

COPY

5281726

LAKE COUNTY, IL RECORDER 06/23/2003

PREPARED BY:

Name:

Susan M. Franzetti

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RETURN TO:

Name:

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Address:

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Sears Tower

233 South Wacker Drive

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THE ABOVE SPACE FOR RECORDER'S OFFICE

Environmental Land Use Control

THIS ENVIRONMENTAL LAND USE CONTROL ("ELUC") is made this 9th day of June, 2003, by Midwest Generation, LLC, ("Property Owner") of that portion (as identified in Exhibit A) of the real property located at the common address Waukegan Station, 401 E. Greenwood Avenue, Waukegan, Illinois 60087 ("Property").

WHEREAS, 415 ILCS 5/58.17 and 35 Ill. Adm. Code 742 provide for the use of an ELUC as an institutional control in order to impose land use limitations or requirements related to environmental contamination so that persons conducting remediation can obtain a No Further Remediation determination from the Illinois Environmental Protection Agency ("IEPA"). The reason for an ELUC is to ensure protection of human health and the environment. The limitations and requirements contained herein are necessary in order to protect against exposure to contaminated soil or groundwater, or both, that may be present on the property as a result of past industrial activities on adjacent property known as the Griess-Pfleger Tannery site (the "Tannery Site".) Under 35 Ill. Adm. Code 742, the use of risk-based, site-specific remediation objectives may require the use of an ELUC on real property, and the ELUC may apply to certain physical features (e.g., engineered barriers, monitoring wells, caps, etc.).

WHEREAS, Commonwealth Edison Company ("ComEd") intends to request risk-based, site specific soil and groundwater remediation objectives from IEPA under 35 Ill. Adm. Code 742 to obtain risk-based closure of the adjacent Tannery Site, identified by Bureau of Land 0971905234, utilizing an ELUC.

NOW, THEREFORE, the recitals set forth above are incorporated by reference as if fully set forth herein, and the Property Owner agrees as follows:

Section One. Property Owner does hereby establish an ELUC on the real estate, situated in the County of Lake, State of Illinois and further described in Exhibit A attached hereto and incorporated herein by reference (the "Property").

Attached as Exhibit B are site maps that show the legal boundary of the Property, any physical features to which the ELUC applies, the horizontal and vertical extent of the contaminants of concern above the applicable remediation objectives for soil or groundwater or both, and the nature, location of the source, and direction of movement of the contaminants of concern, as required under 35 Ill. Adm. Code 742.

Section Two. Property Owner represents and warrants it is the current owner of the Property and has the authority to record this ELUC on the chain of title for the Property with the Office of the Recorder or Registrar of Titles in Lake County, Illinois.

Section Three. The Property Owner hereby agrees, for itself, and its heirs, grantees, successors, assigns, transferees and any other owner, occupant, lessee, possessor or user of the Property or the holder of any portion thereof or interest therein, that the groundwater under the Property shall not be used as a potable supply of water.

Section Four. This ELUC is binding on the Property Owner, its heirs, grantees, successors, assigns, transferees and any other owner, occupant, lessee, possessor or user of the Property or the holder of any portion thereof or interest therein. This ELUC shall apply in perpetuity against the Property and shall not be released until the IEPA determines there is no longer a need for this ELUC as an institutional control; until the IEPA, upon written request, issues a new no further remediation determination approving modification or removal of the limitation(s) or requirement(s); and until and a release or modification of the land use limitation or requirement is filed on the chain of title for the Property.

Section Five. Information regarding the remediation performed on the adjacent Griess-Pfleger Tannery site may be obtained from the IEPA through a request under the Freedom of Information Act (5 ILCS 140) and rules promulgated thereunder by providing the IEPA with the Bureau of Land Identification number (0971905234) listed above.

Section Six. <u>Indemnity</u>: Com Ed hereby agrees to indemnify, defend (with legal counsel selected by Property Owner) and hold harmless Property Owner from and against any and all claims, actions, causes of action, governmental directive(s), liabilities, obligations, costs and expenses (including attorneys' fees) asserted by third parties and for any

reasonable costs and liabilities otherwise incurred by Property Owner, arising out of or related to the presence, discharge, disposal, migration or release of a hazardous or toxic waste, substance or constituent as defined in any applicable federal, state or local law, ordinance or regulation (including, without limitation, iron, manganese and arsenic) (collectively, "Hazardous Materials") on, in, under or from the Tannery Site.

Section Seven. Release: Com Ed hereby waives, releases and discharges Property Owner, its successors, predecessors and affiliates, and each of them, from any and all suits, causes of action, legal or administrative proceedings, liabilities, claims, damages, losses, costs and expenses of whatever kind, known or unknown, suspected or unsuspected, latent or patent, whether or not discoverable by Property Owner, now or hereafter existing or discovered, in any manner or way connected with the presence, discharge, disposal, migration or release of contamination from the Tannery Site onto the Property. Com Ed acknowledges that unknown, unsuspected and/or undiscoverable Hazardous Materials may hereafter be discovered on or about the Property that were discharged, migrated, or released from the Tannery Site and Com Ed knowingly releases Property Owner from any and all liability related thereto.

Section Eight. <u>Disclosure Obligation</u>: Com Ed represents that it has disclosed and shall disclose to Property Owner all unprivileged, material information possessed by Com Ed relating to the presence of any Hazardous Materials located on or under the Property migrating from the Tannery., including without limitation in soil and/or groundwater thereunder, as of the date of execution and delivery hereof. Further, if in the future Com Ed discovers that the existing nature and extent of Hazardous Materials present in soil and/or groundwater on the Property has expanded or migrated beyond the boundaries of this ELUC, as described in Exhibit A, Com Ed shall immediately disclose to Property Owner the nature and extent of any and all such Hazardous Materials.

Section Nine. <u>Future Monitoring</u>: Until such time as this ELUC is released, Com Ed shall conduct the following monitoring of the groundwater on the Property to confirm the absence of any threatened or actual migration of the Hazardous Materials from the Tannery (to which the ELUC applies) in said groundwater beyond the six (6) monitoring wells shown in Figure B-1 of Exhibit B hereof:

- a) Beginning in 2003, semiannual monitoring of arsenic, iron, manganese and total dissolved solids;
- b) Beginning in 2006, and continuing thereafter until a statistical analysis of the laboratory analytical results for arsenic, applying the Mann-Kendall trend test at the 5% level of significance (Gilbert, 1987), show on a statistical basis that the concentration levels thereof have peaked and are starting to decrease, annual monitoring of arsenic;
- c) Beginning in 2006, and continuing thereafter until a statistical analysis of the laboratory analytical results for iron, manganese and total dissolved solids, applying the Mann-Kendall trend test at the 5% level of

significance, show on a statistical basis that the concentration levels are not increasing, annual monitoring of iron;

- d) Beginning in the year in which the statistical analysis described in subparagraph (b) above shows that the concentration levels of arsenic have started to decrease, the monitoring frequency for arsenic shall then change from annually to every five years thereafter until such time as this ELUC is released pursuant to the provisions of Section Four hereof; and
- (e) Beginning in the year in which the statistical analysis described in subparagraph (c) above shows that the concentration levels of iron, manganese and total dissolved solids have not increased, the monitoring frequency for these parameters shall then change from annually to every five years thereafter until such time as this ELUC is released pursuant to the provisions of Section Four hereof.

Com Ed shall provide Property Owner with the analytical results and related documentation (field records, laboratory reports, chain of custody, etc.) of the monitoring performed on the Property within 60 days of the sampling event. The results shall include a statement describing the outcome of the comparison. Property Owner hereby grants Com Ed the right to enter the Property, provided that Com Ed shall provide Property Owner with at least 14 days prior notice of the commencement of the monitoring work. Such monitoring activities shall be conducted in a manner which reasonably minimizes the impact upon and interference with Property Owner's ownership, possession and/or use of the Property.

Section Ten. <u>Future Improvement of Property</u>: (a) This ELUC does not limit Property Owner's or its successors' or assigns' ability to construct on or otherwise improve the Property or to allow others to use the Property. Property Owner reserves the right to remove contaminated soil or groundwater from the Property and to dispose of them as is appropriate under applicable environmental laws.

(b) Prior to performing any construction or other work on the Property that may result in the exposure to contaminated soil or groundwater that have migrated from the Tannery, the Property Owner or its successors or assigns will give Com Ed written notice describing the nature and extent of the proposed construction or other work that it intends to perform such work; provided, however, that no prior written notice shall be required in the case of any necessary emergency work. Com Ed agrees that to the extent necessary to allow for the performance of any construction or other work on the Property, it will remove and dispose of, in whole or in part, or otherwise remediate, in accordance with applicable Illinois law and regulations and to the extent technologically feasible and economically reasonable, contaminated soil or groundwater originating from the Tannery and as necessary for Property Owner's work in advance of that work.

Section Eleven. The effective date of this ELUC shall be the date that it is officially recorded in the chain of title for the Property to which the ELUC applies.

WITNESS the following signatures:

Property Owner(s)

Georgia Nelson

Its: President
Date: June 9, 2003

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

I, Maria L. Richmond the undersigned, a Notary Public for said County and State, DO HEREBY CERTIFY, that Georgia Nelson, personally known to me to be the President of Midwest Generation, LLC, the Property Owner(s) and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that in said capacity signed and delivered the said instrument as a free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal, this 9th day of June

2003.

OCCUPIAL SEAL

OFFICIAL SEAL
MARIA L. RICHMOND
NOTARY PUBLIC, STATE OF ILLMORS
MY COMMISSION EXPIRES 12/06/2005

Exhibit A

The subject property is located in the City of Waukegan, Lake County, State of Illinois, commonly known as Waukegan Station, Waukegan, Illinois and more particularly described as:

COMMON ADDRESS: Waukegan Station (portion) 401 E. Greenwood Ave Waukegan, Illinois 60087

LEGAL DESCRIPTION:

A portion of the East ½ of the West ½ of Section 15, Township 45 North, Range 12 East of the Third Principal Meridian, described as follows:

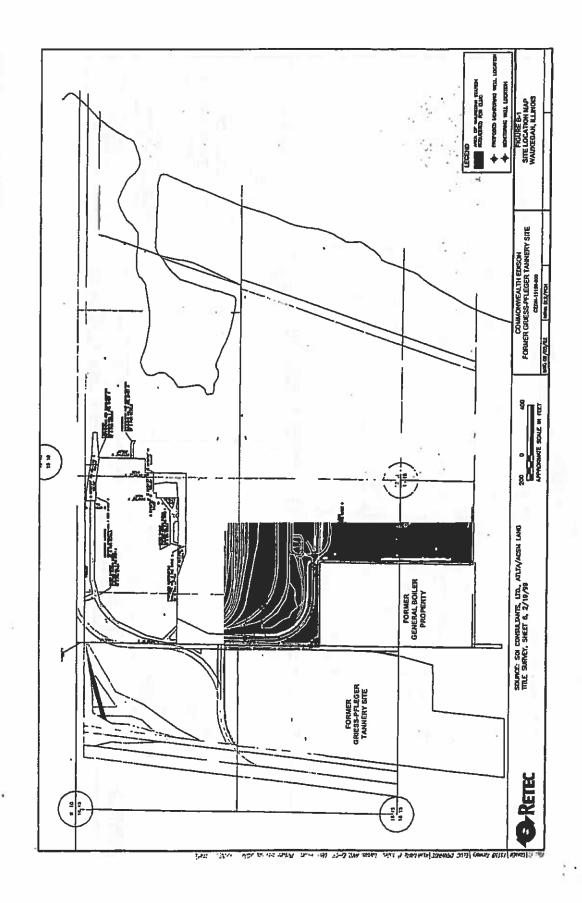
Beginning at the point of intersection between the Southerly line of the 50 foot Switch Railway Right of Way described in Document No. 162510, recorded December 23, 1915, and the West line of the East ½ of the Northwest Quarter of said Section 15, said point being the Northeast corner of that certain premises conveyed to Wilder Tanning Co. by said Document No. 162510; thence South 00 degrees 56 minutes 10 seconds West a distance of 770.42 feet; thence South 89 degrees 54 minutes 26 seconds East a distance of 661.65 feet; thence South 00 degrees 51 minutes 47 seconds West a distance of 1,258.92 feet; thence South 89 degrees 55 minutes 37 seconds East to a point on the South line of the North 600 feet of the Northeast ¼ of the Southwest ¼ of said Section 15, which point lies 1,000 feet easterly along such South line from the West line of the Northeast ¼ of the Southwest ¼ of said Section 15; thence northerly, parallel to the East line of the Northwest ¼ of said Section 15, to a point lying on a line extending easterly from the point of beginning that is parallel to the North line of the Southeast ¼ of the Northwest ¼ of said Section 15; thence westerly along such line a distance of 1,000 feet (more or less) to the point of beginning.

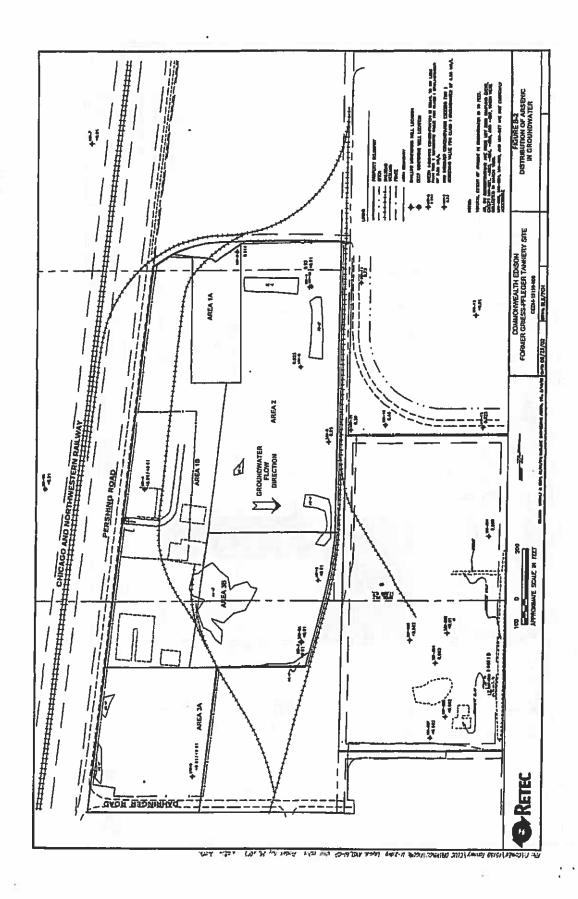
REAL ESTATE TAX INDEX OR PARCEL #

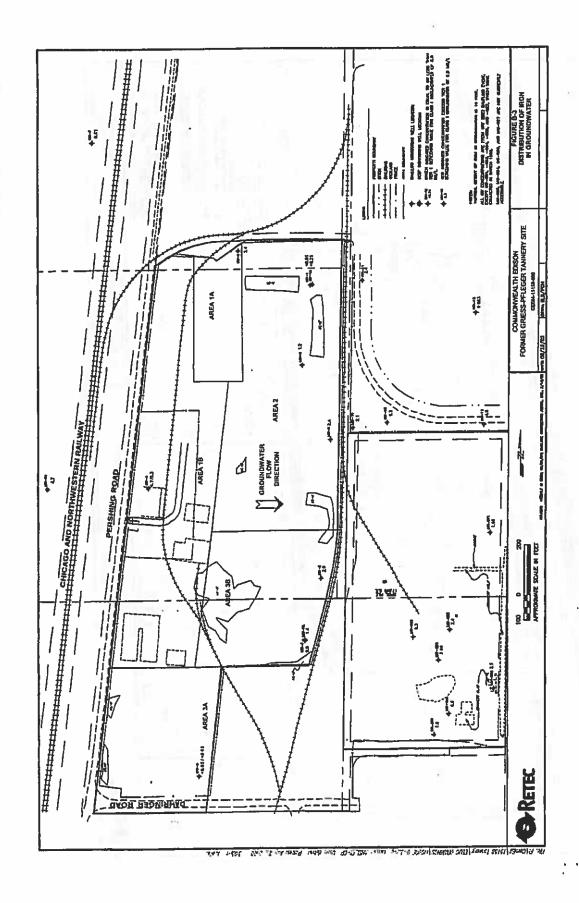
08-15-2000-003 (partial)

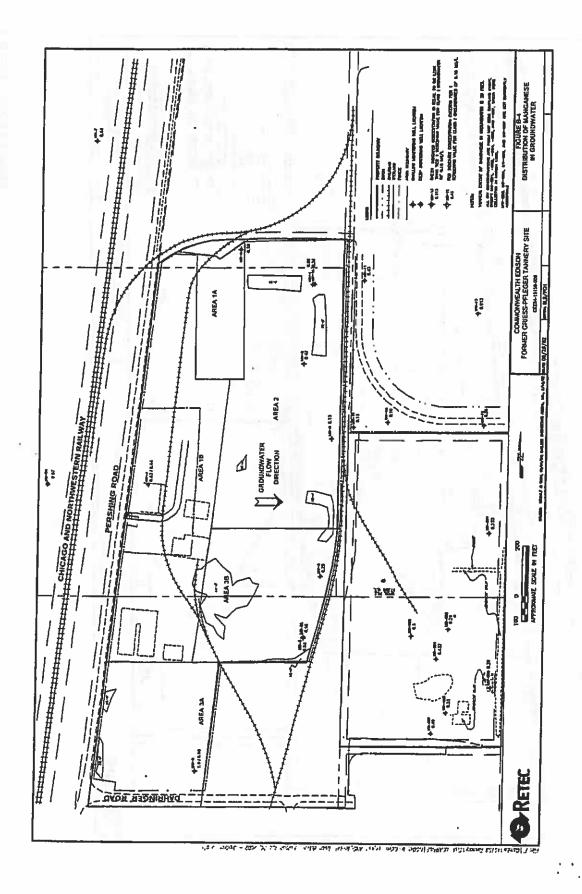
PIN NO. 08-15-200-003 (partial)

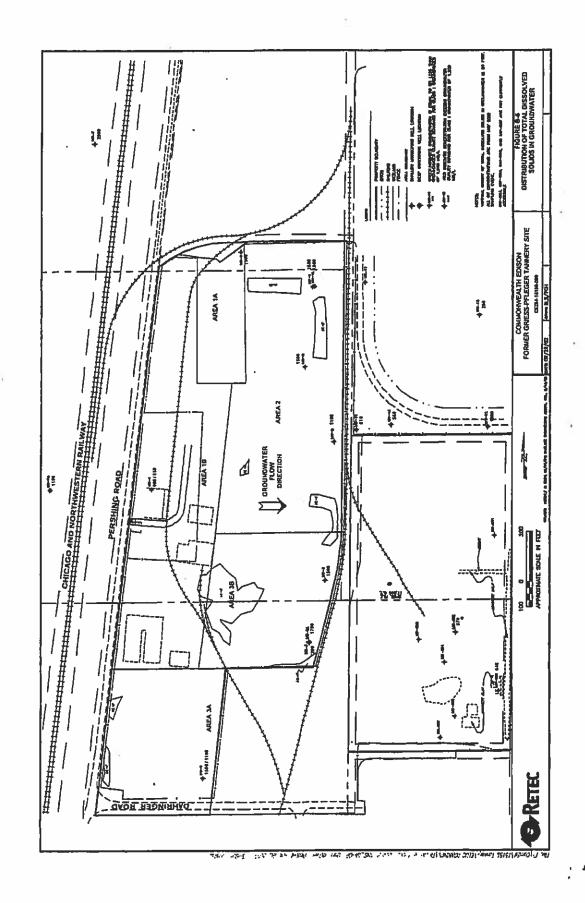
Exhibit B













Commonwealth Edison Company P.O. Box 805379 Chicago, It 60680-5379

www.exeloncorp.com

An Exelon Company

November 12, 2002

Via Airborne Express

Mr. Timothy Murphy
Project Manager, Division of Remediation Management
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62794- 9276

Subject:

097190004 - Lake County Former Griess-Pfleger Tannery

Draft Environmental Land Use Control

Dear Mr. Murphy:

Enclosed for your review are three copies of a draft Environmental Land Use Control (ELUC) for groundwater impacts that have migrated from the Griess-Pfleger Tannery site to Midwest Generation's Waukegan Generating Station Property. Please note that the ELUC would only apply to the portion of Station property that is impacted by the Tannery (Figure B-1). Following your review, a survey will be conducted to establish the legal description of the applicable property. Additionally, please note Sections Six through Ten of the ELUC pertain to specific terms and conditions agreed to by ComEd and Midwest Generation, which are not found in the standard ELUC template.

Should you have any questions, please contact me at 312/394-4470.

Sincerely,

Peter B. McCauley Project Manager

Environmental Services Department

CC:

Marie Race (MWG)

Paul Lambert (Bingham Dana)

David Meiri (RETEC)

PREPARED BY:	
Name:	
Address:	
RETURN TO:	
Name:	
Address:	
	THE ABOVE SPACE FOR RECORDER'S OFFICE
•	
Env	rironmental Land Use Control
THIS ENVIRONMENTAL LA	AND USE CONTROL ("ELUC") is made this

WHEREAS, 415 ILCS 5/58.17 and 35 Ill. Adm. Code 742 provide for the use of an ELUC as an institutional control in order to impose land use limitations or requirements related to environmental contamination so that persons conducting remediation can obtain a No Further Remediation determination from the Illinois Environmental Protection Agency ("IEPA"). The reason for an ELUC is to ensure protection of human health and the environment. The limitations and requirements contained herein are necessary in order to protect against exposure to contaminated soil or groundwater, or both, that may be present on the property as a result of past industrial activities on adjacent property known as the Griess-Pfleger Tannery site (the "Tannery Site".) Under 35 Ill. Adm. Code 742, the use of risk-based, site-specific remediation objectives may require the use of an ELUC on real property, and the ELUC may apply to certain physical features (e.g., engineered barriers, monitoring wells, caps, etc.).

of that portion (as identified in Exhibit A) of the real property located at the common address Waukegan Station, 401 E. Greenwood Avenue, Waukegan, Illinois 60087

WHEREAS, Commonwealth Edison Company ("ComEd") intends to request risk-based, site specific soil and groundwater remediation objectives from IEPA under 35 Ill. Adm. Code 742 to obtain risk-based closure of the adjacent Tannery Site, identified by Bureau of Land 0971900004, utilizing an ELUC.

NOW, THEREFORE, the recitals set forth above are incorporated by reference as if fully set forth herein, and the Property Owner agrees as follows:

C46379

("Property").

Section One. Property Owner does hereby establish an ELUC on the real estate, situated in the County of Lake, State of Illinois and further described in Exhibit A attached hereto and incorporated herein by reference (the "Property").

Attached as Exhibit B are site maps that show the legal boundary of the Property, any physical features to which the ELUC applies, the horizontal and vertical extent of the contaminants of concern above the applicable remediation objectives for soil or groundwater or both, and the nature, location of the source, and direction of movement of the contaminants of concern, as required under 35 III. Adm. Code 742.

Section Two. Property Owner represents and warrants it is the current owner of the Property and has the authority to record this ELUC on the chain of title for the Property with the Office of the Recorder or Registrar of Titles in Lake County, Illinois.

Section Three. The Property Owner hereby agrees, for itself, and its heirs, grantees, successors, assigns, transferees and any other owner, occupant, lessee, possessor or user of the Property or the holder of any portion thereof or interest therein, that the groundwater under the Property shall not be used as a potable supply of water.

Section Four. This ELUC is binding on the Property Owner, its heirs, grantees, successors, assigns, transferees and any other owner, occupant, lessee, possessor or user of the Property or the holder of any portion thereof or interest therein. This ELUC shall apply in perpetuity against the Property and shall not be released until the IEPA determines there is no longer a need for this ELUC as an institutional control; until the IEPA, upon written request, issues a new no further remediation determination approving modification or removal of the limitation(s) or requirement(s); and until and a release or modification of the land use limitation or requirement is filed on the chain of title for the Property.

Section Five. Information regarding the remediation performed on the adjacent Griess-Pfleger Tannery site may be obtained from the IEPA through a request under the Freedom of Information Act (5 ILCS 140) and rules promulgated thereunder by providing the IEPA with the Bureau of Land Identification number (0971900004) listed above.

Section Six. Indemnity: Com Ed hereby agrees to indemnify, defend (with legal counsel selected by Property Owner) and hold harmless Property Owner from and against any and all claims, actions, causes of action, governmental directive(s), liabilities, obligations, costs and expenses (including attorneys' fees) asserted by third parties and for any reasonable costs and liabilities otherwise incurred by Property Owner, arising out of or related to the presence, discharge, disposal, migration or release of a hazardous or toxic waste, substance or constituent as defined in any applicable federal, state or local law, ordinance or regulation (including, without limitation, iron, manganese and arsenic) (collectively, "Hazardous Materials") on, in, under or from the Tannery Site.

Section Seven. Release: Com Ed hereby waives, releases and discharges Property Owner, its successors, predecessors and affiliates, and each of them, from any and all

suits, causes of action, legal or administrative proceedings, liabilities, claims, damages, losses, costs and expenses of whatever kind, known or unknown, suspected or unsuspected, latent or patent, whether or not discoverable by Property Owner, now or hereafter existing or discovered, in any manner or way connected with the presence, discharge, disposal, migration or release of contamination from the Tannery Site onto the Property. Com Ed acknowledges that unknown, unsuspected and/or undiscoverable Hazardous Materials may hereafter be discovered on or about the Property that were discharged, migrated, or released from the Tannery Site and Com Ed knowingly releases Property Owner from any and all liability related thereto.

Section Eight. <u>Disclosure Obligation</u>: Com Ed represents that it has disclosed and shall disclose to Property Owner all unprivileged, material information possessed by Com Ed relating to the presence of any Hazardous Materials located on or under the Property migrating from the Tannery., including without limitation in soil and/or groundwater thereunder, as of the date of execution and delivery hereof. Further, if in the future Com Ed discovers that the existing nature and extent of Hazardous Materials present in soil and/or groundwater on the Property has expanded or migrated beyond the boundaries of this ELUC, as described in Exhibit A, Com Ed shall immediately disclose to Property Owner the nature and extent of any and all such Hazardous Materials.

Section Nine. Future Monitoring: Until such time as this ELUC is released, Com Ed shall conduct the following monitoring of the groundwater on the Property to confirm the absence of any threatened or actual migration of the Hazardous Materials from the Tannery (to which the ELUC applies) in said groundwater beyond the six (6) monitoring wells shown in Figure B-1 of Exhibit B hereof:

- a) Beginning in 2003, semiannual monitoring of arsenic, iron, manganese and total dissolved solids;
- b) Beginning in 2006, and continuing thereafter until a statistical analysis of the laboratory analytical results for arsenic, applying the Mann-Kendall trend test at the 5% level of significance (Gilbert, 1987), show on a statistical basis that the concentration levels thereof have peaked and are starting to decrease, annual monitoring of arsenic;
- c) Beginning in 2006, and continuing thereafter until a statistical analysis of the laboratory analytical results for iron, manganese and total dissolved solids, applying the Mann-Kendall trend test at the 5% level of significance, show on a statistical basis that the concentration levels are not increasing, annual monitoring of iron;
- d) Beginning in the year in which the statistical analysis described in subparagraph (b) above shows that the concentration levels of arsenic have started to decrease, the monitoring frequency for arsenic shall then change from annually to every five years thereafter until such time as this ELUC is released pursuant to the provisions of Section Four hereof; and

(e) Beginning in the year in which the statistical analysis described in subparagraph (c) above shows that the concentration levels of iron, manganese and total dissolved solids have not increased, the monitoring frequency for these parameters shall then change from annually to every five years thereafter until such time as this ELUC is released pursuant to the provisions of Section Four hereof.

Com Ed shall provide Property Owner with the analytical results and related documentation (field records, laboratory reports, chain of custody, etc.) of the monitoring performed on the Property within 60 days of the sampling event. The results shall include a statement describing the outcome of the comparison. Property Owner hereby grants Com Ed the right to enter the Property, provided that Com Ed shall provide Property Owner with at least 14 days prior notice of the commencement of the monitoring work. Such monitoring activities shall be conducted in a manner which reasonably minimizes the impact upon and interference with Property Owner's ownership, possession and/or use of the Property.

Section Ten. Future Improvement of Property: (a) This ELUC does not limit Property Owner's or its successors' or assigns' ability to construct on or otherwise improve the Property or to allow others to use the Property. Property Owner reserves the right to remove contaminated soil or groundwater from the Property and to dispose of them as is appropriate under applicable environmental laws.

(b) Prior to performing any construction or other work on the Property that may result in the exposure to contaminated soil or groundwater that have migrated from the Tannery, the Property Owner or its successors or assigns will give Com Ed written notice describing the nature and extent of the proposed construction or other work that it intends to perform such work; provided, however, that no prior written notice shall be required in the case of any necessary emergency work. Com Ed agrees that to the extent necessary to allow for the performance of any construction or other work on the Property, it will remove and dispose of, in whole or in part, or otherwise remediate, in accordance with applicable Illinois law and regulations and to the extent technologically feasible and economically reasonable, contaminated soil or groundwater originating from the Tannery and as necessary for Property Owner's work in advance of that work.

Section Eleven. The effective date of this ELUC shall be the date that it is officially recorded in the chain of title for the Property to which the ELUC applies.

WITNESS the following signatures:	
Property Owner(s)	
By:	
Its:	
Date:	

STATE OF ILLINOIS)
) SS: COUNTY OF
I, the undersigned, a Notary Public for said County and State, DO HEREBY CERTIFY, that and, personally known to me to be the Property Owner(s) of, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that in said capacities they signed and delivered the said instrument as their free and voluntary act for the uses and purposes therein set forth. Given under my hand and official seal, this day of,
20
Notary Public
State of)
I,, a notary public, do hereby certify that before me this day in person appeared, personally known to me to be the Property Owner(s), of, each severally acknowledged that they signed and delivered the foregoing instrument as the Property Owner(s) herein set forth, and as their own free and voluntary act, for the uses and purposes herein set forth.
Given under my hand and seal this day of, 20
Notary Public

Exhibit A

The subject property is located in the City of Waukegan, Lake County, State of Illinois, commonly known as Waukegan Station, Waukegan, Illinois and more particularly described as:

COMMON ADDRESS:

Waukegan Station (portion) 401 E. Greenwood Ave Waukegan, Illinois 60087

LEGAL DESCRIPTION:

Note to MWG: A legal description will be developed that reflects the minimum portion of Waukegan Station to which the ELUC will apply (as approved by the Illinois EPA). The diagram proposed to meet the requirement of Exhibit A (item A) identifies this portion of Station property (diagram sent separately). It is suggested that the actual legal description be developed following Illinois EPA approval of the Remedial Objectives Report. For reference, the diagram depicts that portion of Waukegan Station property which would be included if a line 1000 ft long were extended directly east from the NE corner of the Tannery and, at the termination point, another line were extended directly south to the southern end of the Station property.

REAL ESTATE TAX INDEX OR PARCEL#

08-15-2000-003 (partial)

PIN NO. 08-15-200-003 (partial)

Exhibit B

