

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

RECEIVED
CLERK'S OFFICE

MAY 22 2007

STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
)
Petition of Johns Manville) AS04-04
for an Adjusted Standard) (Adjusted Standard-Land)
from 35 Ill. Adm. Code)
811.310, 811.311, 811.318, and 814)

NOTICE OF FILING

TO: Ms. Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

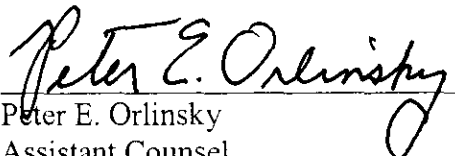
Ms. Elizabeth Wallace
Office of the Attorney General
Environmental Bureau
69 West Washington Street
Suite 1800
Chicago, Illinois 60602

Mr. Edward P. Kenney
Sidley Austin, LLP
One South Dearborn Street
Chicago, Illinois 60603

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the attached *Motion for Leave to File Response to Petition for Adjusted Standard Instantly* and *Response to Petition for Adjusted Standard* on behalf of the Illinois Environmental Protection Agency, copies of which are served upon you herewith.

Date: May 22, 2007

Peter E. Orlinsky
Illinois Environmental Protection Agency
9511 West Harrison Street
Des Plaines, Illinois 60016
847/294-4077


Peter E. Orlinsky
Assistant Counsel
Division of Legal Counsel

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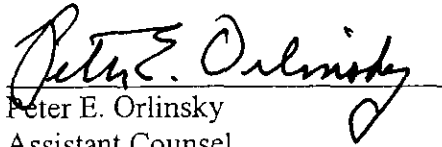
Motion for Leave to File Response to
Petition for Adjusted Standard Instanter

Now comes the Illinois Environmental Protection Agency ("Illinois EPA") by Peter E. Orlinsky, Assistant Counsel and moves to file the Illinois EPA's Response to Petition for Adjusted Standard. In support, the Illinois EPA states as follows:

1. Johns Manville filed its Petition for an Adjusted Standard on June 30, 2004.
2. On August 5, 2004, the Illinois Pollution Control Board ("Board") ruled that the petition was deficient and refused to accept it.
3. On September 30, 2004, Johns Manville filed an Amended Petition for an Adjusted Standard.
4. On November 4, 2004, the Board accepted the amended petition for hearing.
5. The Illinois EPA's initial review of the amended petition concluded that without more information, it would be unable to recommend that an adjusted standard be adopted.
6. Counsel for Johns Manville, counsel for the Illinois EPA, and the Board's hearing officer agreed that the Illinois EPA's recommendation would not have to be filed until after an information exchange among the parties was completed.
7. Following several technical meetings as well as question and answer exchanges, the Illinois EPA is satisfied that it now has been fully informed as to Johns Manville's justifications for the requested adjusted standard.

Wherefore, the Illinois EPA requests that the Board accepted the Response to Petition for Adjusted Standard.

Date: May 22, 2007



Peter E. Orlinsky
Assistant Counsel
Division of Legal Counsel

Peter E. Orlinsky
Illinois Environmental Protection Agency
9511 West Harrison Street
Des Plaines, Illinois 60016
847/294-4077

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STATE OF ILLINOIS
Pollution Control Board

RESPONSE TO PETITION FOR ADJUSTED STANDARD

The Illinois Environmental Protection Agency ("Illinois EPA") by Assistant Counsel Peter E. Orlinsky, pursuant to Section 104.416 of the Procedural Rules of the Illinois Pollution Control Board ("Board"), hereby files the response to the Amended Petition for an Adjusted Standard ("Petition") filed in the above-captioned matter on September 30, 2004 by the Petitioner, Johns Manville ("JM"), and respectfully states as follows:

INTRODUCTION

The Petition filed by JM seeks an adjusted standard from requirements in 35 Ill. Adm. Code Parts 811 and 814 pertaining to landfills. JM has requested that the Board promulgate adjusted standards for its site located in Waukegan, Illinois, modifying the following generally applicable standards governing landfill operations: (1) Section 811.311: Landfill Gas Management System; (3) Section 811.318: Design, Construction, and Operation of Groundwater Monitoring Systems; (4) Section 811.320; Groundwater Quality Standards; and (5) Section 814.402(b)(3): Applicable Groundwater Standards

On January 6, 2005, the State of Illinois and JM entered into a Consent Order in Lake County Circuit Court: *People of the State of Illinois ex rel. Lisa Madigan, Attorney General of the State of Illinois, and ex rel. Michael J. Waller, State's Attorney of Lake County v. Johns Manville, a Delaware Corporation*, No. 01 CH 857. Pursuant to the terms of the Consent Order, JM agreed to the closure of its miscellaneous disposal pit and a portion of its collection basin where waste materials had been disposed. The Consent Order contemplated the possibility that JM would have to obtain an adjusted standard from the Board in order to complete the closure activities (Exhibit A, page 13).

Following the filing of the original adjusted standard petition on June 30, 2004 and continuing to the present, technical personnel from the Illinois EPA and from JM have conducted a series of in person meetings and have exchanged questions and answers by telephone, letter, and e-mail in order to determine the necessity of the requested adjusted standard. For the reasons set forth below, the Illinois EPA recommends that the Board approve the requested adjusted standard. This response will address the requirements of 35 Ill. Adm. Code 104.406(a)(j) in order.

THESE DOCUMENTS ARE SUBMITTED ON RECYCLED PAPER

STANDARD FROM WHICH ADJUSTED
STANDARD IS REQUIRED

JM is seeking adjusted standards from the following Board regulations as they apply to the miscellaneous disposal pit and portions of the collection basin:

1. 35 Ill. Adm. Code 811.310(c)(1) requires that landfill gas monitoring devices including ambient air monitors must be operated on a monthly basis for the entire operating period of the landfill and for a minimum of five years after closure.

2. 35 Ill. Adm. Code 811.311(a)(1) requires that the landfill operator must install a gas management system if a methane concentration greater than 50 per cent of the lower explosive limit in air is detected below the ground surface by a monitoring device or is detected by an ambient air monitor located at or beyond the property boundary or 30.5 meters (100 feet) from the edge of the unit, whichever is less, unless the methane concentration is proven not to be attributable to the facility.

3. 35 Ill. Adm. Code 811.318(b)(3) requires that groundwater monitoring wells are to be installed as close to the potential source of discharge as possible and within half the distance of the edge of the potential source of discharge to the edge of the zone of attenuation downgradient, with respect to groundwater flow from the source.

4. 35 Ill. Adm. Code 811.820(c)(1) defines the zone of attenuation, within which concentrations of constituents in leachate discharge from the landfill may exceed the applicable groundwater quality standard, as a volume bounded by the vertical plane at the property boundary or 100 feet from the edge of the landfill, whichever is less, extending from the ground surface to the bottom of the upper most aquifer and excluding the volume occupied by the waste.

Note the effective date of the above-cited regulations was September 8, 1990.

STATEMENT OF IMPLEMENTATION OF
FEDERAL REQUIREMENT

The regulations from which JM is seeking an adjusted standard were not promulgated to implement any federal requirements.

LEVEL OF JUSTIFICATION

The Illinois EPA does not take issue with representations made by JM concerning the appropriate levels of justification for the adjusted standards requested in these proceedings.

DESCRIPTION OF JM'S ACTIVITY

The Illinois EPA has no independent knowledge of JM's activity at the Waukegan site dating back more than 80 years. However the Illinois EPA has participated in the various administrative and judicial proceedings, both on the state and federal levels, that JM has set forth in its amended petition and is in agreement with the facts set forth therein. Illinois EPA personnel conduct periodic inspections of the facility and are familiar with the on-site landfill.

DESCRIPTION OF EFFORTS NECESSARY TO COMPLY WITH REGULATIONS

The Illinois EPA has no knowledge of what costs would be involved if JM were to comply with the regulations for which it is seeking an adjusted standard. Indeed, even JM has stated that such quantification would be difficult to predict. However, the Illinois EPA is aware of various non-monetary problems that JM would necessarily encounter if it were to comply with the regulations. It is for the following reasons that the Illinois EPA is in agreement that JM should be relieved of its obligations to comply with the regulations in question:

1. Given the relatively small quantities of land fill gas being generated, semi-annual monitoring of the gas, as opposed to monthly monitoring, should be more than adequate to quantify the emissions.
2. In order to perform landfill gas monitoring within the boundaries established by the regulation, JM would necessarily have to drill through the CERCLA engineered barrier that is covering the landfill. Such an operation would compromise the integrity of the cap. JM's proposal to locate the gas management system "as close as possible" to the outside boundary should be more than adequate to accomplish the purpose of the regulation without harming the cap.
3. In order to locate groundwater monitoring wells in the area required by the regulation, JM would have to install the wells on the steep, sloping sides of the CERCLA landfill, through the CERCLA cap, and/or into and through the CERCLA waste. USEPA has stated that it is concerned that such activity "may cause cross contamination of the ground water with asbestos-containing waste materials" and as such is not acceptable (Exhibit B). Illinois EPA agrees that JM's proposed alternative locations for the monitoring wells are preferable.

PROPOSED ADJUSTED STANDARD

JM's proposal for an adjusted standard is set forth on pages 16, 17, and 20 of its amended petition and incorporated by reference herein. The Illinois EPA has not identified any language in JM's proposal that it considers to be adverse to the environment.

IMPACT ON THE ENVIRONMENT

As explained more fully above, the Illinois EPA believes that the proposed adjusted standard is at least as protective of the environment as the regulations that they would replace. Consideration as to how compliance with the regulations would necessarily result in physical damage to the CERCLA cap weighed heavily in the Illinois EPA's analysis.

JUSTIFICATION FOR PROPOSED ADJUSTED STANDARD

The Illinois EPA is of the opinion that JM has met the level of justification necessary to obtain the adjusted standard it is seeking.

CONSISTENCY WITH FEDERAL LAW

The Illinois EPA is unaware of any inconsistencies that the proposed adjusted standard would have with federal law.

WAIVER OF HEARING

The Illinois EPA has no opinion as to whether or not a public hearing should be conducted.

SUPPORTING DOCUMENTATION

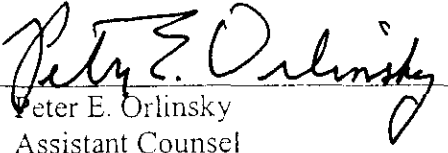
Two exhibits are attached hereto.

RECOMMENDATION

For the reasons set forth above, the Illinois EPA recommends that the adjusted standard sought by JM be approved.

Respectfully submitted,

Illinois Environmental Protection Agency

By: 
Peter E. Orlinsky
Assistant Counsel
Division of Legal Counsel

Date: May 22, 2007

Peter E. Orlinsky
Illinois EPA
Division of Legal Counsel
9511 West Harrison Street
Des Plaines, Illinois 60016
847/294-4077

EXHIBIT A

IN THE CIRCUIT COURT FOR THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. LISA MADIGAN, Attorney General)
of the State of Illinois, and *ex rel.* MICHAEL)
J. WALLER, State's Attorney of Lake County,)
)
Plaintiffs,)
)
v.)
)
JOHNS MANVILLE,)
a Delaware corporation,)
)
Defendant.)

NO. 01 CH 857

FILED

JAN 06 2005

[Signature]
CIRCUIT CLERK

CONSENT ORDER

Plaintiffs, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), *ex rel.* MICHAEL J. WALLER, State's Attorney of Lake County, on his own motion, and Defendant, JOHNS MANVILLE (f/k/a Johns Manville International, Inc., Schuller International, Inc., and Manville Sales Corp.) ("Manville" or "Defendant"), a Delaware corporation, have agreed to the making of this Consent Order and submit it to this Court for approval. The parties agree that the statement of facts contained herein represents a fair summary of the evidence and testimony that would be introduced by the parties if a trial were held. The parties further stipulate that this statement of facts is made and agreed upon for purposes of settlement only and that neither the fact that a party has entered into this Consent Order, nor any of the facts stipulated herein, shall be introduced into evidence in any other proceeding regarding the claims asserted in the Complaint except as otherwise provided herein. If this Court approves and enters this Consent Order, Defendant agrees to be bound by the Consent Order and not to contest its validity in any subsequent proceeding to implement or enforce its terms.

I.

JURISDICTION

This Court has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 et seq. (2002).

II.

AUTHORIZATION

The undersigned representatives for each party certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Consent Order and to legally bind them to it.

III.

STATEMENT OF FACTS

A. Parties

1. On June 18, 2001, a Complaint was filed in this matter, which was subsequently amended on September 21, 2001, and again on August 19, 2003 ("Complaint"), on behalf of the People of the State of Illinois by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois EPA, and *ex rel.* MICHAEL J. WALLER, State's Attorney of Lake County, on his own motion, pursuant to Section 42(d) and (e) of the Act, 415 ILCS 5/42(d) and (e), against the Defendant.

2. Defendant filed its Answer to the Complaint on July 23, 2001, its Answer to the Amended Complaint on October 31, 2001, and its Answer to the Second Amended Complaint on September 22, 2003, wherein Defendant generally denied the allegations in the Complaint and/or raised certain defenses to liability and arguments in mitigation.

3. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2002).

4. At all times relevant to the Complaint, Defendant was and is a Delaware corporation that is authorized to transact business in the State of Illinois.

B. Site Description

1. At all times relevant to the Complaint, Manville owned and operated a facility which manufactured building and other products and was and is located at 1871 North Pershing Road, Waukegan, Lake County, Illinois (the "Site"). Manville ceased manufacturing at the Site in 1998.

2. From approximately 1922 until December 31, 1985, Manville manufactured, among other products, roofing products, commercial flooring products and insulation products, some of which contained asbestos. After 1985 and continuing until sometime in 1998, Manville manufactured products at the Site that did not contain asbestos.

3. In December 1982, part of the Site was listed on the National Priorities List ("NPL") ("NPL Site"). The NPL Site was the subject of a 1988 Consent Decree entered in United States and State of Illinois v. Manville Sales Corp., Case No. 88C630 (N.D. Ill.) ("federal Consent Decree"). Pursuant to the federal Consent Decree, Manville funded and constructed a remedial action pursuant to a Record of Decision issued by the United States Environmental Protection Agency ("U.S.EPA"). Since Manville ceased manufacturing operations at the Site, additional remedial actions are necessary on the NPL Site; hence, Manville, the United States and the State of Illinois have agreed upon an amendment to the federal Consent Decree in which Manville shall perform additional work at the NPL Site pursuant to a First Amended Consent Decree which was lodged on February 11, 2004, in Case No. 88C630 ("federal First Amended Consent Decree").

4. At all times relevant to the Complaint, Manville owned and operated a wastewater treatment system ("WWTS"), which is located adjacent to and intermittently

discharges effluent into Lake Michigan. The WWTS is on the NPL Site. Manville's discharge into Lake Michigan is authorized by National Pollutant Discharge Elimination System ("NPDES") Permit No. IL0069809 (the "NPDES Permit"), which was issued on September 14, 1993 and modified on May 8, 1995. The NPDES Permit allows Manville to discharge to Lake Michigan, *inter alia*, wastewater containing asbestos fibers (in quantities up to seven million fibers per liter (7MFL) measured as fibers greater than 10 microns), total suspended solids (5 mg/l monthly average and 10 mg/l daily maximum) and to contain biochemical oxygen demand (4 mg/l monthly average and 8 mg/l daily maximum). The NPDES Permit expired on September 1, 1996. Manville timely filed its permit renewal application on March 1, 1996, and filed an amended permit renewal application on April 1, 1998. The September 14, 1993, NPDES Permit limits, as modified on May 8, 1995, remain in effect until a new permit is issued by the Illinois EPA. Although Manville has ceased manufacturing at the Site, the WWTS continues to receive storm water from onsite sources as well as from offsite sources to the north and west of the Site, and to discharge effluent intermittently into Lake Michigan.

5. On February 19, 1997, the Illinois EPA inspected the Site and observed a large cluster of drums containing roofing asphalt material located behind the Site manufacturing buildings. The drums were not located on the NPL portion of the Site. Some of the drums were leaking, exposed, or in poor condition. Asphalt spills were observed on the ground. The drums containing asphalt were removed on or before September 15, 1997.

6. A portion of the NPL Site is known as the miscellaneous disposal pit ("landfill"). Pursuant to Section 21(d) of the Act, 415 ILCS 5/21(d), Manville is not required to obtain a permit for this landfill, but the landfill is subject to regulations promulgated by the Illinois Pollution Control Board. Until 1986, Manville used the landfill as a general disposal site for plant waste, some of which contained asbestos. From 1986 until 1998, the landfill was used for disposal of cardboard, wood, finished or in process roofing and thermal 12 products, plastic

banding, steel banding, granules, sand, and sludge from the settling basins. Upon information and belief, Manville ceased on-site disposal activities in 1998 and placed interim cover on the landfill pending final closure. On February 19, 1997, and on December 11, 1998, the Illinois EPA inspected the landfill and observed and recorded numerous apparent violations of applicable regulations, including the lack of final cover. The landfill presently has interim cover and is no longer used for waste disposal.

7. On October 19, 2000, Illinois EPA inspectors visited the Site to observe Manville's demolition of the manufacturing buildings on the Site. During the demolition process, Manville operated a water shroud to control asbestos and general dust released from the demolition activities as required by law. Manville routed and discharged the asbestos containing water generated during the water shroud activity into its WWTS. The asbestos containing water shroud water waste stream was not included in the NPDES Permit then in effect. The Illinois EPA inspectors observed that Manville had installed two sets of filters near the beginning of the WWTS to treat the asbestos and dust in the water shroud water. The NPDES Permit does not contain an authorization to construct such additional treatment for treatment of the new waste stream as a condition of the permit. The State alleges that Manville did not obtain appropriate authorization to modify its existing WWTS prior to discharging the water shroud water into the WWTS and constructing additional treatment filters. Manville contends it notified the Illinois EPA regarding the water shroud water and other NPDES matters via letter dated June 6, 2000; Illinois EPA contends it did not receive the letter when originally sent. Manville subsequently submitted to Illinois EPA a construction permit application for modification of its treatment system and identifying the new waste stream on August 7, 2001, prior to completion of the demolition.

C. Allegations of Non-Compliance

The Complaint alleges the following violations of the Act and Illinois Pollution Control Board ("Board") Regulations:

Count I: NPDES Permit Violations.

Section 12(a) and (f) of the Act, 415 ILCS 5/12(a) and (f) (2002), and Sections 304.141(a) and 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.141(a) and 309.102(a).

Count II: Violation of NPDES Reporting Requirements.

Section 12(f) of the Act, 415 ILCS (f)(2002) and Section 305.102(b) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305.102(b).

Count III: Violations of Waste Disposal Regulations.

Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2002), and Section 808.121(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 808.121(a).

Count IV: Open Dumping.

Section 21(a) of the Act, 415 ILCS 5/21(a) (2002).

Count V: Violation of Landfill Regulations.

Section 21(d)(2) of the Act, 415 ILCS 5/21(a) (2002) and Sections 811.103(a), 811.104, 811.109(b), 811.309(a) and (g), 811.310(b) and (c), 811.313, 811.317(a), 811.318(a), 811.319(a), 811.323(a), 811.404 and 811.406 of the Board Waste Disposal Regulations.

Count VI: Failure to Obtain Authorization to Construct.

Section 12(a) and (f) of the Act, 415 ILCS 5/12(a) and (f) (2002), and Section 309.154(a) and (b) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.154(a) and (b).

D. Non-Admission of Violations

The Defendant represents that it has entered into this Consent Order for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Consent Order and complying with its terms, the Defendant does

not affirmatively admit the allegations of violation within the Complaint; rather, Defendant disputes and denies said allegations of violation and has submitted answers to the complaint with such denials to the Court on July 23, 2001, October 31, 2001, and September 22, 2003, and this Consent Order shall not be interpreted as including any such admission.

E. Compliance Activities to Date

Count I: Manville submitted an application to modify its NPDES permit application to move the discharge point from the Industrial Canal to the Collection Basin discharge into the Industrial Canal.

Count II: Manville filed certain of its Discharge Monitoring Reports ("DMRs") late. With respect to the asbestos test method, the State alleges Manville never submitted its asbestos testing method for approval as required by Standard Condition 10(d) of its NPDES permit; however, Manville contends it submitted its asbestos test method to Illinois EPA for approval by letter dated March 20, 2001.

Counts III and IV: Manville removed and disposed of the asphalt material.

Count V: Manville has not closed the miscellaneous disposal pit pursuant to the applicable regulations, but shall close it pursuant to this Consent Order and the federal First Amended Consent Decree.

Count VI: Manville has stopped discharging water shroud water into the WWTS, and has submitted an authorization to construct to the Illinois EPA.

IV.

APPLICABILITY

A. This Consent Order shall apply to and be binding upon the Plaintiffs and the Defendant, and any officer, director, agent, or employee of the Defendant, as well as any successors or assigns of the Defendant. The Defendant shall not raise as a defense to any enforcement

action taken pursuant to this Consent Order the failure of any of its officers, directors, agents, or employees to take such action as shall be required to comply with the provisions of this Consent Order.

B. No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of the Defendant under this Consent Order. In the event of any conveyance of title, easement or other interest in the facility, the Defendant shall continue to be bound by and remain liable for performance of all obligations under this Consent Order. In appropriate circumstances, however, the Defendant and a contemplated future owner or operator of the facility may jointly request, and the Plaintiffs, in their discretion, may consider modification of this Consent Order to obligate the proposed purchaser or operator to carry out future operation and maintenance requirements of this Consent Order in place of, or in addition to, the Defendant.

C. In the event that the Defendant proposes to sell or transfer a fee or other possessory interest in any real property or operations subject to this Consent Order, the Defendant shall notify the Plaintiffs at least thirty (30) days prior to the conveyance of title, ownership or other interest, including a leasehold interest in the facility or a portion thereof. The Defendant shall make the prospective purchaser or successor's compliance with this Consent Order a condition of any such sale or transfer and shall provide a copy of this Consent Order to any such successor in interest. This provision does not relieve the Defendant from compliance with any regulatory requirement regarding notice and transfer of applicable facility permits.

D. The Defendant shall notify each prime contractor to be retained to perform work required in this Consent Order of each of the requirements of this Consent Order relevant to the activities to be performed by that contractor, including all relevant work schedules and reporting deadlines, and shall provide a copy of this Consent Order to each contractor already retained

no later than 30 days after the date of entry of this Consent Order. In addition, the Defendant shall provide copies of all schedules for implementation of the provisions of this Consent Order to the prime vendor(s) supplying the control technology systems and other equipment required by this Consent Order.

V.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Consent Order in no way affects the responsibilities of the Defendant to comply with any other applicable federal, state or local laws or regulations, including but not limited to applicable provisions of both the Act, and the Board Regulations, 35 Ill. Adm. Code, Subtitles A through H.

VI.

VENUE

The parties agree that the venue of any action commenced in the circuit court for the purposes of interpretation and enforcement of the terms and conditions of this Consent Order shall be in the Circuit Court of Lake County, Illinois.

VII.

SEVERABILITY

It is the intent of the Plaintiffs and Defendant that the provisions of this Consent Order shall be severable, and should any provision be declared by a court of competent jurisdiction to be inconsistent with state or federal law, and therefore unenforceable, the remaining clauses shall remain in full force and effect.

VIII.

JUDGMENT ORDER

This Court having jurisdiction over the parties and subject matter, the parties having

appeared, due notice having been given, the Court having considered the stipulated facts and being advised in the premises, finds the following relief appropriate:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

A. Penalty

1. a. Within thirty (30) days of the date of entry of this Consent Order, the Defendant shall pay a civil penalty of One Hundred and Forty-Five Thousand Dollars (\$145,000.00) total. One Hundred and Forty Thousand Dollars (\$140,000.00) shall be paid to the Illinois EPA and Five Thousand Dollars (\$5,000.00) shall be paid to the Lake County State's Attorney/Lake County Treasurer.

b. Payment to the Illinois EPA shall be made by certified check, money order or electronic fund transfer payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF") and shall be sent by first class mail and delivered to:

Illinois Environmental Protection Agency
Fiscal Services
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

c. Payment to the Lake County State's Attorney/Lake County Treasurer shall be made by certified check, money order, or electronic transfer payable to the Lake County State's Attorney/Lake County Treasurer and shall be sent by first class mail and delivered to:

Lisle A. Stalter
Assistant State's Attorney
Lake County State's Attorney's Office
18 North County St.
Waukegan, IL 60085

d. The name, case number, and Manville's Federal Employer Identification Number ("FEIN"), 13-0889690, shall appear on the face of the certified checks or money orders or included with the electronic fund transfers. A copy of the certified check or money order and the transmittal letter, or a letter/receipt confirming the penalty was paid by electronic fund transfer, shall be sent to:

Elizabeth Wallace
Senior Assistant Attorney General
Environmental Bureau
188 West Randolph St., 20th Floor
Chicago, Illinois 60601

(Only if paid by electronic transfer)

Lisle A. Stalter
Assistant State's Attorney
Lake County State's Attorney's Office
18 North County St.
Waukegan, IL 60085

2. For purposes of payment and collection, the Defendant's attorney may be reached at the following address:

Edward P. Kenney
Sidley Austin Brown & Wood
10 S. Dearborn Street
Chicago, Illinois 60603

3. For purposes of payment and collection, Defendant may be reached at the following address:

Bruce D. Ray
Associate General Counsel
Johns Manville
717 17th Street (80202)
P.O. Box 5108
Denver, CO 80217-5108

4. In the event of default, the Plaintiffs shall be entitled to interest on the penalty and reasonable costs of collection, including reasonable attorney's fees.

B. Future Compliance

Manville ceased operations at the Site in 1998. During 2000, Manville demolished all the buildings on the Site. Pursuant to U.S.EPA Region V's Second Explanation of Significant Differences ("Second ESD") signed by U.S.EPA on September 22, 2000 and the First Amended Consent Decree to be entered in the matter of United States and State of Illinois v. Johns Manville, Case No. 88C630 (N.D.Ill.), Manville will be closing and constructing a cap on some of the water bodies which comprise the WWTS and performing other work (with the approval of USEPA and Illinois EPA) on other water bodies. The Second ESD and the federal Consent Decree also provide that the miscellaneous disposal pit (and the portion of the collection basin where waste was also disposed), which are located on the NPL Site, shall be closed in accordance with 35 Ill. Adm. Code Part 811 (Note: The applicable closure requirements for the landfill are actually found at 35 Ill. Adm. Code Part 814, and not Part 811). The Parties recognize that closure of the landfill is also regulated by the federal First Amended Consent Decree, and therefore the schedules and approval processes contained herein parallel those in the federal First Amended Consent Decree. The Parties intend for the federal First Amended Consent Decree and this Consent Order to be consistent and have attempted to harmonize the federal First Amended Consent Decree with this Consent Order. However, in the unlikely event that an inconsistency arises between the requirements of the federal First Amended Consent Decree and this Consent Order, the Parties may seek appropriate relief from this Court, and if this Court so Orders, stipulated penalties shall not accrue during the period of dispute.

1. Compliance with NPDES Permit No. IL0069809. A draft renewal permit was presented for public notice and comment as required by the Act. Manville shall comply with the terms and conditions of the current NPDES Permit or any final and unappealable terms of renewal NPDES Permit No. IL0069809, whichever are in effect.

2. Closure of Miscellaneous Disposal Pit and portion of Collection Basin where waste was disposed. Manville shall close the miscellaneous disposal pit and the portion of the collection basin where waste materials were deposited in accordance with 35 Ill. Adm. Code Part 814, or obtain an adjusted standard from the Illinois Pollution Control Board ("Board") pursuant to 415 ILCS 5/28.1 for closure of the landfill. Manville submitted a draft Adjusted Standards Petition and a Compliance Plan for Closure of the On-Site Landfill (together "Adjusted Standards Petition") to Illinois EPA on or about July 11, 2003. Within thirty (30) days of Manville's receipt of Illinois EPA's and U.S. EPA's comments on the Adjusted Standards Petition, but no later than June 30, 2004, Manville shall either file a petition with the Board for an adjusted standard pursuant to 35 Ill. Adm. Code 814 for the closure of the landfill or submit a draft Work Plan providing for final closure of the landfill in accordance with 35 Ill. Adm. Code Part 814 to Illinois EPA for approval. In the event that Manville submits an adjusted standards petition to the Board, Manville shall submit a draft Work Plan to Illinois EPA for review and approval within sixty (60) days after the Board's final decision on Manville's adjusted standards petition, which shall provide for closure of the miscellaneous disposal pit and the portion of the collection basin where waste materials were deposited in compliance with 35 Ill. Adm. Code Part 814 or an adjusted standard as determined by the Board. Upon written notification by Illinois EPA, Manville shall implement the Final Work Plan for the landfill as approved or modified pursuant to the procedures herein according to the schedule in the Final Work Plan.

Illinois EPA shall review the draft Work Plan and will notify Manville in writing of any conditional approval, approval, approval with modifications or disapproval of the draft Work Plan. Upon notification of Illinois EPA, Manville shall make all required modifications in the draft Work Plan and submit a Final Work Plan within thirty (30) days of receipt of Illinois EPA's notice.

Upon notification of Illinois EPA in writing of any approval, approval upon conditions, or approval with modification by Illinois EPA on the Final Work Plan, Manville shall immediately proceed to implement the actions required by the work plan in accordance with the schedules approved therein.

The approved Final Work Plan, including any subsequent amendments thereto, and all other approved items required to be submitted under this Consent Order, is enforceable under this Consent Order.

In the event Manville files a Petition for Adjusted Standard with the Board, Manville agrees not to appeal the Board's final order granting or denying Manville's Petition for Adjusted Standard.

3. Certification of Completion of Construction. When Manville determines that it has completed closure of the landfill, Manville shall submit a written report to Illinois EPA for approval. In the report, a registered professional engineer and the Manville Project Coordinator shall state that closure of the miscellaneous disposal pit and portion of the collection basin that received waste has been completed in full satisfaction of the requirements in the Consent Order and approved Final Work Plan. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement signed by a responsible corporate official of Manville or Manville's Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission 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.

If after review of the written report, Illinois EPA determines that closure of the landfill has not been completed in accordance with this Consent Order, Illinois EPA shall notify Manville in writing of the activities that must be undertaken by Manville to complete the closure. Illinois

EPA shall set forth in the notice a schedule for performance of such activities consistent with the Consent Order or require Manville to submit a schedule to Illinois EPA for approval.

Manville shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to its right to invoke dispute resolution. If Illinois EPA concludes, based on the initial or any subsequent request for Certification of Completion by Manville that the work has been performed in accordance with this Consent Order, Illinois EPA shall so notify Manville in writing.

C. Stipulated Penalties

1. If Manville fails to complete any activity by the date specified in Section VIII.B. of this Consent Order including any schedule contained in the approved work plan, Manville shall provide notice to the Plaintiffs of each failure to comply with this Consent Order. In addition, the Defendant shall pay to the Illinois EPA, for payment into the Environmental Protection Trust Fund, stipulated penalties per violation for each day of violation in the amount of \$1,000.00 until such time that compliance is achieved.

2. Manville shall pay stipulated penalties in the amount of \$2,000.00 for each violation of any requirement of its NPDES Permit No. IL0069809.

3. Following the Illinois EPA's determination that Manville has failed to complete performance of any task or other portion of work, failed to provide a required submittal, including any report or notification, the State may make a demand for stipulated penalties upon Defendant for its noncompliance with this Consent Order. Failure by the State to make this demand shall not relieve the Defendant of the obligation to pay stipulated penalties.

4. All penalties owed the Illinois EPA under this section of this Consent Order that have not been paid shall be payable within thirty (30) days of the date Manville knows or should have known of its noncompliance with any provision of this Consent Order.

5. a. All stipulated penalties shall be paid by certified check, money order or electronic fund transfer, payable to the Illinois EPA for deposit in the EPTF and delivered to:

Illinois Environmental Protection Agency
Fiscal Services
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

b. The name and number of the case and Manville's FEIN shall appear on the face of the check, money order, or in the electronic fund transfer transmittal. A copy of the check(s) and the transmittal letter or the electronic fund transfer transmittal, shall be sent to:

Elizabeth Wallace
Senior Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601

6. 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 during the period, if any, beginning on the 31st day after Illinois EPA's receipt of such submission until the date that Illinois EPA notifies Manville of any deficiency; (2) with respect to judicial review by this Court of any dispute under Section VIII(G) (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

7. The stipulated penalties shall be enforceable by the Plaintiffs and shall be in addition to, and shall not preclude the use of, any other remedies or sanctions arising from the failure to comply with this Consent Order.

D. Interest on Penalties

1. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g), interest shall accrue on any penalty amount owed by the Defendant not paid within the time prescribed herein, at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003(a) (2002).

2. Interest on unpaid penalties shall begin to accrue from the date the penalty is due and continue to accrue to the date payment is received by the Plaintiffs.

3. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

4. All interest on penalties owed the Illinois EPA shall be paid by certified check or money order payable to the Illinois EPA for deposit in the EPTF at the above-indicated address. All interest on penalties owed the Lake County State's Attorney shall be paid by certified check or money order payable to the Lake County State's Attorney/Lake County Treasurer at the address indicated in Section VIII A.1.c. The name, case number, and Manville's FEIN shall appear on the face of the certified checks or money orders. A copy of the certified check or money order paid to the Illinois EPA and the transmittal letter shall be sent to:

Elizabeth Wallace
Senior Assistant Attorney General
Environmental Bureau
100 W. Randolph St., 11th Floor
Chicago, Illinois 60601

Lisle A. Stalter
Assistant State's Attorney
Lake County State's Attorney's Office
18 North County St.
Waukegan, IL 60085

E. Future Use

Notwithstanding any other language in this Consent Order to the contrary, this Consent Order may be used against Manville in any subsequent enforcement action or permit

proceeding as evidence of a past adjudication of violation of the Act and the Board Regulations promulgated thereunder, for purposes of Section 39(i) and/or 42(h) of the Act, 415 ILCS 5/39(i) and/or 5/42(h).

F. Force Majeure

1. For the purposes of this Consent Order, *force majeure* is an event arising beyond the control of the Defendant, or any entity controlled by Defendant, which prevents the timely performance of any obligation under this Consent Order. For purposes of this Consent order *force majeure* shall include, but is not limited to, events such as floods, fires, tornadoes, other natural disasters, and labor disputes beyond the reasonable control of the Defendant.

2. When, in the opinion of the Defendant, a *force majeure* event occurs which causes or may cause a delay in the performance of any of the requirements of this Consent Order, the Defendant shall orally notify the State Project Manager within 24 hours of the occurrence. Written notice shall be given to the State Project Manager as soon as practicable, but no later than five (5) calendar days after the claimed occurrence. Written notice shall include the reason(s) for and anticipated duration of such delay, the measures taken and to be taken by Manville to prevent or minimize the delay, and the timetable for implementation of such measures.

3. Failure by the Defendant to comply with the notice requirements of the preceding paragraph shall render this section voidable by the Plaintiffs as to the specific event for which the Defendant has failed to comply with the notice requirement. If voided, this section shall be of no effect as to the particular event involved.

4. Within 10 calendar days of receipt of the *force majeure* notice required under Section VIII.F.2, the Plaintiffs shall respond to the Defendant in writing regarding the Defendant's claim of a delay or impediment to performance. If the Plaintiffs agree that the

delay or impediment to performance has been or will be caused by circumstances beyond the control of the Defendant, including any entity controlled by the Defendant, and that the Defendant could not have prevented the delay by the exercise of due diligence, the parties shall stipulate in writing to an extension of the required deadline(s) for all requirement(s) affected by the delay, by a period equivalent to the delay actually caused by such circumstances. Such stipulation may be filed as a modification to this Consent Order pursuant to the modification procedures established in this Consent Order. The Defendant shall not be liable for stipulated penalties for the period of any such delay.

5. If the Plaintiffs do not accept the Defendant's claim of a *force majeure* event, the Parties shall resolve the dispute according to the dispute resolution procedures in Section VIII.G. If this Court determines that the delay or impediment to performance has been or will be caused by circumstances solely beyond the control of Manville, including any entity controlled by Manville, and that Manville could not have prevented the delay by the exercise of due diligence, Manville shall be excused as to that event (including any imposition of stipulated penalties), for all requirements affected by the delay, for a period of time equivalent to the delay or such other period as may be determined by this Court.

6. An increase in costs associated with implementing any requirement of this Consent Order shall not, by itself, excuse the Defendant under the provisions of this section of this Consent Order from a failure to comply with such a requirement.

G. Dispute Resolution

1. The dispute resolution procedure provided by this section shall be available to resolve all disputes arising under this Consent Order, except where the Defendant has violated any payment or compliance deadline within this Consent Order. If the Defendant has violated any payment or compliance deadline, the Plaintiffs may elect to file a petition for adjudication of

contempt or rule to show cause. Notwithstanding the above, disputes regarding substantial danger to the environment or to the public health of persons or to the welfare of persons, are not subject to the dispute resolution provisions of this Consent Order.

2. The dispute resolution procedure shall be invoked upon the giving of written notice by one of the parties to this Consent Order to another describing the nature of the dispute and the noticing party's position with regard to such dispute. The party receiving such notice shall acknowledge receipt of the notice; thereafter the parties shall schedule a meeting to discuss the dispute informally not later than fourteen (14) days from the receipt of such notice.

3. Disputes submitted to dispute resolution shall, in the first instance, be the subject of informal negotiations between the parties. Such period of informal negotiations shall be for a period of 30 calendar days from the date of the first meeting between representatives of the Plaintiffs and the Defendant, unless the parties' representatives agree to shorten or extend this period.

4. In the event that the parties are unable to reach agreement during the informal negotiation period, the Plaintiffs shall provide the Defendant with a written summary of their position regarding the dispute. The position advanced by the Plaintiffs shall be considered binding unless, within 20 calendar days of the Defendant's receipt of the written summary of the Plaintiffs' position, the Defendant files a petition with this Court seeking judicial resolution of the dispute. The Plaintiffs shall respond to the petition by filing the administrative record of the dispute (which shall include, at a minimum, submittals by the Parties, and the Plaintiffs position) and any argument within 20 calendar days of such filing.

5. The invocation of dispute resolution, in and of itself, shall not excuse compliance with any requirement, obligation or deadline contained herein, and, unless otherwise provided herein, stipulated penalties may be assessed for failure or noncompliance during the period of dispute resolution.

6. Notwithstanding any other provision of this Consent Order, this Court shall make its decision based on the administrative record and shall not draw any inferences nor establish any presumptions adverse to any party as a result of invocation of this section or the parties' inability to reach agreement with respect to the disputed issue.

7. As part of the resolution of any dispute, the parties, by agreement, or by order of this Court, may, in appropriate circumstances, extend or modify the schedule for completion of work under this Consent Order to account for the delay in the work that occurred as a result of dispute resolution.

H. Correspondence, Reports and Other Documents

Any and all correspondence, reports and any other documents required under this Consent Order, except for payments pursuant to Sections VIII.A. and C. of this Consent Order shall be submitted as follows:

As to the Plaintiffs

Elizabeth Wallace
Senior Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601

Peter Orlinsky
Assistant Counsel
Illinois EPA
9511 West Harrison
Des Plaines, IL 60016

Sandra Bron
Bureau of Land
State Project Manager
Illinois EPA
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Chris Kallis
Field Operations Section
Bureau of Water
Illinois EPA
9511 West Harrison
Des Plaines, IL 60016

Lisle A. Stalter
Assistant State's Attorney
Lake County State's Attorney
18 N. County St.
Waukegan, IL 60085-4363

As to the Defendant

Bruce D. Ray
Associate General Counsel
Johns Manville
717 17th Street (80202)
P.O. Box 5108
Denver, CO 80217-5108

I. Right of Entry

In addition to any other authority, the Illinois EPA, its employees and representatives, the Attorney General, her agents and representatives and the Lake County State's Attorney, his agents and representatives, shall have the right of entry, upon presentation of appropriate credentials, into and upon the Defendant's facility which is the subject of this Consent Order, at all reasonable times for the purposes of carrying out inspections. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, his employees and representatives may take photographs, samples, and collect information, as they deem necessary. Except as to actions taken by Illinois EPA pursuant to the NPDES Permit, in the event that the Illinois EPA or any other State entity or their contractors, agents or consultants expect to conduct a sampling event on-site, they shall provide Defendant with reasonable advance notice.

J. Cease and Desist

Manville shall cease and desist from future violations of the Act and Board Regulations, including but not limited to those sections of the Act and Board Regulations that were the subject matter of the Complaint as outlined in Section III.C. of this Consent Order.

K. Release from Liability

In consideration of the Defendant's payment of any specified costs, a \$145,000.00 penalty, and upon the completion of all activities required hereunder, the Plaintiffs release, waive and discharge the Defendant from any further liability or penalties for violations of the Act and Board Regulations that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Plaintiffs' Complaint filed on August 19, 2003 (which includes allegations made in Plaintiffs' original Complaint and First Amended Complaint, both of which were filed in 2001). The Plaintiffs reserve, and this Consent Order is without prejudice to, all rights of the State of Illinois against the Defendant with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on the Defendant's failure to satisfy the requirements of this Consent Order.

Nothing in this Consent Order is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois or the Illinois EPA may have against any

person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than the Defendant.

L. Retention of Jurisdiction

This Court shall retain jurisdiction of this matter for the purposes of interpreting and enforcing the terms and conditions of this Consent Order, except that the parties may, by mutual written consent, extend any compliance dates or modify the terms of this Consent Order without leave of Court. Any such agreed modification shall be in writing, signed by authorized representatives of each party, and incorporated into this Consent Order by reference.

M. Enforcement of Consent Order

1. Upon the entry of this Consent Order, any Party hereto, upon motion, may reinstate these proceedings solely for the purpose of enforcing or modifying the terms and conditions of this Consent Order. This Consent Order is a binding and enforceable order of this Court and may be enforced as such through any and all available means.

2. The Parties agree that notice of any subsequent proceeding to enforce or modify this Consent Order may be made by mail and waive any requirement of service of process.

WHEREFORE, the parties, by their representatives, enter into this Consent Order and submit it to this Court that it may be approved and entered.

AGREED:

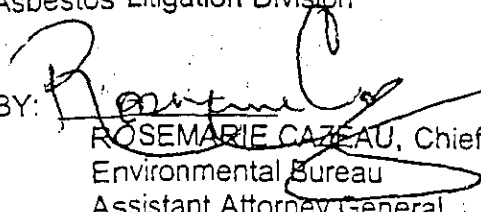
FOR THE PLAINTIFFS:

PEOPLE OF THE STATE OF ILLINOIS
ex rel. LISA MADIGAN,
Attorney General of the
State of Illinois

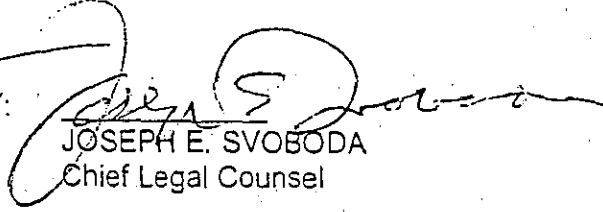
MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

BY:


ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY:


JOSEPH E. SVOBODA
Chief Legal Counsel

DATE:

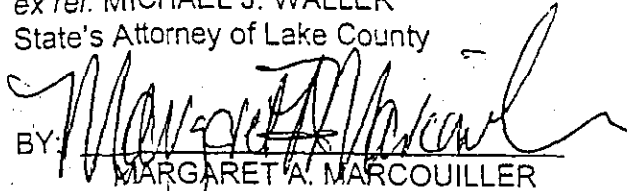
5/13/04

DATE:

5/12/04

ex rel. MICHAEL J. WALLER
State's Attorney of Lake County

BY:


MARGARET A. MARCOUILLER
Chief Deputy, Civil Division

DATE:

May 24, 2004

EXHIBIT B



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

December 5, 2006

REPLY TO THE ATTENTION OF:

William Bow
Levine-Fricke
630 Tollgate Road, Suite D
Elgin, IL 60123-9302

Dear Mr. Bow:

The U.S. Environmental Protection Agency (EPA) has reviewed your November 14, 2006 correspondence titled "Request for U.S. EPA opinion on Proposed Groundwater Monitoring Well Locations; On-Site Landfill; Johns Manville, Waukegan, IL". EPA agrees that placing monitoring wells on the side slopes of the now closed CERCLA landfill is not acceptable and agrees that alternate locations that are beyond the current "footprint" of the landfill would be acceptable.

EPA is concerned that placing groundwater monitoring wells on the side slopes of the current closed landfill could breach and/or compromise the soil cover required under the June 30, 1987 Record of Decision for the Johns-Manville Site and may cause cross-contamination of the ground water with asbestos-containing waste materials. Additionally, the restrictive covenants for the Johns-Manville Site prohibit such activities unless EPA and the State of Illinois provide approval in advance. EPA is not inclined to approve the installation of any groundwater monitoring wells that would be located within the current boundaries of the CERCLA landfill area.

Please contact me at (312) 886-4742 if you have any questions concerning this letter.

Sincerely,

A handwritten signature in cursive script that reads "Brad Bradley".

Brad Bradley
Remedial Project Manager

cc: Sandy Bron, Illinois EPA