent submit additional or supplemental Work Plans for the Site. Within thirty (30) Days after the Department’s written request, Respondent shall advise the Department in writing whether it will submit and implement the requested additional or supplemental Work Plan or whether it elects to terminate this Order pursuant to Paragraph XIII. If Respondent elects to submit and implement such Work Plan, Respondent shall submit the requested Work Plan within sixty (60) Days after such election. If Respondent elects to terminate this Order or fails to make a timely election, this Order shall terminate pursuant to Paragraph XIII.

(c) Respondent may opt to propose one or more additional or supplemental Work Plans (including one or more IRM Work Plans) at any time, which the Department shall review for appropriateness and technical sufficiency.

(d) Any request made by the Department under Subparagraph II.B.1.(b) shall be subject to dispute resolution pursuant to Paragraph XII.

2. A Professional Engineer must stamp and sign all Work Plans other than RI Work Plans.

3. During all field activities conducted under this Order, Respondent shall have on-Site a representative who is qualified to supervise the activities undertaken. Such representative may be an employee or a consultant retained by Respondent to perform such supervision as set forth in 6 NYCRR Part 375-1.6(a)(3).

C. Modifications to Work Plans

The Department shall notify Respondent in writing if the Department determines that any element of a Department-approved Work Plan needs to be modified in order to achieve the objectives of the Work Plan as set forth in the SOW and in Subparagraph II.A. Upon receipt of such notification, Respondent shall, subject to Respondent's right to terminate pursuant to Paragraph XIII, provide written notification as provided at 6 NYCRR 375-1.6(d)(3) as to whether it will modify the Work Plan, or invoke dispute resolution

D. Submission of Final Reports and Periodic Reports

1. In accordance with the schedule contained in a Work Plan, Respondent shall submit a final report as provided at 6 NYCRR 375-1.6(b).

2. Any final report that includes construction activities shall include "as built" drawings showing any changes made to a remedial design or IRM.

3. In the event that a final report for the Site requires Site management, Respondent shall submit a periodic report by the 1st Day of the month following the anniversary of the start of the Site management. Such periodic report shall be signed by a Professional Engineer or by such other qualified environmental professional as the Department may find acceptable and shall contain a certification as provided at 6 NYCRR 375-1.8(h)(3). Respondent may petition the Department for a determination that the institutional and/or engineering controls may be terminated. Such petition must be supported by a statement by a Professional Engineer that such controls are no longer necessary for the protection of public health and the environment. The Department shall not unreasonably withhold its approval of such petition.

E. Review of Submittals other than Progress Reports and Health and Safety Plans

1. The Department shall make a good faith effort to review and respond in writing to each submittal Respondent makes pursuant to this Order within sixty (60) Days. The Department's response shall include an approval or disapproval of the submittal, in whole or in part. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

2. If the Department disapproves a submittal, it shall specify the reasons for its disapproval. Within fifteen (15) Days after the date of the Department's written notice that Respondent's submittal has been disapproved, Respondent shall, subject to Respondent's right to terminate pursuant to Paragraph XIII in the event the rejected submittal is a Work Plan submitted prior to the Department's approval of the RD/RA Work Plan, elect as provided at 6 NYCRR 375-1.6(d)(4). If Respondent elects to modify the submittal, Respondent shall, within thirty (30) Days after such election, make a revised submittal that addresses all of the Department's stated reasons for disapproving the first submittal. In the event that Respondent's revised submittal is disapproved, the Department shall set forth its reasons for such disapproval in writing and Respondent shall be in violation of this Order unless it invokes dispute resolution pursuant to Paragraph XII and its position prevails. Failure to make an election or failure to comply with the election is a violation of this Order.

3. Within thirty (30) Days after the Department's approval of a final report, Respondent shall submit such final report, as well as all data gathered and drawings and submittals made pursuant to such Work Plan, in an electronic format acceptable to the Department. If any document cannot be converted into electronic format, Respondent shall submit such document in an alternative format acceptable to the Department.

III. Progress Reports

Respondent shall submit written progress reports to the parties identified in Subparagraph XI.A.1 by the 10th Day of each month commencing with the month subsequent to the approval of the first Work Plan and ending with the Termination Date, unless a different frequency is set forth in an approved Work Plan. Such reports shall, at a minimum, include: all actions taken pursuant to this Order during the reporting period and those anticipated for the upcoming reporting period; all approved modifications to work plans and/or schedules; all results of sampling and tests and all other data received or generated by or on behalf of Respondent in connection with the Site during the reporting period, including quality assurance/quality control information; information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule, and efforts made to mitigate such delays; and information regarding activities undertaken in support of the Citizen Participation Plan during the reporting period and those anticipated for the upcoming reporting period.

IV. Penalties

A. 1. Respondent's failure to comply with any term of this Order constitutes a violation of this Order, the ECL, and 6 NYCRR 375-2.11(a)(4). Respondent shall not be liable for any penalties under this Order solely as a consequence of an Article 78 Termination pursuant to Suparagraph XIII.D of this Order. Nothing herein abridges Respondent's right to contest any allegation that it has failed to comply with this Order.

2. Payment of any penalties shall not in any way alter Respondent's obligations under this Order.

B. 1. Respondent shall not suffer any penalty or be subject to any proceeding or action in the event it cannot comply with any requirement of this Order as a result of any Force Majeure Event as provided at 6 NYCRR 375-1.5(b)(4). Respondent must use best efforts to anticipate the potential Force Majeure Event, best efforts to address any such event as it is occurring, and best efforts following the Force Majeure Event to minimize delay to the greatest extent possible. "Force Majeure" does not include Respondent's economic inability to comply with any obligation, the failure of Respondent to make complete and timely application for any required approval or permit, and non-attainment of the goals, standards, and requirements of this Order.

2. Respondent shall notify the Department in writing within five (5) Days of the onset of any Force Majeure Event. Failure to give such notice within such five (5) Day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall be deemed

to know of any circumstance which it, any entity controlled by it, or its contractors knew or should have known.

3. Respondent shall have the burden of proving by a preponderance of the evidence that (i) the delay or anticipated delay has been or will be caused by a Force Majeure Event; (ii) the duration of the delay or the extension sought is warranted under the circumstances; (iii) best efforts were exercised to avoid and mitigate the effects of the delay; and (iv) Respondent complied with the requirements of Subparagraph IV.B.2 regarding timely notification.

4. If the Department agrees that the delay or anticipated delay is attributable to a Force Majeure Event, the time for performance of the obligations that are affected by the Force Majeure Event shall be extended for a period of time equivalent to the time lost because of the Force Majeure event, in accordance with 375-1.5(4).

5. If the Department rejects Respondent's assertion that an event provides a defense to non-compliance with this Order pursuant to Subparagraph IV.B, Respondent shall be in violation of this Order unless it invokes dispute resolution pursuant to Paragraph XII and Respondent's position prevails.

V. Entry upon Site

A. Respondent hereby consents, upon reasonable notice under the circumstances presented, to entry upon the Site (or areas in the vicinity of the Site which may be under the control of Respondent) by any duly designated officer or employee of the Department or any State agency having jurisdiction with respect to matters addressed pursuant to this Order, and by any agent, consultant, contractor, or other person so authorized by the Commissioner, all of whom shall abide by the health and safety rules in effect for the Site, for inspecting, sampling, copying records related to the contamination at the Site, testing, and any other activities necessary to ensure Respondent's compliance with this Order. Upon request, Respondent shall (i) provide the Department with suitable work space at the Site, including access to a telephone, to the extent available, and (ii) permit the Department full access to all non-privileged records relating to matters addressed by this Order. Raw data is not considered privileged and that portion of any privileged document containing raw data must be provided to the Department. In the event Respondent is unable to obtain any authorization from third-party property owners necessary to perform its obligations under this Order, the Department may, consistent with its legal authority, assist in obtaining such authorizations.

B. The Department shall have the right to take its own samples and scientific measurements and the Department and Respondent shall each have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled. The Department shall make the results of any such sampling and scientific measurements available to Respondent.

VI. Payment of State Costs

A. The Department reserves all rights to recover all State costs, to the extent permitted by law, (i) associated with the Site and incurred prior to the effective date of this Order, and/or (ii) incurred in the course of undertaking activities associated with the Department's investigation and/or remediation of off-site areas impacted by contamination which has emanated from the Site. However, this Subparagraph VI.A shall not operate to toll or waive any statute of limitations with respect to such Costs.

B. Within forty-five (45) Days after receipt of an itemized invoice from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for State Costs, other than those identified in Subparagraph VI.A, for work performed at or in connection with the on-Site remedial investigation and any other activities Respondent agrees to undertake pursuant to this Order commencing on the effective date of this Order and continuing through and including the Termination Date, as defined in Subparagraph XIII.E.

C. Costs shall be documented as provided by 6 NYCRR 375-1.5(b)(3)(ii). The Department shall not be required to provide any other documentation of costs, provided however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.

D. Such invoice shall be sent to Respondent at the following address:

David P. Flynn, Esq.
Phillips Lytle, LLP
3400 HSBC Center
Buffalo, NY 14203

E. Each such payment shall be made payable to the New York State Department of Environmental Conservation and shall be sent to:

Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-7012
Attn: Bureau Director

F. Each party shall provide written notification to the other within ninety (90) Days of any change in the foregoing addresses.

G. Respondent may contest invoiced costs as provided at 6 NYCRR 375-1.5(b)(3)(v) and (vi).

VII. Reservation of Rights

A. Except as provided at 6 NYCRR 375-1.9 and 375-2.9, and subject to Subparagraph VII.B, nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights or authorities, including, but not limited to, the right to require performance of further investigations and/or response action(s), to undertake investigation and remediation of off-site areas, to recover natural resource damages, and/or to exercise any summary abatement powers with respect to any person, including Respondent.

B. Except as otherwise provided in this Order, Respondent specifically reserves all rights and defenses under applicable law respecting any Departmental assertion of remedial liability and/or natural resource damages against Respondent, and further reserves all rights respecting the enforcement of this Order, including the rights to notice, to be heard, to appeal, and to any other due process. Additionally, Respondent's execution of this Order is without prejudice to any claims asserted by Respondent in the Article 78. The existence of this Order or Respondent's compliance with it shall not be construed as an admission of liability, fault, wrongdoing, or breach of standard of care by Respondent, and shall not give rise to any presumption of law or finding of fact, or create any rights, or grant any cause of action, which shall inure to the benefit of any third party. Further, Respondent reserves such rights as it may have to seek and obtain contribution, indemnification, and/or any other form of recovery from its insurers and from other potentially responsible parties or their insurers for past or future response and/or cleanup costs or such other costs or damages arising from the contamination at the Site as may be provided by law, including but not limited to rights of contribution under section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

VIII. Indemnification

Respondent shall indemnify and hold the Department, the State of New York, the Trustee of the State's natural resources, and their representatives and employees harmless as expressly provided by 6 NYCRR 375-2.5(a)(3)(i).

IX. Public Notice

A. Within thirty (30) Days after the effective date of this Order, Respondent shall provide notice as required by 6 NYCRR 375-1.5(a). Within sixty (60) Days of such filing, Respondent shall provide the Department with a copy of such instrument certified by the recording officer to be a true and faithful copy.

B. If Respondent proposes to transfer by sale or lease the whole or any part of Respondent's interest in the Site, or becomes aware of such transfer, Respondent shall, not fewer than forty-five (45) Days before the date of transfer, or within forty-five (45) Days after becoming aware of such conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed or actual date of the conveyance, and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order. However, such obligation shall not extend to a conveyance by means of a corporate reorganization or merger or the granting of any rights under any mortgage, deed, trust, assignment, judgment, lien, pledge, security agreement, lease, or any other right accruing to a person not affiliated with Respondent to secure the repayment of money or the performance of a duty or obligation.

X. [Reserved.]

XI. Communications

A. All written communications required by this Order shall be transmitted by United States Postal Service, by private courier service, or hand delivered as follows:

1. Communication from Respondent shall be sent to:

Michael J. Ryan, P.E.
NYSDEC
Division of Environmental Remediation
625 Broadway, 11th Floor
Albany, NY 12233-7014
ph. (518) 402-9662
fax (518) 402-9679
mjryan@gw.dec.state.ny.us

Note: One hard copy of work plans is required, as well as one electronic copy.

with copies to:

Director
Bureau of Environmental Exposure Investigation
New York State Department of Health
Empire State Plaza
Corning Tower Room 1787
Albany, New York 12237
E-mail address

Dolores A. Tuohy, Esq.
NYSDEC
Office of General Counsel
625 Broadway, 14th Floor
Albany, NY 12233-1500
ph. (518) 402-9521
fax (518) 402-9018
datuohy@gw.dec.state.ny.us

Correspondence only

2. Communication to be made from the Department shall be sent to:

David P. Flynn, Esq.
Phillips Lytle, LLP
3400 HSBC Center
Buffalo, NY 14203
dflynn@phillipslytle.com

Bret Copple
ELG Utica Alloys, Inc.
378 Gross Boulevard
Herkimer, NY 13350
BretC@elguticaalloys.com

Andy Patz
EHS Support, Inc.
133 Southern Farms Road
Worthington, PA 16262
Andy.Patz@ehs-support.com

B. The Department and Respondent reserve the right to designate additional or different addressees for communication upon written notice to the other.

C. Each party shall notify the other within ninety (90) Days after any change in the addresses in this Paragraph XI or in Paragraph VI.

XII. Dispute Resolution

In the event disputes arise under this Order, Respondent may, within fifteen (15) Days after Respondent knew or should have known of the facts which are the basis of the dispute, initiate dispute resolution in accordance with the provisions of 6 NYCRR 375-1.5(b)(2). Nothing contained in this Order shall be construed to authorize Respondent to invoke dispute resolution with respect to a remedy selected by the Department in the ROD or any element of such remedy, nor to impair any right of Respondent to seek judicial review of the Department's selection of any remedy.

XIII. Termination of Order

A. This Order will terminate upon the earlier of the following events:

1. Respondent's election to terminate pursuant to Subparagraphs II.B.1.b, II.C or II.E.2 so long as such election is made prior to the Department's approval of the RD/RA Work Plan. In the event of termination in accordance with this Subparagraph XIII.A.1, this Order shall terminate

effective the 5th Day after the Department's receipt of the written notification terminating this Order or the 5th Day after the time for Respondent to make its election has expired, whichever is earlier, provided, however, that if there are one or more Work Plan(s) for which a final report has not been approved at the time of Respondent's notification of its election to terminate this Order pursuant to Subparagraphs II.B.1.b or II.E.2 or its failure to timely make such an election pursuant to Subparagraphs II.B.1.b or II.E.2, Respondent shall promptly complete the activities required by such previously approved Work Plan(s) consistent with the schedules contained therein. Thereafter, this Order shall terminate effective the 5th Day after the Department's approval of the final report for all previously approved Work Plans, or as otherwise provided in this Order.

B. Notwithstanding the foregoing, the provisions contained in Paragraphs VI and VIII shall survive the termination of this Order and any violation of such surviving Paragraphs shall be a violation of this Order, the ECL, and 6 NYCRR 375-2.11(a)(4), subjecting Respondent to penalties as provided under Paragraph IV so long as such obligations accrued on or prior to the Termination Date.

C. Except as provided in Subparagraph VII.B, if the Order is terminated pursuant to Subparagraph XIII.A.1, neither this Order nor its termination shall affect any liability of Respondent for remediation of the Site and/or for payment of State Costs, including implementation of removal and remedial actions, interest, enforcement, and any and all other response costs as defined under CERCLA, nor shall it affect any defenses to such liability that may be asserted by Respondent. Respondent shall also ensure that it does not leave the Site in a condition, from the perspective of human health and environmental protection, worse than that which existed before any activities under this Order were commenced.

D. Respondent shall have the unilateral right to terminate this Order in the event that a Court enters a judgment in Respondent's favor in the Article 78. Such right of termination shall become effective upon the expiration of 30 days from Respondent's Notice of Entry to the Department of a final judgment in the Article 78 proceeding, including any appeal therefrom. If Respondent elects to terminate under this Subparagraph XIII.D (the "Article 78 Termination"), Respondent shall notify the Department in writing of its election to terminate, which shall become effective immediately upon the Department's receipt of such written notification. In the event of an Article 78 Termination, Respondent shall have no further obligation under this Order or any Work Plan(s) under this Order.

E. The Termination Date of this Order shall be the earlier of: (i) the date on which the Department approves a Final Report associated with the RI for the Site; or (ii) any of the termination events occurring under Paragraph XIII.

XIV. Miscellaneous

A. Respondent agrees to comply with and be bound by the provisions of 6 NYCRR Subparts 375-1 and 375-2; the provisions of such Subparts that are referenced herein are referenced for clarity and convenience only and the failure of this Order to specifically reference any particular

regulatory provision is not intended to imply that such provision is not applicable to activities performed under this Order.

B. The Department may exempt Respondent from the requirement to obtain any state or local permit or other authorization for any activity conducted pursuant to this Order in accordance with 6 NYCRR 375-1.12(b), (c), and (d).

C. 1. Respondent shall use best efforts to obtain all Site access, permits, easements, approvals, institutional controls, and/or authorizations necessary to perform Respondent's obligations under this Order, including all Department-approved Work Plans and the schedules contained therein. If, despite Respondent's best efforts, any access, permits, easements, approvals, institutional controls, or authorizations cannot be obtained, Respondent shall promptly notify the Department and include a summary of the steps taken. The Department may, as it deems appropriate and within its authority, assist Respondent in obtaining same.

2. If an interest in property is needed to implement an institutional control required by a Work Plan and such interest cannot be obtained, the Department may require Respondent to modify the Work Plan pursuant to 6 NYCRR 375-1.6(d)(3) to reflect changes necessitated by Respondent's inability to obtain such interest.

D. The paragraph headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any provisions of this Order.

E. 1. The terms of this Order shall constitute the complete and entire agreement between the Department and Respondent concerning the implementation of the activities required by this Order. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order. In the event of a conflict between the terms of this Order and any Work Plan submitted pursuant to this Order, the terms of this Order shall control over the terms of the Work Plan(s). Respondent consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this Order.

2. i. Except as set forth herein, if Respondent desires that any provision of this Order be changed, Respondent shall make timely written application to the Commissioner with copies to the parties listed in Subparagraph XI.A.1.

ii. If Respondent seeks to modify an approved Work Plan, a written request shall be made to the Department's project manager, with copies to the parties listed in Subparagraph XI.A.1.

iii. Requests for a change to a time frame set forth in this Order shall be made in writing to the Department's project attorney and project manager; such requests shall not be

unreasonably denied and a written response to such requests shall be sent to Respondent promptly.

F. 1. If there are multiple parties signing this Order, the term “Respondent” shall be read in the plural, the obligations of each such party under this Order are joint and several, and the insolvency of or failure by any Respondent to implement any obligations under this Order shall not affect the obligations of the remaining Respondent(s) under this Order.

2. If Respondent is a partnership, the obligations of all general partners (including limited partners who act as general partners) under this Order are joint and several and the insolvency or failure of any general partner to implement any obligations under this Order shall not affect the obligations of the remaining partner(s) under this Order.

3. Notwithstanding the foregoing Subparagraphs XIV.F.1 and 2, if multiple parties sign this Order as Respondents but not all of the signing parties elect to implement a Work Plan, all Respondents are jointly and severally liable for each and every obligation under this Order through the completion of activities in such Work Plan that all such parties consented to; thereafter, only those Respondents electing to perform additional work shall be jointly and severally liable under this Order for the obligations and activities under such additional Work Plan(s). The parties electing not to implement the additional Work Plan(s) shall have no obligations under this Order relative to the activities set forth in such Work Plan(s). Further, only those Respondents electing to implement such additional Work Plan(s) shall be eligible to receive the Liability Limitation referenced in Paragraph VI.

G. Respondent shall be entitled to receive contribution protection and/or to seek contribution to the extent authorized by ECL 27-1421(6) and 6 NYCRR 375-1.5(b)(5).

H. Unless otherwise expressly provided herein, terms used in this Order which are defined in ECL Article 27 or in regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations.

I. Respondent’s obligations under this Order represent payment for or reimbursement of response costs, and shall not be deemed to constitute any type of fine or penalty.

J. Respondent and Respondent’s successors and assigns shall be bound by this Order. Any change in ownership or corporate status of Respondent shall in no way alter Respondent’s responsibilities under this Order.

K. This Order may be executed for the convenience of the parties hereto, individually or in combination, in one or more counterparts, each of which shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.

L. The effective date of this Order is the 10th Day after it is signed by the Commissioner or the Commissioner’s designee.

DATED:

NOV 16 2012

JOSEPH MARTENS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:



Robert W. Schick, Director
Division of Environmental Remediation

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Order.

ELG Utica Alloys, Inc.

By: Frederick A Schweizer

Title: VP Operations

Date: 9 Nov 2012

STATE OF NEW YORK)

) ss:

COUNTY OF Oneida)

On the 9th day of Nov, in the year 2012, before me, the undersigned, personally appeared Frederick Schweizer, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or person upon behalf of which the individual(s) acted, executed the instrument.

Lynn M Claus
Signature and Office of Individual
taking acknowledge

LYNN M. CLAUS
Notary Public, State of New York
Registration #01CL6046667
Qualified In Fulton County
My Commission Expires Aug. 21, 2014

EXHIBIT "A"

Map of Site

EXHIBIT "B"

RECORDS SEARCH REPORT

1.Detail all environmental data and information within Respondent's or Respondent's agents' or consultants' possession or control regarding environmental conditions at or emanating from the Site.

2.A comprehensive list of all existing relevant reports with titles, authors, and subject matter, as well as a description of the results of all previous investigations of the Site and of areas immediately surrounding the Site which are or might be affected by contamination at the Site, including all available topographic and property surveys, engineering studies, and aerial photographs.

3.A concise summary of information held by Respondent and Respondent's attorneys and consultants with respect to:

- (i) a history and description of the Site, including the nature of operations;
- (ii) the types, quantities, physical state, locations, methods, and dates of disposal or release of hazardous waste at or emanating from the Site;
- (iii) a description of current Site security (i.e. fencing, posting, etc.); and
- (iv) the names and addresses of all persons responsible for disposal of hazardous waste, including the dates of such disposal and any proof linking each such person responsible with the hazardous wastes identified.

Edms 448391v.4

Document Number: 75503

EXHIBIT "C"

"Draft On-Site Remediation Investigation Scope of Work," dated September 17, 2012, and prepared by EHS Support, Inc. ("SOW")"

**Universal Waste Site
Utica, New York**

**Prepared for:
ELG Utica Alloys, Inc.**

September 17, 2012

consider it done

**Draft On-Site
Remediation
Investigation Scope of
Work**

Prepared by:
EHS Support, Inc.

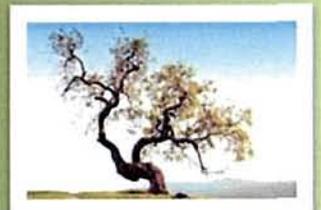


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ACRONYMS

bgs	below ground surface
CSM	conceptual site model
DPT	direct-push technology
EHS Support	EHS Support, Inc.
ELGUA	ELG Utica Alloys, Inc.
EM	electromagnetic
FOIL	Freedom of Information Law
GPR	ground penetrating radar
HASP	health and safety plan
IDW	investigative-derived waste
mg/kg	milligrams per kilogram
NOAA	National Oceanic and Atmospheric Administration
NYSDEC	New York State Department of Environmental Conservation
QA/QC	Quality Assurance/Quality Control
RI	Remedial Investigation
RIR	Remedial Investigation Report
SC	site characterization
SCO	soil cleanup objective
Site	Universal Waste Site
SoW	scope of work
USACE	United States Corp of Engineers
USGS	United States Geological Survey
UWBZ	upper water-bearing zone

1.0 INTRODUCTION

EHS Support, Inc. (EHS Support), on behalf of ELG Utica Alloys, Inc. (ELGUA) has prepared this scope of work (SoW) for an on-site remedial investigation (RI) at the Universal Waste Site (Site) in Utica, New York (**Figure 1**). This SoW is submitted to the New York State Department of Environmental Conservation (NYSDEC), for the purposes of negotiating a Consent Order (CO) to complete an on-site RI at the Site.

This document is not an RI work plan (RIWP) and as such does not include all information that would be required to be included in this type of document. An On-Site RIWP (as detailed in this document) will be prepared following issuance of the CO, with this RIWP developed in accordance with applicable portions of NYSDEC's Technical Guidance for Site Investigation and Remediation (DER-10), Section 3.3. This SoW outlines our understanding of the steps to development of a robust conceptual site model (CSM) and the framework for the proposed program of investigation and assessment works.

In accordance with Section 3.2.2 of DER-10, a CSM should be used at the outset of a RI to develop a general understanding of the Site and to evaluate potential human exposure pathways and impacts to the environment. The CSM should identify potential sources of contamination, types of contaminants and affected media, release mechanisms, and potential contaminant pathways and actual/potential human and environmental receptors. This CSM will be further refined upon issuance of the CO and in accordance with the requirements listed in DER-10 and will be used to develop and support the program of work outlined in the future RIWP(s).

2.0 PRELIMINARY ASSESSMENTS AND DEVELOPMENT OF RIWP

Consistent with the requirements of DER-10 and to enable development of a detailed CSM prior to the development of the RIWP, the following preliminary assessments would normally be proposed to identify potential sources of contamination, types of contaminants, and release mechanisms at the Site in order to assist in the development of the RIWP. However, due to the aggressive schedule requested by NYSDEC which requires the field work described in this SoW to be completed by December 31, 2012, the following preliminary assessments will be performed concurrently with the On-Site RIWP preparation, submittal, and NYSDEC review. The results of those tasks that cannot be completed before submittal of the On-Site RIWP will be presented in the Remedial Investigation Report (RIR) or in supplemental submittals to NYSDEC.

Any materials generated through clearing or preparing of the Site to enable geophysical surveying and/or other investigations, will be managed in accordance with DER-10.

2.1 Records Search

Section 3.3.(a).2 of DER-10 states that the work plan for a site characterization (SC) or RI should be prepared after a records search is performed consistent with Appendix 3A of DER-10.

Historical information concerning the Site history will evaluate the following to the extent available from diligent inquiry:

- Site history information from sources including, but not limited to the following:
 - Sanborn Fire Insurance Maps
 - MacRae's Industrial Directory
 - Title and deed
 - Site plans and facility as-built drawings
 - Federal, State, county and local government offices
 - NYSDEC Geographic Information System
 - Adjacent property use.
- The industrial site history from the time the Site was naturally vegetated, including without limitation:
 - Names of all owners and operators
 - Dates of ownership of each owner
 - Dates of operation of each operator
 - Brief descriptions of the past industrial usage of the Site by each owner and operator.
- All raw materials, finished products, formulations and hazardous substances, hazardous wastes, and petroleum products which are or were present at the Site
- Present and past production processes, including dates, and their respective water use, including ultimate and potential discharge and disposal points and how and where materials are or were received on-site
- All former and current containers, container or bulk storage areas, above and below ground tanks, above and below ground waste and product delivery lines, surface impoundments, landfills, septic systems and other structures, vessels, conveyances or units that contain or previously contained hazardous substances, hazardous waste, and petroleum products
- An interpretation of aerial photography history of the Site which should date back to 1932 or to the earliest photograph available
- Any data or information concerning known discharges that have occurred on the Site
- Remediation activities previously conducted at the Site including dates of previous discharges, remedial actions, and all existing sampling data concerning contaminants at the Site

- All remedies previously approved by NYSDEC in a remedial action work plan or decision document
- All existing environmental sampling data concerning contaminants at the Site
- Any known changes in Site conditions or new information developed since completion of previous sampling or remediation
- All Federal, State, and local environmental permits including permits for all previous and current owners or operators, applied for and/or received, for the Site
- All administrative, civil and criminal enforcement actions for alleged violations of environmental laws concerning the Site
- All areas where non-indigenous fill materials were used to replace soil or raise the topographic elevation of the site, including the dates of emplacement, where reasonably available, paying particular attention to potential areas of concern.

As part of this assessment, interviews will be conducted with facility personnel (past and present), adjoining property owners, and persons familiar with past activities at the Site to assess if and where hazardous waste/substances, or petroleum products were disposed of at the Site, the potential mechanisms of transport and exposure.

ELGUA is also in recent receipt of files from the previous property owner and has submitted a Freedom of Information Law (FOIL) request for additional information not included in the Administrative Record as identified by NYSDEC in their letter of July 20, 2012. A records search report will be submitted to NYSDEC within thirty (30) days of receipt of the FOIL request files from NYSDEC or notification from NYSDEC that no additional files exist.

In addition, NYSDEC has stated the Site has been flooded directly by the Mohawk River on many occasions. EHS Support, on behalf of ELGUA, will review historical news sources; interview Site personnel, local fire and police departments, City of Utica employees, Oneida County employees, and Site neighbors; and review the databases and files of the United States Geological Survey (USGS), United States Corp of Engineers (USACE), and National Oceanic and Atmospheric Administration (NOAA) concerning flooding at Site. This information coupled with the Site topographic survey will be used to evaluate how historic flooding of the Mohawk River may have impacted the Site, specifically, the potential for the transport of impacted surface soils to and from the Site.

2.2 Property Boundary and Topographic Survey

Prior to performing field activities at the Site, a property boundary survey will be performed by a New York-licensed professional land surveyor to locate the property boundary based on historical surveys and legal descriptions. The property corners will be visually marked for use in future investigative activities, if required. The current property boundary will be displayed on future Site-related figures as appropriate.

In order to determine the storm water runoff patterns and evaluate storm water as a potential contaminant pathway pursuant to the requirements of a CSM, a topographic survey of the Site and adjacent sites will be performed by a New York-licensed professional land surveyor. The survey will consist of surface elevations contour lines at 1-foot intervals, the invert and crown elevations for manholes and drainage culverts along Leland Avenue and Sewer Plant Road, invert elevations for drainage ditches, and the limits of Leland Avenue and Sewer Plant Road as well as the elevations of their centerlines and curbing.

Based on the surveyed elevations of the Site a detailed drawing of storm water flow patterns will be developed for the Site and adjacent sites. Using this information and the area of the Site water catchment, a water balance model will be developed to demonstrate how and under what conditions water is retained to the Site.

The property boundary survey will commence immediately after the execution of the CO and is expected to be completed prior to the submittal of the RIWP. However, the results of the topographic survey and evaluation of storm water flow patterns will not be completed prior to submittal of the RIWP and will be submitted in the RIR.

2.3 Geophysical Survey

After the property boundary survey has been performed and prior to intrusive soil sampling, ELGUA will conduct a geophysical investigation at the Site to identify the presence of any buried tanks, utilities, and any other underground structures. To ensure the safety of investigation Site workers, the geophysical survey will be completed to locate any previously unidentified utility lines. Due to the nature of the former and current businesses located at and adjacent to the Site and the likely existence of scrap metal in the surface and subsurface soils at the Site which may distort the instrument readings, the geophysical investigation may require the use more than one technique including, but not limited to, ground penetrating radar (GPR) and electromagnetic (EM) conductivity.

The Site will be surveyed on a grid pattern determined by the Geophysical Contractor based on the Site conditions. Once the initial survey has been completed and the data has been evaluated and mapped, additional areas may be revisited on a closer grid interval in order to better define and identify the detected anomaly(s). The results of the geophysical investigation will be used to determine soil sampling locations and to implement a safe intrusive investigation.

The results of the geophysical survey will not be available prior to submittal of the RIWP and will be submitted in the RIR.

2.4 Identification and Sampling of Historical Groundwater Monitoring Wells

ELGUA will evaluate the viability of the historical groundwater monitoring network at the Site after the property boundary survey has been performed and the property boundaries have been identified and marked. The historical groundwater monitoring network consisted of the following:

- Eleven (11) monitoring wells were installed historically in order to assess the groundwater quality beneath the Site
- Seven (7) monitoring wells (B-1 through B-7) were installed in August 1983 by Clayton Environmental
- Three (3) monitoring wells MW-8, MW-B3R, and MW-6R were installed in 2000 and three monitoring wells MW-1, MW-2, and MW-3 were installed in 2002 by Stearns & Wheler.

The approximate locations of these monitoring wells are shown on **Figure 2**. Due to the age of these monitoring wells, their exact location and integrity is unknown. Additionally, as a result of their lack of use, the well casing and screens could be collapsed or plugged or the wells could have been destroyed. Therefore, ELGUA proposes to attempt to locate the historical monitoring wells during the boundary and topographic survey tasks, and if found, assess their integrity by using a down-hole video camera. If the well casing and screen are still intact, ELGUA will then redevelop and collect groundwater samples from these monitoring wells. Groundwater samples will be analyzed for the TCL/TAL and for PCB congeners by USEPA Method 1668A and PCB homologs by USEPA Method 680. In addition, 20% of the TCL samples will also be analyzed for the 30 (10 volatile organic compounds and 20 semi-volatile organic compounds) highest concentrations of tentatively identified compounds (TIC) as required by DER-10, Chapter 2. However, groundwater samples could also be analyzed using USEPA Method 8082 for PCBs, if requested by the Department.

Additional on-site monitoring wells may be proposed as necessary to horizontally and vertically delineate potentially impacted groundwater on-Site. ELGUA reserves the right to submit a Supplemental RIWP for NYSDEC approval that proposes the construction and locations for any additional new monitoring wells deemed necessary to delineate groundwater both horizontally and vertically.

It is anticipated that the identification of the historical monitoring wells can be completed prior to the submittal of the RIWP, pending timely performance of the property boundary survey. However, it is likely that redevelopment of any viable monitoring wells will be necessary before sampling can commence. Therefore, groundwater sampling is not likely to occur before submittal of the RIWP.

2.5 Sewer Investigation

ELGUA is not the owner of the sewer lines transecting the Site and therefore is not responsible for nor do we have the legal right to test, enter, or disturb the utility lines. However, upon execution of the CO, ELGUA will request that the City of Utica complete integrity testing on the lines. ELGUA will coordinate and cooperate with the City of Utica to expedite this process. Additional investigation may be proposed based on the outcome of the integrity test.

2.6 On-Site RIWP

ELGUA will submit an On-Site RIWP in accordance with the CO and applicable portions of DER-10, Section 3.3., in accordance with the proposed on-site RI implementation schedule provided as **Figure 3**. The On-Site RIWP will include a general description of the preliminary assessments proposed above and a detailed description of the investigations proposed in the following section.

3.0 DETAILED INVESTIGATIONS

The following preliminary SoW items are being proposed to assist in identifying potential contaminant pathways at the Site. Since information from the records search and results of the geophysical survey, storm water flow paths evaluation, groundwater sampling, and sewer investigation will not likely be available for the development of the On-Site RIWP, this SoW may be revised and amended as appropriate based on the results of the preliminary assessment. Any materials generated through clearing or preparing of the Site to enable geophysical surveying and/or other investigations, will be managed in accordance with DER-10. The following tasks will be implemented following approval of the On-Site RIWP by NYSDEC.

3.1 PCB-Impacted Soil Delineation

Between 1983 and 2002, four separate on-Site investigation efforts have been undertaken where 54 surface soil samples were collected and analyzed for PCBs. Out of those 54 surface soil samples, 20 samples exceeded the restricted-use industrial soil cleanup objective (SCO) for PCBs of 25 milligrams per kilogram (mg/kg). **Figure 4** illustrates the approximate locations of these areas of historically-impacted soil.

Using direct-push technology (DPT), soil samples will be collected on a 100-foot grid across the entire Site. The initial depth interval for sample collection will be 0 to 2 inches below ground surface (bgs) then on 2-ft intervals, thereafter, to a minimum of 10 ft bgs. A greater sampling density may be proposed for those areas of concern (AOCs) revealed by visual inspection, geophysical survey, previous sampling data, and review of historical records.

All soil samples will be analyzed for total PCBs by USEPA Method 8082 and 20% of the soil samples will be analyzed for the full TAL/TCL. The location of samples analyzed for full TAL/TCL will be biased towards the most likely impacted areas and depth intervals (areas where crusher materials are present in soils in the top 2 feet). In addition, a percentage of the soil samples will be analyzed for PCB congeners by USEPA Method 1668A and PCB homologs by USEPA Method 680. In addition, 20% of the TCL samples will also be analyzed for the 30 (10 volatile organic compounds and 20 semi-volatile organic compounds) highest concentrations of tentatively identified compounds (TIC) as required by DER-10, Chapter 2. Ten percent (10%) of the soils samples will be collected in duplicate for total PCB analyses only.

Test pits will be installed in all areas that had historical disposal which will be determined based on the results of the geophysical survey. Test pit samples will be analyzed for PCBs, volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), and metals.

3.2 Hydrogeologic Investigation

A hydrogeologic investigation will be performed at the Site in order to determine the following:

- the lithology and thickness of the upper water-bearing zone (UWBZ)
- the structural surface of the confining unit (depth of the confining unit); and 3) physical properties of the UWBZ and the confining unit
- the aquifer hydraulic properties of the UWBZ pursuant to DER-10 Section 3.7.2.(b)5
- the UWBZ groundwater flow direction pursuant to DER-10 Section 3.7.2.(b).4

The investigation will include, but is not limited to, lithology characterization, geotechnical testing, installation of river staff gages (if required), measurement of groundwater and river levels, and the

performance of in situ hydraulic conductivity tests. Results of this investigation will be used to develop a groundwater investigation work plan.

4.0 DELIVERABLES

On the basis of the program of works described above, the following deliverables will be submitted to NYSDEC for review and approval:

4.1 Records Search Report

Within thirty (30) days after receipt of FOIL requested documents from NYSDEC or notification by NYSDEC that no additional files exist, ELGUA will submit a Records Search Report prepared in accordance with Exhibit B of the CO and DER-10, Appendix 3A.

4.2 On-Site RIWP

A RIWP will be prepared in accordance with the provisions of the CO and the applicable sections of DER-10, Section 3.3., in accordance with the proposed on-site RI implementation schedule provided as **Figure 3**.

4.3 Remedial Investigation Report

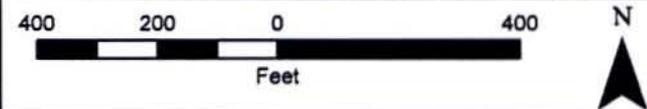
Upon completion of the on-Site RI, an On-Site Remedial Investigation Report (RIR) will be prepared in accordance with DER-10 Section 3.14 and submitted to NYSDEC for review and approval. The RIR will be a comprehensive report incorporating the information collected from all the investigations conducted pursuant to all approved RI work plans, addenda, or supplements.



Source: United States Geological Survey (National Elevation Dataset Orthoimagery), April 2008

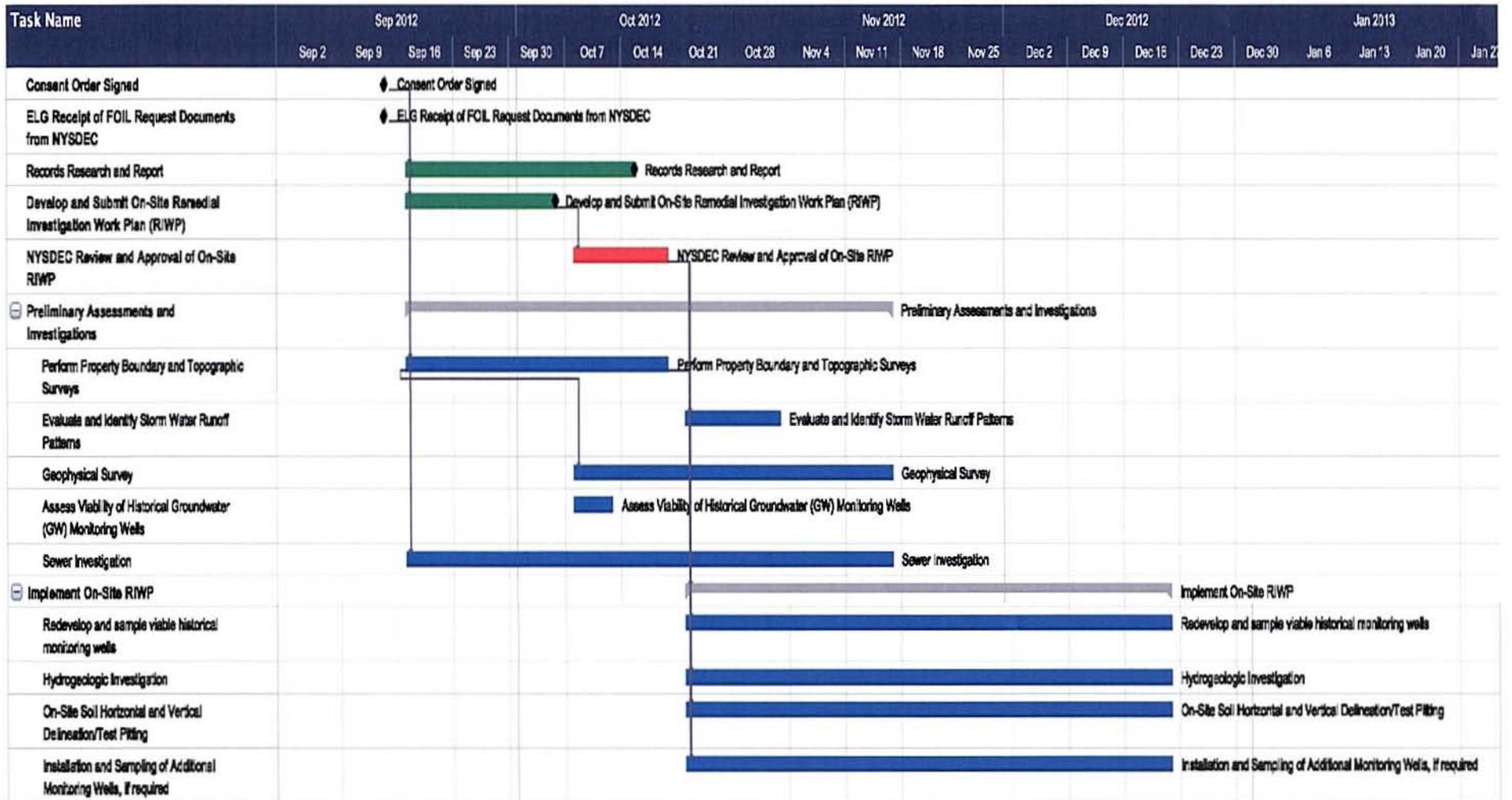
Legend

-  Railroad
-  Approximate Property Boundary





Source: United States Geological Survey (National Elevation Dataset Orthoimagery), April 2008



**FIGURE 3
 PROPOSED ON-SITE RI
 IMPLEMENTATION SCHEDULE**



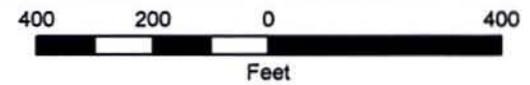
Source: United States Geological Survey (National Elevation Dataset Orthoimagery), April 2008

Legend

- Less than the Residential Standard (1 mg/kg)
- Less than the Industrial Standard (25 mg/kg) but greater than the Residential Standard (1 mg/kg)
- Greater than the Industrial Standard (25 mg/kg)

— Railroad

— Approximate Property Boundary



APPENDIX A

GPR
 MAGNETICS
 ELECTROMAGNETICS
 SEISMICS
 RESISTIVITY
 UTILITY LOCATION
 UXO DETECTION
 BOREHOLE CAMERA
 STAFF SUPPORT

June 25, 2012

Ms. Tonya Maynard
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Re: Estimated Costs for Geophysical Investigation

Outlined below are NAEVA's estimated costs for a geophysical investigation to be conducted at a Universal Waste property located in Utica, NY. NAEVA's cost estimates are based on a production rate of approximately 1-acre per day.

Travel Charges: Utica, NY is approximately 220 miles from our Congers, NY office; therefore a **\$1,000** fee will apply to each round trip mobilization/demobilization.

Below are the **daily rates** for this investigation assuming 1-acre per day:

<u>Item</u>	<u>Rate</u>	<u>Cost</u>
8 hours labor	\$225/hr	\$1,800
1 day EM-61 or EM-31	\$250/day	\$250
1 hour GPR	\$175/hr	\$175
1 hour data processing	\$75/hr	\$75
1 day per diem (crew of 2)	\$246/day	\$246
Materials	-	\$80

Estimated Daily Rate \$2,626.00

Deliverables: Due to the anticipated magnitude of the proposed work a **\$1,000** charge may apply for report and map submission if desired.

Estimated Cost: With a production rate of 1-acre per day at **\$2,626/day** and an investigation area of approximately 22-acres, an estimated cost would be roughly **\$57,772** not including travel or deliverables. This cost is to be considered a rough estimate only given the minimal site information at this time. The total cost would be strongly influenced by the size and number of geophysical sampling grids and the amount of time required for follow-up investigations to delineate in the field the anomalous areas identified in the geophysical data.

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