BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JOHNS MANVILLE, a Delaware corporation,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. 14-3
	)	(Citizen Suit)
ILLINOIS DEPARTMENT OF TRANSPORTATION,	)	
	)	
	)	
Respondent.	)	

NOTICE OF FILING

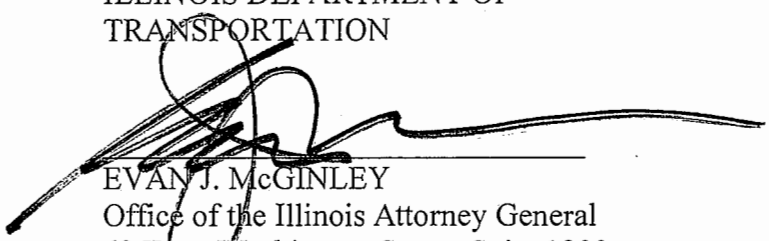
To: ALL PERSONS ON SERVICE LIST

Please take note that today, July 15, 2014, I have filed the following documents the above-referenced matter with the Clerk of the Illinois Pollution Control Board, copies of which are attached hereto and are hereby served upon you:

- Respondent's Section 2-619.1 Motion to Dismiss Amended Complaint and to Strike Portions of Amended Complaint;
- Respondent's Request for Judicial Notice; and
- Respondent's Demand for a Bill of Particulars

Respectfully Submitted,

ILLINOIS DEPARTMENT OF TRANSPORTATION



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THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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Complainant,	)	
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	)	(Citizen Suit)
ILLINOIS DEPARTMENT OF TRANSPORTATION,	)	
	)	
	)	
Respondent.	)	

RESPONDENT'S SECTION 2-619.1 MOTION TO DISMISS AMENDED COMPLAINT AND TO STRIKE PORTIONS OF AMENDED COMPLAINT

NOW COMES RESPONDENT, the Illinois Department of Transportation ("IDOT"), through its attorney LISA MADIGAN, Attorney General of the State of Illinois, which hereby moves the Pollution Control Board ("Board"), pursuant to Section 2-619.1 of the Code of Civil Procedure, 735 ILCS 5/2-619.1 (2012), to (1) dismiss Johns Manville's Amended Complaint, pursuant to Section 2-619 of the Illinois Code of Civil Procedure, 735 ILCS 2—619 (2012), on the grounds that Complainant's action: (a) cannot be maintained before the Board because it lacks the authority to grant Complainant the relief requested in its Amended Complaint; (b) is barred by the applicable statute of limitations; and, (c) is barred by laches; and, (2) in the alternative, to strike certain paragraphs of Complainant Johns Manville's Amended Complaint, pursuant to Section 2-615 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-615 (2012), on the grounds that these paragraphs are irrelevant and immaterial to the causes of action in Johns Manville's Amended Complaint.[1]

[1] In the interest of quasi-judicial economy, IDOT requests that the Board consider the merits of, and rule upon, its Section 2-619 Motion first, before considering turning its attention to the Section 2-615 portion of this Motion.

I. INTRODUCTION

Between 1971 and 1976, IDOT undertook a construction project in Waukegan, Illinois, with the goal of improving access to access to a portion of the Amstutz Expressway. This project took place on and adjacent to property either owned or leased by Complainant, Johns Manville. Duane Mapes, the IDOT engineer who oversaw the project, died over 10 years ago and the Eric Bolander Construction Company, which was the general contractor for the project, went out of business almost 13 years ago.

In subsequent years, the United States Environmental Protection Agency ("EPA") investigated Johns Manville's Waukegan facility, as well as the property which Johns Manville had leased from Commonwealth Edison ("Com Ed") for use as a parking lot. In late 1998, Johns Manville ultimately conducted an investigation of the parking lot and determined that asbestos containing materials ("ACM") were present on and beneath the surface of the parking lot. In the summer of 2007, EPA and Johns Manville (as well as Com Ed), entered into an administrative consent order ("AOC"), pursuant to which Johns Manville was required to conduct further investigations on and adjacent to the former parking lot and, ultimately, to remove the ACM from that property.

In July of 2013, long after the completion of the construction project giving rise to Johns Manville's claims against IDOT, almost 15 years after discovering ACM on the former parking lot and six years after entering into the AOC with EPA, Johns Manville filed the underlying action against IDOT before the Pollution Control Board ("Board").

Johns Manville's Amended Complaint should be dismissed by the Board because it is untimely, the statute of limitations having long passed. Alternatively, it should be dismissed on the grounds of laches, because Johns Manville's delay in bringing suit is inexcusable. Moreover,

this delay is prejudicial in the extreme to IDOT, because with the passage of years has come the demise of witnesses and the loss of relevant evidence and testimony. Johns Manville's Amended Complaint should also be dismissed because it seeks relief that is beyond the board's authority to grant. Finally, and in the alternative, should the Board not dismiss the Amended Complaint, the Board should strike certain portions of the pleading, because as discussed and argued below, they are extraneous and immaterial to Johns Manville's causes of action.

II. JOINT STATEMENT OF FACTS FOR SECTION 2-615 AND 2-619 MOTIONS

During the 1950s and 1960s, Complainant Johns Manville leased a parcel of real property from Commonwealth Edison ("Com Ed"), which was located at and near the southwest corner of Pershing Road and Greenwood Avenue in Waukegan, Illinois, for use as a parking lot ("Parking Lot"). (Amended Complaint ["Am. Compl.] ¶¶ 13 and 20.) Complainant used "asbestos-containing Transite pipes . . . for curb bumpers on the parking lot surface." (Am. Compl. ¶ 21.)

In approximately 1971, IDOT commenced construction of a ramp for the Amstuz Expressway, as part of its reconstruction of the Pershing Road/Greenwood Avenue intersection, ("Construction Project"). (Am. Compl. ¶ 22.) Work on the Construction Project continued up until 1976. (Am. Compl. ¶ 66.) During the course of the Construction Project, IDOT built two temporary detour roads, A and B, through the Parking Lot.[2] (Am. Compl. ¶¶ 24-25.) These roads were used throughout the Construction Project. (Am. Compl. ¶ 28.) Complainant alleges that "IDOT engaged in the open dumping of waste and disposal of ACM waste" during the course of the Construction Project. (Am. Compl. ¶ 66.)

[2] Roads A and B were constructed through what has subsequently become referred to as Sites 3 and 6. (Am. Compl. ¶¶ 13-14.)

Complainant alleges that after completion of the Construction Project "subsequent investigations have revealed Transite pipe" within the former Parking Lot area (e.g., Site 3) and along the south side of Greenwood Avenue (e.g., Site 6), areas in which the Construction Project was, in part, conducted. (Am. Compl. ¶ 32.) Apparently, this investigation occurred in or around December of 1998. (Exhibit 1 to Request for Judicial Notice, "In the Matter of Johns Manville Southwestern Site Area including Sites 3, 4, 5, and 6, Waukegan, Lake County, Illinois, Administrative Settlement Agreement and Order on Consent for Removal Action" ("AOC"), §IV.9.b, p.6.)

In September of 2000, the United States Environmental Protection Agency Region V ("EPA") issued information request letters to the Complainant, Com Ed, and to IDOT, pursuant to EPA's authority under Section 104(e) of the "Comprehensive Environmental Response, Compensation and Liability Act" ("CERCLA"), 42 U.S.C. § 9601 *et seq.* ("104(e) Request").

On November 27, 2000, IDOT submitted its response to EPA's 104(e) Request ("104(e) Response"). Johns Manville asserts in its Amended Complaint: "IDOT stated in a CERCLA Section 104(e) Response that Duane Mapes, a retired IDOT engineer, recalled "'dealing with asbestos pipe during the project and burying some of it.'" (Am. Compl. ¶ 30.) IDOT also stated in its 104(e) Response that Mr. Mapes was the only employee that it had been able to identify that might possibly have knowledge related to the Construction Project on IDOT's activities on Sites 3 and 6.

On December 17, 2003, Duane Mapes, the retired IDOT engineer referred to in IDOT's 104(e) Response, died in Neoga Township, Cumberland County, Illinois. (Request for Judicial Notice, Exhibit 2, Certification of Death Record for Duane L. Mapes.)

On July 11, 2007, EPA entered into the AOC with Johns Manville and Com Ed, pursuant

to which Johns Manville was required to undertake field work on Sites 3 and 6, in order to further define the extent and scope of contamination there, as well as to prepare for and conduct certain removal activities on those Sites. (AOC, § VIII.15.d-i, pp. 9-11.)

On July 8, 2013, Complainant initiated this action with the filing of its initial complaint.

On March 12, 2014, Johns Manville filed its Amended Complaint, which, among other things, alleges that IDOT violated Sections 21(a) and (e) of the Environmental Protection Act, 415 ILCS 5/42(a) and (e) (2012). Johns Manville alleged that, through its activities during the Construction Project, IDOT engaged in open dumping and the disposal of waste at a site that does not meet the requirements of the Environmental Protection Act ("Act"). (Am. Compl. ¶¶ 66-69.)

III. ARGUMENT

A. COMPLAINANT'S ACTION AGAINST IDOT IS PROPERLY DISMISSED PURSUANT TO SECTION 2-619(a)(1), BECAUSE IT SEEKS EQUITABLE RELIEF AND THE BOARD DOES NOT HAVE THE POWER TO GRANT SUCH RELIEF

The Amended Complaint is properly dismissed, pursuant to Section 2-619(a)(1) of the Code of Civil Procedure, 735 ILCS 5/2-619(a)(1) (2012), because Johns Manville seeks to have the Board issue an "order compelling equitable relief." (Am. Compl., p. 1.) Johns Manville alleges that it has incurred certain obligations as the result of its entering into the AOC with EPA, in particular, that it is required to conduct a removal action at Sites 3 and 6. (Am. Compl. ¶¶ 9-10.)

In Paragraph 52 of its Amended Complaint, Johns Manville alleges that on December 11, 2013, it submitted its Remedial Action Work Plan ("RAWP") to EPA, as required by the AOC, and, in Paragraph 53, that it subsequently submitted its final RAWP to EPA. Ultimately, Johns Manville alleges that because it "must begin EPA's proposed remedy shortly after the RAWP is

approved, it stands to suffer immediate and irreparable injuries for which there is no adequate remedy at law." (Am. Compl. 73.) (Emphasis added.)

The allegations in Paragraph 73 of the Amended Complaint, particularly Johns Manville's allegations that it will suffer immediate and irreparable injuries, are the necessary predicates for obtaining equitable or injunctive relief. *Lucas v. Peters,* 318 Ill.App.3d 1, 16 (1st Dist. 2000). Once a plaintiff has demonstrated that it is, in fact, suffering irreparable harm for which there is no adequate remedy at law, a court may grant the plaintiff injunctive relief. *Chicago Title v. Weiss*, 238 Ill.App.3d 921, 928 (2nd Dist. 1992).

The Prayer for Relief in Johns Manville's Amended Complaint further demonstrates that Johns Manville is requesting this Board to grant it mandatory, injunctive relief as against IDOT. Specifically, under item C of its Prayer for Relief, Johns Manville requests that the Board enter an order "Requiring Respondent to participate in the future response action on [the former Construction Site]-implementing the remedy approved or ultimately approved by EPA . . ." The requested relief falls squarely within the traditional understanding of what is encompassed by a mandatory injunction. *Ill. Law and Practice*, "Injunctions", §7 (noting that a mandatory injunction seeks to compel a party to perform a positive act). Thus, relief which requires parties to cooperate in some sort of undertaking has been found to be equitable and injunctive in nature. *Leib v. Toulin*, Inc., 113 Ill.App.3d 707, 720 (1st Dist. 1983). Similarly, a party who seeks the right to participate in bidding on a governmental contract may do so by requesting a court to grant it injunctive relief. *Keefe-Shea Joint Venture v. City of Evanston*, 332 Ill.App.3d 163, 175-76 (1st Dist. 2002).

The allegations in Paragraph 73 of the Amended Complaint, as well as the relief which Johns Manville requests this Board to impose, are fundamentally problematic, as it well-

established that the Board does not possess any equitable powers. *Janson v. IPCB,* 69 Ill.App.3d 324, 327 (3rd Dist. 1979) (the court noting that: "[t]he Board has no authority to issue or enforce injunctive relief as requested in the circuit court..."); *Pawlowski v. Johansen*, PCB 00-157 (May 4, 2000, Slip Op. *2; *See also, WRB Refining, LLC v. IEPA*, PCB 12-66 (Feb. 2, 2012), *15 (noting that "if the Board had the powers of an equity court . . .") (Emphasis added). Indeed, while a citizen can file an action before the Board, if they wish to obtain any form of equitable relief, then by statute, they must bring an action in circuit court seeking that relief. Section 45 of the Act, 415 ILCS 5/45 (2012), provides as follows:

> Any person adversely affected in fact by a violation of this Act or of regulations adopted thereunder may sue for injunctive relief against such violation. However, no action shall be brought under this Section until 30 days after plaintiff has been denied relief by the (Pollution Control) Board under paragraph (b) of Section 31 of this Act."

Thus, by its plain language, the Act recognizes that citizen suits seeking any form of equitable or injunctive relief for a violation of the Act, must be brought in circuit court and not before the Board. *Id.;* See also, *People v. Fiorini,* 192 Ill.App.3d 396, 401 (3rd Dist. 1989).

Accordingly, because the Board lacks the equitable powers and subject matter jurisdiction to grant Johns Manville's requested relief, the Board should dismiss this action, pursuant to Section 2-619(a)(1) of the Code of Civil Procedure, 735 ILCS 5/2-619(a)(1) (2012).

B. JOHNS MANVILLE'S CLAIMS AGAINST IDOT ARE BARRED BY THE STATUTE OF LIMITATIONS AND THUS SHOULD BE DISMISSED PURSUANT TO SECTION 2-619(a)(5) OF THE CODE OF CIVIL PROCEDURE

Johns Manville's action is properly dismissed by the Board, pursuant to Section 2-619(a)(5) of the Code of Civil Procedure, 735 ILCS 5/2-619(a)(5) (2012), because it is untimely and barred by the five year statute of limitations under 735 ILCS 5/13-205 (2012), and

Complainant's allegation that IDOT's alleged violations of Sections 21(a) and (e) of the Act (Am. Compl. ¶ 70) are continuing is unavailing.

Johns Manville's case against IDOT is based on the Department's alleged violations of Sections 21(a) and (e) of the Act, 415 ILCS 5/21(a) and (e) (2012). Because this case is brought by a private citizen, a five year statute of limitations applies to Johns Manville's claims.

Section 13-205 of the Code of Civil Procedure, 735 ILCS 5/13-205 (2012), provides as follows:

> Five year limitation. Except as provided in Section 2-725 of the "Uniform Commercial Code", approved July 31, 1961, as amended, and Section 11-13 of "The Illinois Public Aid Code", approved April 11, 1967, as amended, actions on unwritten contracts, expressed or implied, or on awards of arbitration, or to recover damages for an injury done to property, real or personal, or to recover the possession of personal property or damages for the detention or conversion thereof, and all civil actions not otherwise provided for, shall be commenced within 5 years next after the cause of action accrued.

The Board has acknowledged that the five year statute of limitations provided for under 735 ILCS 5/13-205 applies to actions which are not being brought by the State on behalf of the People of this State, in order to enforce a violation of the Act. *Caseyville Sport Choice, LLC v. Seiber*, PCB 08-30, 2008 WL 5716999 (Oct. 16, 2008), *2.

In *Caseyville*, the complainant initiated its suit before the Board in 2005. Caseyville's amended complaint alleged that during the years 1981 through 1993, respondents violated Sections 21(a), (d), and (e) of the Act by depositing tons of horse manure mixed with municipal waste on property subsequently acquired by Caseyville. Caseyville sought to recover the costs of having to clean up the waste. *Id.* The respondents filed a motion to dismiss Caseyville's action on statute of limitation grounds and Caseyville responded to the motion by asserting that it had not discovered the waste until approximately three years before they filed their original

complaint. *Id.* The Board ultimately held that based upon the discovery rule, Caseyville's action had been timely filed within the five year statute of limitations under Section 13-205 of the Code of Civil Procedure and Caseyville was allowed to proceed with its action. *Id.*

As Illinois courts have noted, under the discovery rule, the relevant statute of limitations only begins to run when plaintiff is put on inquiry notice. *Knox College v. Cellotex Corp.,* 88 Ill.2d 407, 415 (1981); *See also, Pruitt v. Schultz*, 235 Ill. App.3d 934, 936 (1992). Thus, once a plaintiff knows that they may have a claim against, or have been somehow wronged by, another person, they are required to diligently investigate the matter and to determine whether they may have a claim against another party. *Khan v. Deutsche Bank*, 2012 IL 112219, ¶ 45 (2012). The plaintiff is not allowed to wait to begin their investigation until they have first ascertained the full extent of their injuries. *Id.* That is, though, in essence, what Johns Manville has done with respect to the claims it now seeks to pursue against IDOT.

1. Johns Manville's Action Should be Dismissed Because the Statute of Limitations Arguably Began Running in 1976

Johns Manville's claims against IDOT are based on the Department's purported violations of Sections 21(a) and (e) of the Act. In order to make out their *prima facie* burden for these claims, they have to allege that the open dumping of waste has taken place (Section 21(a)), and that there has been the abandonment or disposal of waste at a site which does not meet the requirements of the Act (Section 21(e)). Johns Manville has essentially pled out the necessary allegations in support of these two claims in Paragraphs 57 through 71 of its Amended Complaint.

As alleged in the Amended Complaint, the Construction Project ended in 1976. (Am. Compl. ¶ 66) ("IDOT engaged in open dumping of waste and disposed of ACM waste between 1971 and 1976 . . .") Accordingly, the statute of limitations began to run on Johns Manville's

claim in 1976, after the Construction Project ended, and has long since run and thus, Johns Manville's claim should be dismissed.

2. Alternatively, Johns Manville's Action Should Be Dismissed Because the Statute of Limitations Began Running in 1998, After Johns Manville Learned That ACM was Present at and Beneath Site 3

Even assuming that Johns Manville may not have been aware of the conditions at Sites 3 and 6 in 1976, and did not then have an obligation to investigate the facts surrounding the claims that are now part of its Amended Complaint, it most certainly was on notice of the facts constituting the claims in its Amended Complaint by no later than December 1998. As set forth in the AOC, Johns Manville knew in December 1998 that ACM waste was present both on and beneath the surface (to a depth of three feet) of Site 3. (AOC, Sec. IV.9.b, p. 6.) Once Johns Manville learned about the presence of the ACM, the company was on notice that it may have had a claim against IDOT and thus triggered Johns Manville's duty to investigate the circumstances that led up to the deposition of that material at the Site. *Cellotex*, 82 Ill.2d at 415. Therefore, under this scenario, the five year statute of limitations applicable to Johns Manville's claims against IDOT began to run at some point in December 1998 and expired at some point in December 2003, almost ten years before the company filed the present action. Accordingly, Johns Manville's Amended Complaint should be dismissed by the Board pursuant to Section 2-619(a)(5) of the Code of Civil Procedure, 735 ILCS 5/2-619(a)(6) (2012).

3. Ultimately, Johns Manville's Action Should Be Dismissed Because the Statute of Limitations Began Running on its Claims Against IDOT No Later than June 17, 2007, Upon the Entry of the AOC

Even assuming for the sake of argument that the five year statute of limitations did not begin running in December 1998, it would most certainly have begun running upon the entry of the AOC in June 2007, as it set out all of the facts necessary for Johns Manville to allege the

claims in its Amended Complaint. The AOC's Findings of Fact section notes that:

> Asbestos containing pipes were split in half lengthwise and used for curb bumpers on Site 3. Site 3 also contains miscellaneous fill materials, some of which contains asbestos . . . JM removed surficial ACM and conducted sampling of the area which showed ACM at depths of at least three feet at Site 3.
>
> * * *
>
> Site 6 is adjacent to the JM former manufacturing facility on the shoulders of Greenwood Avenue and within the right-of-way of Greenwood Avenue in Waukegan, Illinois . . . Samples of this area were taken as part of the Waukegan Park District Study[3]. Both shallow and deeper sample material from the Greenwood Avenue shoulder [of Site 6] showed elevated levels of concentrations of primarily chrysotile asbestos.
> (AOC, §IV.9.b and e, pp. 6-7.)

Once again, the discovery rule is determinative with respect to Johns Manville's claims. Assuming that for some reason, Johns Manville was not put on inquiry notice in December 1998 of its possible claims against IDOT (which is a generous assumption), it was put on notice about those potential claims after it entered into the AOC. Yet, even with the certain knowledge that they were now subject to a series of legal obligations to address conditions at Sites 3 and 6, Johns Manville somehow – inexplicably and inexcusably – took no action against IDOT for more than six years after it entered into the AOC and one year after the expiration of the statute of limitations.

Based on the relevant five year statute of limitations provided for under 735 ILCS 5/13-205 (2012), as further determined based upon the discovery rule, Johns Manville's claims in this case should be dismissed pursuant to Section 2-619(a)(5) of the Code of Civil Procedure, because the limitations period within which to bring its action expired prior to its initiation of this case.

[3] The Waukegan Park District Study was completed in 2002.

C. JOHNS MANVILLE'S CLAIMS AGAINST IDOT ARE BARRED BY THE DOCTRINE OF LACHES

Even if the Johns Manville's action was not barred by the expiration of the statute of limitations, it would still be barred by laches, and therefore properly dismissed pursuant to Section 2-619(a)(9) of the Code of Civil Procedure, 735 ILCS 5/2-619(a)(9) (2012). Laches is an equitable doctrine that will defeat a plaintiff's cause of action, where the plaintiff's delay in commencing the action is prejudicial to the defendant's ability to assert their rights. *Senese v. Climatemp*, 280 Ill.App.3d 570, 578-79 (1st Dist. 1997.) The Board's cases have found laches to consist of similar elements. *Indian Creek De. Co. v. BNSF Rwy. Co.*, PCB 07-44, 2009 WL 1766180 (June 18, 2009), * 7.

Several facts support the application of this equitable doctrine and make this case properly subject to dismissal. First, IDOT's work at the site which gave rise to Johns Manville's causes of action took place almost forty years ago. Second, Johns Manville alleges that Duane Mapes, the former IDOT engineer who oversaw the Construction Project and who, in the fall of 2000, in response to USEPA's 104(e) Request letter, provided certain statements about the movement of asbestos pipe during construction activities in former Parking Lot (Am. Compl. ¶ 30.) Mapes, who died over ten years ago (RJN, Exhibit 2), is the only witness which IDOT ever identified and which might have been able to provide any relevant testimony for IDOT in the present action. Third, the general contractor for the Construction Project, Eric Bolander Construction, went out of business in 2001 (RJN, Exhibit 3, Certified Copy of the Certificate of Dissolution for Eric Bolander Construction Company), 12 years before Johns Manville initiated the present action.

Mape's death and the Bolander Company's going out of business also means that IDOT does not have the ability to defend itself against certain allegations within the Amended

Complaint, in particular, Paragraphs 33 and 34. These two paragraphs make reference to certain IDOT engineering drawings which purportedly show that IDOT planned to use ACM as backfill on Greenwood Avenue and to spread and otherwise used the ACM during construction activities.[4]

Here again, Johns Manville's delay in initiating this action fundamentally prejudices IDOT's ability to defend itself. Had Johns Manville filed this action shortly after it determined in late 1998 that there was ACM waste at and beneath the surface of Site 3, Duane Mapes would have still been alive and IDOT's general contractor for the project would have still been in business. Mapes might have been able to provide relevant testimony regarding the Construction Project, as might someone with Bolander. However, by failing to act with the requisite degree of diligence, Johns Manville has prejudicially impaired IDOT's ability to defend itself in this action. Such prejudicial impairment warrants the dismissal of Johns Manville's action against IDOT. *Senese*, 280 Ill.App.3d 570 at 580.

Accordingly, IDOT requests that the Board dismiss this action, pursuant to Section 2-619(a)(9), on the grounds of laches.

D. CERTAIN PORTIONS OF THE AMENDED COMPLAINT SHOULD BE STRICKEN PURSUANT TO SECTION 2-615 OF THE CODE OF CIVIL PROCEDURE BECAUSE THEY ARE FRIVOLOUS AND IMMATERIAL TO COMPLAINANT'S CAUSES OF ACTION

IDOT brings the second part of its 2-619.1 motion pursuant to Section 2-615 of the Code of Civil Procedure, in order to strike Paragraphs 11, 19, 35 through 54, 71 (partial), [5] and 72 of Johns Manville's Amended Complaint, because they are immaterial to the two statutory violations alleged therein.

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[4] These allegations are the subject of IDOT's contemporaneously-filed Demand for a Bill of Particulars.

[5] IDOT seeks only to strike the last sentence of Paragraph 71 of the Amended Complaint, which begins on line three of that paragraph and continues through the end of Paragraph 71.

Section 2-615(a) of the Code of Civil Procedure, 735 ILCS 5/2-615(a) (2012), provides as follows:

> Motions with respect to pleadings. (a) All objections to pleadings shall be raised by motion. The motion shall point out specifically the defects complained of, and shall ask for appropriate relief, such as: that a pleading or portion thereof be stricken because substantially insufficient in law, or that the action be dismissed, or that a pleading be made more definite and certain in a specified particular, or that designated immaterial matter be stricken out, or that necessary parties be added, or that designated misjoined parties be dismissed, and so forth.

In its Amended Complaint, Complainant alleges violations of Sections 21(a) (open dumping of waste) and 21(e) (disposal of waste at facility which does not meet the requirements of the Act). (Am. Compl. ¶¶ 57, 68, and 69.) In order to make out its *prima facie* case for open dumping of waste, Complainant must plead, as it has, that IDOT caused or allowed open dumping of waste, which is defined as "consolidation of refuse from one or more sources at a disposal site which does not fulfill the requirements of a sanitary landfill." (Am. Compl. ¶ 60.) Thus, while it becomes necessary to allege, as Johns Manville does, that neither Sites 3 or 6 "fulfill[s] the requirements of a sanitary landfill" (Am. Compl. ¶ 65), it is most certainly not necessary to allege, as Complainant does, the nature, extent, and scope of the removal actions which it must undertake pursuant to the AOC. (Am. Compl. ¶¶ 47.a-i.) Indeed, a substantial portion of Johns Manville's Amended Complaint contains allegations about the removal work that, pursuant to the AOC, EPA has directed it to perform at Sites 3 and 6. (*See e.g.,* Am. Compl. ¶¶ 38-41, and 48-49.)

As the Second District Court of Appeals stated in its opinion in *Brown v. Heritage Insurance*, 33 Ill. App.3d 943 (1975), "if necessary facts appear in the complaint, but are encumbered with unnecessary material," those unnecessary allegations are amenable to being struck, upon proper motion by the responding party. *Id.* at 948. The Amended Complaint need

only allege sufficient facts to state all the elements of Johns Manville's asserted causes of action. *Schiller v.* Mitchell, 357 Ill. App.3d 435, 439 (2nd Dist. 2005). As Johns Manville's Amended Complaint contains a substantial number of allegations regarding matters that are unnecessary and immaterial to its pleading and encumber it with extraneous material, the Board should strike, pursuant to Section 2-615 of the Code of Civil Procedure, Paragraphs 11, 19, 35 through 54, 71 (partial) and 72 of the Amended Complaint, on the grounds that said paragraphs are immaterial and extraneous to the necessary allegations of the complaint. *Brown*, 33 Ill.App.3d at 948.

IV. CONCLUSION

WHEREFORE, For the reasons set forth above, IDOT respectfully requests that the Board:

A. Dismiss the Amended Complaint, pursuant to Section 2-619(a)(1) of the Code of Civil Procedure, 415 ILCS 5/2-619(a)(1), on the grounds that the Board is not vested with the authority to grant Johns Manville's request for injunctive relief;

B. Dismiss the Amended Complaint, pursuant to Section 2-619(a)(5) of the Code of Civil Procedure, 415 ILCS 5/2-619(a)(5), on the grounds that Johns Manville filed this action after the expiration of the five year statute of limitations;

C. Dismiss the Amended Complaint, pursuant to Section 2-619(a)(9) of the Code of Civil Procedure, 415 ILCS 5/2-619(a)(9), on the grounds that Johns Manville's action is barred by the doctrine of laches;

D. Pursuant to Section 2-615 of the Code of Civil Procedure, 415 ILCS 5/2-615, strike Paragraphs 11, 19, 35 through 54, 71 (partial)[6] and 72 of the Amended Complaint, on the grounds that those provisions are superfluous and immaterial to the essential allegations of the Amended Complaint; and,

E. Such other relief as the Board may grant IDOT.

Respectfully Submitted,

ILLINOIS DEPARTMENT OF TRANSPORTATION

LISA MADIGAN,
Attorney General
of the State of Illinois

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Chicago, Illinois 60602
312.814.3153
emcginley@atg.state.il.us

[6] IDOT seeks only to strike the last sentence of Paragraph 71 of the Amended Complaint, which begins on line three of that paragraph and continues through the end of Paragraph 71.

CERTIFICATE OF SERVICE

***Johns Manville v. Illinois Department of Transportation*, PCB 14-3 (Citizens)**

I, EVAN J. McGINLEY, do hereby certify that, today, July 15, 2014, I caused to be served on the individuals listed below, by first class mail, a true and correct copy of the attached Respondent's Section 2-619.1 Motion to Dismiss Amended Complaint and to Strike Portions of Amended Complaint:

John Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601

Bradley Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601

Susan Brice
Kathrine Hanna
Bryan Cave LLP
161 North Clark Street
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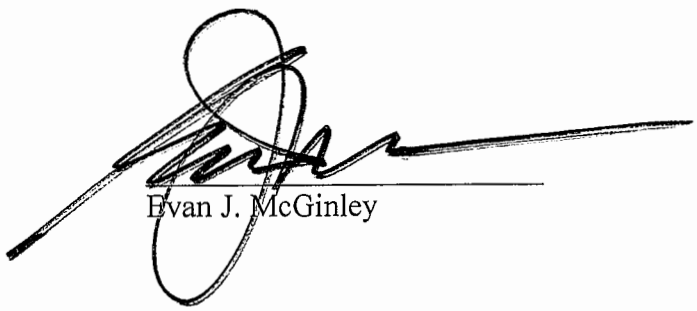

Evan J. McGinley

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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	)	
Complainant,	)	
	)	
v.	)	PCB No. 14-3
	)	(Citizen Suit)
ILLINOIS DEPARTMENT OF TRANSPORTATION,	)	
	)	
	)	
Respondent.	)	

RESPONDENT'S REQUESTS FOR JUDICIAL NOTICE

NOW COMES RESPONDENT, the Illinois Department of Transportation ("IDOT"), through its attorney LISA MADIGAN, Attorney General of the State of Illinois, which request that the Pollution Control Board ("Board") take judicial notice, pursuant to Section 101.630 of the Board's Procedural Rules, 35 Ill. Adm. Code 101.630, of the documents listed herein as Exhibits 1 through 3. Section 101.630 of the Board's Procedure Rules provides that: "[o]fficial notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge and experience of the Board."

Exhibit 1

- "In the Matter of Johns Manville Southwestern Site Area including Sites 3, 4, 5, and 6, Waukegan, Lake County, Illinois, Administrative Settlement Agreement and Order on Consent for Removal Action" ("AOC")"

Exhibit 2

- Certification of Death Record for Duane L. Mapes

Exhibit 3

- Certified Copy of the Certificate of Dissolution of Domestic Corporation, Eric Bolander Construction Company, Inc.

All three documents listed herein are amenable to judicial notice. Exhibit 1 is a public record of the United States Environmental Protection Agency (and to which Complainant, Johns Manville, is a signatory), and as such, is an appropriate subject for judicial notice. *In re Estate of Pellico*, 394 Ill.App.3d 1052, 1059 (2nd Dist. 2009). Exhibits 2 and 3, as officially certified records, are both appropriate subjects for judicial notice. *Swieton v. Landoch,* 106 Ill.App.3d 292, 299 (1st Dist. 1982).[1]

WHEREFORE, Respondent, the ILLINOIS DEPARTMENT OF TRANSPORATION, herewith requests that the Board take judicial notice of the documents attached hereto as Exhibits 1, 2, and 3.

Respectfully Submitted,

ILLINOIS DEPARTMENT OF TRANSPORTATION

LISA MADIGAN,
Attorney General
of the State of Illinois

EVAN J. McGINLEY
Office of the Illinois Attorney General
69 West Washington Street, Suite 1800
Chicago, Illinois 60602
312.814.3153
emcginley@atg.state.il.us

[1] The original certified copies of Exhibits 2 and 3 are maintained in the files of Respondent's attorney.

CERTIFICATE OF SERVICE

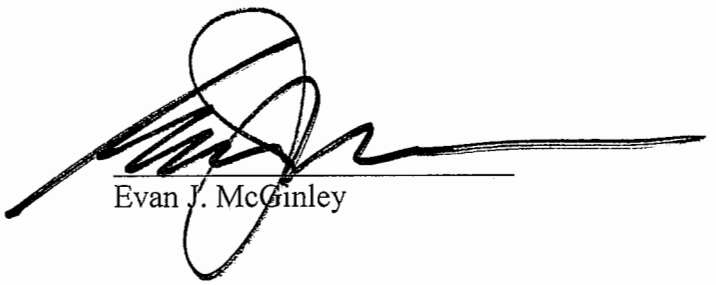
***Johns Manville v. Illinois Department of Transportation*, PCB 14-3 (Citizens)**

I, EVAN J. McGINLEY, do hereby certify that, today, July 15, 2014, I caused to be served on the individuals listed below, by first class mail, a true and correct copy of the attached Respondent's Request for Judicial Notice:

John Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601

Bradley Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601

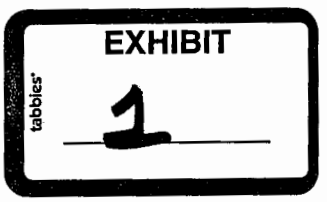
Susan Brice
Kathrine Hanna
Bryan Cave LLP
161 North Clark Street
Suite 4300
Chicago, Illinois 60601



Evan J. McGinley

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTION
Johns Manville Southwestern Site Area including Sites 3, 4, 5, and 6 Waukegan, Lake County, Illinois	U.S. EPA Region 5 CERCLA Docket No. V-W- '07-C-870
Johns Manville and Commonwealth Edison Company, Respondents	Proceeding under Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. Sections 9604, 9606(a), 9607 and 9622



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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Johns Manville ("JM") and Commonwealth Edison Company ("ComEd") ("Respondents"). This Settlement Agreement provides for the performance of a removal action by Respondents and the reimbursement of certain response costs incurred by the United States at or in connection with certain property located on and adjacent to the southern and western property lines of the former Johns Manville manufacturing facility located near Greenwood Avenue and Pershing Road in Lake County, Illinois and denoted as the Southwestern Site Area in Attachment 1.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Sections 9604, 9606(a), 9607 and 9622, as amended ("CERCLA").

3. EPA has notified the State of Illinois of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. Section 9606(a).

4. EPA and Respondents recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV and V of this Settlement Agreement. Respondents agree to comply with and be bound by the terms of this Settlement Agreement and further agree that they will not contest the basis or validity of this Settlement Agreement or its terms.

II. PARTIES BOUND

5. This Settlement Agreement applies to and is binding upon EPA and upon Respondents and their successors and assigns. Any change in ownership or corporate status of a Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondents' responsibilities under this Settlement Agreement.

6. Respondents are jointly and severally liable for carrying out all activities required by this Settlement Agreement. In the event of the insolvency or other failure of any one or more Respondents to implement the requirements of this Settlement Agreement, the remaining Respondents shall complete all such requirements.

7. Respondents shall ensure that their contractors, subcontractors, and representatives receive a copy of this Settlement Agreement and comply with this Settlement Agreement. Respondents shall be responsible for any noncompliance with this Settlement Agreement.

III. DEFINITIONS

8. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601, et seq.

b. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

c. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXX.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies.

e. "Illinois EPA" shall mean the Illinois Environmental Protection Agency and any successor departments or agencies.

f. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 24 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation), and Paragraph 34 (emergency response). Future Response Costs shall also include all Interim Response Costs [and all Interest on those Past Response Costs] Respondents have agreed to reimburse under this Settlement Agreement that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from June 30, 2006 to the Effective Date.

g. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

h. "Interim Response Costs" shall mean all costs, including direct and indirect costs, a) paid by the United States in connection with the Southwestern Site Area between June 30, 2006 and the Effective Date, or b) incurred prior to the Effective Date, but paid after that date.

i. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

j. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section XXIX). In the event of conflict between this Settlement Agreement and any attachment, this Settlement Agreement shall control.

k. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral.

l. "Parties" shall mean EPA and Respondents.

m. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Southwestern Site Area through June 30, 2006, plus Interest on all such costs through such date.

n. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901, et seq. (also known as the Resource Conservation and Recovery Act).

o. "Respondents" shall mean Johns Manville and Commonwealth Edison Company.

p. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

q. "Site 3" means the area so identified and approximately delineated in Attachment 1 where asbestos containing material has come to be located, as generally described in Paragraph 9.b.

r. "Site 4" means the area so identified and approximately delineated in Attachment 1 where asbestos containing material has come to be located, as generally described in Paragraph 9.c.

s. "Site 5" means the area so identified and approximately delineated in Attachment 1 where asbestos containing material has come to be located, as generally described in Paragraph 9.d.

t. "Site 6" means the area so identified and approximately delineated in Attachment 1 where asbestos containing material has come to be located, as generally described in Paragraph 9.e.

u. "State" means the State of Illinois.

v. "Southwestern Site" or "Southwestern Site Area" means the area so identified and approximately delineated in Attachment 1 where asbestos has come to be located, including Sites 3, 4, 5, and 6.

w. "Waste Material" shall mean 1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); 3) and any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

x. "Work" shall mean all activities Respondents are required to perform under this Settlement Agreement.

IV. FINDINGS OF FACT

9. Based on available information, including the Administrative Record in this matter, U.S. EPA hereby finds that:

a. Johns Manville is a Delaware corporation, and Commonwealth Edison Company is an Illinois corporation.

b. Site 3 is owned by Commonwealth Edison Company and is located south of the Greenwood Avenue right-of-way near the southern property line of the former JM manufacturing facility. Pursuant to a license agreement with Commonwealth Edison, Johns Manville used Site 3 as a parking lot for Johns Manville employees and invitees from the 1950s through approximately 1970. Asbestos containing pipes were split in half lengthwise and used for curb bumpers on Site 3. Site 3 also contains miscellaneous fill material, some of which contains asbestos. The parking lot was taken out of service in approximately 1970 when the Amstutz Expressway was constructed. The Illinois Department of Transportation ("IDOT") constructed a detour road on the parking lot for use during construction of the Expressway. IDOT subsequently removed and destroyed the detour road. In December 1998, Respondent Johns Manville discovered ACM at the surface on Site 3. JM removed surficial ACM and conducted sampling of the area which showed ACM at depths of at least three feet at Site 3.

c. Site 4 is on and adjacent to the western boundary of JM's former manufacturing facility in Waukegan, Illinois. Site 4 is located within the right of way owned by Commonwealth Edison extending northward from the north end of the elevated roadway approach to Greenwood Avenue to Site 5. On October 26, 2000, Johns Manville personnel observed asbestos-containing material at Site 4 during excavation activities related to the decommissioning of a nearby natural gas line. Pieces of ACM in the form of roofing materials, transite sheeting and brake shoe materials were noted in the excavated soil. ACM exposed at the surface was picked up and disposed off-site at the Onyx Landfill located in Zion, Illinois but subsurface ACM remains.

d. Site 5 is located within a swale area of the Commonwealth Edison right of way, which is on and adjacent to the western boundary of the former JM manufacturing facility in Waukegan, Illinois from Site 4 on the south to a point west of the north end of the pumping lagoon. Asbestos was discovered in the swale on Site 5 during investigations for a study prepared for the

Waukegan Park District entitled "Waukegan Park District: An Evaluation of Offsite Asbestos and Air Pollutants and Their Potential Effect on Visitors to the Proposed Sports Complex in Waukegan, Illinois" dated March 7, 2002 ("Waukegan Park District Study"). According to this study, a composite sample from the swale exhibited elevated asbestos concentrations.

e. Site 6 is adjacent to the JM former manufacturing facility on the shoulders of Greenwood Avenue and within the right-of-way of Greenwood Avenue in Waukegan, Illinois extending from the east end of Greenwood Avenue's elevated approach to Pershing Road on the west to the boundary of Site 2 on the east. Samples of this area were taken as part of the Waukegan Park District Study. Both shallow and deeper sample material from the Greenwood Avenue shoulder showed elevated levels of concentrations of primarily chrysotile asbestos. The current known area of asbestos contamination at Site 6 is not owned by Commonwealth Edison.

f. Johns Manville has provided U.S. EPA with a drawing of the approximate locations where asbestos containing material has been identified at Sites 3, 4, 5 and 6.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

10. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

a. The Southwestern Site Area, including Sites 3, 4, 5, and 6, is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The asbestos found at Sites 3, 4, 5, and 6 of the Southwestern Site Area is a "hazardous substance" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Each Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for performance of response action and for response costs incurred and to be incurred at the Southwestern Site Area. Respondents are "owners" and/or "operators" of the Southwestern Site Area as defined by Section 101(20) of CERCLA. Respondents are either persons who at the time of disposal of any hazardous substances owned or operated the Southwestern Site Area or who arranged for disposal or transport for disposal of hazardous substances at the Southwestern Site Area. The Respondents therefore may be liable under Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a).

e. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from each facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. The removal action required by this Settlement Agreement is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the

terms of this Settlement Agreement, will be considered consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. SETTLEMENT AGREEMENT AND ORDER

11. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for the Southwestern Site Area, it is hereby Ordered and Agreed that Respondents shall comply with all provisions of this Settlement Agreement, including, but not limited to, all attachments to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

12. Respondents shall retain one or more contractors to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) within five days of the Effective Date. Respondents shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least five days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondents. If EPA disapproves of a selected contractor, Respondents shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within three days of EPA's disapproval. The proposed contractor must demonstrate compliance with ANSI/ASQC E-4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP must be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B0-1/002), or equivalent documentation as required by EPA. Any decision not to require submission of the contractor's QMP should be documented in a memorandum from the OSC and Regional QA personnel to the Site file.

13. Within five days after the Effective Date, Respondents shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondents required by this Settlement Agreement and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within three days following EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by all Respondents.

14. EPA has designated Brad Bradley of the Remedial Response Branch, as its On-Scene Coordinator ("OSC"). Except as otherwise provided in this Settlement Agreement, Respondents shall direct all submissions required by this Settlement Agreement to OSC at 77 West

Jackson Boulevard (SR-6J), Chicago, IL 60604 by certified or express mail. Respondents must also send a copy of all submissions to Janet Carlson at 77 West Jackson Boulevard (C-14J), Chicago, Il 60604. EPA and Respondents shall have the right, subject to Paragraph 13, to change their respective designated OSC or Project Coordinator. Respondents shall notify EPA 2 days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED

15. Respondents shall perform, at a minimum, the following actions:

a. Determine the nature and extent of asbestos contamination at and near the Southwestern Site Area approximately delineated in Attachment 1. Respondent Johns Manville has previously sampled and analyzed soil samples at Site 3 using methodologies that are "not inconsistent with the National Contingency Plan." At a minimum, Respondents will further investigate Site 3 by visually inspecting borings or excavations below a depth of three feet at a representative number of locations. At a minimum, Respondents shall sample soil in unpaved areas in one foot depth intervals down to a depth of three feet below the ground according to a sampling grid with an area no greater than 1225 square feet and a length to width ratio of no greater than 2:1 in the Southwestern Site Area (except Site 3). Respondents shall analyze the soil samples for asbestos using Polarized Light Microscopy (PLM) CARB Level A (analytical sensitivity of 0.25% asbestos). Respondents shall also analyze a sample, at random interval depths, from 10% of the soil sample locations via Transmission Electron Microscopy (TEM) CARB Level B (analytical sensitivity of 0.1% asbestos). Due to the possible presence of building materials presumed or confirmed as containing ACM that may prevent or hinder the advancement of a geoprobe, Respondents may at their option, propose to excavate 3-foot deep holes with a backhoe or similar equipment and collect samples at appropriate depths from the sidewalls of the excavations. Respondents may also, at their option, choose to declare a particular sampling location and interval above actionable levels, without analysis, if visible ACM is found in the sample. For areas west of the property line of JM's former manufacturing facility, Respondents shall initially limit sampling to the upland areas adjacent to the JM property line. Absent the presence of visible ACM, the extent of contamination investigation shall not extend beyond areas where the sample results indicate asbestos levels below the analytical sensitivity of the PLM CARB Level A laboratory method. If asbestos contamination is encountered at 3 feet, Respondents shall conduct additional sampling below 3 feet to determine the extent of contamination for the remaining areas.

b. Within 60 days after the Effective Date, Respondents shall submit to EPA for approval (with a copy to the State) an Extent of Contamination Work Plan, or at Respondents' option, a set of plans for any combination of Sites, for performing the removal sampling activities identified in Paragraph 15.a. Respondents shall prepare a Quality Assurance Project Plan as part of the Work Plan. The QAPP for the JM Waukegan NPL Site activities was approved pursuant to the following QAPP Guidance: "EPA Requirements for Quality Assurance Project Plans (QA/R-5)" (EPA/240/B-01/003, March 2001), and "EPA Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998). Respondents may use the existing QAPP for the JM Waukegan NPL Site as a template under this Settlement Agreement. For activities that are

outside the scope of the QAPP approved for the JM Waukegan NPL Site, Respondents shall develop a new QAPP in accordance with the Uniform Federal Policy for Implementing Environmental Quality Systems (UFP-QS), the Uniform Federal Policy for Quality Assurance Project Plans (UFP-QAPP) Manual, the UFP-QAPP Workbook, and the UFP-QAPP Compendium. The U.S. EPA Office of Solid Waste and Emergency Response (OSWER) approved the UFP-QS (Final, Version 2, March 2005). The Extent of Contamination Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement Agreement.

c. Within 150 days of EPA approval or approval with modification of the Extent of Contamination Work Plan, Respondents shall complete the sampling activities required by the Extent of Contamination Work Plan and shall prepare and submit an Engineering Evaluation Cost Analysis Study (EE/CA) in accordance with U.S. EPA's "Guidance on Conducting Non-Time-Critical Removal Action Under CERCLA" to EPA for review and approval (with a copy to the State). The EECA shall contain: source, nature, characterization (including a risk evaluation) and extent of contamination for the Southwestern Site Area; identification and analysis of removal objectives; identification of ARARs; identification and analysis of alternatives for removal of the asbestos in the Southwestern Site Area; and comparative analysis of removal action alternatives according to long term and short term effectiveness, implementability and cost of the proposed alternative. The EECA shall evaluate the excavation and offsite disposal of all asbestos containing material above background levels in the Southwestern Site Area as one of the removal action alternatives.

d. Respondents, the State, and, if required by the NCP and CERCLA, the public, will be provided an opportunity to comment on the response action proposed by EPA for the Southwestern Site Area. EPA will include the EPA approved EECA in the Administrative Record for the Southwestern Site Area. EPA may select a response action for the Southwestern Site Area pursuant to an Action Memorandum or other decision document.

e. Within 120 days after receiving EPA's notice to proceed, Respondents shall submit to EPA for approval (with a copy to the State) a Removal Action Work Plan for performing EPA's selected response action for the Southwestern Site Area in accordance with EPA's Action Memorandum or other decision document for the Southwestern Site Area. The Removal Action Work Plan shall provide a description of, and an expeditious schedule for such action.

f. Following EPA approval of the Removal Action Work Plan, the Respondents shall initiate and implement the Removal Action in accordance with the EPA approved Removal Action Work Plan and the schedule therein.

g. During all removal activities, Respondents shall allow no visible emissions in the work areas. The presence of visible emissions in any work area shall result in immediate cessation of all work activities in said area until such time as the visible emissions can be controlled.

h. Pursuant to the Removal Action Work Plan, during removal activities, Respondents shall conduct air sampling and analysis for asbestos using PCM as specified in Appendix A of OSHA Standard 1926.1101 (Asbestos) or NIOSH Method 7400. If fiber concentrations exceed 0.01 f/cc, a recount shall be conducted of the same sample using TEM ISO 10312 methodology. In

addition, random air samples shall be analyzed using TEM ISO 10312 methodology as specified in the Removal Action Work Plan. An action level of concentrations exceeding 0.01 f/cc (PCM Equivalent) will be used during removal activities. In the event of any exceedance of the action level or background level, whichever is higher, work practices must immediately be reviewed and adjusted until said exceedance ceases.

i. Within 90 days of completion of all construction activities, Respondents shall prepare and submit a summary report of the removal action.

16. Review of Plans.

a. EPA may approve, disapprove, require revisions to, or modify all plans under this Settlement Agreement including the Extent of Contamination Work Plan, EECA and the Removal Action Work Plan in whole or in part. If EPA requires revisions, Respondents shall submit a revised Extent of Contamination Work Plan, revised EECA or revised Removal Action Work Plan within 30 days of receipt of EPA's notification of the required revisions unless extended in writing by EPA. Respondents shall implement the Extent of Contamination Work Plan and the Removal Action Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plans, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.

b. Respondents shall not commence any Work except in conformance with the terms of this Settlement Agreement. Respondents shall not commence implementation of the Extent of Contamination Work Plan and Removal Action Work Plan developed hereunder until receiving written EPA approval pursuant to Paragraph 16(a). Respondents shall notify U.S. EPA at least 48 hours prior to performing any on site work pursuant to the U.S. EPA approved work plan.

17. Health and Safety Plan. The Health and Safety Plan ("HSP") will be included in the Extent of Contamination Work Plan. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). Respondents may use the existing HSP for the JM Waukegan NPL site as a template. In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondents shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

18. Quality Assurance and Sampling.

a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondents shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990),

as guidance for QA/QC and sampling. Respondents shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001)," or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.

b. Upon request by EPA, Respondents shall have such a laboratory analyze samples submitted by EPA for QA monitoring. Respondents shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

c. Upon request by EPA, Respondents shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondents shall notify EPA not less than 3 business days in advance of any activity requiring sample collection, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Respondents to take split or duplicate samples of any samples it takes as part of its oversight of Respondents' implementation of the Work.

19. Post-Removal Site Control. In accordance with the Work Plan schedule, or as otherwise directed by EPA, Respondents shall submit a proposal for post-removal site control consistent with Section 300.415(l) of the NCP and OSWER Directive No. 9360.2-02. Upon EPA approval, Respondents shall implement such controls and shall provide EPA with documentation of all post-removal site control arrangements.

20. Reporting.

a. Respondents shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement Agreement monthly, on the 10th day of each month following receipt of EPA's approval of the Extent of Contamination Work Plan until submission of the summary report identified in 15(i), unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Respondents shall submit to EPA 2 copies of all plans, reports or other submissions required by this Settlement Agreement, or any approved work plan. Upon request by EPA, Respondents shall submit such documents in electronic form.

c. Respondents who own or control property at the Southwestern Site Area shall, at least 30 days prior to the conveyance of any interest in real property at the Southwestern Site Area, give written notice to the transferee that the property is subject to this Settlement Agreement and written notice to EPA and the State of the proposed conveyance, including the

name and address of the transferee. Respondents who own or control property at the Sites 3, 4, 5 and 6 also agree to require that their successors comply with the immediately proceeding sentence and Sections IX (Site Access) and X (Access to Information).

21. Final Report. Within 60 calendar days after completion of all Work required by this Settlement Agreement, Respondents shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Settlement Agreement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

22. Off-Site Shipments.

a. Respondents shall, prior to any off-Site shipment of Waste Material from the Southwestern Site Area to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the On-Scene Coordinator. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

i. Respondents shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method of transportation. Respondents shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

ii. The identity of the receiving facility and state will be determined by Respondents following the award of the contract for the removal action. Respondents shall provide the information required by Paragraph 22(a) and 22(b) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any asbestos containing material (or other hazardous substances, pollutants, or contaminants, if any) from the Southwestern Site Area to an off-site

location, Respondents shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d) (3), 42 U.S.C. § 9621(d) (3), and 40 C.F.R. §300.440 and which is properly licensed to accept asbestos or asbestos containing material. Respondents shall only send asbestos containing material (or other hazardous substances, pollutants, or contaminants, if any) from the Southwestern Site Area to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

IX. SITE ACCESS

23. If the Southwestern Site Area, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by any of the Respondents, such Respondents shall, commencing on the Effective Date, provide EPA, the State, and their representatives, including contractors, with access at all reasonable times to the Southwestern Site Area, for the purpose of conducting any activity related to this Settlement Agreement.

24. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within 30 days after the Effective Date, or as otherwise specified in writing by the OSC. Respondents shall immediately notify EPA if after using their best efforts they are unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondents shall describe in writing their efforts to obtain access. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate. Respondents shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XV (Payment of Response Costs).

25. Notwithstanding any provision of this Settlement Agreement, EPA and the State retain all of their access authorities and rights as well as all of their rights to require land/water use restrictions", including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

X. ACCESS TO INFORMATION

26. Respondents shall provide to EPA and the State, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Southwestern Site Area or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondents shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

27. Respondents may assert business confidentiality claims covering part or all of the documents or information submitted to EPA and the State under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA and the State, or if EPA has notified Respondents that the documents or information are not confidential under the standards of Section 104(e) (7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondents.

28. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondents assert such a privilege in lieu of providing documents, they shall provide EPA and the State with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

29. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Southwestern Site Area.

XI. RECORD RETENTION

30. Until 10 years after Respondents' receipt of EPA's notification pursuant to Section XXIX (Notice of Completion of Work), each Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Southwestern Site Area, regardless of any corporate retention policy to the contrary. Until 10 years after Respondents' receipt of EPA's notification pursuant to Section XXVIII (Notice of Completion of Work), Respondents shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

31. At the conclusion of this document retention period, Respondents shall notify EPA and the State at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA or the State, Respondents shall deliver any such records or documents to EPA or the State. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege, they shall provide EPA or the State with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3)

the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

32. Each Respondent hereby certifies individually that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Southwestern Site Area since notification of potential liability by EPA or the State or the filing of suit against it regarding the Southwestern Site Area and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. § § 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XII. COMPLIANCE WITH OTHER LAWS

33. Respondents shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. § § 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

34. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Southwestern Site Area including Sites 3, 4, 5 and 6 that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action. Respondents shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer, USEPA Region 5 Emergency Planning and Response Branch at (312) 353-2318 [Emergency Planning and Response Branch], of the incident or Site conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondents shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XV (Payment of Response Costs).

35. In addition, in the event of any release of a hazardous substance from the Southwestern Site Area, Respondents shall immediately notify the OSC at (312) 353-2318 and the National Response Center at (800) 424-8802. Respondents shall submit a written report to EPA within 7 days after each release, setting forth the events that occurred and the measures taken or to

be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, et seq.

XIV. AUTHORITY OF ON-SCENE COORDINATOR

36. The OSC shall be responsible for overseeing Respondents' implementation of this Settlement Agreement. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement, or to direct any other removal action undertaken at the Southwestern Site Area. Absence of the OSC from the Southwestern Site Area shall not be cause for stoppage of work unless specifically directed by the OSC.

XV. PAYMENT OF RESPONSE COSTS

37. Payment for Past Response Costs.

a. Within 30 days after the Effective Date, Respondents shall pay to EPA $8,953.40 for Past Response Costs. Payment shall be made to U.S. EPA by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures that U.S. EPA Region 5 will provide Respondents, and shall be accompanied by a statement identifying the name and address of the party(ies) making payment, the Site name, U.S. EPA Region 5, the Site/Spill ID Number 05A5 Operable Unit 3 and Operable Unit 4, and the EPA docket number for this action.

b. At the time of payment, Respondents shall send notice that such payment has been made to:

Brad Bradley
United States Environmental
Protection Agency
Region 5, C-14J
77 West Jackson Boulevard
Chicago, IL 60604

Janet Carlson
United States Environmental
Protection Agency
Region 5, C-14J
77 West Jackson Boulevard
Chicago, IL 60604

c. The total amount to be paid by Respondents pursuant to Paragraph 37(a) shall be deposited in the Johns Manville Special Accounts for 05A5 03 and 05A5 04 within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Southwestern Site Area, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

38. Payments for Future Response Costs.

a. Respondents shall pay EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondents a bill requiring payment that includes an itemized cost summary. Respondents shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 40 of this Settlement Agreement.

b. Payment shall be made to U.S. EPA by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to Respondents by U.S. EPA Region 5. Payment shall be accompanied by a statement identifying the name and address of the party(ies) making payment and EPA Site/Spill ID number as identified in the billing according to the following site ID:

05A5 03 (Site 3 Parking lot and adjacent area)
05A5 04 (Western boundary area: Site 4 and Site 5 and adjacent area)
05A5 06 (Greenwood Ave: Site 6 and adjacent area)

c. At the time of payment, Respondents shall send notice that payment has been made to.

Brad Bradley
United States Environmental Protection Agency
Region 5, C-14J
77 West Jackson Boulevard
Chicago, IL 60604

Janet Carlson
United States Environmental Protection Agency
Region 5, C-14J
77 West Jackson Boulevard
Chicago, IL 60604

d. The total amount to be paid by Respondents pursuant to Paragraph 38(a) shall be deposited in the Johns Manville Special Accounts for 05A5 03 (Parking lot and adjacent area); 05A5 04 (Western boundary area: Site 4 and Site 5 and adjacent area); 05A5 06 (Greenwood Ave: Site 6 and adjacent area) within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Southwestern Site Area, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

39. In the event that the payment for Past Response Costs is not made within 30 days of the Effective Date, or the payments for Future Response Costs are not made within 30 days of Respondents' receipt of a bill, Respondents shall pay Interest on the unpaid balance. The Interest on Past Response Costs shall begin to accrue on the Effective Date and shall continue to accrue until the date of payment. The Interest on Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVIII.

40. Respondents may dispute all or part of a bill for Future Response Costs submitted under this Settlement Agreement, if Respondents allege that EPA has made an accounting error, or if Respondents allege that a cost item is inconsistent with the NCP. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not

resolved before payment is due, Respondents shall pay the full amount of the uncontested costs to EPA as specified in Paragraph 38 on or before the due date. Within the same time period, Respondents shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondents shall simultaneously transmit a copy of both checks to the persons listed in Paragraph 38(c) above. Respondents shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within 5 days after the dispute is resolved.

XVI. DISPUTE RESOLUTION

41. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement between the Respondents and EPA. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.

42. If Respondents object to any EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, they shall notify EPA in writing of their objection(s) within 10 days of such action, unless the objection(s) has/have been resolved informally. EPA and Respondents shall have 10 days from EPA's receipt of Respondents' written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

43. Any agreement reached by the parties pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Remedial Branch Chief level or higher will issue a written decision on the dispute to Respondents. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Respondents' obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

XVII. FORCE MAJEURE

44. Respondents agree to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a force majeure. For purposes of this Settlement Agreement, a force majeure is defined as any event arising from causes beyond the control of Respondents, or of any entity controlled by Respondents, including but not limited to their contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondents' best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the Work, increased cost of performance, or a failure to attain performance standards/action levels.

45. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a force majeure event, Respondents shall notify EPA orally within 24 hours of when Respondents first knew that the event might cause a delay. Within two days thereafter, Respondents shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of force majeure for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

46. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Settlement Agreement that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Respondents in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

XVIII. STIPULATED PENALTIES

47. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 48 and 49 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVII (Force Majeure). "Compliance" by Respondents shall include completion of the activities under this Settlement Agreement or any work plan or other plan approved under this Settlement Agreement identified below in accordance with all applicable requirements of law, this Settlement Agreement and any plans or other documents approved by EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

48. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 48(b):

Penalty per Violation per Day	Period of Noncompliance
$2,000.00	1st through 14th day
$4,000.00	15th through 30th day

$10,000.00	31st day and beyond

b. Compliance Milestones. Failure to conduct the work in accordance with paragraph 15, the Extent of Contamination Work Plan, the Removal Action Work Plan, any other EPA approved work plans and the schedules contained therein. Failure to submit a timely or adequate EECA in accordance with paragraph 15.

49. Stipulated Penalty Amounts - Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents pursuant to Paragraphs 15, 16, 17, 19 and 20:

Penalty per Violation per Day	Period of Noncompliance
$1,000.00	1st through 14th day
$2,000.00	15th through 30th day
$4,000.00	31st day and beyond

50. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency; and 2) with respect to a decision by the EPA Management Official at the Remedial Branch Chief level or higher, under Paragraph 42 of Section XVI (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

51. Following EPA's determination that Respondents have failed to comply with a requirement of this Settlement Agreement, EPA may give Respondents written notification of the failure and describe the noncompliance. EPA may send Respondents a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondents of a violation.

52. All penalties accruing under this Section shall be due and payable to EPA within 30 days of Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the dispute resolution procedures under Section XVI (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to U.S. Environmental Protection Agency, Region 5 Superfund Receivable, P.O. Box 371099M, Pittsburgh, PA 15251 , shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID Number 05A5 Operable Unit 3 and 4, the EPA Docket Number, and the name and address of the party(ies) making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to EPA as provided in Paragraph 37.

53. The payment of penalties shall not alter in any way Respondents' obligation to complete performance of the Work required under this Settlement Agreement.

54. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until 15 days after the dispute is resolved by agreement or by receipt of EPA's decision.

55. If Respondents fail to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondents shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 52. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Settlement Agreement. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XIX. COVENANT NOT TO SUE BY EPA

56. In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. § 9606 and 9607(a), for performance of the Work and for recovery of Past Response Costs and Future Response Costs. This covenant not to sue shall take effect upon receipt by EPA of the Past Response Costs due under Section XV of this Settlement Agreement and any Interest or Stipulated Penalties due for failure to pay Past Response Costs as required by Sections XV and XVIII of this Settlement Agreement. This covenant not to sue is conditioned upon the complete and satisfactory performance by Respondents of the Work and their obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Section XV. This covenant not to sue extends only to Respondents and does not extend to any other person.

XX. RESERVATIONS OF RIGHTS BY EPA

57. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or

solid waste on, at, or from the Southwestern Site Area including Sites 3, 4, 5 and 6. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

58. The covenant not to sue set forth in Section XIX above does not pertain to any matters other than those expressly identified therein. EPA reserves and this Settlement Agreement are without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

a. claims based on a failure by Respondents to meet a requirement of this Settlement Agreement;

b. liability for costs not included within the definitions of Past Response Costs or Future Response Costs;

c. liability for performance of response action other than the Work;

d. criminal liability;

e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Southwestern Site Area; and

g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Southwestern Site Area.

XXI. COVENANT NOT TO SUE BY RESPONDENTS

59. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Past Response Costs, Future Response Costs, or this Settlement Agreement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b) (2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. § 9606(b) (2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Southwestern Site Area, including any claim under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. § 9607 and 9613, relating to the Southwestern Site Area including Sites 3, 4, 5 and 6.

Except as provided in Paragraph 61 (Waiver of Claims), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 58 (b), (c), and (e) - (g), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

60. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXII. OTHER CLAIMS

61. By issuance of this Settlement Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or EPA shall not be deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

62. Except as expressly provided in Section XXI, and Section XIX (Covenant Not to Sue by EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

63. No action or decision by EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXIII. CONTRIBUTION

64. a. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondents are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. § 9613(f) (2) and 9622(h) (4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work, Past Response Costs and Future Response Costs.

b. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondents have, as of the Effective Date, resolved their liability to the United States for the Work, Past Costs and Future Costs.

c. Except as provided in Section XXI, nothing in this Settlement Agreement precludes the United States or Respondents from asserting any claims, causes of action, or demands against any persons not parties to this Settlement Agreement for indemnification, contribution, or cost recovery. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)92) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

XXIV. INDEMNIFICATION

65. Respondents shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondents agree to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Settlement Agreement. Neither Respondents nor any such contractor shall be considered an agent of the United States.

66. The United States shall give Respondents notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondents prior to settling such claim.

67. Respondents waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Southwestern Site Area including Sites 3, 4, 5 and 6, including, but not limited to, claims on account of construction delays. In addition, Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Southwestern Site Area, including, but not limited to, claims on account of construction delays.

XXV. INSURANCE

68. At least 7 days prior to commencing any on-Site work under this Settlement Agreement, Respondents shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of 1 million dollars, combined single limit. Within the same time period, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. In addition, for the duration of the Settlement Agreement, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Settlement Agreement. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondents need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXVI. FINANCIAL ASSURANCE

69. In order to ensure the full and final completion of the Work, Respondents shall establish and maintain a performance guarantee for the benefit of EPA in the amount of $300,000 (hereinafter "Estimated Cost of the Work") in one or more of the following forms, which must be satisfactory in form and substance to EPA:

a. A surety bond unconditionally guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on Federal bonds as set forth in Circular 570 of the U.S Department of the Treasury;

b. One or more irrevocable letters of credit payable to or at the direction of EPA, that is issued by one or more financial institutions (1) that has the authority to issue letters of credit and (ii) whose letter-of-credit operations are regulated and examined by a U.S. Federal or State agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee (i) that has the authority to act as a trustee and (ii) whose trust operations are regulated and examined by a U.S. Federal or State agency;

d. A policy of insurance that (i) provides EPA with acceptable rights as a beneficiary thereof; and (ii) is issued by an insurance carrier (a) that has the authority to issue insurance policies in the applicable jurisdiction(s) and (b) whose insurance operations are regulated and examined by a State agency;

e. A demonstration that one or more of the Respondents satisfy the requirements of 40 C.F.R. Part 264.143(f) with respect to the Estimated Cost of the Work, provided that all other requirements of 40 C.F.R. Part 264.143(f) are satisfied;

f. A written guarantee to fund or perform the Work executed in favor of EPA by one or more of the following: (1) a direct or indirect parent company of a Respondent, or (ii) a company that has a "substantial business relationship with at least one of Respondents; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that is satisfies the financial test requirements of 40 C.F.R. Part 264.143(f) with respect to the Estimate Cost of the Work that it proposes to guarantee hereunder.

70. Respondents have selected, and EPA has approved, initial Performance Guarantees in the following forms. Within thirty days after the effective date of this AOC, Respondent Johns Manville shall deposit an additional $260,000 into the US Bank Manville Sales Corporation EPA Escrow Account No. 77315030 that was established under the First Amended Consent Decree in United States v. Manville Sales Corp. (now Johns Manville), Case 88C 630 (N.D. Ill.). Within thirty days after the effective date of this AOC, Respondent Commonwealth Edison shall issue an irrevocable letter of credit payable to or at the direction of EPA in the amount of $40,000, by one or more financial institutions (1) that has the authority to issue letters of credit and (ii) whose letter-of-credit operations are regulated and examined by a U.S. Federal or State agency;

If at any time during the effective period of this AOC, the Respondents provide a Performance Guarantee for completion of the Work by means of a demonstration or guarantee pursuant to Paragraph 69(e) or (f) above, such Respondent shall also comply with the other relevant requirements of 40 C.F.R. Sections 264.143(f), 264.151(f) and 264.151(h)(1) relating to these methods unless otherwise provided in this AOC, including but not limited to: (i) the initial submission of required financial reports and statements from the accountant; (ii) the annual re-submission of such reports and statements within ninety days after the close of each such entity's fiscal year; and (iii) the notification of EPA within ninety days after the close of any fiscal year in which such entity no longer satisfies the financial test requirements set forth at 40 C.F.R. Section 264.143(f)(1). For purposes of the Performance Guarantee methods specified in this Section XIII, references in 40 C.F.R. Part 264, Subpart H, to "closure," "postclosure" and "plugging and abandonment" shall be deemed to refer to the Work required under this AOC, and the terms "current closure cost estimate", "current closure cost estimate", "current post-closure cost estimate" and "current plugging and abandonment cost estimate" shall be deemed to refer to the Estimated Cost of the Work. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Respondents shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 69 of this Section. Respondents' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Settlement Agreement.

71. If, after the Effective Date, Respondents can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 69 of this Section, Respondents may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount by the appropriate fraction of $300,000 provided under this Section. Respondents shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA. In the event of a dispute, Respondents may reduce the amount of the security in accordance with the written decision resolving the dispute. Upon EPA's issuance of a Notice of Completion of

Work under Paragraph 76, any remaining portion of the $260,000 (including accrued interest on the $260,000) in Escrow Account No. 773150 shall revert to Respondent Johns Manville and any remaining portion of Respondent Commonwealth Edison's $40,000 letter of credit shall be returned.

72. Respondents may change the form of financial assurance provided under this Section at any time, upon notice to and approval by EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Respondents may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

XXVII. MODIFICATIONS

73. The OSC may make modifications to any plan or schedule in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the parties.

74. If Respondents seek permission to deviate from any approved work plan or schedule, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 73.

75. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXVIII. NOTICE OF COMPLETION OF WORK

76. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including post-removal site controls, payment of Future Response Costs, and record retention, EPA will provide written notice to Respondents. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the Work Plan if appropriate in order to correct such deficiencies. Respondents shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondents to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

XXIX. SEVERABILITY/INTEGRATION/APPENDICES

77. If a court issues an order that invalidates any provision of this Settlement Agreement or finds that Respondents have sufficient cause not to comply with one or more provisions of this Settlement Agreement, Respondents shall remain bound to comply with all provisions of this Settlement Agreement not invalidated or determined to be subject to a sufficient cause defense by the court's order.

78. This Settlement Agreement and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

Attachment 1: Map - Southwestern Site Area including Sites 3, 4, 5 and 6

XXX. NOTICES

79. Whenever, under the terms of this Administrative Agreement and Order on Consent, notice is required to be given by one party to another, such correspondence shall be directed to the following individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing:

As to U.S. EPA

Regional Counsel
Attn: Janet Carlson, Johns Manville staff attorney
U.S. EPA, Mail Code C14J
77 W. Jackson Blvd
Chicago, IL 60604

Director, Superfund Division
Attn: Brad Bradley, Johns Manville RPM
U. S. EPA, Mail Code 6J
77 W. Jackson Blvd
Chicago, IL 60604

As to the State of Illinois

Illinois Environmental Protection Agency
Attn: Manager, Federal Site Remediation Section
Division of Remediation Management
1021 Grand Avenue East
Springfield, IL 62794-9276

Chief, Environmental Bureau North
Illinois Attorney General's Office
100 W. Randolph Street
Chicago, Illinois 60601

As to Johns Manville:

Brent A. Tracy
Associate General Counsel
Johns Manville
717 17th Street (80202)
P.O. Box 5108
Denver, CO 80217-5108
(303) 978-3268 FAX

As to Commonwealth Edison Company:

John VanVranken
Exelon Law Department
10 S. Dearborn
Chase Tower, 49th Floor
Chicago, Il 60603

XXXI. EFFECTIVE DATE

80. This Settlement Agreement shall be effective 3 days after the Settlement Agreement is signed by the Superfund Division Director or his delegatee.

It is so ORDERED and Agreed this day of , 200 .

BY: Richard C Karl DATE: 6-11-07

Richard C. Karl, Director
Superfund Division
Region 5
U.S. Environmental Protection Agency

EFFECTIVE DATE:

The undersigned representatives of Respondents certify that they are fully authorized to enter into the terms and conditions of this Order and to bind the parties they represent to this document.

Agreed this 23rd day of May, 2007.

For Respondent Johns Manville

By Brent A Trage

Title Sr. Environmental Counsel

The undersigned representatives of Respondents certify that they are fully authorized to enter into the terms and conditions of this Order and to bind the parties they represent to this document.

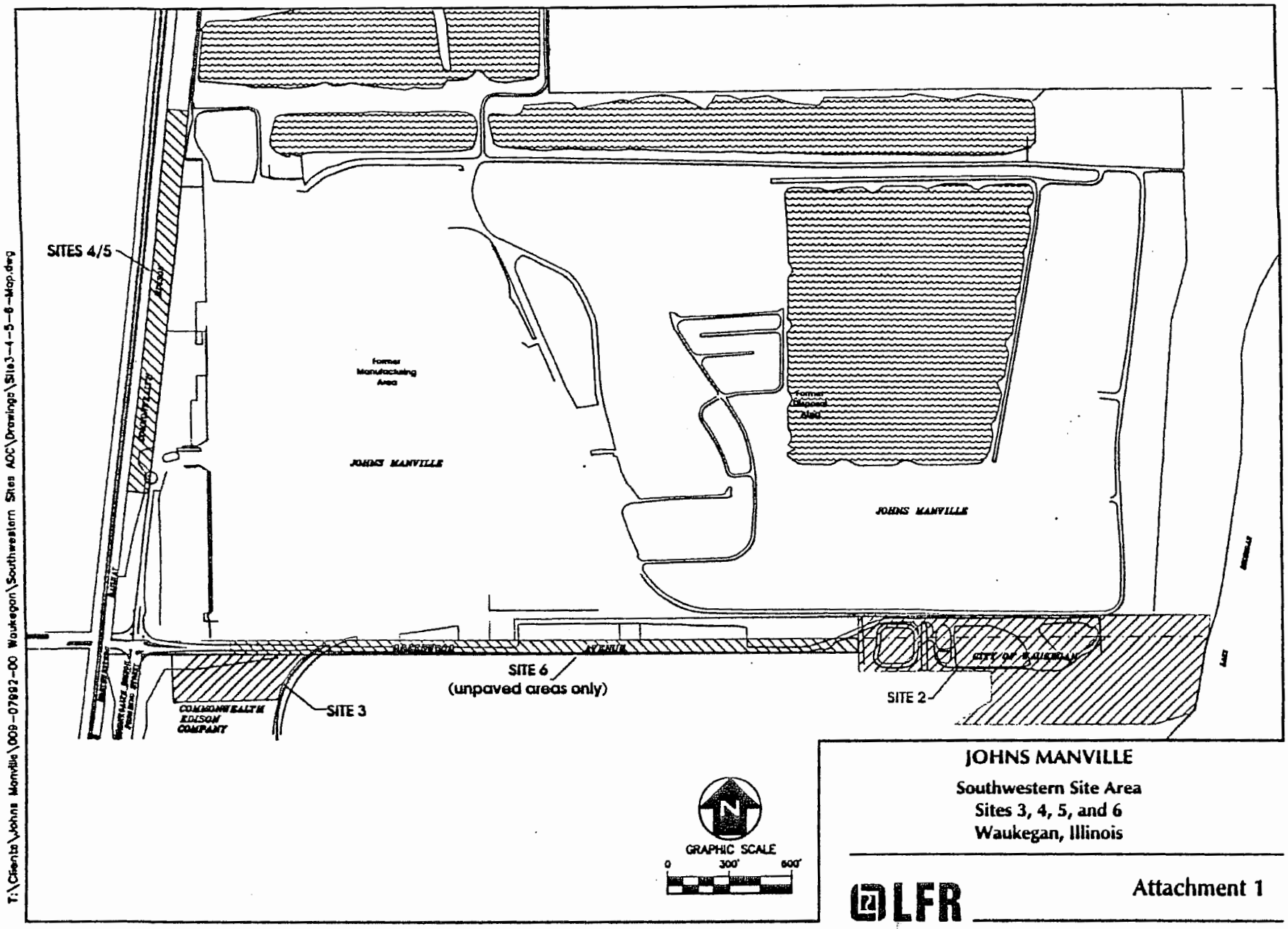
Agreed this 23rd day of May, 2007

For Respondent Commonwealth Edison Company

By Neena Hemmady

Title Manager Environmental

Attachment 1: Map - Southwestern Site Area including Sites 3, 4, 5 and 6



JOHNS MANVILLE

Southwestern Site Area
Sites 3, 4, 5, and 6
Waukegan, Illinois

LFR

Attachment 1

CERTIFICATION OF DEATH RECORD

STATE OF ILLINOIS

Certification of Death Record

State File Number 2003 0075214 Date Issued June 20, 2014

Name DUANE LEWIS MAPES

Social Security Number 350-30-4966 Sex MALE

Place of Death NEOGA TWP , CUMBERLAND County

Date of Death DECEMBER 16, 2003 Date Record Filed DECEMBER 17, 2003

EXHIBIT

tabbies 2

This is to certify that this is a true and correct copy from the official death record filed with the Illinois Department of Public Health.

Joy Sutherland

Joy Sutherland
Cumberland County Clerk & Recorder

ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE

HOLD UP TO LIGHT TO VERIFY TRUE WATERMARK

TO TEST FOR AUTHENTICITY: The face of this document has a multicolored background. Verification of some of these security features can be accomplished by:

- Holding the *SafeImage*™ security paper up to transit light, to verify the words "SAFE" and "VERIFY FIRST" in the true fourdrinier watermark.
- Identifying visible blue and red fibers embedded in the paper.
- Applying fresh liquid bleach to activate color stain chemical protection reaction.
- Face of document has a full bleed green border with ornate lines including reverse microtext.
- This backer copy is constructed of a full bleed microtext relief showing larger state seals. Inspection under magnifier shows "ILLINOISDEATHCERTIFICATE" in microtext.
- Document is protected with tactile holographic seals. Hold to light to verify both.
  Left seal shows "ILLINOIS DEATH CERTIFICATE" with tactile lines over printing seal.
  Right seal shows "LOCK-KEY-SAFE" flip imagery and guilloche tactile ridges with "D" and "C" latent images.
- Inspect background with a magnifier to verify the encrypted NaNOcopy™ algorithm in body of document.
- Photocopying this document produces the word "VOID" across the face.

U.S. Security Patents: 5,636,874, 7,772,248, 5,873,604, 5,704,651, 6,396,927, 6,665,406, 6,692,030, 7,196,822

www.isp-vft.com Ref: 903316

Anniversary DECEMBER
County LAKE

STATE OF ILLINOIS
Office Of
THE SECRETARY OF STATE

D 5328-004-8
File Number

CERTIFICATE OF DISSOLUTION OF DOMESTIC CORPORATION
BUSINESS CORPORATION ACT

WHEREAS it appears that

ERIC BOLANDER CONSTRUCTION COMPANY, INC.
% STEPHEN W BOLANDER 062000
839 KRISTIN CT
GURNEE, IL. 60031-6104

CP0371724

being a corporation organized under the laws of the State of Illinois relating to Domestic Corporations has failed to **file an annual report and pay an annual franchise tax**

as required by the provisions of "The Business Corporation Act" of the State of Illinois, in force JULY 1, A.D. 1984 and all acts amendatory thereof; AND WHEREAS, said acts provided that upon failure to, **file an annual report and pay an annual franchise tax**

the Secretary of State shall dissolve the corporation pursuant to Section 12.40 effective July 1, 1984.

NOW THEREFORE, the Secretary of State of the State of Illinois, hereby dissolves the above corporation in pursuance of the provisions of the aforesaid Act.

IN TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois.

Done at the City of Springfield,

this **1 st day of MAY A.D. 2001**

Jesse White

Secretary of State

H004367

EXHIBIT 3

STATE OF ILLINOIS
OFFICE OF THE SECRETARY OF STATE
I hereby certify that this is a true and correct copy, consisting of 1 pages, as taken from the original on file in this office.

Jesse White
JESSE WHITE
SECRETARY OF STATE

DATE: 7/9/14

BY:

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JOHNS MANVILLE, a Delaware corporation, Complainant, v. ILLINOIS DEPARTMENT OF TRANSPORTATION, Respondent.	)	PCB No. 14-3 (Citizen Suit)

RESPONDENT'S DEMAND FOR A BILL OF PARTICULARS

NOW COMES RESPONDENT, the Illinois Department of Transportation ("IDOT"), through its attorney LISA MADIGAN, Attorney General of the State of Illinois, who, pursuant to Section 2-607 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-607 (2012), hereby demands from Complainant, a bill of particulars, with respect to Paragraphs 33 and 34 of the Amended Complaint. Respondent states as follows in support of its demand:

1. The Pollution Control Board's ("Board") General Rules do not provide for a demand for a bill of particulars; however, Section 101.100(b), 35 Ill. Adm. Code 101.100(b), provides as follows:

> The provisions of the Code of Civil Procedure [735 ILCS 5] and the Supreme Court Rules [Ill. S. Ct. Rules] do not expressly apply to proceedings before the Board. However, the Board may look to the Code of Civil Procedure and the Supreme Court Rules for guidance where the Board's procedural rules are silent.

2. Section 2-607(a) of the Code of Civil Procedure, provides, in relevant part, as follows:

> Bills of particulars. (a) Within the time a party is to respond to a pleading, that party may, if allegations are so wanting in details that the responding party should be entitled to a bill of particulars, file and serve a notice demanding it. The notice shall point out specifically the defects complained of or the details desired. The pleader shall have 28 days to file and serve the bill of particulars, and the party who requested the bill shall have 28 days to plead after being served with the bill.

3. In Paragraph 33 of its Amended Complaint, Johns Manville alleges:

> Review of IDOT engineering drawings indicates that IDOT, among other things, used ACM as fill when building embankments to Greenwood Avenue on Sites 3 and 6.

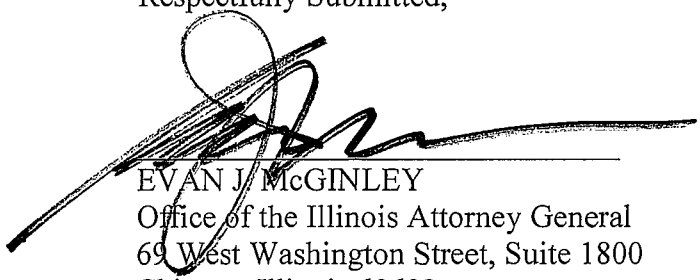
4. Similarly, in Paragraph 34 of its Amended Complaint, Johns Manville alleges:

> Review of IDOT engineering drawings indicates that IDOT, among other things, used, spread and/or buried ACM during its construction and/or obliteration of Bypasses A and B.

5. Both Paragraphs are significantly "wanting in details" because they fail to specify what "IDOT engineering drawings" Johns Manville is making reference to in its allegations. IDOT routinely develops a number of various types of drawings and schematics for the projects that it undertakes. As currently drafted, IDOT is unable to determine what "IDOT engineering drawings" Johns Manville is referring to in Paragraphs 33 and 34 of its Amended Complaint. This lack of detail is particularly important, where, as here, they relate to critical allegations in Johns Manville's Amended Complaint.

WHEREFORE, Respondent, the ILLINOIS DEPARTMENT OF TRANSPORTATION, hereby demands that Complainant, JOHNS MANVILLE, specifically identify what "IDOT engineering drawings" it is referring to in Paragraphs 33 and 34 of its Amended Complaint.

Respectfully Submitted,



EVAN J. McGINLEY
Office of the Illinois Attorney General
69 West Washington Street, Suite 1800
Chicago, Illinois 60602
312.814.3153
emcginley@atg.state.il.us

CERTIFICATE OF SERVICE

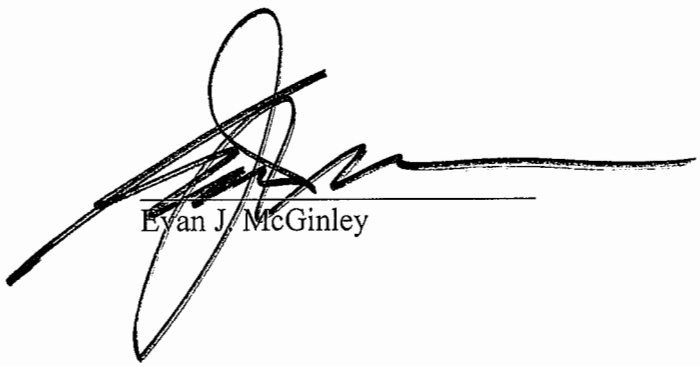
***Johns Manville v. Illinois Department of Transportation*, PCB 14-3 (Citizens)**

I, EVAN J. McGINLEY, do hereby certify that, today, July 15, 2014, I caused to be served on the individuals listed below, by first class mail, a true and correct copy of the attached Respondent's Demand for a Bill of Particulars:

John Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601

Bradley Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601

Susan Brice
Kathrine Hanna
Bryan Cave LLP
161 North Clark Street
Suite 4300
Chicago, Illinois 60601



Evan J. McGinley

CERTIFICATE OF SERVICE

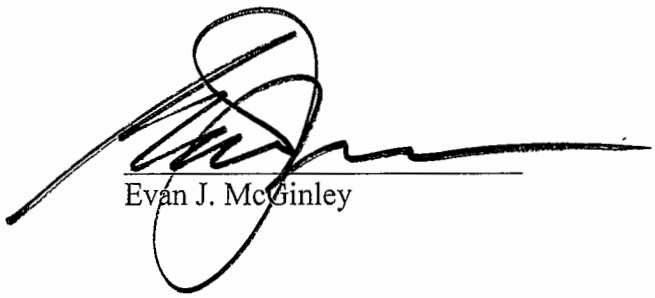
***Johns Manville v. Illinois Department of Transportation*, PCB 14-3 (Citizens)**

I, EVAN J. McGINLEY, do hereby certify that, today, July 15, 2014, I caused to be served on the individuals listed below, by first class mail, a true and correct copy of the attached Notice of Filing:

John Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601

Bradley Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601

Susan Brice
Kathrine Hanna
Bryan Cave LLP
161 North Clark Street
Suite 4300
Chicago, Illinois 60601



Evan J. McGinley