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 THE ATTACHED CERTIFICATE OF SERVICE

Please take note that today, February 23, 2016, I filed Respondent, Illinois Department of Transportation's Response to "Complainant's Motion for leave to File Second Amended Complaint to Conform Pleadings to Newly Discovered Facts without Hearing Delay," a copy of which are hereby served upon you.

Respectfully Submitted,

By: _____

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CERTIFICATE OF SERVICE

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

I, EVAN J. McGINLEY, do hereby certify that, today, February 23, 2016, I caused to be served on each of the the individuals listed below, by first class mail and electronic mail, a true and correct copy of the attached "IDOT's Response to Complainant's Motion for leave to File Second Amended Complaint to Conform Pleadings to Newly Discovered Facts without Hearing Delay."

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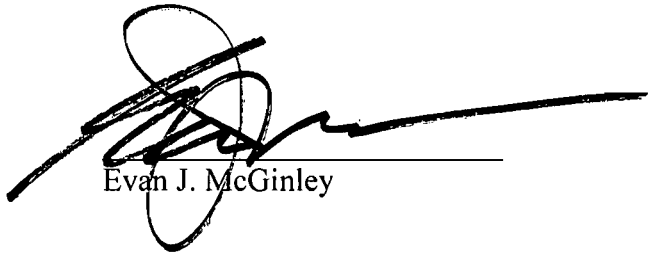

Evan J. McGinley

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JOHNS MANVILLE, a Delaware corporation,	)	
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Complainant,	)	
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ILLINOIS DEPARTMENT OF TRANSPORTATION,	)	
	)	
	)	
Respondent.	)	

IDOT'S RESPONSE TO COMPLAINANT'S MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT TO CONFORM PLEADINGS TO NEWLY DISCOVERED FACTS WITHOUT HEARING DELAY

Now comes Respondent, the Illinois Department of Transportation ("IDOT"), which herewith files its response to Complainant's Motion for leave to File Second Amended Complaint to Conform Pleadings to Newly Discovered Facts without Hearing Delay ("Motion"). As set forth herein, IDOT requests that: 1) the Hearing Officer deny Johns Manville's ("JM") Motion in its entirety; or, alternatively, 2) should the Hearing Officer grant JM's request for leave to file their proposed Second Amended Complaint, that the hearing in this matter, which is currently set for March 15-17, 2016, at the Pollution Control Board's Chicago offices, be rescheduled at least sixty (60) days from the present date set for hearing, so as to allow IDOT to the opportunity to respond to the Second Amended Complaint and to conduct further limited discovery on JM's new claim. IDOT states as follows, in support of this response:

I. INTRODUCTION

The audacity of JM's Motion is truly breathtaking. Their Motion, filed four weeks before the date this case is set to go to hearing, seeks not only to amend its complaint to add new facts and a new claim (a claim which IDOT had no prior knowledge JM would be seeking to pursue at hearing and is, at present, ill-prepared to defend against), but, more troublingly, it also expressly

seeks to deny IDOT the opportunity to respond to their amended complaint. And, by insisting that the Board keep the existing hearing date in this matter, JM implicitly seeks to deny IDOT the right to conduct necessary discovery that is relevant to JM's new claim. JM argues that its untimely Motion is justified by the discovery of "new evidence not previously available" to it. But that claim cannot withstand scrutiny, given the fact that the "new evidence" it makes reference to is based on information that JM has been in possession of for at least 15 months, if not years longer.

If JM's Motion were to be granted in its entirety by the Board, IDOT would be significantly prejudiced in both its ability to prepare for hearing and to defend itself from JM's new claim. This prejudice arises from the fact that IDOT would have to blindly prepare its defense regarding JM's new claim, as fact discovery in this case ended a year ago. Moreover, IDOT's informal discovery would have to take place at the same time IDOT is preparing of hearing in this case. And, JM's new claim *substantially expands* the potential liability that IDOT faces in this case.

It is IDOT's position that JM's Motion should be denied without exception. However, if the Board is amenable to granting JM's Motion - no matter how untimely - and gives it leave to file its Second Amended Complaint, then fairness dictates that IDOT be allowed to both respond to the complaint and to be able to conduct discovery on these new allegations. Additionally, if the Board accepts JM's Second Amended Complaint for filing, fairness also dictates that the hearing in this matter must be rescheduled, so as to allow IDOT an appropriate amount of time in which to conduct limited discovery on JM's new claim.

II. STATEMENT OF FACTS

In the opening paragraph of its Motion, JM states that has been brought "based upon new evidence not previously available to [it]." It is unclear how JM could make this representation to the Board, as the document upon which this "new evidence" is based has likely been known to JM since late 2000. The Property Insight report that JM refers to in Paragraph 12 of its Motion, and which is attached as Exhibit D thereto, in turn references a "Grant for Public Highway" (identified as "Doc ID 2288725") ("Grant Document"). This Grant Document was produced by IDOT to USEPA in November 2000, when IDOT filed its response to the United State Environmental Protection Agency's September 2000 Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") 104(e) information request letter.

IDOT has also produced the Grant Document to JM on at least two occasions during the course of conducting discovery in this case. The first occasion occurred on October 24, 2014, **fifteen months before the filing of the Motion,** when IDOT produced the Grant Document to JM, as part of its initial production of documents. (A true and correct copy of the Grant Document produced by IDOT to JM as part of its initial production is attached hereto as Exhibit A to this Response.) The second occasion occurred approximately eight months later, on July 2, 2015, when IDOT produced this same document to JM as part of its production of documents related to JM's deposition of IDOT's expert witness, Steven L. Gobelman.

Elsewhere in its Motion, JM states that IDOT has repeatedly delayed these proceedings, thus "jeopardizing JM's ability to obtain all of its requested relief [from the Board]." (Mot. ¶23, at 7.) In advancing this allegation, JM apparently forgets that on at least three occasions in the late Summer and early Fall of 2015, IDOT suggested setting an earlier hearing date for this case, as it was apparent after the close of expert discovery that it would be impossible to resolve this

case on motions for summary judgment. It was not until November 2015 that JM finally agreed to set a hearing date in this matter.

Two final facts are worth noting in considering JM's Motion (particularly with respect to its several statements that IDOT has sought to delay these proceedings). First, the claims which JM is pursuing against IDOT in this case arise out of obligations that JM incurred in 2007, when it entered into an "Administrative Settlement Agreement and Order on Consent for Removal Action" for the "Johns Manville Southwestern Site Area including Sites 3, 4, 5, and 6 Waukegan, Lake County, Illinois ("AOC") with USEPA. (A true and correct copy of the AOC is attached hereto as Exhibit B.) Second, for reasons better known to JM, it took JM six years to file its action against IDOT.

III. ARGUMENT

A. JM's Motion Should Be Denied Because It Is Untimely and the Granting of the Motion would be Prejudicial to IDOT's Ability to Defend Itself at Hearing

JM correctly notes that there are four factors that a court should consider when exercising its broad discretion as to whether to grant a plaintiff's motion for leave to amend their complaint. (Mot. ¶18, citing *Loyola Acad. v. S&S Roof Maint., Inc.*, 146 Ill.2d 263 (1992).) These four factors are: 1) that the proposed amendment would cure a defect in the current complaint; 2) previous opportunities to amend the pleading could be identified; 3) other parties would sustain prejudice or surprise by virtue of the amendment; and 4) the proposed amendment is timely. *Loyola Academy*, 146 Ill.2d at 273. These factors are not equal in weight or in the consideration that courts are to give them when ruling on a motion to amend. Indeed, "[t]he most important of the *Loyola* factors is the prejudice to the opposing party . . ." *Miller v. Pinnacle Door Co., Inc.*, 301 Ill.App.3d 257, 261 (4th Dist. 1998).

As the *Miller* court went on to note:

> For a delay to prejudice a party, it must operate to hinder his ability to present his case on the merits. . . . Prejudice may be shown where delay before seeking an amendment leaves a party prepared to respond to a new theory at trial.

Miller, 310 Ill.App.3d at 261 (emphasis added.)

JM argues that it has simply brought the Motion to correct certain defects in its current complaint. (Mot. ¶19.) While JM's stated reason finds support in the first *Loyola* factor, the balance of the *Loyola* factors favor denying the Motion in its entirety. First, the entire scope of relief sought by JM through its Motion runs afoul of *Loyola's* prejudice factor. To ask for leave to file an amended complaint, containing a completely new claim, which significantly expands the scope of JM's claims, as well as IDOT's potential liability, while simultaneously asking the Board to deny IDOT the opportunity to respond to the amended complaint (or to apparently take any discovery regarding that claim), and still adhering to the current hearing date, would be extraordinarily prejudicial to IDOT's ability to defend itself at hearing.

This prejudice initially arises because fact discovery – which IDOT would need to conduct in order to be able to adequately to defend itself at hearing on JM's new claim - has been closed for over a year now. JM would have IDOT blindly prepare to defend itself against its new claim. Even worse, is JM's insistence that it be allowed to both amend its complaint, while at the same time demanding that the Board go forward with the hearing on this matter, as scheduled. It is demanding enough to prepare for hearing just based on JM's existing claims without also having to simultaneously conduct informal discovery on its new claim.

The prejudice to IDOT is compounded when one applies the final *Loyola* factor – i.e., the timeliness of JM's request to amend. Simply put, there is nothing timely about their motion to amend. As noted in the Statement of Facts, the claims which JM is pursuing against IDOT in

this case stem from the obligations that JM voluntarily incurred in 2007, when it entered into the AOC with USEPA. Additionally, the Grant Document - the document that is referred to in the Property Insight report - has been in JM's possession for at least 15 months and likely for many years before IDOT first produced it to JM. Illinois courts have held that plaintiffs should not be allowed to amend their complaints where they have failed to take action based on previously available information. *Behr v. Club Med. Inc.*, 190 Ill.App.3d 396, 406 (1st Dist. 1989).[1]

The timeliness of JM's Motion must also be considered in light of the parties' recent filing and exchange of witness and exhibit lists. JM obviously knew well in advance of the February 18, 2016 deadline to exchange this information that it would be filing its Motion. It also knew at the time that it filed its Motion that it would be naming a previously undisclosed witness, V. Gina Giannelli, of Chicago Title Insurance Company, in its exhibit and witness list. IDOT has only recently learned of this person when JM produced additional documents to it on January 27, 2016. But as fact discovery closed in this case a year ago, there would be no way to take any discovery about what Ms. Giannelli knows and how her knowledge may be relevant to JM's claims (presumably, Ms. Giannelli would be testifying about the Property Insight report, but that is simply speculation).

For the Board to grant JM's Motion now, after JM failed to first timely initiate this action, and then more recently failed to take action after IDOT produced the Grant Document to it, would effectively reward JM for sitting on its rights and for game playing. Accordingly, the Board should deny JM's Motion in its entirety.

[1] The fact that JM had knowledge of the Grant Document for as long as it has, also speaks negatively to the second *Loyola* factor, in that JM had opportunities before it filed the Motion to seek leave to amend its complaint and to bring in new claims based on this document.

B. If the Board Accepts JM's Proposed Second Amended Complaint for Filing, IDOT Should Be Given the Opportunity to Answer the Second Amended Complaint

JM argues in its Motion that IDOT should be denied the opportunity to answer its Second Amended Complaint and the matter should simply proceed to hearing. (Mot., ¶29.) It supports this position by arguing that "JM cannot afford to delay the hearing of this matter."[2] (Id.) It is disingenuous for JM to assert such a position here, as it could have uncovered this "new evidence" with the exercise of some diligence in the immediate aftermath of IDOT having served it with its first set of responsive documents in October of 2014.

It is also disingenuous for JM to claim now that it "cannot afford to delay the hearing of this matter," as it was IDOT, and not JM, that first raised the issue of setting this matter for hearing back in the late Summer and early Fall of last year, when it became apparent that this case could not be resolved through summary judgment. It was only after raising the issue with JM on at least three occasions that JM finally agreed to dispense with the filing of motions for summary judgment and to set this matter for hearing.

JM seeks to bolster its position that the Board should accept its proposed amended complaint (and that IDOT should not be allowed the opportunity to respond to it), by citing to several Board cases. (Mot., ¶30.) As an initial matter, all of these cases are factually distinguishable, because none of them involve a situation such as the present one, where a party seeks to amend its complaint to add new claims and facts, based on evidence that had long been in its possession.

There are other factual distinctions which render JM's cited cases of no value in supporting their Motion. For example, in *People v. The Highlands*, PCB 00-104, slip op. at 3 (May 6, 2004), the Board accepted the complainant's second amended complaint for filing in

[2] It is more than ironic for JM to complain that it "cannot afford to delay the hearing of this matter," when it took JM six years from the date that the AOC was entered to the date that it filed its initial complaint in this action.

large part because it was unopposed by the respondent. (Id.) As IDOT is vigorously contesting JM's Motion, JM's reliance on the Board's *The Highlands* opinion to support its Motion is pointless.

JM's citation to and reliance upon *People v. Community Landfill Co.*, PCB 97-193, slip op. at 5 (Mar. 6, 2000) is similarly off point, as the case was in a very different procedural posture from the circumstances surrounding this case. In the *Community Landfill* case, the Board was confronted with a motion for leave to file a second amended complaint that added new claims against the respondent. (Id. at 1-2.) The Board ultimately decided to deny the respondent's response to the motion (which the Board treated as a motion to dismiss the second amended complaint). Thereafter, the respondent filed its answer to the second amended complaint and, by in accordance with the Board's hearing officer's April 27, 2000 order, the parties were directed to set discovery schedules for the matter. (*See,* April 24 and 27, 2000 entries in the Docket for *People v. Community Landfill*, PCB 97-193, http://www.ipcb.state.il.us/COOL/external/CaseView.aspx?referer=results&case=3635.)

JM's arguments that IDOT should not be allowed time prior to hearing to answer JM's Second Amended Complaint are baseless and the cases that they have cited in support of their argument are inapplicable. There is simply no merit to their position that IDOT should be denied its right to respond to JM's proposed Second Amended Complaint.

In both large ways and small ones, it is JM that delayed the ultimate resolution of this case, not IDOT. Thus, If JM wishes to have the Board accept its Second Amended Complaint for filing, then fairness dictates that IDOT be allowed to respond to its newly amended Complaint.

C. Should the Board Decide to Allow JM Leave to File its Second Amended Complaint at this Late Date, the Interests of Justice Require Allowing IDOT to Take Limited Discovery Regarding JM's New Claim

Should the Board grant JM leave to file its proposed Second Amended Complaint, then it is imperative that it reopen fact discovery in this case. As the Appellate Court stated in *Schwendener v. Larrabee Commons Partners*, 338 Ill.App.3d 19 (1st Dist. 2003), "[t]he amendment of pleadings to state a new claim after close of discovery usually requires reopening of discovery." 338 Ill.App.3d at 32 (holding that the trial court erred by denying a party's request for further discovery after granting defendant's motion to add additional count to its counterclaim); *See, Aylward v. Settecase*, 401 Ill.App.3d 831, 838 (1st Dist. 2011) (citing *Schwendener* for same proposition of law; *See also, People v. The Highlands*, at 3-4 (finding that allowing complainant to file its second amended complaint was supported by the fact that discovery had not been completed and thus the respondent would be able to conduct discovery on complainant's newly alleged, additional violations.)

Given the highly prejudicial impact that it would have to grant JM's Motion in its entirety, should the Board decide to grant it leave to file its Second Amended Complaint, the Board should reopen fact discovery for a period of sixty days, during which time, IDOT would propose to conduct the tasks to advance full and complete discovery of this matter:

1) Amendment of its prior responses to JM's Interrogatories, so as to list additional persons with knowledge regarding this matter, as well as to identify additional individuals which it intends to call as witnesses at hearing in support of its case in rebuttal and who, based on preliminary discussions which IDOT's counsel has been able to have in the course of preparing both this response and its exhibit and witness list, who IDOT expects will testify that that JM's contention that IDOT

"owns/controls a critical portion of Site 6[]" is erroneous. (Mot., ¶ 29.)

2) Undertake fact discovery from JM concerning what steps it took to timely bring its new claim; and,

3) Undertake fact discovery from third parties, by a) serving subpoenas for the production of documents; and b) to take the depositions of at least V. Gina Giannelli, a witness who JM intends to call at hearing but who had not been disclosed to IDOT prior to the parties' February 18th exchange of exhibit and witnesses lists in this case; and at least one individual from Property Insight, regarding the facts and circumstances surrounding the creation of the document attached as Exhibit D to the Motion.

D. If the Board Grant's JM's Motion and Allows it to File its Second Amended Complaint, the Interests of Justice Require Rescheduling the Hearing

If the Board grants JM's Motion, the hearing in this case should be rescheduled to a date that will allow IDOT to undertake the limited discovery contemplated above. In the interests of moving this case forward, IDOT is prepared to both respond to the Second Amended Complaint and to conduct fact discovery concurrently, so as to allow the hearing to be held at the earliest possible opportunity after completion of discovery.

IV. CONCLUSION

The Board should deny JM's Motion in its entirety, because it untimely, it is not based on new evidence, and granting the Motion would both impede IDOT's general ability to prepare for hearing in this matter and would also be prejudicial to IDOT's ability to defend itself against the new claim that JM now seeks to add to its complaint. It defies logic for JM to argue that its Motion only seeks to add newly available evidence when the underlying document giving rise to this "new evidence" has been known to JM for at least 15 months, if not years earlier.

If the Board ultimately decides to grant leave to JM to amend its complaint, then in the interest of fairness, IDOT deserves the opportunity to both answer the newly amended complaint and, further, to be allowed to conduct additional discovery related to JM's new claim. And, needless to say, the hearing in this matter must be reset for a future date, so as to allow IDOT the opportunity to both respond to JM's newly amended complaint and to conduct additional discovery in this matter.

WHEREFORE, Respondent, Illinois Department of Transportation, prays that the Hearing Officer will:

1) Deny JM's Motion in its entirety;
2) Alternatively:
   a) Grant JM's Motion only in so far as to allow them to amend their complaint;
   b) Allow IDOT time to respond to JM's newly amended complaint; and,
   c) Allow IDOT to conduct limited discovery in this matter, according to the parameters described above;
3) Rule on JM's Motion and IDOT's Response thereto at the earliest possible time, so as to provide the necessary guidance to the parties about how this case will now proceed;
4) Set this matter for status at the earliest possible date; and,
5) Granting such additional relief as the Board may provide for in the interests of justice.

Respectfully Submitted,

By: _____

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GREENWOOD AV. AT SAND ST.
WAUKEGAN GENERATING STATION
WAUKEGAN TWP. LAKE CO.

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GRANT FOR PUBLIC HIGHWAY

THIS INDENTURE WITNESSETH: That Grantor, COMMONWEALTH EDISON COMPANY, an Illinois Corporation, for and in consideration of the sum of Ten and No/100 Dollars ($10.00) and other good and valuable consideration, receipt of which is hereby acknowledged, paid by and for the State of Illinois, Grantee herein, acting by and through the Department of Public Works and Buildings, now Department of Transportation, Division of Highways, hereby grants, but without warranty, subject to the reservations, conditions and provisions hereinafter contained, unto Grantee the right to use for highway purposes only, the following tract of land:

Parcel No. 0392

PART A

A part of the Westerly 100 feet of all that part of the Southwest Quarter of the Southwest Quarter of Section 10 in Township 45 North, Range 12 East of the Third Principal Meridian, lying Easterly of the Right of Way of the Chicago and North Western Railway Company, in Lake County, Illinois, described as follows: Beginning at the intersection of the Easterly Right-of-Way line of the Chicago and North Western Railway Company and the South line of the Southwest Quarter of said Section 10; thence North 6° 39' 32" East 305.30 feet, as measured along said Easterly Right of Way; thence North 89° 44' 18" East 35.00 feet; thence North 11° 09' 06" East 194.74 feet; thence North 15° 11' 23" East 202.24 feet; thence North 6° 39' 33" East 101.37 feet; thence South 83° 20' 30" East 20.00 feet to a point on a line 100.00 feet Easterly of the Easterly Right of Way line of the Chicago and North Western Railway Company; thence South 6° 39' 32" West 792.89 feet to a point on the South line of the Southwest Quarter of said Section 10; thence South 89° 44' 18" West 100.73 feet, as measured along the South line of the Southwest Quarter of said Section 10, to the point of Beginning.

PART B

A part of the Westerly 100 feet of all that part of the West Half of the Northwest Quarter of Section 15 in Township 45 North, Range 12 East of the Third Principal Meridian, lying Easterly of the Right of Way of the Chicago and North Western Railway Company, in Lake County, Illinois, described as follows:

This instrument prepared by T. M. Mulcahy (name) P. O. Box 767, Chicago, Illinois 60690, on behalf of Commonwealth Edison Company

EXHIBIT A

Beginning at the intersection of the Easterly Right of Way line of the Chicago and North Western Railway Company and the South line of Greenwood Avenue, said South line of Greenwood Avenue being 66 feet South of and parallel to the North line of the Northwest Quarter of said Section 15; thence South 6° 39' 32" West 90.0 feet, as measured along the Easterly Right of Way of the Chicago and North Western Railway Company; thence South 13° 02' 59" East, 148.26 feet; thence South 6° 39' 32" West 100.00 feet; thence South 2° 48' 12" East 304.14 feet to a point on the Westerly line of Sand Street; thence North 6° 39' 32" East 641.72 feet along the Westerly line of Sand Street to a point on the South line of Greenwood Avenue; thence South 89° 44' 16" West, 100.73 feet along the South line of the Greenwood Avenue, to the Point of Beginning.

Parcel No. 0393

A part of the Northwest Quarter of Section 15 in Township 45 North, Range 12 East of the Third Principal Meridian in Lake County, Illinois, described as follows: Beginning at the intersection of the Easterly line of Sand Street and the South line of Greenwood Avenue thence North 89° 44' 17" East 643.23 feet as measured along the South line of Greenwood Avenue; thence South 0° 15' 49" East 15.0 feet; thence South 81° 54' 31" West 403.76 feet; thence South 89° 44' 17" West 140.0 feet; thence South 27° 50' 01" West 185.24 feet; thence South 0° 06' 25" East 118.83 feet; thence South 14° 42' 11" West 414.48 feet to a point on the easterly line of Sand Street; thence North 6° 39' 32" East 758.19 feet as measured along the Easterly line of Sand Street to the Point of Beginning.

Parcel No. 0394

A part of the East 300 feet of the South Half of the Southeast Quarter of Section 9 in Township 45 North, Range 12 East of the Third Principal Meridian in Lake County, Illinois, described as follows: Beginning at the Southeast Corner of the Southeast Quarter of said Section 9 thence South 89° 45' 04" West 300.02 feet, as measured along the South line of the Southeast Quarter of said Section 9 thence North 0° 25' 40" East 105.61 feet; thence South 81° 40' 52" East 37.63 feet; thence South 0° 14' 56" East 20.00 feet; thence North 89° 45' 04" East 46.00 feet; thence North 0° 14' 56" West 20.00 feet; thence North 89° 45' 04" East 61.00 feet; thence North 0° 14' 52" West 120.00 feet; thence North 89° 45' 04" East 157.16 feet to a point on the East line of the South Half of the Southeast Quarter of said Section 9; thence South 0° 25' 40" West 220.00 feet as measured along the said East line to the Point of Beginning.

Parcel No. 0395

PART A

A part of the Northwest Quarter of the Northwest Quarter of Section 15 in Township 45 North, Range 12 East of the Third Principal Meridian in Lake County, Illinois, described as follows: Commencing at the intersection of the South line of Greenwood Avenue and the Westerly Right of Way of the Chicago and North Western Railway Company thence South 89° 45' 04" West

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100.00 feet, as measured along the South line of Greenwood Avenue; thence South 0° 14' 56" East 75.00 feet; thence South 89° 45' 04" West 66.00 feet along a line 75.00 feet South of and parallel to the said South line of Greenwood Avenue; thence North 0° 14' 56" West 75.00 feet to a point on the South line of Greenwood Avenue; thence North 89° 45' 04" East 66.00 feet, as measured along the said South line of Greenwood, to the Point of Beginning.

Said tract of land herein described contains 0.114 acres, more or less.

PART B

A part of Lot 1 in School Trustee's Subdivision of Section 16 and a part of the South 300 feet of the North 479.5 feet of that part of Northwest Quarter of the Northwest Quarter of Section 15, lying West of the Westerly line of the right of way of the Chicago and North Western Railway Company, all in Township 45 North, Range 12 East of the Third Principal Meridian in Lake County, Illinois, described as follows: Beginning at the intersection of the East line of the Northeast Quarter of said Section 16 and the South line of Lot 9 in Russell H. Edward's Business Sites, being a part of Lot 1 in said School Trustee's Subdivision and a part of the Northwest Quarter of the Northwest Quarter of said Section 15; thence South 88° 55' 20" West 141.77 feet, as measured along the South line of Lots 9 and 8 in said Russell H. Edward's Business Sites; thence South 0° 11' 03" East 52.27 feet; thence South 2° 37' 41" West 200.25 feet; thence South 5° 56' 41" East 48.05 feet; thence North 89° 09' 38" East 310.24 feet; thence North 0° 14' 03" West 144.53 feet; thence North 5° 56' 41" West 100.30 feet; thence North 3° 28' 56" West 54.52 feet to a point on the South line of Lot 10 in said Russell H. Edward's Business Sites; thence South 89° 44' 17" West 150.11 feet, as measured along the South line of Lots 10 and 9 of said Russell H. Edward's Business Sites to the Point of Beginning.

Said tract of land herein described contains 2.106 Acres, more or less.

Parcel No. 0399

A part of Lots 6, 7, 8 and 9 in Russell H. Edward's Business Sites, being a Subdivision of Lot 1 in School Trustee's Subdivision of Section 16 in Township 45 North, Range 12 East of the Third Principal Meridian, reference being made to the Plat thereof recorded in the Recorder's Office of Lake County, Illinois, in Book of Plats 31 on Page 102; described as follows: Beginning at the intersection of the South line of Greenwood Avenue and the East line of the Northeast Quarter of said Section 16; thence South 89° 45' 04" West 311.83 feet along the North lines of Lots 9, 8, 7 and 6 to a point 49.67 feet East of the Northwest corner of said Lot 6; thence South 14° 33' 01" West 46.61 feet; thence South 80° 47' 07" East 30.47 feet; thence North 89° 45' 07" East 150.00 feet; thence South 0° 14' 56" East 91.54 feet to a point on the South line of said Lot 8; thence North 88° 55' 20" East 141.77 feet along the South lines of said Lots 8 and 9 to a point on the East line of the Northeast Quarter of said Section 16; thence North 0° 38' 46" East 139.31 feet along the East line of the Northeast Quarter of said Section 16 to the Point of Beginning.

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Parcel No. 0400

A part of Lots 1 and 2 in School Trustee's Subdivision of Section 16 and a part of the Northwest Quarter of the Northwest Quarter of Section 15 all in Township 45 North, Range 12 East of the Third Principal Meridian in Lake County, Illinois, described as follows: Commencing at the intersection of South line of the Northwest Quarter of the Northwest Quarter of said Section 15 and the Westerly Right of Way of the Chicago and North Western Railway Company thence South 89° 46' 07" West 204.00 feet as measured along the South line of the Northwest Quarter of the Northwest Quarter of said Section 15 to the Point of Beginning; thence North 0° 13' 53" West 204.00 feet; thence North 89° 46' 07" East 73.17 feet; thence North 8° 32' 41" East 82.02 feet; thence North 3° 34' 48" East 150.33 feet; thence North 1° 24' 09" East 350.14 feet; thence North 0° 14' 03" West 55.46 feet; thence South 89° 09' 38" West 310.24 feet; thence South 5° 56' 41" East 253.45 feet; thence South 0° 14' 03" East 300.00 feet; thence South 2° 50' 26" East 100.05 feet; thence South 0° 53' 54" East 185.11 feet to a point on the North line of Lot 3 in said School Trustee's Subdivision; thence North 89° 46' 07" East 172.61 feet, as measured along the North line of Lot 3 in said School Trustee's Subdivision and along the South line of the Northwest Quarter of the Northwest Quarter of said Section 15 to the Point of Beginning, as shown on Exhibit "A", attached hereto and made a part hereof.

FURTHERMORE

Grantee in connection with the construction of F. A. Route 42 hereinafter referred to as "Roadway" finds it necessary to enter upon certain parcels of real estate owned by the Grantor located in Sections 9, 10, 15 and 16, Waukegan Township, Lake County, Illinois,

WHEREAS, in order to facilitate the construction of said Roadway it is necessary for the Grantee to obtain temporary construction easements, as noted and shown upon the revised State of Illinois, Department of Transportation Right of Way strip map entitled "F. A. Route 42 Section 6", attached hereto and made a part hereof, identified as Exhibit "A".

WHEREAS, the Grantor is the owner in fee simple of the above described property and is willing to grant such temporary construction easement to the Grantee for said Roadway; however, reserving unto the Grantor, its grantees, successors and assigns certain rights to operate, maintain, construct, erect, use, relocate, renew and remove electrical transmission and distribution lines, including wires, underground conduit and cables, and

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necessary fixtures and appurtenances attached thereto, in a manner which will meet the requirements of the Illinois Commerce Commission and which will not interfere with said Roadway.

NOW THEREFORE, for and in consideration of the foregoing, the Grantor does hereby grant to the Grantee a temporary construction easement during the construction of said Roadway, to enter upon, over and across Grantor's property as shown and indicated on the Exhibit "A" attached hereto and made a part hereof and described as follows:

Parcel NO. E392

A part of the Westerly 100 feet of all that part of the Southwest Quarter of the Southwest Quarter of Section 10, Township 45 North, Range 12 East of the Third Principal Meridian, lying Easterly of the Right of Way of the Chicago and North Western Railway Company, in Lake County, Illinois, described as follows: Commencing at the intersection of the Easterly Right of Way of the Chicago and North Western Railway Company and the North line of Greenwood Avenue, said North line of Greenwood Avenue being 40 feet North of and parallel to the South line of the Southwest Quarter of the Southwest Quarter of said Section 10; thence North 6° 39' 32" East 801.34 feet, as measured along the Easterly Right of Way of the Chicago and North Western Railway Company, to the Point of Beginning; thence South 83° 21' 08" East 100.00 feet; thence North 6° 39' 32" East 120.00 feet; thence North 83° 21' 08" West 100.00 feet to a point on the Easterly Right of Way of the Chicago and North Western Railway Company; thence South 6° 39' 32" West 120.00 feet, as measured along said Easterly Right of Way, to the Point of Beginning.

Parcel No. E393

A part of the Northwest Quarter of Section 15 in Township 45 North, Range 12 East of the Third Principal Meridian in Lake County, Illinois, described as follows: Commencing at the intersection of the South line of Greenwood Avenue and the East line of Sand Street thence North 89° 44' 17" East 643.23 feet; thence South 0° 15' 49" East 15.00 feet to the Point of Beginning; thence South 0° 15' 49" East 15.00 feet; thence South 57° 56' 15" West 435.99 feet; thence South 23° 33' 27" West 247.70 feet; thence South 34° 51' 13" West 336.16 feet; thence South 26° 17' 09" West 201.25 feet; thence North 83° 26' 33" East 3.40 feet to a point on the East line of Sand Street; thence North 6° 39' 32" East 189.57 feet as measured along the East line of Sand Street; thence North 14° 42' 11" East 175.00 feet; thence North 41° 26' 36" East 141.13 feet; thence North 17° 14' 26" East 92.57 feet; thence North 1° 03' 41" East 280.32 feet; thence North 27° 50' 01" East 45.00 feet; thence North 89° 44' 17" East 45.00 feet; thence South 1° 00' 09" East 198.14 feet; thence North 53° 41' 32" East 388.50 feet; thence North 81° 54' 31" East 180.00 feet to the Point of Beginning.

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Parcel No. E394

PART A

A part of the East 300 feet of the South Half of the Southeast Quarter of Section 9 in Township 45 North, Range 12 East of the Third Principal Meridian in Lake County, Illinois, described as follows: Commencing at the intersection of the East line of the South Half of the Southeast Quarter of said Section 9 and the North line of Greenwood Avenue, said North line of Greenwood Avenue being 40 feet North of the South line of the South Half of the Southeast Quarter of said Section 9; thence North 0° 25' 40" East 355.00 feet, as measured along the said East line to the Point of Beginning; thence North 0° 25' 40" East 180.00 feet, as measured along said East line; thence South 40° 20' 50" West 467.30 feet to a point on a line 300 feet West of the East line of the South Half of the Southeast Quarter of said Section 9; thence South 0° 25' 40" West 114.39 feet; thence South 81° 40' 52" East 37.63 feet; thence North 41° 28' 28" East 160.78 feet; thence North 42° 03' 04" East 236.58 feet to the Point of Beginning.

Parcel No. E394

PART B

A part of the East 300 feet of the South Half of the Southeast Quarter of Section 9 in Township 45 North, Range 12 East of the Third Principal Meridian in Lake County, Illinois, described as follows: Beginning at the intersection of the East line of the South Half of the Southeast Quarter of said Section 9 and the North line of Greenwood Avenue, said North line of Greenwood Avenue being 40 feet North of the South line of the South Half of the Southeast Quarter of said Section 9; thence South 89° 45' 04" West 300.02 feet, as measured along the North line of Greenwood Avenue; thence North 0° 25' 40" East 65.61 feet; thence South 81° 40' 52" East 37.63 feet to the Point of Beginning; thence South 0° 14' 56" East 20.00 feet; thence North 89° 45' 04" East 46.00 feet; thence North 0° 14' 56" West 20.00 feet; thence South 89° 45' 04" West 46.00 feet to the Point of Beginning.

Parcel NO. E395

PART A

A part of the Northwest Quarter of the Northwest Quarter of Section 15 in Township 45 North, Range 12 East of the Third Principal Meridian in Lake County, Illinois, described as follows: Commencing at the intersection of the South line of Greenwood Avenue, said South line being 40 feet South of the North line of the Northwest Quarter of the Northwest Quarter of said Section 15, and the Westerly Right of Way of the Chicago and North Western Railway Company; thence South 89° 45' 04" West 100.00 feet; thence South 0° 14' 56" East 75.00 feet to the Point of Beginning; thence South 0° 15' 44" East 205.00 feet; thence South 89° 44' 15" West 91.00 feet; thence North 0° 15' 45" West 140.31 feet; thence North 89° 46' 04" East 24.98 feet; thence North 0° 14' 56" West 64.49 feet; thence North 89° 45' 04" East 66.00 feet to the Point of Beginning.

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Parcel No. E395

PART B

A part of Lot 1 of School Trustee's Subdivision of Section 16 in Township 45 North, Range 12 East of the Third Principal Meridian, in Lake County, Illinois, described as follows: Commencing at the Southwest Corner of Lot 6 in Russell H. Edward's Business Sites, being a Subdivision of said Lot 1 in School Trustee's Subdivision thence North 88° 55' 20" East 77.28 feet, as measured along the South line of said Lot 6, to the Point of Beginning; thence South 0° 14' 56" East 36.25 feet; thence North 89° 45' 04" East 100.00 feet; thence North 0° 14' 56" West 37.69 feet to a point on the South line of Lot 7 in said Russell H. Edward's Business Sites; thence South 88° 55' 20" West 100.00 feet, as measured along the South line of Lots 6 and 7 in said Russell H. Edward's Business Sites; to the Point of Beginning.

Parcel No. E399

A part of Lots 6 and 7 in Russell H. Edward's Business Sites, being a part of Lot 1 in School Trustee's Subdivision of Section 16 in Township 45 North, Range 12 East of the Third Principal Meridian, according to the Plat thereof recorded in Book 31 of Plats, Page 102, in Lake County, Illinois, described as follows: Commencing at the Southwest Corner of said Lot 6 thence North 88° 55' 20" East 77.28 feet, as measured along the South line of said Lot 6, to the Point of Beginning; thence North 0° 14' 56" West 93.71 feet; thence North 89° 45' 07" East 100.00 feet; thence South 0° 14' 56" East 92.27 feet to a point on the South line of said Lot 7; thence South 88° 55' 20" West 100.00 feet, as measured along the South line of Lots 6 and 7 to the Point of Beginning.

Grantor hereby grants said temporary construction easement upon the Grantee for the purpose aforesaid, during the construction of the Roadway or for a period of 3 years from the date hereof, whichever is earlier.

Grantor hereby reserves unto itself, its successors and assigns, the right to install, operate, maintain, renew and remove its or their facilities upon, over and under the surface of said described tracts of land, and to make such other and further use of said tracts of land, as it or they shall see fit, insofar as is compatible with the use of said tracts of land for highway purposes.

Grantor hereby further reserves the right to trim from time to time such trees, saplings, and bushes as may reasonably be required in the operation and maintenance of said facilities of Grantor, and Grantee agrees not to plant any trees on or near said described tracts of land which can grow into said facilities of Grantor.

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This grant is subject to two (2) roadways reserved in deed dated June 8, 1923, recorded on June 13, 1923, as Document No. 225388, an easement dated June 18, 1936 to the City of Waukegan for a 10-inch sanitary sewer, and an easement dated August 14, 1954, to North Shore Sanitary District for a 39-inch interceptor sanitary sewer. There may be other utility lines, mains, pipelines or other underground facilities in this area, however, the exact location and users are not known to Grantor but this grant is expressly made subject to such lines.

The purpose of this document is to correct the intent and legal descriptions of a Grant for Public Highway, of the same date, between the same parties, recorded January 16, 1974, in the Office of the Recorder of Deeds of Lake County, Illinois as Document Number 1649408.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed on this 3rd day of August, A.D. 1971.

COMMONWEALTH EDISON COMPANY

By _____
Vice President

_____
Assistant Secretary

ACCEPTED THIS 6TH DAY OF APRIL, 1984.
STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS

BY _____

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, JAMES M. O'LEARY, a Notary Public in and for said County and in the State aforesaid, DO HEREBY CERTIFY that P. B. KAVANAGH and Robert W. Bressmann, personally known to me to be Vice President and Assistant Secretary, respectively, of COMMONWEALTH EDISON COMPANY, a corporation, and also known to me to be the persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Vice President and Assistant Secretary respectively, they signed, sealed and delivered the said instrument as the free and voluntary act of said corporation, for the uses and purposes therein set forth, and that they were duly authorized to execute the same by the board of directors of said corporation.

Given under my hand and notarial seal this 6th day of April, A.D. 1984.

JAMES M. O'LEARY NOTARY PUBLIC COOK COUNTY, ILL.

Notary Public

My Commission Expires: September 2, 1986

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RECORDER
LAKE COUNTY, ILLINOIS
1984 JUN -8 PM 1:20

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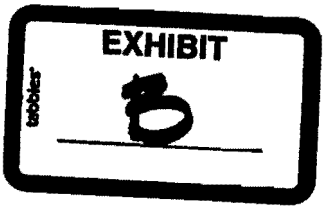
TOTAL P.11

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



[TABLE OF CONTENTS]

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 Trump

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.

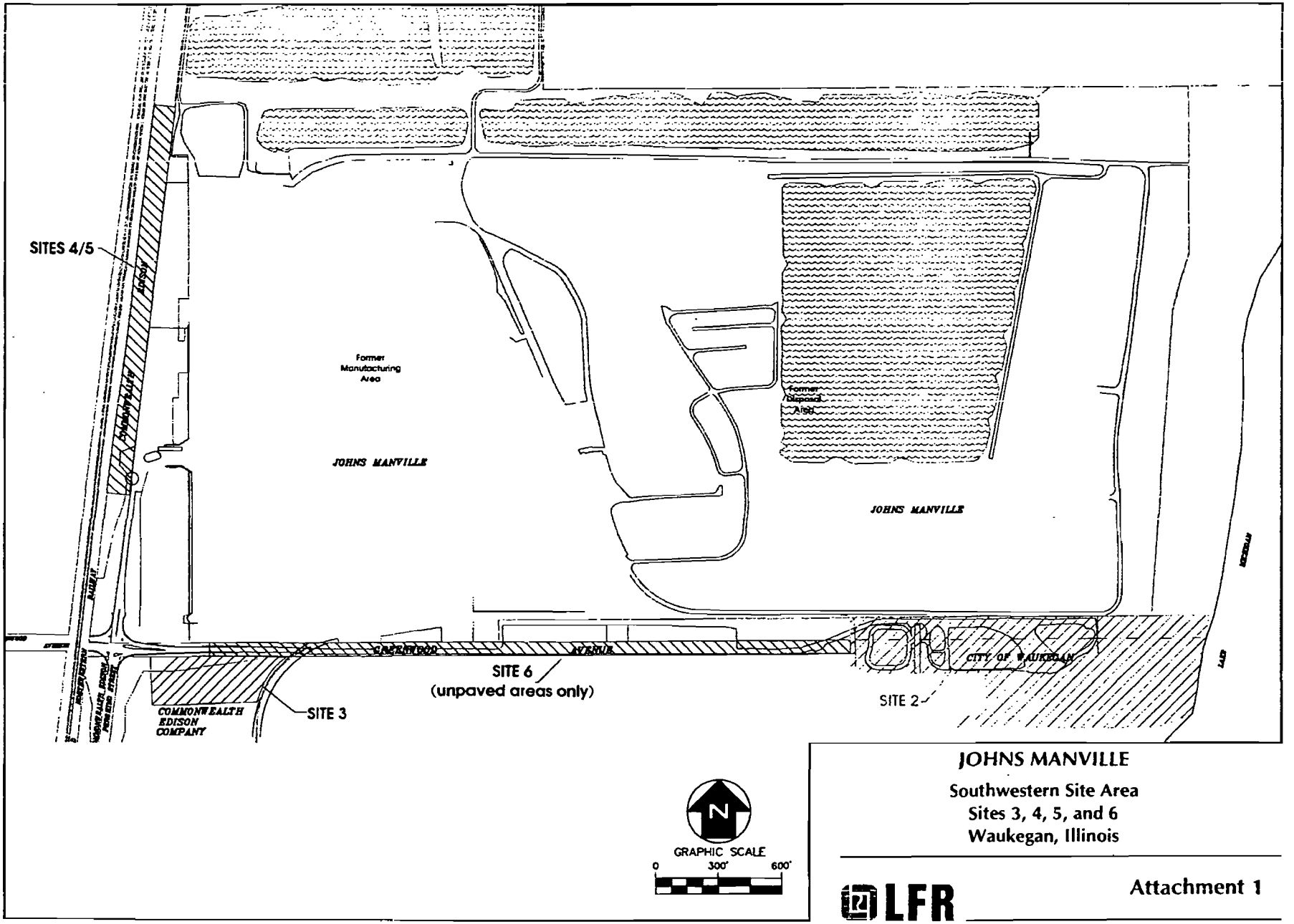
Agreed this 23rd day of May, 2007.

For Respondent Commonwealth Edison Company

By Neena Hemmady

Title Manager Environmental

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



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JOHNS MANVILLE

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

LFR

Attachment 1