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September 4, 2012

VIA E-MAIL AND OVERNIGHT MAIL

Illinois EPA
Division of Public Water Supplies
Attn: Andrea Rhodes, CAS #19
P.O. Box 19276
Springfield, IL 62794-9276

Re: Violation Notice: Midwest Generation, LLC, Waukegan Generating Station
Identification No.: 6281
Violation Notice No.: W-2012-00056

Dear Ms. Rhodes:

This letter is a supplemental response to the above-referenced June 11, 2012 Violation Notice ("VN") following the meeting between the Illinois Environmental Protection Agency ("Illinois EPA or the "Agency") and Midwest Generation, LLC ("MWG") on August 14, 2012.[1] MWG appreciated the opportunity to discuss the VNs and the underlying allegations with the Agency. The extensive participation at the August 14th meeting by Interim Director John Kim and Agency personnel was productive and helped to clarify the key issues. As a result, MWG believes it now has a better understanding of the Agency's views regarding resolution of this matter.

The August 14th meeting also helped MWG both to identify issues that warrant further attention and explanation in this supplemental response and to revise its proposed Compliance Commitment Agreement ("CCA") for the MWG Waukegan Generation Station ("Waukegan") for the Agency's consideration. Accordingly, this supplemental response does not repeat all of the information contained in MWG's July 27, 2012 response to the VN, but rather focuses on responding to the questions and concerns raised by the Agency during the meeting. It also includes a revised, proposed CCA which MWG submits should be acceptable to resolve the VN allegations based on discussion at the aforementioned August 14th meeting.

[1] The August 14, 2012 meeting was held at the request of MWG, pursuant to Section 31(a)(4) of the Illinois Environmental Protection Act. 415 ILCS 5/31(a)(4).

Central to the revised, proposed CCA and based largely on MWG's understanding of Agency staff's concerns as expressed during the August 14th meeting, MWG proposes to enter into an Environmental Land Use Control ("ELUC") Agreement to cover station property not already included in an existing ComEd Former Tannery Site ELUC (as described further below). MWG will submit a proposed ELUC to the Illinois EPA for review and approval within 90 days of the effective date of the CCA. Upon the approval of the ELUC by the Agency, MWG will record the ELUC within 30 days

In addition, and again reflective of concerns expressed by Agency staff during the August 14th meeting, MWG will install an additional groundwater monitoring well between the Waukegan Station and the North Shore Sanitary District within three months of the effective date of the CCA.

These and other provisions of MWG's proposed CCA are summarized in Section II below.

By submitting this supplemental response and revised, proposed CCA, MWG does not waive any of its original objections to the VNs raised in our July 27th response. Moreover, MWG does not, by submitting this supplemental response, make any admissions of fact or law, or waive any of its defenses to those alleged violations.

I. Supplemental Response to Alleged Violations in the VN

To answer questions presented at the August 14th meeting and further explain why the ash ponds at Waukegan are not causing a release into the groundwater, MWG has set forth below additional information concerning: (1) the treatment purpose and function of the ash ponds; (2) the condition of the liners underlying the ash ponds; (3) why the alleged the groundwater exceedances are not the result of releases from the ash ponds; and (4) other potential sources of groundwater impacts. MWG believes the August 14th discussion provided important insights and clarifications by both parties concerning the relevant facts and issues raised by the VN. While we may not embrace the Agency's views on each of the issues discussed, the discussion provided MWG with information that enables us to present a revised CCA that we believe addresses the questions and concerns expressed by the Agency.

A. The Treatment Purpose and Function of the Ash Ponds

As stated in MWG's July 27, 2012 VN response, and discussed further during the August 14th meeting, the Waukegan ash ponds are not disposal sites. They are part of the Station's wastewater treatment system. As a primary treatment step in the wastewater treatment system, bottom ash wastewater (called "ash transport water" in the Station's NPDES Permit #IL0002259) is discharged to the ash ponds for settlement of suspended solids. The effluent from the ash treatment ponds is then either recycled or conveyed to the wastewater treatment plant for further treatment prior to discharge. The wastewater treatment system, including the ash ponds, is permitted pursuant to the Station's NPDES Permit #IL0002259. Under the NPDES

Permit, the ash ponds' "ash transport water" effluent is authorized to be discharged through internal Outfall C01 and then to Lake Michigan via Outfall 001.

Apparently, because the ash ponds perform a wastewater treatment function and are not disposal sites, it was suggested by Agency personnel during the August 14th meeting that the ash ponds may be subject to the design criteria for treatment works set forth in Part 370 of the Illinois Pollution Control Board Regulations, referencing generally section 370.930 thereof entitled "Waste Stabilization Ponds and Aerated Lagoons," and more specifically, section 370.930(d)(2)(D) entitled "Pond Bottom" as the relevant criteria for the liners that should be installed in ash ponds. 35 Ill. Adm. Code § 370.930. As a practical matter, this is unnecessary given that the existing liners in the Waukegan ash ponds provide an equivalent level of protection to that specified in section 370.930(d)(2)(D). Further, Part 370 is not applicable to existing treatment works like the ash ponds at the Waukegan station. Rather, Part 370 regulations only apply to new construction of waste collection and treatment works. As stated in section 370.100, the purpose of these regulations is to "establish criteria for the design and preparation of plans and specifications for wastewater collection and treatment systems." 35 Ill. Adm. Code § 370.100 (emphasis supplied; see also § 370.200). There are no provisions or requirements in the Part 370 regulations that require existing treatment works to be modified or replaced to meet Part 370 criteria.

B. The Condition of the Liners in the Ash Ponds

As MWG explained in its July 27th response to the VN and during the August 14th meeting, the Waukegan ash ponds are fully lined to prevent releases to groundwater. Even before the 2002 liner replacement work performed by MWG, the liners in Ponds 1 and 2 were high-density polyethylene ("HDPE") liners. MWG replaced the HDPE liners in both ponds in 2002 with another HDPE liner, overlain by a 12-inch sand cushion layer and a 6-inch limestone warning layer. The HDPE liners in both ash ponds have a permeability of approximately 10^{-13} cm/sec. Based on this history and the quality of the HDPE liners that have been in place in each of the Waukegan ash ponds, it is simply improbable that the ash ponds are the cause of the groundwater exceedances alleged in the VN.

At the August 14th meeting, Illinois EPA questioned whether the ash ponds were causing a "mounding" condition in the surrounding groundwater. Illinois EPA based this question on the recorded existence of water levels in the ash ponds that are consistently higher than water levels recorded in the surrounding groundwater monitoring wells. As KPRG's Richard Gnat explained during the meeting, the most probable explanation of why the water levels in the ash ponds are higher than in the monitoring wells is because the HDPE liners are effectively containing or holding the water within the ash ponds. In other words, the HDPE liners are doing a good job of preventing any release to groundwater. There are no "mounding" conditions occurring at the site. The existing water level data for both the ponds and the adjoining monitoring wells do not support the existence of mounding conditions. Based on the outcome of the August 14th meeting discussion, it is MWG's understanding that IEPA staff recognize that the data do not support the existence of mounding conditions at this site.

C. Lack of Data Showing the Ash Ponds are Causing a Release

As stated in the original VN Response, the monitoring well results do not support the contention that the ash ponds are a source of the alleged groundwater impacts.[2] The highest concentrations, including boron which is a primary ash impact tracer, and greatest number of exceedances of the Class I groundwater standards were detected in the upgradient well, MW-5. Four parameters exceeded the groundwater standards only in this well, and not in any of the downgradient wells. The data simply does not support the conclusion that the ash ponds are causing the alleged groundwater exceedances.

D. Other Potential Causes of Groundwater Impacts

There are two adjacent properties to the Waukegan Station that are known release sites, both of which have been enrolled in the Illinois Site Remediation Program ("SRP"). They are known as the "ComEd Former Tannery Site" and the "General Boiler Site." They are both shown on the attached "Site Location Map," dated July 8, 2002, prepared by Retec for ComEd. (See Attachment A) Either or both of these sites may be a contributing cause to the alleged groundwater exceedances. The information presented below is based on information that either was already within MWG's possession or was available on the Agency's website and/or the internet. MWG would welcome the Agency's voluntary production of any investigative and/or remedial action reports on these properties from its files to allow MWG and its consultants the opportunity to further evaluate their potential contributions to the groundwater impacts.

1. ComEd Former Tannery Site

This site is located at the northeast corner of Sand (also known as "Pershing") and Dahringer Roads, immediately to the west (upgradient) of the Waukegan Station. The tannery was built in 1917 and operated as a leather tanning facility from 1918 through early 1973. During this approximately sixty-five year period, tannery wastes were placed in unlined wastewater treatment ponds in the northeastern corner of the site resulting in contamination of soil and groundwater. ComEd acquired the property in 1973. Multiple investigations of soil and groundwater conditions on the property were performed from 1989 to 2000. A number of contaminants were identified, including arsenic. Concentrations of arsenic in groundwater on the tannery site in the area of the former wastewater treatment ponds were greater than 2 mg/L (2,000 ug/L).[3]

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[2] MWG incorporates by reference all of its discussion and explanation of the groundwater monitoring results in the original VN response.

[3] Source: Figure 3-2 from the Remedial Options Report and Table 4-1 from the 1995 Phase II Remedial Investigation Report prepared for ComEd for the Former Tannery Site. Lower arsenic concentrations (<50 ug/L) were reported for a deep monitoring well (MW1A) nested with the well with the highest arsenic concentrations on the tannery site; however, this well was screened in a soil interval identified as having a higher silt content than overlying soils. The silt is expected to result in lower hydraulic conductivity than the overlying coarse sands; therefore, the silt may limit vertical migration at that specific monitoring location. Deep borings identified high soil

A groundwater investigation conducted in the late 1990's found that elevated arsenic levels above Tier 1 screening values for groundwater conditions had migrated to the eastern edge of the Former Tannery property boundary -- the boundary shared with the Waukegan Station. Thereafter, four additional monitoring wells were installed on the Waukegan Station property downgradient of the ComEd Former Tannery Site. Based on sampling from these monitoring wells, it was concluded that arsenic exceeding 50 ug/L had migrated approximately 400 feet from the ComEd Former Tannery Site onto the Waukegan Station property.[4] MWG does not know the details regarding how this approximate determination of the extent of the arsenic impacts on groundwater was made.[5]

Based on the above-described findings, ComEd requested, and MWG agreed, to enter into an Environmental Land Use Control Agreement (the "ComEd ELUC"). The boundaries of the ComEd ELUC are shown on the enclosed Figure 1. (See Attachment B)

To explain why the ComEd Former Tannery Site may be contributing to the alleged arsenic exceedances at well location MW-01 in the VN, the arsenic and boron groundwater monitoring results obtained from the monitoring wells around the ash ponds need to be considered. The arsenic distribution in the ash pond wells is different than the boron distribution. A maximum concentration of 170 ug/L was observed in MW-01 near the northeast portion of the ash pond system (See enclosed Figure 1 in Attachment B). The next highest concentration was observed in MW-02, which is immediately south of MW-01, while the other three ash pond monitoring wells had trace arsenic concentrations of 10 ug/L or less. If the boron source is also the arsenic source, then the distribution of these two constituents in groundwater is expected to be similar. However, the boron concentration distribution is not similar to arsenic. The highest boron concentration was in upgradient well MW-05, while downgradient wells MW-01 through MW-04 had boron concentrations that were similar to each other and much lower than at MW-05. (*Id.*)

The ComEd Former Tannery Site may be a source of the elevated arsenic that has been detected only in MW-01 of the ash ponds monitoring wells. Groundwater flow is eastward from the Former Tannery Site toward the Waukegan Station and Lake Michigan, at a velocity of up to 215 ft/yr based on slug tests performed on ash pond monitoring wells.[6] Waukegan Station

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arsenic concentrations (>1000 mg/kg) over most of the former wastewater treatment pond area, indicating the potential for arsenic at depth as well as at the surface in this area.

[4] Because prior sampling on the Former Tannery Site had not indicated the presence of any organic compounds, only metals sampling was conducted on the Waukegan Station property. However, page 2-1 of the 1994 Phase 1 Remedial Investigation Report for the ComEd Former Tannery Site identifies borax as a mineral used at the tannery. Borax is a boron mineral, and is therefore a potential source of boron release to the environment. However, no boron analytical data were identified during review of the ComEd Former Tannery Site reports to allow this potential boron source to be further evaluated.

[5] The conclusion concerning the extent of the arsenic impacts onto the Waukegan Station property was presented in Section 2.4.5 of the 2002 Remedial Options Report prepared for ComEd. Section 2.4.5 summarized the principal conclusion of the Phase IIB site investigation, but MWG does not have a copy of the Phase IIB site investigation report.

[6] Hydrogeologic Assessment Report – Waukegan Station. Patrick Engineering, February 2011

monitoring well MW-01 is about 2,500 feet east of the Former Tannery Site. Assuming no attenuation, it would take 90 years for groundwater to flow to MW-01 at the lower velocity and 17 years at the higher velocity, either of which are feasible because the tannery began operation 94 years ago. While arsenic is subject to attenuation, arsenic attenuation rates are highly site specific, and tend to be lowest (*i.e.*, have the least impact on arsenic concentrations) in chemically reduced, sand-rich groundwater flow systems such as the system present at the Waukegan Station.[7]

The enclosed Figure 2 (see Attachment B) shows the distribution of observed maximum arsenic concentrations in groundwater at both the Former Tannery Site and the Waukegan Station ash pond monitoring wells. It shows that concentrations in intermediate-distance wells (MW-12 and MW-05) are lower than in MW-01. However, all of the monitoring wells are screened at the water table. They may be too shallow to monitor arsenic that may be migrating from the Former Tannery Site at a greater depth than the existing monitoring well screened intervals within the 30-foot thick sand unit. If groundwater recharge east of the Former Tannery site is pushing the arsenic plume toward the bottom of the 30-foot thick sand and gravel formation, then other conditions are present which would allow the arsenic plume to migrate at depth to monitoring well MW-01 while being mostly undetected by the intermediate-distance, shallow water table monitoring wells.[8] While monitoring well MW-01 is also a water table monitoring well, it is close to Lake Michigan -- the regional point for groundwater discharge -- where upward vertical gradients (upwelling of groundwater from the deeper portion of the aquifer), are expected.

Arsenic concentrations in ELUC monitoring wells MW-10 and MW-12 also indicate that the Former Tannery Site may be impacting groundwater at MW-01. These ELUC wells lie on a line approximately parallel to groundwater flow and upgradient of MW-01 (see Figure 2 in Attachment B). In both of them, four arsenic concentration peaks have been detected (in 2002, 2005, 2009, 2011) and each peak occurred on the same sample date for both wells (see Figure 3 in Attachment B). It is unlikely that all four arsenic concentration peaks are a result of natural variability because such peaks would occur randomly (*i.e.*, would not be expected to occur on the same four sample events). Laboratory or sample effects also are not plausible explanations because of the magnitude of the concentrations and the fact that other wells would have been affected. Therefore, the short term upwelling of a plume at depth in the aquifer is a plausible explanation.

Based on the above analysis of the ComEd Former Tannery Site information and data, MWG submits that the elevated arsenic concentrations detected at MW-01 on the Waukegan Station property may be due to the former operations on the adjacent Tannery Site.

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[7] Chemically reducing conditions are inferred because iron and manganese concentrations in groundwater are high in most monitoring locations (although not at MW-01), which occurs when groundwater is chemically reduced.
[8] These conditions include: 1) the reduced chemical condition of the aquifer; 2) the eastward groundwater flow direction; and 3) the reported hydraulic gradient and conductivities in the vicinity of the site.

2. General Boiler Site

The General Boiler Site has been the subject of a Leaking Underground Storage Tank ("LUST") reported release and was subsequently entered into the Illinois SRP to address other contamination present on the property. The Site is believed to be owned by ComEd. MWG's information concerning the General Boiler Site is limited to information that was available on the Agency's website and on the internet. Relevant information concerning this Site is contained in the documents enclosed as Attachment C.

The General Boiler Company formerly operated on this 19-acre parcel, located at 184 Dahringer Road, immediately to the west of the southern portion of the Waukegan Station property. (See aerial map with a "blue dot" depicting the location of the site in Attachment A) The historical uses of this site include the forming of steel boilers, the construction of pre-formed concrete posts, and the production of Styrofoam products. Prior site investigations found numerous contaminants present at the General Boiler Site, including arsenic, lead and PCBs. A fly ash fill area was detected in the northern section of the Site during investigations performed in 1998 and 1999. (See Attachment C, Taskforce on Waukegan Neighborhoods, "Lakefront Redevelopment Report" at p. 3) Groundwater sampling on the northwest corner of the site contained arsenic which reports indicate likely "migrated from the [ComEd Former Tannery Site]." (*Id.*)

The LUST release from a five-hundred gallon underground storage tank was reported to the Agency in 2000. A "No Further Remediation" ("NFR") Letter, dated October 23, 2000, has been recorded for the property. The NFR Letter imposed industrial/commercial land use restrictions on the property and a groundwater prohibition against using groundwater as a potable water supply. (See Attachment D, October 23, 2000 NFR Letter at p. 2, paragraphs 1 and 2) Neither the October 23, 2000 NFR Letter nor the information available on the Agency's website contained information identifying the contaminants that were the basis for these use restrictions on the property.

The General Boiler Site also was entered into the SRP. It received a NFR Letter in 2005. The Agency's website indicates that the 2005 NFR Letter, like the 2000 NFR Letter, also included a groundwater use restriction. No additional information regarding the nature and extent of the soil and groundwater contamination present on the General Boiler Site is currently available. However, based on the limited information that MWG has obtained to date, the General Boiler Site is also a potential source of the groundwater impacts alleged in the VN.

II. Supplemental Compliance Commitment Agreement

Based on and in response to the August 14th meeting discussion, MWG has revised its proposed Compliance Commitment Agreement ("CCA") terms which were submitted in its July 27 2012 VN response.

The revised CCA terms are set forth below and a draft CCA is enclosed for the Agency's review.

MWG believes its revised CCA should be an acceptable resolution to the VN issued to the Waukegan station. As stated in the original VN response, there is no threat to human health presented by the alleged exceedances of the groundwater standards. The groundwater wells installed within 2,500 feet of the site are all east and upgradient of the site. Shallow groundwater at the site discharges to Lake Michigan. Although Lake Michigan is used as a drinking water source, the nearest intake location is too far away to be impacted by the alleged groundwater exceedances. In the absence of any potable groundwater receptors or use, groundwater at the Waukegan site does not pose any risk to human health.

The revised CCA terms are as follows:

A. The ash ponds will not be used as permanent disposal sites and will continue to function as treatment ponds to precipitate ash. Ash will continue to be removed from the ponds on a periodic basis.

B. The ash treatment ponds will be maintained and operated in a manner which protects the integrity of the existing liners. During the removal of ash from the ponds, appropriate procedures will be followed to protect the integrity of the existing liners, including operating the ash removal equipment in a manner which minimizes the risk of any damage to the liner.

C. During the ash removal process, visual inspections of the ponds will be conducted to identify any signs of a breach in the integrity of the pond liners. In the event that a breach of the pond liners is detected, MWG will notify the Agency and will submit a corrective action plan for repair or replacement, as necessary, of the liner. Upon the Agency's approval, and the issuance of any necessary construction permit, MWG will implement the correction action plan.

D. MWG will enter into an ELUC to cover the remaining Waukegan Station property to the east that is not already included in the existing ComEd Former Tannery Site ELUC. MWG will submit a proposed ELUC to the Illinois EPA for review and approval within 90 days of the effective date of the CCA. Upon the approval of the ELUC by the Agency, MWG will record the ELUC within 30 days.

E. MWG will also install an additional groundwater monitoring well on the Waukegan Station property in the area approximately 500 feet south of existing monitoring well MW-05. MWG will install the monitoring well within 3 months of the effective date of the CCA. The new monitoring well shall be sampled twice. The sampling protocol and analytical parameters for the new monitoring well shall be the same as for the existing groundwater monitoring wells. The first sampling event shall be conducted not later than 90 days from the effective date

of the CCA. The second sampling event shall coincide with the next quarterly monitoring of the existing groundwater monitoring wells and shall be separated by an interval of at least 60 days from the first sampling event. The sampling protocol for the new monitoring well shall be the same as for the existing monitoring wells. The analytical parameters shall also be the same as for the current groundwater monitoring program, except that radium isotopes will be excluded.

F. MWG will continue to monitor the groundwater through the existing five groundwater monitoring wells and the additional proposed groundwater monitoring well and report its findings to IEPA. The continuing groundwater monitoring requirements will be included in the requirements of the ELUC described in subparagraph D above. The ELUC terms will include a provision which allows MWG the right to request the Agency's approval of a cessation of all or some of the monitoring requirements based on future monitoring results.

This letter constitutes our supplemental response to, and modified CCA for, the Violation Notice W-2012-00056. MWG also reserves the right to raise additional defenses and mitigation arguments as may be necessary, in defense of the allegations listed in the Violation Notice in the event of any future enforcement. We believe that this supplemental response is responsive to all of the Agency's comments and concerns expressed in our meeting, and represents an appropriate resolution to the VN. Should you have any additional questions or concerns, please do not hesitate to contact me.

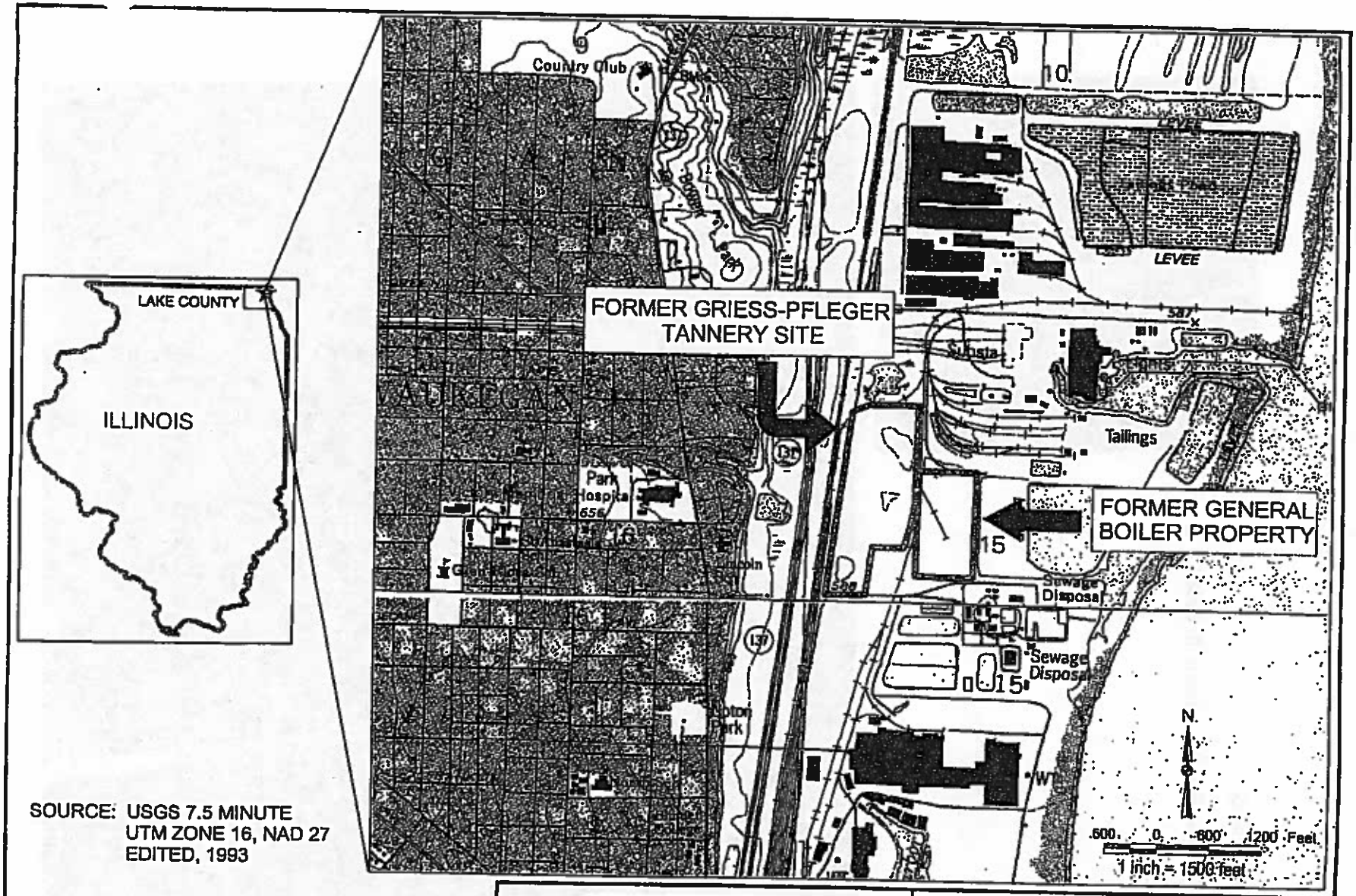
Very truly yours,

Susan M. Franzetti
Counsel for Midwest Generation, LLC

Enclosure

cc: Maria L. Race, Midwest Generation, LLC

Attachment A



SOURCE: USGS 7.5 MINUTE
UTM ZONE 16, NAD 27
EDITED, 1993

RETEC

COMMONWEALTH EDISON FORMER GRIESS-PFLEGER TANNERY SITE CED14-15159-000	SITE LOCATION MAP WAUKEGAN, ILLINOIS
DATE: 7/8/02 | KBL/ftc | FILE: w:\commed\tannery\gis\projects\gw6_26_02.apr (Location)	FIGURE: 2-1

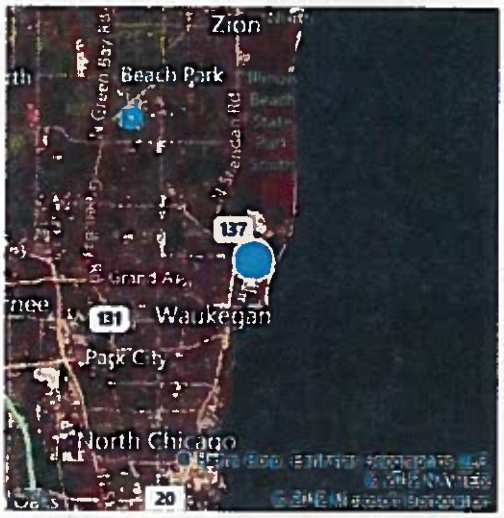
MWG13-15_462

bing Maps

184 Dahringer Rd, Waukegan, IL 60085

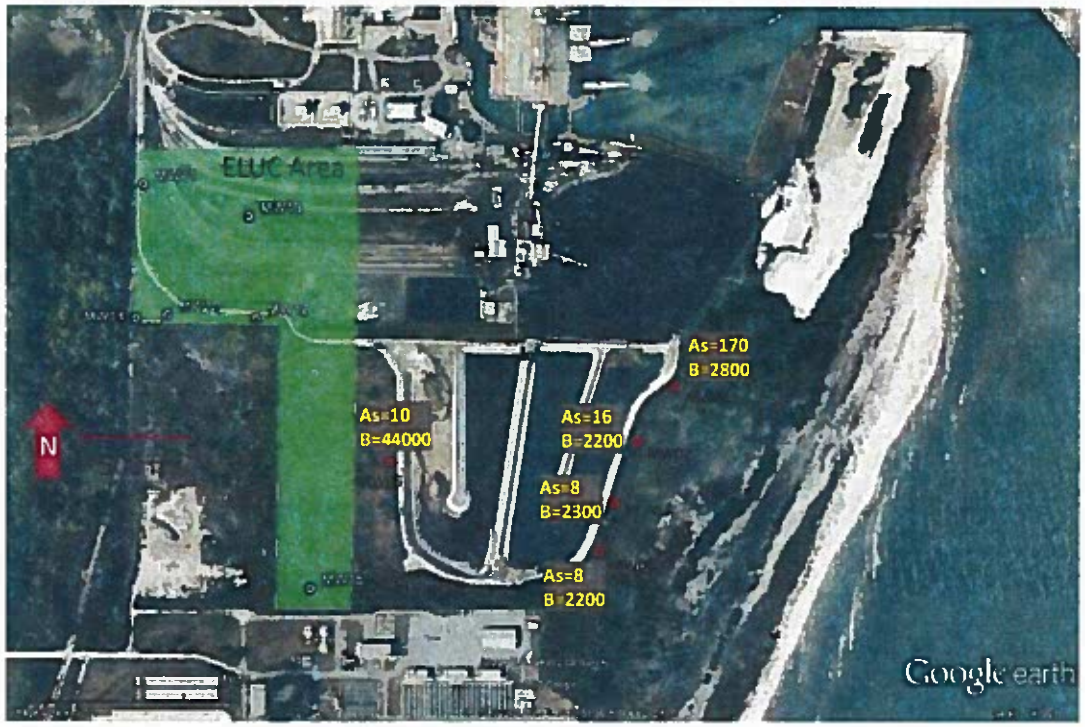
My Notes

On the go? Use **m.bing.com** to find maps, directions, businesses, and more



Attachment B

Figure 1, As & B Maximum Concentrations

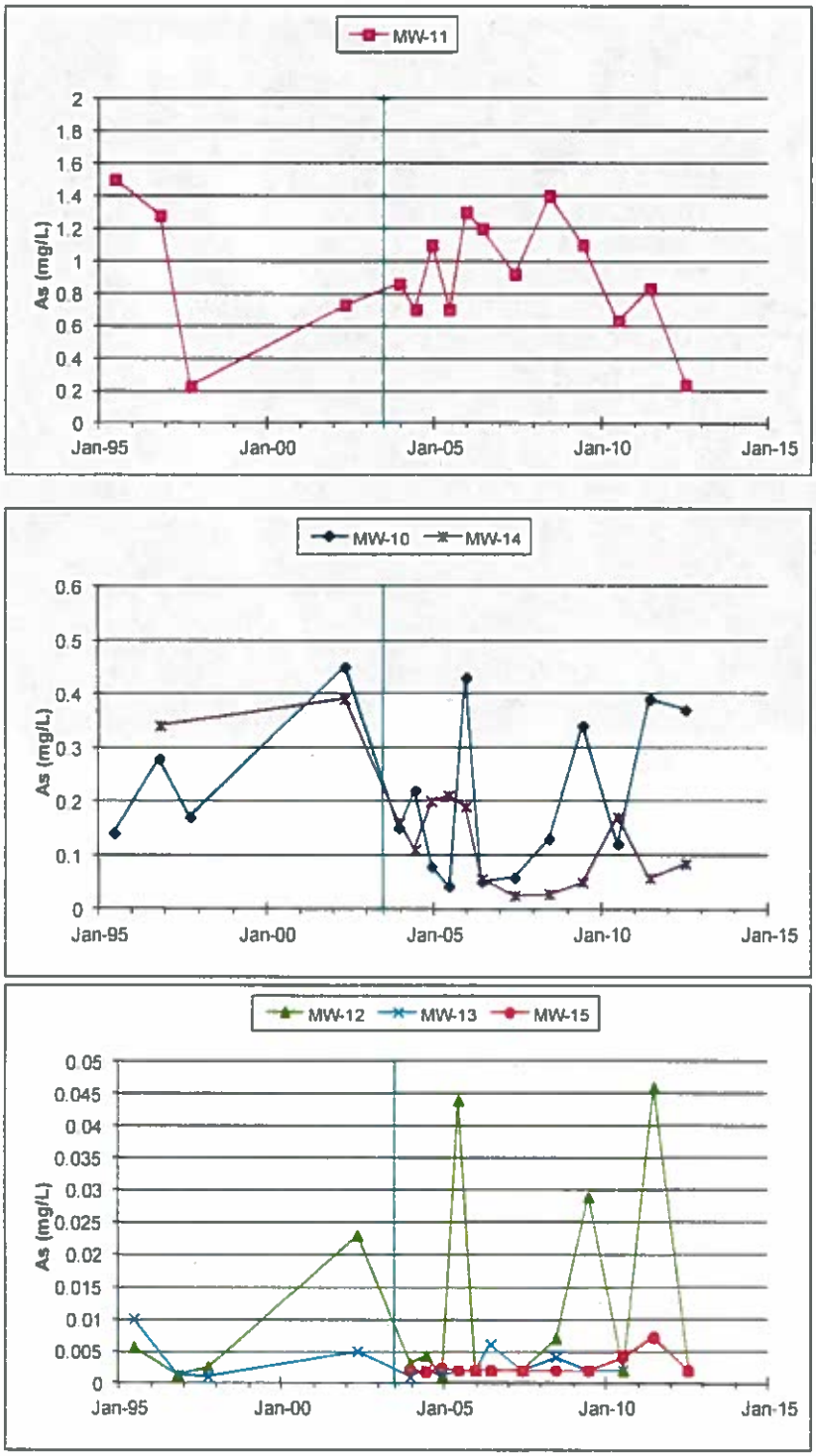


Concentrations in ug/L based on samples collected from October 2010 to March 2012

Figure 2, Maximum Arsenic Concentrations

Concentrations in ug/L, based on samples collected from October 2010 to March 2012 for MW01 through MW05, and on samples collected from 2003 to 2012 in wells MW10 through MW15

Figure 3, arsenic concentration time series plots for ELUC monitoring wells



Attachment C

Illinois Environmental Protection Agency

State of Illinois

Inventory Search Page

Follow the links or buttons presented below for more information about this Facility. The address listed or Geographic position (Lat/Lon - if available) will attempt to render a map from Bing Maps which are not part of the Illinois EPA data systems.

BOL ID #	Facility Name	Street	City	Lat/Lon
0971905333	Com Ed-general Boiler	184 E Dahringer Rd	Waukegan	42.376792/-87.819968

Underground Storage Tank Data

Site Remediation Program Data

USEPAID	Tie File	Revision Date	Interest Type
	170000103689	7/3/2003	BOL

Affiliation Type: LOCATION CONT.
Name: Com Ed-general Boiler
Address: 184 E Dahringer Rd
Waukegan, IL. 60085
Phone: 312-394-4470
Contact: Peter Mccauley
Entry Date: 9/21/1998
Revision Date: 7/3/2003

Affiliation Type: OWNER
Name: Com Ed Environmental Svcs
Address: 130 S Jefferson 4th Fl
Chicago, IL. 60661
Phone: 312-394-4464
Contact: Judy Freitag
Entry Date: 9/21/1998
Revision Date: 7/3/2003

Affiliation Type: OPERATOR
Name: Commonwealth Edison
Address: 10 S Dearborn
Chicago, IL. 60603
Phone: 312-394-4470
Contact: Peter Mccauley
Entry Date: 9/21/1998
Revision Date: 7/3/2003

ALT-ID #	NAICS CODE	SIC CODE
No industry codes found!		

2 Recorded NFR Image(s) available

Recorded NFR(s) were found and are available to the public as electronic images. To view this electronic version of the recorded NFR, please click on the link above for display/retrieval.

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Illinois Environmental Protection Agency

State of Illinois

Site Remediation

The following conditions apply to the No Further Remediation Letter for this site:

SRP Site Name: General Boiler

LPC#: 0971905333
NFR Letter Issued: 11/21/2005 Recorded: 1/3/2006
Land Use Approved: Industrial/Commercial
Comprehensive/Focused: Comprehensive
Institutional Control: Groundwater use restriction
Engineered Barrier:
Worker Caution: No
Size: 10.7 acres

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MWG13-15_470

Illinois Environmental Protection Agency

State of Illinois

Site Remediation

SRP Site Name: General Boiler

Active: No
LPC#: 0971905333 **USEPA ID:** _
Address: 184 East Dahringer Road
Waukegan, IL 60087- Lake County
Date Enrolled: 9/15/1998

Map this site with bing

Remediation Applicant:	Commonwealth Edison Company
Point of Contact:	Peter McCauley
Address:	25000 Governors Highway University Park, IL 60466-
Phone:	(708) 235-2605

Consultant:	The RETEC Group, Inc.
Point of Contact:	David Meiri
Address:	8605 West Bryn Mawr Avenue Suite 301 Chicago, IL 60631-
Phone:	(773) 714-9900

Section 4(y) Letter:
No Further Remediation Letter: 11/21/2005
Project Manager: Murphy

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MWG13-15_471

TOWN is a proud recipient of the Points of Light presidential citation

Lakefront Redevelopment Report Page 3

To the north along the lakefront is the site of the former General Boiler Company, a nineteen-acre parcel on Dahringer Road between the Midwest Generation Power Plant and the North Shore Sanitary District facility. A portion of this site is currently leased by a local contractor to recycle concrete and asphalt and to store construction materials. Its prior uses include the forming of steel boilers, the construction of pre-formed concrete posts, and the production of Styrofoam products. A 1993 Preliminary Environmental Property Assessment collected soil and groundwater samples showing elevated levels of several contaminants, including lead, barium, arsenic, and select polyaromatic hydrocarbons, and more testing was called for to fully characterize the presence of these and other pollutants.

In 1998 and 1999, further environmental analyses were performed on portions of this property, and it was confirmed that the northern section contained arsenic above remediation benchmarks in a fly ash fill area. Because "the remedial objectives and/or remedial action for the fly ash area (had) yet to be developed," the cleanup possibilities for this area could not be determined. It was also observed that a groundwater sample on the northwest corner of the site contained arsenic, which likely "migrated from the (Griess-Pfleger) Tannery site, " and thus could not be remediated without addressing that adjoining parcel. Concentrations of numerous pollutants in surface soils exceeded remediation objectives for industrial and commercial properties, being "stained black" with contamination from PCB's and PNA's including benzoanthracene, benzofluoranthene, benzopyrene, and dibenzoanthracene. A five-hundred gallon underground storage tank was also discovered on the General Boiler site that had leaked benzene and naphthalene into the groundwater, which also contained contamination from ethylbenzene and styrene.

Turning to potential health threats, the reports concluded that "the exposure pathway of concern is particulate inhalation/ingestion of surface soils" (breathing toxic dust), and "based on existing data, the impacted soil presents a potential risk to public health and the environment as well as a long term liability." Setting aside the fly ash and groundwater issues, a remedial action plan was proposed to reduce the pollution in certain areas of soils to levels below health-risk benchmarks and remediation objectives. The PCB and PNA-impacted soils would be excavated in six-inch lifts and disposed of in appropriate landfills until the contamination was sufficiently reduced or groundwater was encountered. A covering would then be applied to seal off the surface, to be followed by a backfill of clean soil. The underground storage tank would be drained and removed from the ground, along with all

piping and appurtenant structures. Soils in the vicinity of the tank that contained volatile organic compounds or other toxins would also be excavated and sealed.

While this remediation plan was only a partial solution, it pointed in a positive direction, but there is no evidence in the environmental records that any implementation has occurred since the plan was formulated in 1999. Even had the remediation plan been fully implemented, portions of this site would only have reached a suitable level for industrial or commercial use as a best case scenario, and additional approaches would still have been needed to deal with the fly ash and groundwater contamination. Despite the questions that remain about the full extent of potentially dangerous pollution and the degrees of remediation that are feasible, the SOM redevelopment plan proposes that we use the General Boiler site as part of a moorland, a place of public recreation. Granted, this is somewhat less of a disconnect than putting residences on the OMC/Coke Plant parcel, but even recreational development would seem to be a substantial stretch until further testing and more comprehensive remediation plans show that open public access to this site, with complete safety for intended users like families and children, can become a viable option. The same can be said of the nearby North Shore Gas coal gas plant site (aka Tar Pits), south of Dahringer Road, upon which a litany of toxins has been identified, running the alphabet from arsenic to xylene. The EPA has called for restricted public access to this site, but SOM includes it as an additional component of the recreational moorland.

Previous Next

Please help support TOWN! All donations are completely tax-deductible.

Discuss this on the TOWN Forums!

Hosted by WebDesign Shop

Web Sculpture by Alviani Software

Taskforce on Waukegan Neighborhoods

Features

TOWN is a proud recipient of the Points of

Lakefront Redevelopment Report Page 9

LAKEFRONT DATA SUMMARY

Parcel Name: General Boiler Site
Map Number: 3 (19 acres)
Current Use: Storage of raw materials and equipment, as well as asphalt and concrete crushing (recycling)
Prior Use: Prior to 1920, unknown. After early 1920 a variety of industrial uses such as the forming of steel boilers (early 1920s), construction of preformed concrete posts(1960s), production of Styrofoam products (1980s)

Have any environmental studies been done? Yes
March 1993 - preliminary environmental property assessment
1998 - January 1999 - Phase II and IIA by Metcalf and Eddy (site investigation)

Was contamination tested for? Yes
Phase II and IIA - soil, groundwater

List of contaminants found to date:
Lead, Barium, Select Polyaromatic Hydrocarbons, Arsenic; Polychlorinated Biphenyl (PCBs, i.e., Aroclor 1248); Polynuclear Aromatic Hydrocarbon(PNAs, i.e., Benzo(a) Anthracene, Benzo(b)Fluoranthene, Benzo(a)Pyrene, Dibenzo(a,h)Anthracene); Ethylbenzene, Benzene; Naphthalene, Styrene

Do some or all of these contaminants exceed health or environmental protection standards? Yes

Is more testing necessary to determine the full extent of pollution, additional health risks, or restrictions on future use? Yes
Restriction applied prohibiting the installation of wells for potable purposes.

Proposed use:
Moorland/Recreational

Previous Next

Discuss this on the TOWN Forums!

MWG13-15_474

Attachment D

Commonwealth Edison Company
130 South Jefferson
Chicago, IL 60661

www.exeloncorp.com

ComEd.
An Exelon Company

RECEIVED
JAN 05 2001
IEPA/BOL

January 3, 2001

Illinois Environmental Protection Agency
Bureau of Land - #24
LUST Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

Subject: LPC #0971905333 — Lake County
Former General Boiler Site — Commonwealth Edison
184 East Dahringer Road
LUST Incident No. 20000300
TecL

Dear Sir/Madam:

Attached is a recorded copy of the No Further Remediation Letter for the subject site and LUST incident.

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

Sincerely,

Peter B. McCauley
Environmental Project Manager
Environmental Services Department

RELEASABLE
JAN 23 2001
REVIEWER MM

4615143

Filed for Record in:
LAKE COUNTY, IL
MARY ELLEN VANDERVENTER - RECORDER
On Nov 29 2000
At 11:37am
Receipt #: 261398
Doc/Type : LET
Deputy - Cashier #1

Illinois Environmental Protection Agency
October 23, 2000
Waukegan/Commonwealth Edison-Former General Boiler Site
Corrective Action Completion Report Addendum

AFTER RECORDING
RETURN TO:
COMED
% REAL ESTATE SERVICES DEPARTMENT
11th FLOOR/UCO
P.O. BOX 767
CHICAGO, ILLINOIS 60690

8

MWD12-15-177

PREPARED BY:

Name: Pete McCauley
Commonwealth Edison

Address: 184 East Dahringer Road
Waukegan, Illinois 60185

RETURN TO:

Name: Pete McCauley
Commonwealth Edison

Address: 130 South Jefferson Street, 4th Floor
Chicago, Illinois 60661

THE ABOVE SPACE FOR RECORDER'S OFFICE

LEAKING UNDERGROUND STORAGE TANK ENVIRONMENTAL NOTICE

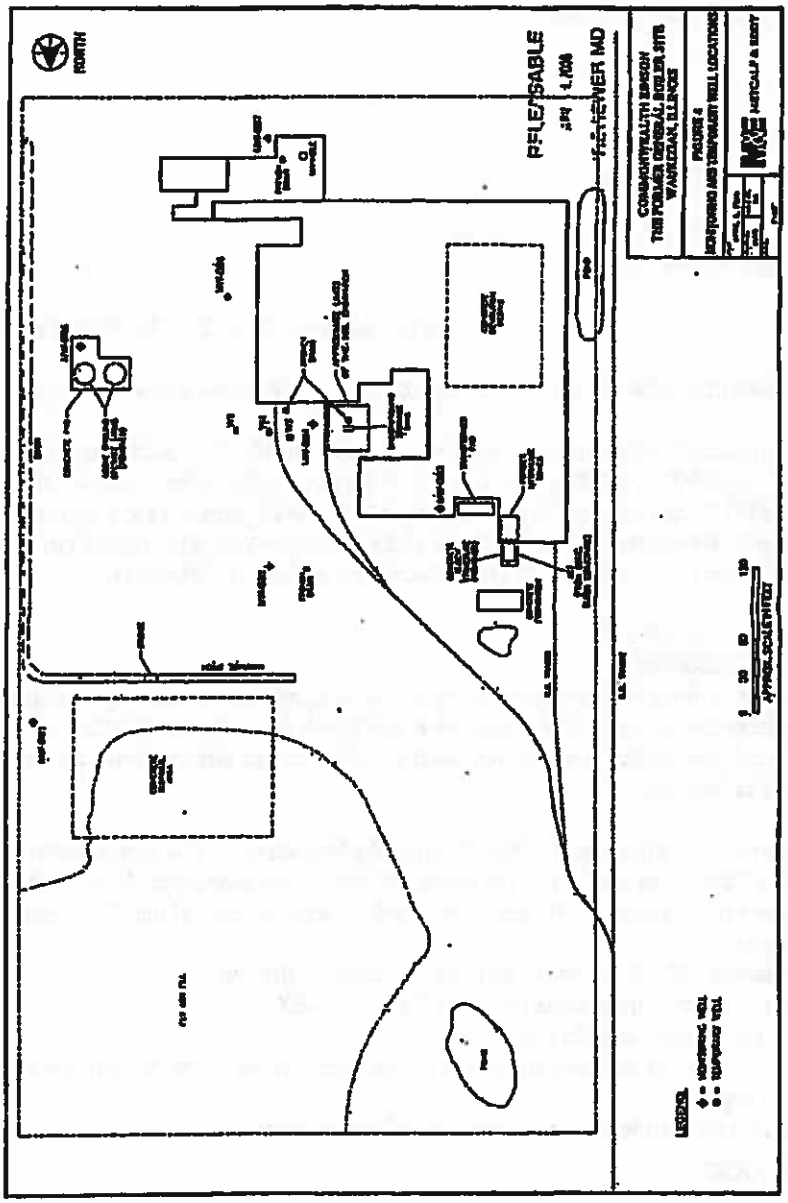
THE OWNER AND/OR OPERATOR OF THE LEAKING UNDERGROUND STORAGE TANK(S) ASSOCIATED WITH THE RELEASE REFERENCED BELOW, WITHIN 45 DAYS OF RECEIVING THE NO FURTHER REMEDIATION LETTER CONTAINING THIS NOTICE, MUST SUBMIT THIS NOTICE AND THE REMAINDER OF THE NO FURTHER REMEDIATION LETTER TO THE OFFICE OF THE RECORDER OR REGISTRAR OF TITLES OF LAKE COUNTY IN WHICH THE SITE DESCRIBED BELOW IS LOCATED.

Illinois EPA Number: 0971905333
LUST Incident No.: 20000300
Commonwealth Edison, the owner and operator of the leaking underground storage tank(s) associated with the above-referenced incident, whose address is 130 South Jefferson Street, 4th Floor, Chicago, Illinois, has performed investigative and/or remedial activities for the site as shown on the attached site map and identified as follows:

1. Legal description or Reference to a Plat Showing the Boundaries: The Southwest ¼ of the Southeast ¼ of the Northwest ¼ and the North 600 Feet of the Northwest ¼ of the Northeast ¼ of the Southwest ¼ of Section 15, Township 45 North, Range 12, East of the Third Principal Meridian, in Lake County, IL
2. Common Address: 184 East Dahringer Road, Waukegan, Illinois
3. Real Estate Tax Index/Parcel Index Number: 08-15-100-007
4. Site Owner: Commonwealth Edison
5. Land Use Limitation: Industrial/Commercial. The groundwater under the site shall not be used as a potable water supply.
6. See the attached No Further Remediation Letter for other terms.

HAA:SJ:jk000744.DOC

Site Map
Commonwealth Edison--Former General Boiler Site
LPC #0971905333--Lake County
LUST Incident No. 20000300



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8

PLAT OF SURVEY

OF

LEGEND

NOTE:

4615143

Northern Illinois Survey, Inc.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276

THOMAS V. SKINNER, DIRECTOR

217/782-6762

OCT 23 2000

CERTIFIED MAIL
0001 1273 2042

Commonwealth Edison
Attention: Pete McCauley
130 South Jefferson Street, 4th Floor
Chicago, Illinois 60661

Re: LPC #0971905333 -- Lake County
Waukegan/Commonwealth Edison - Former General Boiler Site
184 East Dahringer Road
LUST Incident No. 20000300
LUST Technical File

Dear Mr. McCauley:

The Illinois Environmental Protection Agency ("Illinois EPA") has reviewed the Corrective Action Completion Report Addendum submitted for the above-referenced incident. This information is dated August 8, 2000; was received by the Illinois EPA August 9, 2000; and was prepared by Metcalf & Eddy, Inc. Citations in this letter are from the Environmental Protection Act ("Act") and 35 Illinois Administrative Code ("35 IAC").

The Corrective Action Completion Report and the Professional Engineer Certification submitted pursuant to 35 IAC Section 732.300(b)(1) and Section 732.409(b) indicate the remediation objectives set forth in 35 IAC Section 732.408 have been met.

Based upon the certification by Henry Adamiak, a Registered Professional Engineer of Illinois, and pursuant to Section 57.10 of the Act (415 ILCS 5/57.10), your request for a no further remediation determination is granted under the conditions and terms specified in this letter.

Issuance of this No Further Remediation Letter ("Letter"), based on the certification of the Registered Professional Engineer, signifies that: (1) all statutory and regulatory corrective action requirements applicable to the occurrence have been complied with; (2) all corrective action concerning the occurrence has been completed; and (3) no further remediation concerning the occurrence is necessary for the protection of human health, safety and the environment. Pursuant to Section 57.10(d) of the Act, this Letter shall apply in favor of the following persons:

1. Commonwealth Edison;

2. The owner and operator of the UST(s);

3. Any parent corporation or subsidiary of the owner or operator of the UST(s);

4615143

PRINTED ON RECYCLED PAPER

MWC13-15 481

4. Any co-owner or co-operator, either by joint-tenancy, right of survivorship, or any other party sharing a legal relationship with the owner or operator to whom the letter is issued;

5. Any holder of a beneficial interest of a land trust or inter vivos trust, whether revocable or irrevocable;

6. Any mortgagee or trustee of a deed of trust of the owner of the site or any assignee, transferee, or any successor-in-interest of the owner of the site;

7. Any successor-in-interest of such owner or operator;

8. Any transferee of such owner or operator whether the transfer was by sale, bankruptcy proceeding, partition, dissolution of marriage, settlement or adjudication of any civil action, charitable gift, or bequest; or

9. Any heir or devisee of such owner or operator.

This Letter, and all attachments, including but not limited to the Leaking Underground Storage Tank Environmental Notice, must be filed within 45 days of its receipt as a single instrument with the Office of the Recorder or Registrar of Titles in the County where the above-referenced site is located. This Letter shall not be effective until officially recorded by the Office of the Recorder or Registrar of Titles of the applicable County in accordance with Illinois law so it forms a permanent part of the chain of title for the above-referenced property. Within 30 days of this Letter being recorded, a certified copy of this Letter, as recorded, shall be obtained and submitted to the Illinois EPA. For recording purposes, it is recommended that the Leaking Underground Storage Tank Environmental Notice of this Letter be the first page of the instrument filed.

CONDITIONS AND TERMS OF APPROVAL

LEVEL OF REMEDIATION AND LAND USE LIMITATIONS

1. The remediation objectives have been established in accordance with an industrial/commercial land use limitation. The remediation objectives for the above-referenced site, more particularly described in the Leaking Underground Storage Tank Environmental Notice of this Letter, were established in accordance with the requirements of the Tiered Approach to Corrective Action Objectives (35 IAC Part 742) rules.

2. As a result of the release from the underground storage tank(s) associated with the above-referenced incident, the above-referenced site, more particularly described in the attached Leaking Underground Storage Tank Environmental Notice of this Letter, shall not be used in a manner inconsistent with the following land use limitation: Industrial/Commercial. The groundwater under the site shall not be used as a potable water supply.

3. The land use limitation specified in this Letter may be revised if:

   a) Further investigation or remedial action has been conducted that documents the attainment of objectives appropriate for the new land use; and

b) A new Letter is obtained and recorded in accordance with Title XVII of the Act and regulations adopted thereunder.

PREVENTIVE, ENGINEERING, AND INSTITUTIONAL CONTROLS

4. Preventive: None.

Engineering: None.

Institutional: This Letter shall be recorded as a permanent part of the chain of title for the above-referenced site, more particularly described in the attached Leaking Underground Storage Tank Environmental Notice of this letter.

5. Failure to establish, operate, and maintain controls in full compliance with the Act, applicable regulations, and the approved corrective action plan may result in voidance of this Letter.

OTHER TERMS

6. Any contaminated soil or groundwater removed, or excavated from, or disturbed at the above-referenced site, more particularly described in the Leaking Underground Storage Tank Environmental Notice of this Letter, must be handled in accordance with all applicable laws and regulations.

7. Further information regarding the above-referenced site can be obtained through a written request under the Freedom of Information Act (5 ILCS 140) to:

Illinois Environmental Protection Agency
Attention: Freedom of Information Act Officer
Bureau of Land - #24
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276

8. Pursuant to Section 57.10(e) of the Act (415 ILCS 5/57.10(e)), should the Illinois EPA seek to void this Letter, the Illinois EPA shall provide notice to the owner or operator of the leaking underground storage tank(s) associated with the above referenced incident and the current title holder of the real estate on which the tanks were located, at their last known addresses. The notice shall specify the cause for the voidance, explain the provisions for appeal, and describe the facts in support of the voidance. Specific acts or omissions that may result in the voidance of this Letter include, but shall not be limited to:

a) Any violation of institutional controls or industrial/commercial land use restrictions;

b) The failure to operate and maintain preventive or engineering controls or to comply with any applicable groundwater monitoring plan;

c) The disturbance or removal of contamination that has been left in-place in accordance with the Corrective Action Plan or Completion Report;

4615143

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d) The failure to comply with the recording requirements for the Letter;

e) Obtaining the Letter by fraud or misrepresentation; or

f) Subsequent discovery of contaminants, not identified as part of the investigative or remedial activities upon which the issuance of the Letter was based, that pose a threat to human health or the environment.

Within 35 days after the date of mailing of this final decision, the owner or operator may petition for a hearing before the Illinois Pollution Control Board ("Board") to contest the decision of the Illinois EPA. (For information regarding the filing of an appeal, please contact the Board at 312/814-3620.) However, the 35-day period for petitioning for a hearing may be extended for a period of time not to exceed 90 days by written notice provided to the Board from the owner or operator and the Illinois EPA within the 35-day initial appeal period. (For information regarding the filing of an extension, please contact the Illinois EPA's Division of Legal Counsel at 217/782-5544.)

Submit the certified copy of this letter, as recorded, to:

Illinois Environmental Protection Agency
Bureau of Land - #24
LUST Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

If you have any questions or need further assistance, please contact the Illinois EPA project manager, Steve Jones, at 217/524-1253.

Sincerely,

Hernando A. Albarracin
Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

HAA:SJ:jk000744.DOC

Attachments: Leaking Underground Storage Tank Environmental Notice
Site Map

cc: Metcalf & Eddy, Inc.
Division File

4615143

TRUSTEE'S DEED
(INDIVIDUAL)

FOR THE PROTECTION OF OWNER, THIS INSTRUMENT SHALL BE RECORDED WITH THE RECORDER OF DEEDS.

98726598m
60 66664 NB

BANK OF WAUKEGAN
1601 North Lewis Avenue
Waukegan, Illinois 60085
Telephone (847) 244-6000

4193726

Filed for Record in:
LAKE COUNTY, IL
MARY ELLEN VANDERVENTER - RECORDER
On Aug 25 1998
At 9:53am
Receipt #: 125428
Doc/Type : TRU
Deputy - Cashier #6

The above space is for the recorder's use only

The Grantor, BANK OF WAUKEGAN, a corporation in the State of Illinois, and duly authorized to accept and execute trusts within the State of Illinois, not personally, but solely as Trustee under the provisions of a Deed or Deeds in Trust duly recorded and delivered to said Grantor in pursuance of a certain Trust Agreement dated the 12th day of May, 19 83, and known as Trust Number 1455, for and in consideration of Ten and No/100th Dollars ($10.00), and other good and valuable considerations in hand paid, conveys and quit claims to COMMONWEALTH EDISON COMPANY, an Illinois Corporation

of (Address of Grantee) 130 South Jefferson Street
Chicago, IL 60661, Attn: Real Estate Services

the following described real estate situated in the County of LAKE, in the State of Illinois, to wit:

THE SOUTHWEST 1/4 OF THE SOUTH EAST 1/4 OF THE NORTHWEST 1/4 AND THE NORTH 600 FEET OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 15, TOWNSHIP 45 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN LAKE COUNTY, IL.

(NOTE: If additional space is required for legal, attach on a separate 8½" x 11" sheet.)

together with all the appurtenances and privileges thereunto belonging or appertaining.

Permanent Index Number(s) 08-15-100-007

This deed is executed pursuant to and in the exercise of the power and authority granted to and vested in said trustee by the terms of said deed or deeds in trust delivered to said trustee in pursuance of the trust agreement above mentioned. This deed is made subject to the lien of every trust deed or mortgage (if any there be) of record in said county given to secure the payment of money, and remaining unreleased at the date of the delivery hereof.

IN WITNESS WHEREOF, Grantor has caused its corporate seal to be hereunto affixed, and name to be signed by its Trust Officer and attested by its Vice President, this 7th day of August, 19 98.

BANK OF WAUKEGAN
as Trustee aforesaid, and not personally.

BY: Barbara Richter
TRUST OFFICER

ATTEST: Nancy K. Young
~~VICE PRESIDENT~~ TRUST OFFICER

CHICAGO TITLE INSURANCE CO

3

MWG13-15_489

STATE OF ILLINOIS)
) SS,
COUNTY OF LAKE)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that the above named Trust Officer and Vice President of BANK OF WAUKEGAN, Grantor, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such, Trust Officer and Vice President respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary acts, and as the free and voluntary act of said Bank, for the uses and purposes, therein set forth and the said Vice President then and there acknowledged that said Vice President as custodian of the corporate seal of said Bank caused the corporate seal of said Bank to be affixed to said instrument as said Vice President's own free and voluntary act, and as the free and voluntary act of said Bank for the uses and purposes therein set forth.

Given under my hand and notarial seal this 7th day of August, 19 98.

Helen V. Levick
Notary Public
My Commission Expires: 8/4/98

"OFFICIAL SEAL"
HELEN V. LEVICK
Notary Public, State of Illinois
My Commission Expires 04/13/00

ADDRESS OF PROPERTY
184 Dahringer

Waukegan, IL
The above address is for information only and is not part of this deed.

This instrument was prepared by:
(Name) Bank of Waukegan - Trust Dept.
(Address) 1601 N. Lewis Ave.
Waukegan, IL 60085

Mail ~~subsequent tax bills~~ to:
(Name) Commonwealth Edison Co.
(Address) 130 S. Jefferson St.
Chicago, IL 60661

TXS Commonwealth Edison
Property Tax Services
227 W Monroe 9th Floor
Chicago, IL 60606

STATE OF ILLINOIS
REAL ESTATE TRANSFER TAX
AUG-17-94 DEPT OF REVENUE 695.00

695.00

STATE OF ILLINOIS
REAL ESTATE TRANSFER TAX
AUG-17-98 DEPT OF REVENUE 105.00

105.00

COUNTY OF LA
Real Estate Transfer Tax
$ 400.00 PAID

4193726

2

PLAT ACT AFFIDAVIT

STATE OF ILLINOIS
} SS.
COUNTY OF LAKE

Emanuel Winston, being duly sworn on oath, states that he resides at 1448 Old Skokie Road, Highland Park, Illinois 60035. That the attached deed is not in violation of 765 ILCS 205/1 for one of the following reasons:

1. Said Act is not applicable as the grantors own no adjoining property to the premises described in said deed;

- OR -

the conveyance falls in one of the following exemptions as shown by Amended Act which became effective July 17, 1959.

2. The division or subdivision of the land into parcels or tracts of five acres or more in size which does not involve any new streets or easements of access.

3. The divisions of lots or blocks of less than one acre in any recorded subdivision which does not involve any new streets or easements of access.

4. The sale or exchange of parcels of land between owners of adjoining and contiguous land.

5. The conveyance of parcels of land or interests therein for use as right of way for railroads or other public utility facilities, which does not involve any new streets or easement of access.

6. The conveyance of land owned by a railroad or other public utility which does not involve any new streets or easements of access.

7. The conveyance of land for highway or other public purposes or grants or conveyances relating to the dedication of land for public use or instruments relating to the vacation of land impressed with a public use.

8. Conveyances made to correct descriptions in prior conveyances.

9. The sale or exchange of parcels or tracts of land existing on the date of the amendatory Act into no more than two parts and not involving any new streets or easements of access.

CIRCLE NUMBER ABOVE WHICH IS APPLICABLE TO ATTACHED DEED.

Affiant further states that he makes this affidavit for the purpose of inducing the Recorder of Deeds of Lake County, Illinois, to accept the attached deed for recording.

SUBSCRIBED and SWORN to before me
this 5th day of August, 1998.

Diana Piotrowski
Notary Public

"OFFICIAL SEAL"
DIANA PIOTROWSKI
Notary Public, State of Illinois
My Commission Expires 06/24/01

4193726

3

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:	)	
	)	
Midwest Generation, LLC	)	
Waukegan Generating Station	)	
Waukegan, Lake County, Illinois	)	
IEPA ID #170001453834	)	
	)	
	)	**ILLINOIS EPA VN W-2012-00056**
	)	**BUREAU OF WATER**
	)	

COMPLIANCE COMMITMENT AGREEMENT

I. Jurisdiction

1. This Compliance Commitment Agreement ("CCA") is entered into voluntarily by the Illinois Environmental Protection Agency ("Illinois EPA") and Midwest Generation, LLC, Waukegan Generating Station ("Respondent") (collectively, the "Parties") under the authority vested in the Illinois EPA pursuant to Section 31(a)(7)(i) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(a)(7)(i).

II. Allegation of Violations

2. Respondent owns and operates a coal-fired electrical generating station at 401 East Greenwood Avenue in Waukegan, Lake County, IL.

3. Pursuant to Violation Notice ("VN") W-2012-00056, issued on June 11, 2012, the Illinois EPA contends that Respondent has violated the following provisions of the Act and Illinois Pollution Control Board ("Board") Regulations:

   a) Section 12 of the Illinois Environmental Protection Act, 415 ILCS 5/12

   b) 35 Ill. Adm. Code 620.115, 620.301, 620.401, 620.405, and 620.410

III. Compliance Activities

4. On July 27, 2012, the Illinois EPA received Respondent's response to VN W-2012-00056, which included proposed terms for a CCA. On August 14, 2011, the Parties met at the Illinois EPA offices to discuss the violation notice and the July 27th response. On _____ __, 2012, the Illinois EPA received Respondent's supplemental reply to the VN in response to Illinois EPA's comments at the meeting. The Illinois EPA has reviewed Respondent's proposed CCA terms, as well as considered whether any

additional terms and conditions are necessary to attain compliance with the alleged violations cited in the VN.

5. Respondent agrees to undertake and complete the following actions, which the Illinois EPA has determined are necessary to attain compliance with the allegations contained in VN W-2012-00056:

   a) The ash ponds will not be used as permanent disposal sites and will continue to function as treatment ponds to precipitate ash. Ash will continue to be removed from the ponds on a periodic basis.

   b) The ash treatment ponds will be maintained and operated in a manner which protects the integrity of the existing liners. During the removal of ash from the ponds, appropriate procedures will be followed to protect the integrity of the existing liners, including operating the ash removal equipment in a manner which minimizes the risk of any damage to the liner.

   c) During the ash removal process, visual inspections of the ponds will be conducted to identify any signs of a breach in the integrity of the pond liners. In the event that a breach of the pond liners is detected, MWG will notify the Agency and will submit a corrective action plan for repair or replacement, as necessary, of the liner. Upon the Agency's approval, and the issuance of any necessary construction permit, MWG will implement the correction action plan.

   d) There is an existing, recorded ELUC on a portion of the Waukegan Station property for the ComEd Former Tannery Site. MWG will implement an ELUC to cover the remaining Waukegan Station property not already subject to the ComEd Former Tannery Site ELUC. MWG will submit a proposed ELUC to the Illinois EPA for review within 90 days of the effective date of the CCA. The ELUC will include a groundwater use prohibition and a commercial/industrial use restriction. Upon the approval of the ELUC by the Agency, MWG will record the ELUC within 30 days

   e) MWG will continue to monitor the groundwater through the existing five groundwater monitoring wells and report its findings to IEPA. Within 3 months of the effective date of the CCA, MWG will also install an additional groundwater monitoring well on the Waukegan Station property in the area approximately 500 feet south of existing monitoring well MW-05.

   f) A schedule for the continued groundwater monitoring of existing and new monitoring wells will be included in the ELUC for the Waukegan Station. The ELUC terms will include a provision which allows MWG the right to request the Agency's approval of a cessation of all or some of the monitoring requirements based on future monitoring results.

IV. Terms and Conditions

6. Respondent shall comply with all provisions of this CCA, including, but not limited to, any appendices to this CCA and all documents incorporated by reference into this CCA. Pursuant to Section 31(a)(10) of the Act, 415 ILCS 5/31(a)(10), if Respondent complies with the terms of this CCA, the Illinois EPA shall not refer the alleged violations that are the subject of this CCA, as described in Section II above, to the Office of the Illinois Attorney General or the State's Attorney of the county in which the alleged violations occurred. Successful completion of this CCA or an amended CCA shall be a factor to be weighed, in favor of the Respondent, by the Office of the Illinois Attorney General in determining whether to file a complaint on its own motion for the violations cited in VN W-2012-00056.

7. This CCA is solely intended to address the violations alleged in Illinois EPA VN W-2012-00056. The Illinois EPA reserves, and this CCA is without prejudice to, all rights of the Illinois EPA against Respondent with respect to noncompliance with any term of this CCA, as well as to all other matters. Nothing in this CCA is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the Illinois EPA may have against Respondent, or any other person as defined by Section 3.315 of the Act, 415 ILCS 5/3.315. This CCA in no way affects the responsibilities of Respondent to comply with any other federal, state or local laws or regulations, including but not limited to the Act, and the Board Regulations.

8. Respondent represents that it has entered into this CCA for the purpose of settling and compromising the alleged violations in VN W-2012-00056. By entering into this CCA and complying with its terms, Respondent does not admit the allegations of violation within VN W-2012-00056 and this CCA shall not be interpreted as including such admission.

9. Pursuant to Section 42(k) of the Act, 415 ILCS 5/42(k), in addition to any other remedy or penalty that may apply, whether civil or criminal, Respondent shall be liable for an additional civil penalty of $2,000 for violation of any of the terms or conditions of this CCA.

10. This CCA shall apply to and be binding upon the Illinois EPA, and on Respondent and Respondent's officers, directors, employees, agents, successors, assigns, heirs, trustees, receivers, and upon all persons, including but not limited to contractors and consultants, acting on behalf of Respondent, as well as upon subsequent purchasers of Respondent's facility.

11. In any action by the Illinois EPA to enforce the terms of this CCA, Respondent consents to and agrees not to contest the authority or jurisdiction of the Illinois EPA to enter into or enforce this CCA, and agrees not to contest the validity of this CCA or its terms and conditions.

12. This CCA shall only become effective:

a) If, within 30 days of receipt, Respondent executes this CCA and submits it, via certified mail, to Andrea Rhodes, CAS, CAS #19, Illinois EPA, Division of Public Water Supplies, P.O. Box 19276, Springfield, IL 62794-9276. If Respondent fails to execute and submit this CCA within 30 days of receipt, via certified mail, this CCA shall be deemed rejected by operation of law; and

b) Upon execution by all Parties.

13. Pursuant to Section 31(a)(7.5) of the Act, 415 ILCS 5/31(a)(7.5), this CCA shall not be amended or modified prior to execution by the Parties. Any amendment or modification to this CCA by Respondent prior to execution by all Parties shall be considered a rejection of the CCA by operation of law. This CCA may only be amended subsequent to its effective date, in writing, and by mutual agreement between the Illinois EPA and Respondent's signatory to this CCA, Respondent's legal representative, or Respondent's agent.

AGREED:

FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY:

BY: _____ DATE: _____

Mike Crumly
Manager, Compliance Assurance Section
Division of Public Water Supplies
Bureau of Water

FOR RESPONDENT:

BY: _____ DATE: _____

Susan M. Franzetti
Counsel for Midwest Generation, LLC