BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter Of:	)	
	)	
JOHNS MANVILLE, a Delaware corporation,	)	
	)	
	)	
Complainant,	)	**PCB No. 14-3**
	)	
v.	)	
	)	
ILLINOIS DEPARTMENT OF TRANSPORTATION,	)	
	)	
	)	
Respondent.	)	

ORIGINAL

NOTICE OF FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on October 11, 2013, I caused to be filed with the Clerk of the Pollution Control Board of the State of Illinois, Complainant's Response to Respondent's Motion to Dismiss, copies of which are attached hereto and herewith served upon you via e-mail. Paper hardcopies of this filing will be made available upon request.

Dated: October 11, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, the undersigned, certify that on October 11, 2013, I caused to be served a true and correct copy of Complainant's Response to Respondent's Motion to Dismiss upon all parties listed on the Service List by sending the documents via e-mail to all persons listed on the Service List, addressed to each person's e-mail address. Paper hardcopies of this filing will be made available upon request.

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COMPLAINANT'S RESPONSE TO RESPONDENT'S MOTION TO DISMISS

Complainant JOHNS MANVILLE ("JM") hereby responds to Respondent ILLINOIS DEPARTMENT OF TRANSPORTATION'S ("IDOT") Motion to Dismiss as follows:

INTRODUCTION

Respondent IDOT moves to dismiss JM's Complaint on two grounds: (1) that the action is duplicative of three federal proceedings and (2) that it is insufficient as a matter of law pursuant to Section 2-615 of the Illinois Code of Civil Procedure because—IDOT argues—JM makes conclusory allegations that IDOT believes are wrong.[1] In IDOT's view, the asbestos waste at issue in this case could have been caused by digging and backfilling associated with

[1] Respondent cites Section 2-619.1 as the basis for its Motion to Dismiss. Memorandum of Law in Support of Respondent's Motion to Dismiss ("Resp. Mem.") at 1. 415 ILCS 5/2-619.1. Section 619.1 allows the movant to combine motions with respect to the pleadings under Section 2-615 and motions for involuntary dismissal or other relief under Section 2-619. 735 ILCS 5/2-619.1. Here, IDOT has requested dismissal on grounds that JM's Complaint allegedly is substantially insufficient in law, pursuant to Section 2-615 of the Illinois Code of Civil Procedure. 735 ILCS 5/2-615. IDOT also cites to Section 2-619(a)(9) as grounds for dismissal of JM's Complaint. 735 ILCS 5/2-619(a)(9) ("the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim"). However, Respondent does not separately address this basis for its motion. Accordingly, JM will not separately address this standard in its response.

replacement or repair of underground utility lines and is not necessarily associated with IDOT's road construction activities. IDOT's arguments fall flat. IDOT's Motion fails to apply the proper legal standards, misconstrues the scope of the "federal proceedings" it references, and neglects to cite any Pollution Control Board case law in support of its arguments.

As to IDOT's first argument, none of the three alleged "duplicative proceedings" is "identical or substantially similar to one brought before the Board or another forum." 35 Ill. Adm. Code § 101.202. In fact, IDOT never explains the significance of one of these proceedings (a 1991 "Global Settlement Order") or how it is duplicative; IDOT merely refers to it in passing. Resp. Mem. at 7-8. As to the other proceedings, neither addresses violations of the Illinois Environmental Protection Act (the "Act"), which is the basis for JM's Complaint in this case. One of them (a 2004 Consent Decree) does not even involve the property at issue in this case and the other, a 2007 Administrative Order on Consent, is neither an action before "the Board or another forum" nor is IDOT or any other agency of the State of Illinois a party to it. Consequently, none of these prior proceedings is duplicative of the current action before the Board, which is a citizen enforcement action alleging that IDOT violated Sections 21(a) and 21(e) of the Act.

IDOT's "insufficient as a matter of law" argument flies off target. As a threshold matter, the Board may only dismiss a Complaint if it is "duplicative or frivolous." 415 ILCS 5/31(d)(1). The Board does not delve into the merits on a Motion to Dismiss. As a result, IDOT's belief that someone else could have caused the contamination is beside the point. IDOT's argument that the Complaint lacks specificity is equally off base. Even a cursory review of JM's Complaint indicates that its allegations are amply supported by facts and that it reasonably apprises the Respondent of the allegations against it. *See, e.g.*, Complaint ¶¶ 23, 24, 26 39, 54.

Interestingly, IDOT never attempts to equate the 2-615 standard to the Board's frivolity standard and entirely fails to argue that the Complaint is frivolous. It is worth noting, though, that the Complaint passes this test. An action before the Board is "frivolous" if the Board does not have the authority to grant the requested relief, or if the complaint fails to state a cause of action upon which the Board can grant relief. 35 Ill. Adm. Code § 101.202. The Board plainly has the authority to grant the requested relief, the Complaint states a cause of action upon which the Board can grant relief, and IDOT fails to argue otherwise.

BACKGROUND

On July 8, 2013, Complainant JM filed a Complaint before the Illinois Pollution Control Board (the "Board") pursuant to Section 31(d) of the Act, 415 ILCS 5/31(d), which authorizes "any person" to file a complaint before the Board against "any person allegedly violating this Act." 415 ILCS 5/31(d). JM contends that IDOT violated certain provisions of Section 21 of the Act when it broke up, obliterated, spread, buried, placed, dumped, disposed of and abandoned asbestos-containing Transite® pipe and used it as fill during an expressway project at and near a site in Waukegan, Illinois currently owned by Commonwealth Edison ("ComEd"). This Site is referred to herein as Site 3. Site 3 neighbors the former JM manufacturing facility located in Waukegan, Illinois (the "Facility").

IDOT admits that it dealt with discarded asbestos-containing material ("ACM") at some point between 1971 and 1976 during construction of a ramp to the Amstutz Expressway, which runs adjacent to Site 3. Complaint, ¶ 24. Records and aerial photographs show that IDOT constructed a temporary bypass road during this time frame through a former JM employee parking lot (now Site 3), where asbestos-containing Transite® pipe was in use as curb "bumpers" on the parking lot surface. Complaint, ¶¶ 18-19, 21. Maps showing the approximate outline of

the detour road appear to closely track the boundaries of the current Site 3, most importantly in the northeast portion where Site 3 is larger than the rectangular shape of the former parking lot IDOT demolished. *See* map attached hereto as Complainant's Exhibit A. JM contends that IDOT broke up and obliterated this pipe during construction, buried it, disposed of it, abandoned it and spread it both horizontally and vertically over previously uncontaminated areas. Indeed, IDOT personnel previously admitted to burying asbestos-containing Transite® pipe during the construction project, and further investigation suggests that IDOT used ACM as fill material underneath the expressway ramp. *See* Complaint, ¶ 24 (retired engineer Duane Mapes recalled "dealing with asbestos pipe during the project and burying some of it"); ¶ 26 (Transite® pipe found buried within ramp constructed by IDOT and one foot higher than Site 3). ACM currently remains in situ at and adjacent to the Facility. Complaint, ¶ 50. Accordingly, JM asserts that IDOT both disposed of and abandoned ACM waste and caused the open dumping of ACM waste at and near Site 3, in violation of Sections 21(a) and 21(e) of the Act. 415 ILCS 5/21(a), (e).

Site 3, along with several other nearby areas, is currently subject to a 2007 Administrative Order on Consent ("AOC") between JM, ComEd and the United States Environmental Protection Agency ("EPA"). The AOC requires JM and ComEd to perform certain response actions to address asbestos contamination at Site 3 and the other nearby areas. IDOT's disposal, dumping and abandonment of ACM in and around Site 3 has directly impacted the scope of the EPA's selected remedy, which includes significant excavation of fill materials in that area. JM is seeking a finding that IDOT violated the Act and equitable relief in the form of an Order requiring IDOT to participate in future response actions at Site 3, to the extent the asbestos contamination at and near Site 3 is attributable to IDOT's actions.

LEGAL STANDARD

Section 31(d) of the Act provides that "any person may file with the Board a complaint . . . against any person allegedly violating this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order." 415 ILCS 5/31(d)(1). "Unless the Board determines that such complaint is duplicative or frivolous, it shall schedule a hearing and serve written notice thereof upon the person or persons named therein." 415 ILCS 5/31(d)(1). Per the Board's rules, a complaint is considered "duplicative" if the matter is "identical or substantially similar to one brought before the Board or another forum." 35 Ill. Adm. Code § 101.202. *See also Brandle v. Ropp*, PCB 85-68, slip. op. at 1 (June 13, 1985); *League of Women Voters v. North Shore Sanitary Dist.*, PCB 70-7, slip. op. at 2 (Oct. 8, 1970). In determining whether a matter is the same or substantially similar as one pending before the Board or another forum, the Board considers the following factors: (1) whether the parties to the two matters are the same; (2) whether the proceedings are based on the same legal theories; (3) whether the violations alleged in the two matters occurred over the same time period; and (4) whether the same relief is sought in the two proceedings. *Sierra Club v. Midwest Generation, LLC*, PCB 13-15, slip. op. at 22 (Oct. 3, 2013). An action before the Board is "frivolous" if the Board does not have the authority to grant the requested relief, or if the complaint fails to state a cause of action upon which the Board can grant relief. 35 Ill. Adm. Code § 101.202.

When ruling on a motion to dismiss, the Board takes all well-pled allegations as true and draws all inferences from them in favor of the non-movant. *People v. Peabody Coal Co.*, PCB 99-134, slip. op. at 1-2 (June 20, 2002). Dismissal is proper only if it is clear that no set of facts could be proven that would entitle a complainant to relief. *People v. Stein Steel Mills Co.*, PCB

02-1, slip op. at 1 (Nov. 15, 2001). Dismissal is inappropriate if the facts pled and all reasonable inferences based on those facts reasonably inform the Respondent of a violation of the Act or Board rules. *Mandel v. Kulpaka*, PCB 92-33, slip. op. at 2 (July 30, 1992) (citing *Brumley v. Touche, Ross & Co.*, 123 Ill.App.3d 636 (2d Dist. 1984)). A Complainant is only required to set forth ultimate facts in its complaint, not "the evidentiary facts tending to prove such ultimate facts." *Schilling v. Hill*, PCB 10-100, slip. op at 10 (Mar. 15, 2012) (citing *People ex rel. Fahner v. Carriage Way West, Inc.*, 88 Ill.2d 300, 308 (1981)).

STATEMENT OF FACTS

To the extent the facts stated in Respondent's Motion to Dismiss are largely excerpted from JM's Complaint, JM deems those facts admitted and will not repeat them here.

Respondent IDOT has asked the Board to take official notice of a 2004 Consent Decree and also discusses portions of the AOC in their Response. Although JM does not concede that these proceedings are dispositive of the instant action, JM contends that Respondent's statement of facts mischaracterizes the scope and application of these proceedings. Therefore, JM will briefly summarize these prior proceedings in the interest of clarity.

a. *United States v. Manville Sales Corporation*, No. 88C 630 (N.D. Ill.)

On September 8, 1983, EPA added the Facility—referred to as the "Johns Manville Waukegan Disposal Area"—to the National Priorities List ("NPL") under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), due to asbestos contamination. 40 C.F.R. Part 300, Appendix B; 48 Fed. Reg. 40658 (Sept. 8, 1983). On January 22, 1988, the United States filed a Complaint in the Northern District of Illinois against Manville Sales Corporation (now known as Johns Manville or JM) under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, for reimbursement of costs and performance of remedial

action at the Facility. Complaint, *United States v. Manville Sales Corp.*, No. 88C 630 (N.D. Ill. Jan. 22, 1988). The State of Illinois filed a motion for leave to intervene in the action, which was granted on February 26, 1988. Motion for Leave to Intervene, *Manville*, No. 88C 630. This enforcement action was resolved in a consent decree entered by the Court on or about March 18, 1988 (the "Original Consent Decree"). Order Entering Consent Decree, *Manville*, No. 88C 630. The State of Illinois was a party to the Original Consent Decree.

In 1998, when Johns Manville ceased all manufacturing operations at the Facility, EPA determined that additional remedial actions would be necessary in order to permanently close the Facility. The parties subsequently signed a First Amended Consent Decree (the "2004 Consent Decree," attached hereto as Complainant's Exhibit B), which was proposed on February 11, 2004, *see* First Amended Consent Decree, *Manville*, No. 88C 630, and was subsequently entered by the Court on December 16, 2004, *see* Minute Order Granting Joint Motion to Enter First Amended Consent Decree, *Manville*, No. 88C 630. The Illinois Environmental Protection Agency ("Illinois EPA") was also added as a party to the 2004 Consent Decree. *See* 2004 Consent Decree, Preamble, ¶ S. The Court's docket indicates that this case was closed on the date the 2004 Consent Decree was entered. *See* Minute Order dated December 16, 2004, *Manville*, No. 88C 630.

The scope of the 2004 Consent Decree, like the Original Consent Decree, was limited only to the boundaries of the Facility itself. The 2004 Consent Decree defines the "Facility" as "only those areas depicted on the facility map attached hereto as Exhibit 3." 2004 Consent Decree, ¶ 2(b) (emphasis added). The boundaries of the area covered by the 2004 Consent Decree are therefore depicted on a map attached as Exhibit 3 to the consent decree. *See* Affidavit of Brent Tracy ("Tracy Aff."), ¶ 5. The Facility map at Exhibit 3 makes no reference

to Site 3 or to any other off-site areas. *See* Facility map attached hereto as Complainant's Exhibit C. The Facility expressly "does not include any areas adjacent to and/or outside of the boundaries set forth in Exhibit 3." 2004 Consent Decree, ¶ 2(b). The 2004 Consent Decree further notes that "[s]ince 1998, the parties have discovered further asbestos contamination in several areas on and/or adjacent to the Johns Manville Waukegan Disposal Area, including Sites 1, 2, 3, 4, 5, 6 and 7" but that "this First Amended Consent Decree does not include response actions for these areas." 2004 Consent Decree, Preamble, ¶ N (emphasis added). The approximate boundaries of these off-site areas are depicted on a map attached as Exhibit 4 to the consent decree. *See* Respondent's Exhibit B. Per the 2004 Consent Decree, "[t]hese Sites will be addressed by separate actions." 2004 Consent Decree, Preamble, ¶ N.

b. Southwestern Site Area Administrative Order on Consent ("AOC")

On or about January 2007, EPA initiated a separate investigation of asbestos contamination on the "Southwestern Site Area," which consists of property located on or adjacent to the southern and western property lines of the Facility. Tracy Aff., ¶ 6. The Southwestern Site Area consists of Sites 3, 4, 5, and 6, which were originally referenced in the 2004 Consent Decree as areas where asbestos contamination had been discovered but for which a separate response action would be proposed.

On June 11, 2007, JM entered into an Administrative Order on Consent ("AOC," attached hereto as Complainant's Exhibit D) with EPA providing for the performance of a "removal action" for the Southwestern Site Area. The AOC describes Site 3, the subject of the instant action, as follows:

> 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.

AOC, ¶ 9.b.

ComEd is a party to the AOC as the current owner of Sites 3 and 4 and is a co-respondent with JM. *See* AOC, ¶ 1. The State of Illinois, the Illinois EPA, and IDOT are not parties to the AOC. Tracy Aff., ¶ 8.

Pursuant to Section XXIII of the AOC, "[t]he 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 . . . resolved their liability to the United States." AOC, ¶ 64. The AOC is premised on an agreement that "the actions undertaken by Respondents . . . do not constitute an admission of any liability." AOC, ¶ 4. This administrative settlement does not require court approval and has not been approved or entered by any state or federal court. Tracy Aff., ¶ 9. The AOC is not currently under review by any state or federal court or administrative tribunal. Tracy Aff., ¶ 10.

ARGUMENT

I. This Action is Not Duplicative of Any Other Proceeding.

JM accurately alleged in its Complaint that it is not aware of "any identical or substantially similar action pending before the Board or in any other forum against Respondent IDOT based on the same conduct or alleging the same violations of the Act." Complaint, ¶ 57. Respondent argues that this action should nonetheless be dismissed as duplicative because there are at least three federal matters that it claims have a "direct bearing" on Site 3: (1) a 1988

Northern District of Illinois case that led to the 2004 Consent Decree; (2) a Stipulation and Order of Dismissal from a federal bankruptcy proceeding entered in the Southern District of New York ("Global Settlement Order"); and (3) the 2007 Administrative Order on Consent between JM, EPA and ComEd.

Respondent is wrong. The 2004 Consent Decree has nothing to do with Site 3; IDOT fails to explain the importance of the Global Settlement Order; and the AOC has not been brought before a "forum" within the meaning of the Act. More importantly, however, none of these actions involves Respondent IDOT, and none of them addresses violations of the Act, which is determinative of whether an action will be dismissed as "duplicative." *See Yorkville v. Hamman Farms*, PCB 08-96, slip. op. at 5 (Apr. 2, 2009) (noting that in deciding whether a citizen complaint is duplicative of a court action "the Board has looked to whether the parties before the Board are also before the court" and finding that a citizen enforcement action was not duplicative of a circuit court case because "the parties to the respective proceedings differ"); *Brian Finley v. IFCO-INS-Chicago, Inc.*, PCB 02-208, slip. op at 9 (Aug. 8, 2002) (finding action not duplicative of orders issued by Chicago Department of Energy and Cook County Circuit Court because those orders "simply do not involve alleged violations of the Act").

Respondent cannot show that the instant action is "duplicative" of any other matter as defined by the Board's rules, and its Motion to Dismiss must therefore be denied. Each of these three matters is addressed in turn below.

A. <u>The 2004 Consent Decree does not bar JM's claim against IDOT.</u>

Respondent's argument that the instant matter is duplicative of the 2004 Consent Decree relies almost exclusively on a map, attached as Exhibit 4 to the 2004 Consent Decree, which shows the approximate location of Site 3 and several other areas adjacent to the former JM

manufacturing facility. *See* Respondent's Exhibit B. Based on this map, Respondent contends that the 2004 Consent Decree covers response actions at Site 3 and, therefore, JM is required to pursue any contribution claim against IDOT under the 2004 Consent Decree. This is simply not true, and IDOT cannot make it so by repeatedly referencing the map in its Memorandum. Resp. Mem. at 3, 6 and 8 (claiming that Site 3 is "noted" or "outlined" on Exhibit 4).

Respondent misrepresents the scope and application of the 2004 Consent Decree. Had Respondent read the text of the Consent Decree itself, it would have found that the 2004 Consent Decree only covers response actions at the "Facility," which is defined as "only those areas depicted on the facility map attached hereto as Exhibit 3." 2004 Consent Decree, ¶ 2(b) (emphasis added). The Facility "does not include any areas adjacent to and/or outside of the boundaries set forth in Exhibit 3." *Id.* The Facility map at Exhibit 3 of the 2004 Consent Decree makes no reference to Site 3 or to any other off-site areas. Indeed, the consent decree expressly provides that it does not include response actions for Sites 1, 2, 3, 4, 5, 6 and 7, "as approximately depicted in Exhibit 4." 2004 Consent Decree, Preamble, ¶ N. "[T]hese Sites will be addressed by separate actions." *Id.*

Other provisions of the 2004 Consent Decree make equally clear that it was not intended to govern response actions at Site 3 and the remaining off-site areas. For example, the Consent Decree provides that "U.S. EPA may select and require implementation of any response action for any area outside the Facility boundaries and such decisions are not subject to this Consent Decree." 2004 Consent Decree, ¶ 18 (emphasis added). Similarly, the Consent Decree provides that "the United States and the State reserve and this Decree is without prejudice to claims based on . . . [l]iability for any area located adjacent to and/or outside of the boundaries of the Facility as set forth in Exhibit 3, including but not limited to areas where asbestos and/or other Waste

Material have or may have come to be located from the Facility." 2004 Consent Decree, ¶ 59 (emphasis added). Since the 2004 Consent Decree does not cover Site 3 and therefore does not seek the same remedy as the Complaint at issue here, the two actions are not duplicative.

Even if the 2004 Consent Decree did govern response actions at Site 3 (which it plainly does not), Respondent still has not shown that it is "identical or substantially similar" to the instant case for purposes of dismissing this case as duplicative. IDOT contends that the 2004 Consent Decree is duplicative in part because the State of Illinois is a party to the federal lawsuit and "the Illinois Department of Transportation . . . does not have a legal identity separate and apart from the State of Illinois." Resp. Mem. at 7. Even accepting this premise as true, however, the identity of parties is only one factor the Board considers in determining whether an action is duplicative. *See Sierra Club*, PCB 13-15, slip. op. at 22; *Yorkville*, PCB 08-96, slip. op. at 5-6 (declining to find citizen enforcement action duplicative of circuit court action where parties to the respective proceedings differed, timeframe of alleged violations differed, and amount of civil penalties sought differed, even where both complaints alleged similar violations of the Act). Further, although the State of Illinois may have been a party to the 2004 Consent Decree, that Consent Decree has nothing to do with IDOT's conduct beginning in the early 1970s—burying, dumping, disposing of, abandoning and spreading asbestos over areas adjacent to the former JM manufacturing facility—which forms the basis for the violations of the Act alleged in JM's Complaint in this case.

Indeed, the 2004 Consent Decree arises under various sections of CERCLA and is based on the alleged historic release of hazardous substances on JM property and the fact that JM appeared to qualify as a potentially responsible party. It has absolutely nothing to do with alleged violations of Sections 21(a) and 21(e) of the Act by anyone, let alone IDOT. The Board has

repeatedly held that allegations of non-Act violations do not make a citizen complaint before the Board duplicative. *League of Women Voters v. North Shore Sanitary Dist.*, PCB 70-7, slip. op. at 2 (Oct. 8, 1970) ("The State has several laws against pollution, and a complaint alleging violation of one of them does not preclude a complaint by another party alleging violation of another law."); *Finley*, PCB 02-208, slip. op. at 6 (finding that action before the Board was not duplicative of an EPA Notice of Violation ("NOV") in part because the NOV cited violations of the Illinois State Implementation Plan whereas the citizen complaint cited violations of Section 9(a) of the Act). Therefore, as the 2004 Consent Decree involves different property, different alleged violations, different time periods and different requested relief, it cannot be duplicative of the instant Complaint.[2]

B. <u>The Global Settlement Order does not bar JM's claim against IDOT.</u>

Respondent conclusively asserts on page 8 of its Memorandum that a Global Settlement Order entered by the Southern District of New York on October 28, 1994 in *Manville Corporation v. United States*, No. 91 Civ. 6683, has a "direct bearing" on Site 3. But Respondent fails to provide any further information about this Global Settlement Order, let alone explain how that order is in fact duplicative of the instant case. JM is unclear what relevance, if any, the "Global Settlement Order" could have on this matter. Despite IDOT's failure to tie this alleged evidence to their argument, JM notes that the Global Settlement Order was intended to

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2 In a related argument, Respondent claims that jurisdiction is proper in the Northern District of Illinois because that Court retained jurisdiction over the 2004 Consent Decree. *See* Resp. Mem. at 8. The 2004 Consent Decree provides only that the Court retains jurisdiction over the "subject matter of the First Amended Consent Decree." 2004 Consent Decree, ¶ 81. Because the 2004 Consent Decree expressly excludes Site 3 and all other off-site areas, the consent decree does not give the Northern District of Illinois jurisdiction over the instant matter. Further, JM has alleged that IDOT violated Sections 21(a) and 21(e) of the Act, and the Board has previously recognized that it has exclusive jurisdiction over actions to enforce the Act that are initiated by citizens, whether individuals, corporations, or municipalities. *See Finley*, PCB 02-208, slip. op. at 9.

address certain respects of JM's liability to EPA under CERCLA, after JM's emergence from bankruptcy in 1988. Tracy. Aff., ¶ 11. Neither Illinois nor IDOT were parties to the Global Settlement Order, and the Global Settlement Order has nothing to do with IDOT's historical violations of the Act. Tracy. Aff., ¶ 12. Consequently, the Global Settlement Agreement cannot be duplicative of the instant action.

C. The 2007 AOC does not bar JM's claim against IDOT.

While the 2007 AOC actually does address response actions at Site 3, it nonetheless does not bar JM's claim before the Board because (a) it is not a matter before "another forum"; (b) Illinois/IDOT are not parties to the AOC; and (c) the AOC does not address IDOT's conduct or alleged violations of the Act.

Per the Board's rules, a complaint is considered "duplicative" if the matter is "identical or substantially similar to one brought before the Board or another forum." 35 Ill. Adm. Code § 101.202 (emphasis added). The AOC does not constitute a matter before "another forum" within the meaning of the "duplicative" standard. In *Brian Finley v. IFCO-ICS-Chicago, Inc.*, PCB 02-208 (Aug. 8, 2002), the Board held that a Notice of Violation ("NOV") issued by EPA was not duplicative of a citizen complaint alleging violations of the Act because the NOV did not "purport to commence, or to be the product of, an adjudicatory proceeding by a tribunal, either administrative or judicial." *Id.* at slip. op. 6. As the Board noted in that case, "[i]nvestigation by the government of potential violations does not render duplicative a citizen complaint, formally filed with the Board under Section 31(d) of the Act." *Id.* "The Board is not precluded from accepting complaints merely because it is possible that another matter may, at some later date, end up in court or before a USEPA administrative law judge or review panel." *Id.* (emphasis added). *See also UAW v. Caterpillar, Inc.*, PCB 94-240, slip op. at 5 (Nov. 3, 1994) (Agency's

voluntary cleanup program does not constitute "another forum"; accordingly, issues before Board were not being litigated before any other "judicial forum" with jurisdiction to resolve the issues); *Revision of the Board's Procedural Rules*, R00-20, slip op. at 6 (Mar. 16, 2000) (definition of "duplicative" refers to "another forum" because State may bring enforcement proceedings in circuit court, and citizen may file third-party claim in circuit court).

Here, although the matter at issue is an AOC and not an NOV, the analysis is the same. The AOC is not the product of an adjudicatory proceeding but rather is an administrative settlement, with no admission of liability, by which JM and ComEd have agreed to perform further investigation of and response actions related to asbestos contamination in the Southwestern Site Areas, including Site 3. The AOC has not been approved or entered by a court or any other tribunal, nor is it required to be. Tracy Aff., ¶ 9. Further, the AOC is not currently under review by any court of administrative law judge. Tracy Aff., ¶ 10.

Even if the AOC were the product of an administrative or court proceeding, however, it still would not be "duplicative," barring JM's citizen enforcement action against IDOT. As an initial matter, neither the State nor IDOT is a party to the AOC, and IDOT's actions are not a focus of the AOC. Like the 2004 Consent Decree, the AOC is based upon CERCLA and the fact that ComEd and JM appear to qualify as potentially responsible parties with respect to the ACM found on the various sites, including Site 3 (JM leased Site 3 from ComEd in the 1950s). By contrast, the issue before the Board is whether IDOT violated Sections 21(a) and 21(e) of the Act when it constructed and later demolished a detour bypass and expressway ramp on and adjacent to Site 3 beginning in the early 1970s. Since the AOC does not involve alleged violations of the Act, it is not duplicative under the law. *See Finley*, PCB 02-208, slip. op. at 9 (refusing to find Chicago DOE Order duplicative of citizen action before the Board because the

Chicago DOE Order did not involve alleged violations of the Act and the remedy called for in the Chicago DOE Order "may not be substantially coextensive with either the cease and desist remedy complainants request . . . or with a remedy that the Board could fashion under the Act.").

Respondent appears to suggest that because EPA declined to add IDOT as a party to the AOC, JM cannot now ask the Board to issue an order requiring IDOT to participate in and bear its share of costs related to the response actions at Site 3. Resp. Mem. at 9. To the contrary, EPA's decision not to include IDOT as a party to the AOC supports JM's position that the AOC is not duplicative of the instant action. Further, it is worth noting that EPA was exercising discretion in assessing liability under CERCLA when it elected not to add IDOT to the AOC; it was not considering violations of Section 21 of the Act. As the Board has previously recognized, "the State has several laws against pollution, and a complaint alleging a violation of one of them does not preclude a complaint by another party alleging violation of another law," even if both complaints seek the same relief. *League of Women Voters*, PCB 70-7, slip. op. at 2. In short, at the very least, the AOC is not before an adjudicative forum and involves different parties, unique timeframes and disparate laws. As a result, it is not "duplicative" of this proceeding before the Board and cannot bar JM's claim.

Finally, Respondent argues that the "correct recourse" for JM would be for it to file a contribution claim in federal district court under Section 107 or Section 113 of CERCLA, 42 U.S.C. §§ 9607, 9613. Respondent has not cited any authority for this proposition, and Respondent's opinion is not grounds for dismissing JM's Complaint in this case. Section 31(d) of the Act specifically authorizes citizen claims against state agencies for violations of the Act, 415 ILCS 5/3.315, and the Board has broad authority under Section 33 of the Act to award equitable relief. 415 ILCS 5/33. The Board is the appropriate, indeed exclusive, forum for

actions to enforce the Act that are initiated by citizens, whether they be individuals, corporations, or municipalities. *See Finley*, PCB 02-208, slip. op. at 9. JM's Complaint is properly before the Board, and Respondent has failed to demonstrate that this action is duplicative of any other proceeding. Accordingly, its Motion to Dismiss must be denied.

II. JM's Complaint Pleads Facts Sufficient to Survive a Motion to Dismiss.

Respondent argues that JM's Complaint should also be dismissed because it is substantially insufficient in law, pursuant to Section 2-615 of the Illinois Code of Civil Procedure, because it consists wholly "of conclusions of the pleader and are not based upon specific facts." Resp. Mem. at 13. IDOT argues that JM is "leaping to conclusions" that it buried Transite® pipe at Site 3 and offers an alternative theory: "There are inferences that can be reasonably drawn" from the Complaint that it "would be more likely to conclude that the Transite® pipe has been buried at Site 3 . . . when the utility companies did digging and backfilling." Resp. Mem. at 11-12. This argument is way off base.

The Board is required to schedule JM's Complaint for a hearing "unless the Board determines that such complaint is duplicative or frivolous." 415 ILCS 5/31(d)(1). IDOT never claims JM's Complaint is frivolous and never attempts to equate the frivolous standard to a Section 2-615 standard. If anything, IDOT should have raised any "sufficiency" argument through a motion to strike under the Board's procedural rules and not Section 2-615 of the Illinois Code. *See* 35 IAC § 101.506. Put simply, IDOT is using the wrong procedural tool.

But even if it had employed a proper mechanism to challenge the sufficiency of JM's Complaint, IDOT's argument does not hold up. First, IDOT misapplies the relevant legal standard. IDOT is asking JM to prove its case at the complaint stage, which it is not required to do. JM is only required to plead facts which, if established, would entitle it to relief. *People v.*

Peabody Coal Co., PCB 99-134, slip. op. at 1-2 (June 20, 2002); *People v. Stein Steel Mills Co.*, PCB 02-1, slip op. at 1 (Nov. 15, 2001) (citing *Import Sales, Inc. v. Cont'l Bearings Corp.*, 217 Ill. App. 3d 893 (1st Dist. 1991)); *Schilling v. Hill*, PCB 10-100, slip. op at 10 (Mar. 15, 2012) (a Complainant is only required to set forth ultimate facts in its complaint, not "the evidentiary facts tending to prove such ultimate facts") (citing *People ex rel. Fahner v. Carriage Way West, Inc.*, 88 Ill.2d 300, 308 (1981)).

Similarly, IDOT cannot rely on reasonable "inferences" to support its view of JM's Complaint. *See* Resp. Mem. at 11-12. The Board is required to take all well-pled allegations as true and to draw all inferences from them in favor of JM, not IDOT. *See People v. Peabody Coal Co.*, PCB 99-134, slip. op. at 1-2 (June 20, 2002). Dismissal is proper only if it is clear that no set of facts could be proven that would entitle complainant to relief. *See People v. Stein Steel Mills Co.*, PCB 02-1, slip op. at 1 (Nov. 15, 2001) (citing *Import Sales, Inc. v. Cont'l Bearings Corp.*, 217 Ill. App. 3d 893 (1st Dist. 1991)) (emphasis added).

Moreover, JM is not required to amass all possible facts and tie them together in a neat bow for IDOT. Section 31(c) of the Act states that the complaint "shall specify the provision of the Act or the rule or regulation . . . under which such person is said to be in violation, and a statement of the manner in, and the extent to which such person is said to violate the Act or such rule or regulation . . . ." 415 ILCS 5/31(c); *Schilling v. Hill*, PCB 10-100, slip. op. at 6 (Nov. 4, 2010) (citing same). The Complaint must only "advise respondents of the extent and nature of the alleged violations to reasonably allow preparation of a defense." 35 Ill. Adm. Code § 103.204(c); *EPA v. Dillon*, PCB 73-216, slip. op. at 1 (July 12, 1973) ("An examination of the complaint discloses allegations of violation that are of sufficient specificity to inform respondent as to the nature of the violations alleged. Any detail or amplification necessary to properly

prepare a defense may be obtained by resort to pre-trial discovery procedures as provided in the Board Rules."); *Mandel v. Kulpaka*, PCB 92-33, slip. op. at 2 (July 30, 1992) (citing *Brumley v. Touche, Ross & Co.*, 123 Ill.App.3d 636 (2d Dist. 1984)) (holding that dismissal is inappropriate if the facts pled and all reasonable inferences based on those facts reasonably inform the Respondent of a violation of the Act or Board rules.) Here, IDOT does not argue that it does not understand the allegations. To the contrary, it alleges they are wrong, based solely on conjecture and theorizing.

But setting procedure and standards aside for the moment, IDOT's argument still stumbles.[3] It is unequivocal that JM has alleged facts sufficient to advise IDOT of the nature of the violations alleged. If this were not the case, IDOT would not be able to articulate why it believes these allegations to be incorrect. *See, e.g.*, Resp. Mem. at 12 (claiming that "[t]his matter against the Department has been incorrectly characterized . . . as "open dumping"); *id.* at 13 (claiming that "[b]uilding a temporary road in the vicinity of Site 3 does not constitute open dumping" and that "[n]either the intended road work nor any actual roadwork was for the purpose of the 'open dumping' of transite pipe or other ACM"). More specifically, JM has alleged, and Respondent acknowledges, that IDOT built a detour road through the former parking lot in the area currently designated as Site 3 and destroyed the parking lot during construction, and that the detour road was removed and obliterated after construction was complete. Complaint, ¶¶ 21-23; Resp. Mem. at 4. JM has further alleged, and Respondent acknowledges, that "IDOT has admitted to EPA that it dealt with asbestos pipe during the construction project" and that, as IDOT stated in a CERCLA Section 104(e) Response, "a retired

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[3] IDOT's claim that JM is wrong because EPA determined that "there was insufficient evidence to name IDOT [as a party to the AOC]" similarly lacks merit. EPA's determination under CERCLA (not the Act), and the motivations behind it, are wholly irrelevant to whether JM has alleged sufficient facts to state a claim that IDOT violated Section 21(a) and 21(e) of the Act.

engineer, Mr. Duane Mapes, recalled 'dealing with asbestos pipe during the project and burying some of it.'" Complaint, ¶ 24; Resp. Mem. at 4. JM also has alleged that "[s]ubsequent investigations have revealed buried Transite® pipe in the area" and that "[p]ortions of Transite® pipe have been found in the south side shoulder of Greenwood Avenue at a depth of approximately 2.5 feet below the ground surface," which is roughly one foot higher than the adjacent surface of Site 3, indicating that ACM was used as fill in construction of the expressway ramp. Complaint, ¶ 26. Finally, JM alleged that IDOT engaged in "breaking up, obliterating, spreading, burying, placing, dumping, disposing of and abandoning ACM ... throughout Site 3," used it as "fill during construction of the Greenwood Avenue ramp and expressway bypass," and exacerbated it by moving it both horizontally and vertically within and outside the boundaries of Site 3. Complaint, ¶¶ 39, 54. Based upon these facts, JM appropriately contends that "IDOT engaged in the open dumping of waste," "disposed of ACM waste," and "abandoned" ACM waste in violation of Sections 21(a) and 21(e) of the Act. Therefore, IDOT's Motion to Dismiss based upon lack of specificity must be denied.

III. JM Has Alleged Sufficient Facts to State a Claim for Open Dumping.

In the context of its "lack of specificity" argument, IDOT dives into the merits again, arguing that JM cannot prove its claim that IDOT engaged in "open dumping," in violation of Section 21(a) of the Act. It is worth noting that IDOT does not make a similar argument with respect to the Section 21(e) violation for "disposing of" ACM waste.

To support its argument, IDOT mangles the definition of "open dumping." "Open dumping" is defined as "the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill." 415 ILCS 5/3.305. IDOT claims, without citing to any authority, that to engage in open dumping one must bring waste from one

site to another, different site. Resp. Mem. at 12. However, this condition is found nowhere in the definition of "open dumping," which includes the "consolidation" of refuse from "one" source.

As a last ditch argument, IDOT grossly oversimplifies the Complaint, asserting that the "allegations against the Department essentially say that the Department caused a temporary road to be built in the area of Site 3 in the early to mid-1970s and then removed the temporary road." Resp. Mem. at 12-13. Building upon this mischaracterization, IDOT then claims that "building a temporary road does not constitute open dumping" because IDOT did not intend to dump ACM waste. *Id.* at 13. IDOT is mistaken.

A violation of Section 21 of the Act does not require intent. As the Illinois Supreme Court has established, one may "cause or allow" a violation of the Act without knowledge or intent. *People v. Fiorini*, 143 Ill.2d 318 (1991). In *Fiorini*, the Court stated that "knowledge or intent is not an element to be proved for a violation of the Act. This interpretation of the Act . . . is the established rule in Illinois." 143 Ill.2d at 336. *See also Freeman Coal Mining Corp. v. PCB*, 621 Ill.App.3d 157, 163 (5th Dist. 1974) (the Act is *malum prohibitum* and no proof of guilty knowledge or *mens rea* is necessary to find liability). But even if intent were a prerequisite to finding a violation of Section 21 of the Act, by admitting to "burying" asbestos pipe during the road construction project, IDOT's former engineer appears to have demonstrated intentional conduct. *See* Complaint, ¶ 24.

In short, IDOT fails to show—or even to argue—that JM's Complaint is frivolous, or that JM's Complaint fails to state a cause of action for a violation of Section 21(a) or 21(e) of the Act. Accordingly, the Motion must be denied.

CONCLUSION

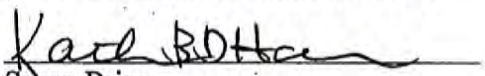
For the reasons set forth above, JM requests that the Board deny Respondent IDOT's Motion to Dismiss, schedule this matter for a hearing in accordance with Section 31(d)(1), and order appropriate pre-hearing discovery pursuant to the Board's rules. In the alternative, to the extent the Board deems JM's Complaint to be legally deficient, JM hereby requests leave to amend its Complaint to allege additional facts.

Dated: October 11, 2013

Respectfully submitted,

BRYAN CAVE LLP

Attorneys for Complainant Johns Manville

By: 

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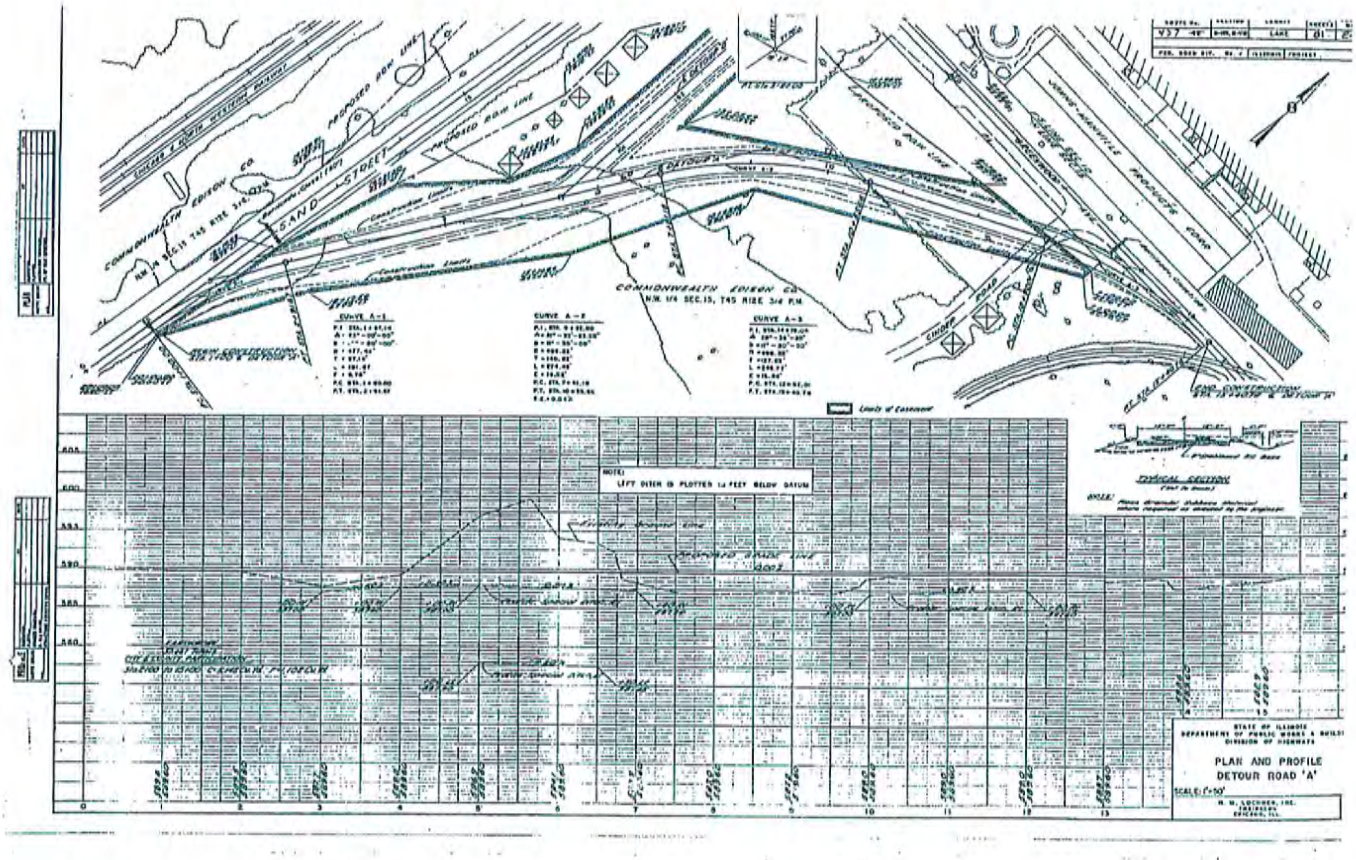
SAND STREET
COMMONWEALTH EDISON CO
PROPOSED ROW LINE
EXISTING ROW LINE
DETOUR
PLAN AND PROFILE
DETOUR ROAD 'A'
STATE OF ILLINOIS
DEPARTMENT OF PUBLIC WORKS & BUILDINGS
DIVISION OF HIGHWAYS
TYPICAL SECTION
NOTE: LEFT RIVER IS PLOTTED 14 FEET BELOW DATUM

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ORIGINAL

UNITED STATES OF AMERICA, Plaintiff, and PEOPLE OF THE STATE OF ILLINOIS, ex rel. LISA MADIGAN, Attorney General of the State of Illinois, Plaintiff-Intervenor -v- MANVILLE SALES CORPORATION (now known as Johns Manville) Defendant.	CIV. ACTION NO. 88C 630

FIRST AMENDED CONSENT DECREE

Date Lodged with Court: _____

Date Entered by Court: _____

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PREAMBLE

This First Amended Consent Decree incorporates changes and additions to the remedial work performed and ongoing work to be performed by Manville Sales Corporation (now known as Johns Manville) under the original Consent Decree in this action, which was entered on or about March 18, 1988. The First Amended Consent Decree also restates and updates certain other provisions in the original Consent Decree. When entered by the Court, this First Amended Consent Decree will be the governing document defining responsibilities for work by Johns Manville at its facility, as defined in Exhibit 3, in Lake County, Illinois.

A. The United States Environmental Protection Agency ("U.S. EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9605, placed the Johns Manville Waukegan Disposal Area in Waukegan, Illinois on the National Priorities List ("NPL"), which is set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 40658;

B. U.S. EPA and Manville Sales Corporation, now known as Johns Manville, on June 14, 1984, entered into an Administrative Order by Consent ("Consent Order"), under which Manville Sales Corporation agreed to conduct a Remedial Investigation and Feasibility Study ("RI/FS") pursuant to 40 C.F.R. Part 300 for the Johns Manville Waukegan Disposal Area. At various times, Manville Sales Corporation has been known as Johns-Manville Sales Corporation, Schuller International, Inc., Johns Manville International, Inc. and is currently known as Johns Manville. For purposes of this First Amended Consent Decree, Manville Sales Corporation and

these other entities shall be referred to as "JM";

C. JM submitted a Remedial Investigation ("RI") Report on July 3, 1985, and submitted a Feasibility Study ("FS") Report in December 1986 recommending remedial action consisting, inter alia, of an 18-inch thick soil cover with vegetation over specified areas of the Waukegan Disposal Area;

D. The U.S. EPA submitted an Addendum to the Final Feasibility Study Report on January 28, 1987, which recommended, inter alia, a cover thickness of 24 inches of compacted, non-asbestos-containing material, with vegetation, to be placed over the specified areas of the Waukegan Disposal Area;

E. The FS Report, as modified by the Addendum, contained a proposed plan for a remedial action at the Johns Manville Waukegan Disposal Area;

F. On or about January 23, 1987, U.S. EPA, pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, published notice of the completion of the RI/FS and of the proposed plan for a remedial action and provided opportunity for public comment to be submitted in writing to U.S. EPA in February 1987 or orally at a public meeting held in the City of Waukegan, Illinois, on February 9, 1987;

G. U.S. EPA, pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, has kept a transcript of the public meeting and has made this transcript available to the public;

H. Various persons provided comments on U.S. EPA's proposed plan for a remedial action, and U.S. EPA provided a summary of responses to the significant comments, criticisms and new data submitted during the aforementioned comment period;

I. On January 17, 1987, U.S. EPA, pursuant to Section 122 of CERCLA, 42 U.S.C. § 9622, notified JM that the U.S. EPA had determined JM to be a potentially responsible party ("PRP") regarding the proposed remedial action at the Johns Manville Waukegan Disposal Area and JM responded to such notice;

J. Considering the proposed plan for remedial action and the public comments received, U.S. EPA reached a decision on a final remedial action plan;

K. U.S. EPA's decision on a remedial action was incorporated in an Original Record of Decision, ("Original ROD") which was executed on June 30, 1987, to which the State of Illinois ("State") gave its concurrence;

L. On January 22, 1988, the United States of America filed a Complaint against Manville Sales Corporation (now known as Johns Manville or JM) under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, for reimbursement of costs and performance of remedial action at the Johns Manville Waukegan Disposal Area. The State of Illinois filed a motion for leave to intervene in the action, which was granted on February 26, 1988. The action was resolved in a Consent Decree entered by this Court on or about March 18, 1988 (the "Original Consent Decree"), in which JM agreed to implement the remedial action plan in the Original ROD. The State of Illinois was a party to the Original Consent Decree;

M. During construction of the remedy, pursuant to work plans approved by U.S. EPA with Illinois EPA concurrence, JM implemented additional work and several changes to the remedy outlined in the Original ROD and the Original Consent Decree. On February 9, 1993, U.S. EPA issued an Explanation of Significant Differences ("First ESD") to the Original ROD, pursuant to Section 117(c) of CERCLA, 42 U.S.C. Section 9617(c), and 40 C.F.R.

§ 300.435(c)(2)(i), to explain the differences between the action actually taken and the remedy described in the Original ROD, and the reasons for the changes. The First ESD also required that certain land use restrictions be placed on the property to ensure the integrity of the constructed remedy. The First ESD is attached at Exhibit 1. Several of the changes set forth in the First ESD require modifications to the Original Consent Decree;

N. In 1985, JM ceased all manufacturing of asbestos products at the Johns Manville Waukegan Area. In 1998, JM ceased all remaining manufacturing at the Johns Manville Waukegan Area, causing U.S. EPA to evaluate how the Johns Manville Waukegan Disposal Area might be permanently closed. In the course of this evaluation, U.S. EPA determined that additional work and several changes (over and above those enumerated in the First ESD) were required in the remedial action set forth in the Original ROD and Original Consent Decree. On September 22, 2000, U.S. EPA issued a Second Explanation of Significant Differences ("Second ESD") to the Original ROD, pursuant to Section 117(c) of CERCLA, 42 U.S.C. Section 9617(c), and 40 C.F.R. § 300.435(c)(2)(i). The Second ESD explains the necessity and reasons for the further changes to the Original ROD and is attached at Exhibit 2. Several of the changes set forth in the Second ESD require modifications to the Original Consent Decree. Since 1998, the parties have discovered further asbestos contamination in several areas on and/or adjacent to the Johns Manville Waukegan Disposal Area, including Sites 1, 2, 3, 4, 5, 6 and 7 as approximately depicted in Exhibit 4. This First Amended Consent Decree does not include response actions for these areas; however these Sites will be addressed by separate actions.

O. Pursuant to Section 121 of CERCLA, 42 U.S.C. § 9621, the remedial action selected in the ROD, as modified to include the First ESD and Second ESD (the "ROD as

Modified"), attains legally applicable or relevant and appropriate standards, requirements, criteria or limitations under Federal environmental law and State environmental or facility siting law;

P. U.S. EPA, the State of Illinois and JM have determined that the remedial action plan adopted by U.S. EPA in the ROD as Modified will attain a degree of clean-up of hazardous substances, pollutants and contaminants released into the environment and of control of further releases which, at a minimum, assures protection of human health and the environment within the Facility;

Q. The remedial action plan in the ROD as Modified is in accordance with Section 121 of CERCLA, 42 U.S.C. § 9621, and with the National Contingency Plan ("NCP"), 40 C.F.R. Part 300;

R. Under Section V of the Original Consent Decree in this action, JM agreed to perform the remedial work required in the Original ROD. In Section V of this First Amended Consent Decree, JM agrees to perform the work required in the ROD as Modified. U.S. EPA and the State have determined that JM is qualified to implement the work required under this First Amended Consent Decree;

S. The Illinois Environmental Protection Agency ("Illinois EPA") is a party to this First Amended Consent Decree pursuant to Section 4 of the Illinois Environmental Protection Act, 415 ILCS 5/4 (2002); and

T. The Parties recognize, and the Court by entering this Consent Decree, finds that entry of this First Amended Consent Decree, will avoid prolonged and complicated litigation between the Parties, and will expedite cleanup of the Facility.

NOW, THEREFORE, it is hereby Ordered, Adjudged and Decreed:

I. JURISDICTION

1. This Court has jurisdiction over the subject matter herein, and over the parties consenting hereto. JM shall not challenge the terms of this First Amended Consent Decree or the Court's jurisdiction to enter and enforce it.

II. PARTIES BOUND

2. This First Amended Consent Decree applies to and is binding upon the United States and the State and upon JM and its successors and assigns, including any reorganized company of JM. The undersigned representatives of JM and the State of Illinois and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice each certifies that he or she is fully authorized to enter into the terms and conditions of this First Amended Consent Decree and to execute and legally bind such Party to this document.

3. JM shall provide a copy of this First Amended Consent Decree to the contractors hired to perform the work required by this First Amended Consent Decree and shall require the contractors to provide a copy thereof to any subcontractor retained to perform any part of the required work. Notwithstanding the terms of any contract, however, JM is responsible for compliance with this First Amended Consent Decree, and for ensuring that its contractors and subcontractors comply with the Decree.

III. DEFINITIONS

4. Whenever the following terms are used in this First Amended Consent Decree and any Exhibits attached hereto, the definitions specified in this Section shall apply:

(a) "Contractor" means the company or companies retained by or on behalf of JM to undertake and complete the work required by this First Amended Consent Decree. Each contractor and subcontractor shall be qualified to do those portions of the work for which it is retained.

(b) "Facility" means only the area within the boundaries depicted on the facility map attached hereto as Exhibit 3. The Facility is located within Lake County, Illinois generally south of Illinois Beach State Park, west of Lake Michigan, north of Greenwood Avenue and east of the Union Pacific Railroad Line. The Facility does not include JM's former manufacturing area, which is currently enrolled in the State of Illinois Site Remediation Program and is approximately depicted in Exhibit 5. The Facility does not include any areas adjacent to and/or outside of the boundaries set forth in Exhibit 3.

(c) "Future liability" refers to liability for the area within the Facility boundaries depicted in Exhibit 3 arising after Certification of Completion of Work/Remedial Action by U.S. EPA and Illinois EPA, pursuant to Section XXII hereof.

(d) "Hazardous substance" shall have the meaning provided in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

(e) "Illinois EPA" means the Illinois Environmental Protection Agency.

(f) "JM" means Johns Manville and its predecessor companies, Manville Sales Corporation, Johns-Manville Sales Company, Johns Manville International, Inc. and Schuller International, Inc. and their predecessors, successors and assigns.

(g) "Johns Manville Waukegan Disposal Area" means the portion of the Johns Manville owned property in Waukegan, Illinois that was placed on the National Priorities

List ("NPL"), set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 40658;

(h) "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.

(i) "Non-asbestos-containing materials or soils" means materials or soils which have been determined to contain asbestos at or below background, in accordance with methods approved in the Phase II Work Plans.

(j) "O & M Manual" means the Second Draft Operation and Maintenance Plan dated February 28, 1992 ("O & M Manual") including any amendments thereto approved by U.S. EPA with the concurrence of Illinois EPA.

(k) "Original Consent Decree" means the Consent Decree entered by this Court on March 18, 1988 in United States et al. v. Manville Sales Corporation, Civil Action No. 88 C 630 (N.D. Ill.).

(l) "Original Record of Decision" means the Record of Decision signed by the Regional Administrator for the Johns Manville Waukegan Disposal Area dated June 30, 1987.

(m) "Parties" means the United States of America, the State of Illinois and JM.

(n) "Phase II Remedial Work Plans" means the Final Remedial Work Plans and other Final Plans as approved or modified pursuant to Paragraph 15(h) for implementation of the remedial work required by Paragraph 15 and the ROD as Modified, and any amendments to

those Plans approved by U.S. EPA with the concurrence of Illinois EPA.

(o) "Plaintiffs" means the United States of America and the State of Illinois.

(p) "Record of Decision (ROD) as Modified" means the Original Record of Decision dated June 30, 1987 as modified by an Explanation of Significant Differences dated February 9, 1993, and a Second Explanation of Significant Differences dated September 22, 2000.

(q) "Remedial Action" means the Work as defined herein.

(r) "Response Costs" means any costs incurred by the United States or the State pursuant to 42 U.S.C. §§ 9601 et seq. or State law in connection with the Facility.

(s) "Revised (Amended) Remedial Work Plan" means the Remedial Work Plan adopted by U.S. EPA for implementation of remedial work at the Facility as approved under the Original Consent Decree, including the O & M Manual (defined above) as amended, and any amendments to that Remedial Work Plan approved by U.S. EPA.

(t) "State" means the State of Illinois.

(u) "United States" means the United States of America.

(v) "U.S. EPA" means the United States Environmental Protection Agency.

(w) "U.S. DOJ" means the United States Department of Justice.

(x) "Vegetated Soil Cover" means a minimum of 24 inches of compacted non-asbestos-containing soils with the following minimum composition: six inches of sand overlain by 15 inches of native clayey soil, three inches of topsoil and a vegetation cover. On sloped surfaces (greater than 20%) or other surfaces agreed to by the Parties and memorialized in an approved Phase II Remedial Work Plan pursuant to Paragraph 15(h), the six inch sand layer

may be replaced with eight inches of clayey soil (making a total of 23 inches of clay).

(y) "Waste Material" means any hazardous substance, as defined by 42 U.S.C. § 9601(14); or pollutant or contaminant as defined by 42 U.S.C. § 9601(33).

(z) "Work" means the implementation, in accordance with Section V hereof, of the Revised (Amended) Remedial Work Plan, the O & M Manual (as amended) and the Phase II Remedial Work Plans and any schedules or plans required to be submitted pursuant to those documents, and includes the reservation of environmental easement/restrictive covenants in accordance with Section VIII.

IV. GENERAL PROVISIONS

Financial Responsibility

5. Before entry of the Original Consent Decree in this action, JM established a cash escrow account ("Escrow Account") in an Illinois bank, in favor of the United States.

6. JM funded the Escrow Account with $3.5 million in cash. During the course of the work required by the Original Consent Decree the balance of the Escrow was expended and the account closed, with U.S. EPA approval.

7. A second account ("Second Account") was established subsequently by JM, in favor of the United States. JM shall ensure that the funds in this Second Account total a minimum of $500,000 at all times, until a Certificate of Completion of Work/Remedial Action is issued pursuant to Section XXII of this First Amended Consent Decree, unless otherwise agreed by the parties. Any money (including principal and accrued interest) left in the Second Account at the time of issuance of the Certificate of Completion of the Work/Remedial Action will revert to JM, without restriction, within thirty days of issuance of the Certificate of Completion of

Work/Remedial Action.

8. In addition to the foregoing requirements of this Section IV, JM shall maintain sufficient funds to assure the uninterrupted progress and timely completion of all phases of the Work required hereunder. JM shall submit periodic financial reports to the United States and the State, on January 31 of each year, that identify cash flow projections and project the level of funds that will be necessary for the Work for the succeeding one year period.

Commitment of JM

9. JM agrees to finance and perform the Work as it is defined in Subparagraph 4(z) and in Section V of this First Amended Consent Decree. As so defined, the Work shall be completed in accordance with the standards, specifications and within the time periods set forth in this First Amended Consent Decree, including the Revised (Amended) Remedial Work Plan, the O & M Manual and the Phase II Remedial Work Plans.

10. Nothing in this Consent Decree shall constitute a preauthorization claim against the Hazardous Substance Superfund within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611.

11. This Consent Decree was negotiated by the Parties in good faith to avoid protracted, expensive litigation. The Parties agree that nothing herein and no performance hereunder shall constitute or be construed or used as an admission or acknowledgment of the factual or legal allegations of the Complaint, Administrative Order or this Decree, or of any liability, fault or wrongdoing under any law, rule or regulation by JM.

Permits and Approvals

12. All activities undertaken by JM pursuant to this Consent Decree shall be

undertaken in accordance with the requirements of all applicable local, state and federal laws, regulations and permits, except that CERCLA § 121(e)(1), 42 U.S.C. § 9621(e)(1), shall apply to Work performed on-site, including excavation and dredging of sand and other materials from the Borrow Pit as identified and approximately delineated in Exhibit 3. The United States and the State have determined that the obligations and procedures authorized under this First Amended Consent Decree are consistent with the authority of the United States and the State under applicable law to establish appropriate remedial measures for the Facility.

13. JM shall obtain all permits or approvals which are necessary to perform work off-site under federal, state or local laws and shall submit timely applications and requests for any such permits and approvals.

V. PERFORMANCE OF THE WORK

14. Under the Original Consent Decree, JM submitted a Revised (Amended) Remedial Work Plan to U.S. EPA and Illinois EPA to implement the work outlined in the Original Decree. U.S. EPA approved the Revised (Amended) Remedial Work Plan with the concurrence of Illinois EPA. Pursuant to that Plan, JM has performed the remedial activities summarized in Subparagraphs (a) through (r) below. Under this First Amended Consent Decree, JM agrees to perform the activities necessary to maintain the effectiveness of these remedial actions, as required under the O&M Manual. These activities are also described in Subparagraphs (a) through (r) below. These activities shall be performed in accordance with the schedules in the O&M Manual.

(a) Waste materials/soil in the inactive waste disposal areas of the Site (marked on Exhibit 6, and excluding peripheral roads) was graded and covered with a minimum

of 24 inches of compacted non-asbestos-containing soils. Except on sloped surfaces (greater than 20%), the cover consists of six inches of sand overlain by 15 inches of native clayey soil as described in the Feasibility Study. On sloped surfaces, the six inch sand layer was replaced with eight inches of clayey soil (making a total of 23 inches of clay) which provides equivalent freeze/thaw protection as the cover for level areas. In either case, three inches of topsoil was placed over the clayey soil cover, and a vegetation cover has been established. JM has graded and covered Waste materials/soil in a certain inactive waste disposal area of the Facility known as Area Z (marked on Exhibit 6, and excluding peripheral roads) with a minimum six inch compacted gravel layer overlain by a minimum two inch thick bituminous pavement cover. JM shall maintain the Facility cover, which includes the vegetative soil cover, asphalt cover and riprap outlined in Exhibit 6, according to the O & M Manual.

(b) The asbestos disposal pit was closed in June 1989 and was provided 24 inches of cover as described above, in accordance with the National Emission Standards for Hazardous Air Pollutants ("NESHAP") requirements located at 40 C.F.R. § 61.151. JM shall maintain the closed asbestos disposal pit in accordance with the O & M Manual.

(c) The miscellaneous disposal pit was covered with non-asbestos containing materials and soils and will be closed pursuant to Paragraph 15 below. The sludge disposal pit was provided with a vegetative soil cover in accordance with Subparagraph (a) above.

(d) Except as provided in any work plan approved by U.S. EPA with Illinois EPA concurrence, any asbestos-containing material generated from demolition, reconstruction, dredging or other activities on site after June 1989 has and shall be disposed of off-site in an approved landfill.

(e) A soil cover monitoring program was developed and shall be implemented by JM as set forth in the O & M Manual, to ensure that no asbestos or asbestos-containing material reaches the surface of the cover and becomes releasable to the air in the future;

(f) Where feasible, one layer of nominal 12-inch thick riprap was placed on the interior slopes of the wastewater treatment system components, including the pumping lagoon, industrial canal, collection basin, catch basin and mixing basins. Four-inch thick bedding material was used to prevent erosion of soil beneath the riprap. All other exposed interior slopes were provided with the soil cover as described in Subparagraph (a) above, with the exception of areas used for ongoing miscellaneous waste disposal prior to completion of the remedial action. These areas were covered with 26 inches of clayey soils which shall be protected against erosion. JM shall maintain the riprap and vegetative soil cover in accordance with the O & M Manual and Phase II Remedial Work Plans.

(g) A plan was developed, and JM shall continue to implement the plan to ensure that no asbestos containing sludge is dredged from the wastewater treatment system in the future unless specified in a work plan approved by U.S. EPA with Illinois EPA concurrence. This plan includes (i) the discontinuance of systematic dredging activities in the 33-acre settling basin, and (ii) a one-time dredging of all waterways leading to the settling basin to a depth that exceeds the depth range of JM's dredging equipment. The sludge generated as a result of (ii) above was deposited in the settling basin. Any sludge removed from the settling basin in the future shall be tested for asbestos using U.S. EPA approved methods and disposed of in accordance with the Resource Conservation and Recovery Act, NESHAP and other applicable law.

(h) The north, west, and south slopes of the waste disposal area were sloped with non-asbestos-containing soil to a ratio of two horizontal to one vertical and provided with a vegetative soil cover as described in Subparagraph (a) above (see Exhibit 6). JM shall maintain the slopes and vegetative soil cover in accordance with the O & M Manual.

(i) A minimum of 24 inches of non-asbestos-containing soil was placed on top of all dikes and dike roadway on-site. On heavily used dike roadways this 24 inches included a minimum 12 inch thick, non-asbestos-containing sand layer overlain by 12 inches compacted gravel, and on lightly traveled dike roadways it included a minimum 14 inch thick, non-asbestos-containing sand layer overlain by 10 inches of compacted gravel. JM shall maintain the soil cover and gravel surfaces in accordance with the O & M Manual.

(j) A groundwater and surface water detection-monitoring system was developed and shall be operated and maintained by JM as follows:

(1) A system of monitoring wells and surface water monitoring locations has been established, approximately as indicated on Exhibit 7, consistent with the Revised (Amended) Remedial Work Plan.

(2) The wells were sampled quarterly for two years for asbestos, lead, chromium, arsenic and other organic and inorganic water quality parameters which are Hazardous Substances which can be attributed to waste disposal practices at the Facility based on a source list identifying chemicals received and used by JM at the Waukegan Plant. This source list was provided to U.S. EPA and Illinois EPA in the Revised (Amended) Remedial Work Plan and indicated materials used in each process or to produce each end product as well as material used for general applications at the Facility;

(3) Except as described below in Subparagraph (4), JM conducted further monitoring every five years for parameters determined by U.S. EPA and Illinois EPA based on existing data. Except as described below in Subparagraph (4), JM shall continue to conduct further ground water and surface water monitoring every five years for parameters set forth in the O & M Manual at the locations approximately as indicated on Exhibit 7A for at least 30 years after entry of the First Amended Consent Decree.

(4) In the event any measured groundwater quality parameter is statistically determined to exceed background (upgradient) levels or the most stringent state or federal promulgated drinking water standards (i.e., maximum contaminant levels ("MCLs") or equivalent where no MCL has been promulgated), whichever is higher, the contingency plan shall be implemented. JM retains the right to seek alternate concentration limits ("ACLs") in the event of such exceedances. The level of asbestos in groundwater which shall cause the contingency plan to go into effect shall be 7.0 million fibers per liter greater than 10 micrometers in length, or whatever groundwater standard for asbestos is promulgated and is in effect at the time any periodic review is conducted pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c). The level of arsenic which shall cause the contingency plan to go into effect shall be 50 ug/l and the level of antimony which shall cause the contingency plan to go into effect shall be 6 ug/l or whatever groundwater standard for arsenic and antimony is promulgated and is in effect at the time any periodic review is conducted pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c).

(5) In the event any measured surface water quality parameter is statistically determined to exceed background levels or the most stringent state or federal

established surface water standards (i.e., Illinois Water Quality Standards and/or numerical standards established in the Great Lakes Water Quality Agreement of 1978, or equivalent where no such standards have been promulgated), whichever is higher, the contingency plan shall be implemented as approved by U.S. EPA with Illinois EPA concurrence. JM retains the right to seek alternate concentration limits ("ACLs") in the event of such exceedances. The level of asbestos and arsenic in surface water which shall cause the contingency plan to go into effect shall be 7.0 million fibers (longer than 10 micrometers in length) per liter asbestos and 50 ug/l for total arsenic or whatever applicable surface water standards for asbestos or arsenic are promulgated and are in effect at the time any periodic review is conducted pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), including 35 IL. Admin. Code 302.504(c).

(6) Within 60 days of an exceedance as described in either paragraph (4) or paragraph (5) above, JM shall submit to U.S. EPA and Illinois EPA for approval, a contingency plan, which shall require appropriate monitoring and assessment to confirm the exceedance and identify any causes, evaluation of potential remedial alternatives, and implementation of a remedial alternative consistent with the National Contingency Plan as it may be amended. JM shall implement the contingency plan as approved by U.S. EPA with Illinois EPA concurrence.

(7) This monitoring program shall continue for a minimum of 30 years after entry of the First Amended Consent Decree and shall be conducted in accordance with the O & M Manual. After that time, U.S. EPA and the State will evaluate the need for further monitoring and require appropriate action to be taken by JM;

(k) An air monitoring program was developed and operated and shall be maintained by JM as follows:

(1) During certain remedial construction activities, air monitoring as described in Exhibit 8 was conducted;

(2) After completion of remedial construction and establishment of vegetation on the cover at the Site, JM conducted air sampling to determine concentrations of asbestos, lead and total suspended particulates ("TSP") in the air using a sufficient number of monitoring stations to thoroughly characterize background, on-site and downwind air quality. Sampling was conducted during the dry season and did not immediately follow a rainfall event, as approved by U.S. EPA and Illinois EPA technical staffs.

(3) Except as described in Subparagraph (4) below, the above sampling shall be repeated every five years.

(4) In the event concentrations of monitored substances are statistically determined to exceed applicable established ambient air quality standards (if any), or background levels, whichever are higher, then the contingency plan shall be implemented.

(5) Within 60 days of an exceedance as described in paragraph (4) above, JM shall submit to U.S. EPA and Illinois EPA a contingency plan, which shall require appropriate monitoring and assessment to confirm the exceedance and identify any causes, evaluation of potential remedial alternatives, and implementation of a remedial alternative consistent with the National Contingency Plan as it may be amended. If an exceedance is determined not to be attributable to releases from the Facility, there shall be no further action relative to such exceedance under this First Amended Consent Decree. JM shall retain the right

to apply for appropriate variances. JM shall implement the contingency plan as approved by U.S. EPA with Illinois EPA concurrence.

(6) This monitoring program shall continue for a minimum of 15 years and shall be conducted in accordance with the O & M Manual. After that time, U.S. EPA and the State shall evaluate the need for further monitoring and require appropriate action to be taken by JM.

(l) Debris from the beach next to the east end of the Facility was periodically cleaned up and shall continue to be periodically cleaned up in accordance with the Phase II Work Plans and O & M Manual.

(m) The eastern site boundary was fenced to limit access.

(n) Additional warning signs were placed along the Site perimeter.

(o) The southeast ditch (see Exhibit 6) was closed as described in Subparagraph (f) above.

(p) The active waste disposal areas (miscellaneous disposal pit, sludge disposal pit, and wastewater treatment system) were sampled. JM provided vegetative soil cover over the sludge disposal pit in accordance with Subparagraph (a) above. JM shall maintain the vegetative soil cover on the sludge disposal pit in accordance with the O & M Manual. JM shall maintain Facility surface water at such levels to ensure that no water-covered asbestos-containing waste materials become exposed or dry out, except to the extent required by work plans approved pursuant to Paragraph 15(h), until the wastewater treatment ponds and system are closed pursuant to Paragraph 15 below. While performing activities pursuant to a work plan approved pursuant to Paragraph 15(h), JM shall maintain water levels as therein directed.

(q) The open area in the northeast corner of the miscellaneous disposal pit (see Exhibit 6) was closed as described in Subparagraph (a) above.

(r) Peripheral ditches were constructed to collect site run-off and channel it to the industrial canal.

15. (a) Phase II Remedial Work Plans are required to provide for implementation of the remedial activities in the Second ESD. According to the schedules set forth in this Paragraph, JM shall submit to U.S. EPA and Illinois EPA the Phase II Remedial Work Plans for U.S. EPA approval with Illinois EPA concurrence according to the procedures in Paragraph 15(h). The Phase II Remedial Work Plans shall provide for construction and implementation of the remedy in the Second ESD and achievement of the performance standards in Paragraph 15(a) through (g) of this First Amended Consent Decree and the Second ESD.

(b) Each of the draft Phase II Remedial Work Plans required pursuant to this paragraph below, shall include, at a minimum, the following elements:

- 30 percent design plan drawings and specifications

-Site Health and Safety Plan

-Emergency and Contingency Plan

-Quality Assurance Project Plan and Sampling and Analysis Plan for all sampling activities

-Monitoring Plan - including Air Monitoring Program

-Equipment and Personnel Decontamination Procedures

-Methodology and schedule for the Operation and Maintenance activities necessary to maintain the effectiveness of the remedial activities required in this paragraph

- Schedule for completion of the remedial activities in this paragraph

Each of the final Phase II Remedial Work Plans shall include the same elements as the corresponding draft Phase II Remedial Work Plan, with the exception that the design plan drawings and specification shall be at the 95 percent complete level.

(c) JM shall close the miscellaneous disposal pit and the portion of the collection basin where waste materials were deposited as depicted in Exhibit 9, in accordance with 35 Ill. Admin. Code Part 814, or an adjusted standard of 35 Ill. Admin. Code Part 814 as determined by the Illinois Pollution Control Board pursuant to 415 ILCS 5/28.1, and any applicable Order of the Circuit Court in Lake County in Case No. 01CH857. JM shall submit a draft Part 814 Work Plan, including any adjusted standards petition, to U.S. EPA and Illinois EPA on or before July 11, 2003. Within 30 days of JM's receipt of U.S. EPA and Illinois EPA's comments on the draft Part 814 Work Plan, including any adjusted standards petition, JM shall either file a petition with the Illinois Pollution Control Board for an adjusted standard to 35 Ill. Admin Code 814 for the closure of the miscellaneous disposal pit or submit a draft Phase II Work Plan providing for final closure of the miscellaneous disposal pit in accordance with 35 Ill. Adm. Code Part 814 to U.S. EPA and Illinois EPA for approval. In the event that JM submits an adjusted standards petition to the Pollution Control Board, JM shall submit a draft Phase II Remedial Work Plan to U.S. EPA and Illinois EPA within 60 days after the Illinois Pollution Control Board's final decision on JM'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. Admin. Code Part 814 or an adjusted standard as determined by the Illinois Pollution Control Board. Upon written notification by

U.S. EPA, or entry of this First Amended Consent Decree, whichever is later, JM shall implement the Final Phase II Remedial Work Plan for the miscellaneous disposal pit as approved or modified pursuant to the procedures in Paragraph 15(h) according to the schedule in the Final Phase II Remedial Work Plan.

(d) By September 30, 2003, JM shall submit a draft Phase II Remedial Work Plan for the waste treatment ponds to U.S. EPA and Illinois EPA, which shall provide for implementation of the following remedial activities:

(1) JM shall close the wastewater treatment ponds, which include, but is not limited to, the paper mill ditch, catch basin, mixing basin, and the settling basin.

(2) JM closure activities shall include: (i) stopping the pumping of storm water runoff into the wastewater treatment ponds and system; and (ii) placing and maintaining a vegetated soil cover over the closed wastewater treatment ponds and system. The vegetated soil cover shall consist of a minimum of 24 inches of compacted non-asbestos-containing soils with the following minimum composition: six inches of sand overlain by 15 inches of native clayey soil, three inches of topsoil and a vegetation cover. The six-inch sand layer may be replaced with eight inches of clayey soil (making a total of 23 inches of clay). In the draft Phase II Work Plan, JM may submit a petition to U.S. EPA and Illinois EPA in support of an alternative cover over the settling basin instead of the vegetated soil cover. JM's petition shall demonstrate that such alternative cover is as protective of human health and the environment as the vegetated soil cover. U.S. EPA, with the concurrence of Illinois EPA, shall determine in its unreviewable discretion whether to approve the use of an alternative cover. JM shall place and maintain the alternative cover over the settling basin if approved by U.S. EPA

with Illinois EPA concurrence in the Final Phase II Work Plan.

(3) During wastewater treatment system closure activities, JM shall conduct surface water monitoring for surface water quality parameters, including but not limited to asbestos, antimony and arsenic, at the locations set forth in Exhibit 7A in accordance with the Final Phase II Work Plan. JM shall not exceed asbestos levels of 7.0 million fibers per liter greater than 10 micrometers in length, arsenic levels of 50 ug/l or antimony levels of 6 ug/l at the sampling points in Exhibit 7A. If JM exceeds these levels during the implementation of wastewater treatment system closure activities, JM shall implement the contingency plan set forth in the Final Phase II Remedial Work Plan. After certification of construction of the vegetated soil cover in Paragraph 15(d)(2), JM shall continue to conduct the surface water monitoring and implement the contingency plan requirements set forth in Paragraph 14(j)(3),(5)(6) and (7).

(4) Upon notification by U.S. EPA, or entry of this First Amended Consent Decree, whichever is later, JM shall implement the Final Phase II Remedial Work Plan for the waste treatment ponds and system as approved or modified pursuant to Paragraph 15(h) according to the schedule in the Final Phase II Remedial Work Plan

(e) Within 150 days of notification by U.S. EPA of the completion of the drainage of the settling basin, JM shall submit a draft Phase II Remedial Work Plan for the collection basin, industrial canal and pumping lagoon to U.S. EPA and Illinois EPA, which shall provide for implementation of the following remedial activities:

(1) JM sampled the sediments in the water filled portion of the collection basin, industrial canal, and the pumping lagoon for asbestos and found levels of

asbestos exceeding 1%. JM shall implement the following actions: (i) cap or remove the asbestos-containing sediments of these waterways in compliance with federal and state laws; (ii) ensure that the soil cover on the side slopes of the industrial canal, pumping lagoon and borrow pit remain protected from erosion; (iii) implement a program to pick up visible debris in these waterways; and (iv) keep the outlet pipe from the industrial canal to Lake Michigan open and free of debris, except as provided by a contingency plan approved by U.S. EPA with Illinois EPA concurrence.

(2) During implementation of the remedial activities in Paragraph 15(e)(1)(i), JM shall conduct surface water monitoring for surface water quality parameters, including but not limited to asbestos, antimony and arsenic in accordance with the Final Phase II Remedial Work Plan. JM shall not exceed asbestos levels of 7.0 million fibers per liter greater than 10 micrometers in length, arsenic levels of 50 ug/l or antimony levels of 6 ug/l at the locations identified in the Phase II Work Plan, including the Industrial Canal pipe connection to Lake Michigan and the northern boundary of the Facility including the Illinois Nature Preserve. If JM exceeds these levels during implementation of the remedial activities in Paragraph 15(e)(1)(i), JM shall implement the contingency plan set forth in the Final Phase II Remedial Work Plan. After certification of construction of the remedial activities in Paragraph 15(e)(1)(i), JM shall continue to conduct the surface water monitoring and implement the contingency plan requirements set forth in Paragraph 14(j)(3),(5),(6) and (7) . JM shall implement any additional surface water monitoring required by U.S. EPA with the concurrence of Illinois EPA subject to dispute resolution procedures of Section XII.

(3) JM shall implement the Final Phase II Remedial Work Plan for the

collection basin, industrial canal and pumping lagoon as approved or modified pursuant to Paragraph 15(h) according to the schedule in the Final Phase II Remedial Work Plan.

(f) JM shall provide for operation and maintenance of the closed miscellaneous disposal pit, collection basin, wastewater treatment ponds, the industrial canal, pumping lagoon and borrow pit for a minimum of 30 years after completion of the construction. After 30 years, U.S. EPA and the State shall evaluate the need for further operation and maintenance and JM shall implement any action required by U.S. EPA subject to the dispute resolution procedures of Section XII;

(g) If any new areas of asbestos-containing waste material are discovered within the Facility after the lodging of this First Amended Consent Decree, JM shall notify U.S. EPA and Illinois EPA within 24 hours of the discovery. Within 60 days of discovery, JM shall submit a Phase II work plan to U.S. EPA and Illinois EPA to remediate these areas. The additional Phase II Work Plan shall require: 1) the complete removal of asbestos-containing waste materials and backfill with clean material; 2) grading and covering asbestos-containing waste materials with a vegetated soil cover as defined in Paragraph 4(x) and the imposition of land use restrictions as specified in Paragraph 23 and Paragraph 26; or 3) grading and covering asbestos-containing materials with a cover that is as protective of human health and the environment as the vegetated soil cover as defined in Paragraph 4(x) and the imposition of land use restrictions as specified in Paragraph 23 and Paragraph 26. JM shall implement the Phase II Work Plan as approved or modified pursuant to Paragraph 15(h) according to the schedule therein.

(h) Approval of Plans and Other Submissions: Within 30 days of receipt of

the Draft Phase II Remedial Work Plan or other draft plan, draft report or draft item, the Illinois EPA shall review and provide its comments on the item to U.S. EPA. Within 14 days of receipt of U.S. EPA's comments on the Draft Phase II Remedial Work Plan or other draft item, Illinois EPA shall concur on U.S. EPA's comments or forfeit said right. U.S. EPA, after review of each draft Phase II Remedial Work Plan (30% design plan drawings and specifications), other draft plan, draft report or draft item required to be submitted pursuant to this First Amended Consent Decree and concurrence by Illinois EPA, will notify JM in writing of any conditional approval, approval, approval with modifications or disapproval of the Draft Phase II Remedial Work Plan, draft plan, draft report or draft item. Upon notification of U.S. EPA, JM shall make all required modifications in the Draft Phase II Remedial Work Plan, draft plan, draft report or draft item and submit a Final Phase II Remedial Work Plan (95% design plan drawings and specifications), final plan, final report or final item to U.S. EPA and Illinois EPA within 30 days of receipt of U.S. EPA notice, subject to the dispute resolution provisions of Section XII of this First Amended Consent Decree with respect to the modifications or conditions made by U.S. EPA. Within 14 days of receipt of a Final Phase II Remedial Work Plan (95% design plan drawings and specifications), other final plan, final report or final item, the Illinois EPA shall provide its comments on the final item to U.S. EPA. Within 14 days of receipt of U.S. EPA's comments on the Final Phase II Remedial Work Plan or other final item, Illinois EPA shall concur on U.S. EPA's comments or forfeit said right. U.S. EPA, after review of each Final Phase II Remedial Work Plan (95% design plan drawings and specifications), other final plan, final report or final item required to be submitted pursuant to this Consent Decree and concurrence by Illinois EPA, will notify JM in writing of any conditional approval, approval, approval with modifications or

disapproval of the Final Phase II Remedial Work Plan, final plan, final report or final item. Upon receipt of written approval, approval upon conditions, or approval with modification by U.S. EPA on any Final Phase II Remedial Work Plan, final plan, final report, or other final item, or entry of this First Amended Consent Decree, whichever is later, JM shall immediately proceed to take any action required by the Final Phase II Remedial Work Plan, final plan, final report, or other final item, as approved or modified by U.S. EPA in accordance with the schedules approved therein, subject only to JM's right to invoke the dispute resolution procedures set forth in Section XII (Dispute Resolution) with respect to the modifications or conditions made by U.S. EPA. All approved Final Phase II Remedial Action Work Plans, approved final plans, approved final reports, and other approved items required to be submitted under this First Amended Consent Decree, shall be incorporated into and be enforceable under this First Amended Consent Decree.

16. All instructions by the U.S. EPA On-Scene Coordinator or Remedial Project Manager in connection with the work to be performed at the Facility which are consistent with the terms of this First Amended Consent Decree and with the National Contingency Plan, 40 C.F.R. Part 300, shall, whenever feasible, be provided in writing and be binding upon JM, subject to the dispute resolution provisions of Section XII.

VI. U.S. EPA PERIODIC REVIEW

17. In 1992, JM completed the remedial activities in the Original Consent Decree, except for those areas identified in the First Explanation of Significant Differences. Pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), U.S. EPA conducted a review of the remedial activities conducted under the Original Consent Decree in 1997 and the Illinois EPA was

provided with an opportunity for review and comment. U.S. EPA is currently conducting a periodic review of the remedial activities conducted under the Original Consent Decree, which commenced in 2002, and will provide the Illinois EPA with an opportunity for review and comment on the five year review.

18. Pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), U.S. EPA shall review the Remedial Action/Work at least every five years after the 2002 review, to assure that human health and the environment are being protected by the Remedial Action/Work being implemented. Pursuant to the O & M Plan and as requested by U.S. EPA, JM shall conduct studies and investigations within the Facility boundaries, in order to permit U.S. EPA to conduct reviews of the Remedial Action/Work under Section 121(c) of CERCLA. If U.S. EPA, determines that the Remedial Action/Work is not protective of human health and the environment, U.S. EPA may select further response actions within the Facility boundaries in accordance with the requirements of CERCLA and the NCP. JM and Illinois EPA shall be given the opportunity to comment upon any such further response actions within the Facility boundaries proposed by U.S. EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record. If U.S. EPA selects further response actions within the Facility boundaries, JM shall undertake such further response actions to the extent that the reopener conditions in Paragraph 60(a) or Paragraph 60(b) are satisfied. JM may invoke the procedures set forth in Section XII (Dispute Resolution) to dispute (1) U.S. EPA's determination that the reopener conditions of Paragraph 60(a) or Paragraph 60(b) of Section XVI are satisfied, (2) U.S. EPA's determination that the Remedial Action is not protective of human health and the environment, or (3) U.S. EPA's selection of further response

actions within the Facility boundaries. Disputes pertaining to whether the Remedial Action is protective or to U.S. EPA's selection of further response actions within the Facility boundaries shall be resolved pursuant to Paragraphs 43(c) and 44(c) with review on the administrative record. If JM is required to perform the further response actions within the Facility boundaries, JM shall submit a plan for such work to U.S. EPA for approval in accordance with the procedures set forth in Paragraph15(h) and shall implement the plan approved by U.S. EPA in accordance with the provisions of this First Amended Consent Decree. U.S. EPA may select and require implementation of any response action for any area outside the Facility boundaries and such decisions are not subject to this Consent Decree, including Section XII (Dispute Resolution).

VII. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS

19. JM shall use quality assurance, quality control, and chain of custody procedures for all data gathered under this First Amended Consent Decree in accordance with U.S. EPA's "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001) "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998), and subsequent amendments to such guidelines upon notification by U.S. EPA to JM of such amendment. Sampling data generated consistent with the Quality Assurance Project Plan ("QAPP") shall be admissible, without objection, in any proceeding under this Decree. JM shall ensure that U.S. EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by JM in implementing this First Amended Consent Decree. JM shall only use laboratories that have a documented Quality System which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for

Environ- mental 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 U.S. EPA. U.S. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements.

20. JM shall make available to U.S. EPA and Illinois EPA the results of all sampling, tests and other data it generates during implementation of this First Amended Consent Decree. JM shall submit these results in the monthly progress reports described in Section IX hereof. Upon request by U.S. EPA, JM shall submit the required data or report in electronic format according to U.S. EPA Region 5's electronic format.

21. Upon request, each of the Parties shall allow split or duplicate samples to be taken of any samples taken by the other Parties during implementation of this First Amended Consent Decree. JM shall notify U.S. EPA and Illinois EPA not less than 14 days in advance of any sample collection or related activity. JM shall have the right to observe activities of U.S. EPA and State of Illinois employees, contractors and consultants on the Facility.

VIII. FACILITY ACCESS AND INSTITUTIONAL CONTROLS,

22. Access to Property within the Facility owned by JM. JM shall provide access to the portion of the Facility owned by JM to U.S. EPA and State employees, contractors, agents, and consultants at all reasonable times, and shall permit such persons to be present and move freely about the area for the purpose of conducting any activity relating to this First Amended Consent Decree, including, but not limited to, monitoring the Work, taking samples, verifying any data or information submitted to U.S. EPA or the State, conducting investigations, obtaining

samples, assessing the need for, planning, or implementing additional response actions at or near the Facility, assessing JM's compliance and determining whether the Site is being used in a manner that is prohibited or restricted under this First Amended Consent Decree. In the event the U.S. EPA or Illinois EPA or their contractors, agents or consultants expect to conduct a sampling event on-site, they shall provide JM reasonable advance notice. U.S. EPA and Illinois EPA and their contractors, agents or consultants shall present appropriate credentials upon request.

23. Non-Interference With Remedy. As of the date of lodging of this First Amended Consent Decree, JM agrees that it will not use the Facility, or any other property, in any manner that would interfere with or adversely affect the implementation, integrity or protectiveness of the Remedial Action without the prior approval of U.S. EPA, with Illinois EPA concurrence. Such restrictions include, but are not limited to the following:

(a) Disturbance of Cover. Except as necessitated by compliance with the O & M Manual or other work plan approved or modified by U.S. EPA with Illinois EPA concurrence and except as provided in Subparagraph (g) below, no action shall be taken to excavate, drill or intrude into, penetrate or otherwise disturb the Facility cover designated in Exhibit 10, which includes the vegetated soil cover, asphalt cover and riprap, or the soils below such vegetated soil cover or asphalt cover or riprap.

(b) Maintenance of Water Levels. The Facility surface water shall be maintained at such levels to ensure that no water-covered asbestos-containing waste materials become exposed or dry out until closure of the wastewater ponds and system pursuant to Paragraph 15 above, except as authorized by an approved work plan pursuant to Paragraph 15(h).

(c) Interference with Remedy. There shall be no interference with the construction, operation, maintenance, monitoring, efficacy or physical integrity of any component, structure, or improvement resulting from or relating to the remedial action for the Facility. No action shall be taken which would cause Waste Materials that have been covered to become exposed except as authorized by a work plan approved by U.S. EPA with Illinois EPA concurrence.

(d) Operation and Maintenance Program. To ensure the long-term integrity of the vegetated soil cover, asphalt covers and riprap and to minimize exposure of Waste Materials at the Facility, JM shall meet the requirements in the O & M Manual for the Facility, as well as all subsequent amendments, modifications or revisions to the O & M Manual approved pursuant to Paragraph 15(h). JM shall meet the requirements in the amendment to the O & M Manual for operation and maintenance of the closed wastewater ponds and treatment system.

(e) Land Uses. The Facility shall not be used for any of the following purposes:

(i) Residential, including any dwelling units and rooming units, mobile home or factory built housing, camping facilities, hotels, or other unit constructed or installed for occupancy on a 24-hour basis;

(ii) A hospital for humans;

(iii) A public or private school;

(iv) A day care center for children;

(v) Any purpose involving occupancy on a 24-hour basis;

(vi) Any use that would disturb or penetrate the Facility cover as set forth in (a) above or interfere with the remedy as set forth in (d) above (e.g. construction of buildings).

No change shall be made to the land use restrictions in this Subparagraph, except pursuant to Subparagraph (g) below, and except with the consent of any other federal, state or local governmental agencies having jurisdiction over the proposed activities, and subject to applicable statutes, ordinances, rules and regulations in effect at such time.

(f) Ground Water Uses. No activities shall be conducted on the Facility depicted in Exhibit 3 or on adjacent property owned by Johns Manville that is enrolled in the State of Illinois Site Remediation Program and is depicted in Exhibit 5 ("SRP Property") that extract, consume, or otherwise use any groundwater from the property, nor shall any well be constructed on the Facility or the SRP Property for purposes other than ground water monitoring, unless approved in a work plan pursuant to Paragraph 15 (h).

(g) Modification of Restrictions. U.S. EPA, with the concurrence of Illinois EPA, may modify or terminate the above restrictions in whole or in part, in writing, as authorized by law. If requested by the U.S. EPA, with the concurrence of Illinois EPA, such writing will be executed by JM in recordable form and recorded with the Recorder of Deeds, Lake County, Illinois. JM may modify or terminate the above restrictions in whole or in part, in writing, with the prior written approval of U.S. EPA, with the concurrence of Illinois EPA. JM may seek to modify or terminate, in whole or in part, the restrictions by submitting to both U.S. EPA and the Illinois EPA, for approval, a written application that identifies each such restriction to be

terminated or modified, describes the terms of each proposed modification and includes proposed revision(s) to the Notice described in Paragraph 25 and proposed revision(s) to the environmental easement and restrictive covenants described in Paragraph 26. Each application for termination or modification of any restriction shall include a demonstration that the requested termination or modification will not interfere with, impair or reduce: (i) the effectiveness of any remedial measures undertaken pursuant to this First Amended Consent Decree; (ii) the long term protectiveness of the Remedial Action; or (iii) protection of human health and the environment. If U.S. EPA, with the concurrence of Illinois EPA, makes a determination that an application satisfies the requirements of this paragraph, including the criteria specified in (i) through (iii), above, U.S. EPA will notify JM in writing. If U.S. EPA does not respond in writing to a request to change land use within 90 days of its receipt of that request, unless JM agrees to extend this period beyond 90 days, U.S. EPA may be deemed to have denied the request and JM may send a notice of dispute pursuant to Paragraph 42 of Section XII of the First Amended Consent Decree. If a modification to or termination of a land or groundwater restriction is approved by U.S. EPA, with the concurrence of Illinois EPA, JM shall record the revised Notice and the revised environmental easement and restrictive covenants as approved by U.S. EPA, with the concurrence of Illinois EPA, with the Recorder of Deeds, Lake County, Illinois.

(h) Impact on State's Authorities as to Nature Preserve. Nothing in the First Amended Consent Decree is in any way meant, or shall be interpreted to affect, any legal authorities the State of Illinois may have regarding the nature preserve to the north of the Facility.

24. Notice: With respect to any property owned or controlled by JM that is located

within the Facility, within 30 days after the entry of this First Amended Consent Decree, JM shall file the Notice set forth in Exhibit 11 with the Recorder of Deeds, Lake County, State of Illinois. This Notice provides all successors-in-title with notice that the property is part of an NPL Site that was used for the disposal of asbestos-containing waste material, that U.S. EPA selected a remedy for the NPL Site and that JM entered into a Consent Decree and a First Amended Consent Decree in the case of ***United States and State of Illinois v. Manville Sales Corporation,*** Civil Action No. 88C 630 (N.D. Ill) requiring implementation of the remedy as well as land and water use restrictions to maintain the integrity and protectiveness of the remedy. JM shall provide U.S. EPA and the State with a certified copy of the recorded Notice within 10 days of recording such Notice. With respect to JM's former manufacturing facility depicted in Exhibit 5, which is enrolled in the State of Illinois Site Remediation Program, within 30 days after the entry of this First Amended Consent Decree, JM shall file the Notice set forth in Exhibit 12 with the Recorder of Deeds, Lake County, State of Illinois, which provides all successors-in-title with notice that the SRP property is subject to groundwater restrictions and that Site Y, Site Z and the western parking lot portions of the SRP property are also subject to certain land use restrictions. JM shall provide U.S. EPA and the State with certified copies of the recorded Notices within 10 days of recording such Notices.

25. At least 45 days prior to the conveyance of any interest in property located within the Facility including, but not limited to, fee interests, leasehold interests, and mortgage interests, JM shall give the grantee (i) written notice of this First Amended Consent Decree, and (ii) a copy of the proposed Deed with Reservation of Environmental Easement and Declaration of Restrictive Covenants referenced in the following paragraphs that will reserve a right of access

and the right to enforce restrictions on the land/interest to be conveyed. In the event of any such conveyance, JM's obligations under this First Amended Consent Decree, including, but not limited to, its obligation to provide or secure access and institutional controls, as well as to abide by such institutional controls pursuant to this Section, shall continue to be met by JM unless otherwise agreed to by the United States and State of Illinois in writing. In no event shall the conveyance release or otherwise affect the liability of JM to comply with all provisions of this First Amended Consent Decree. If the United States and the State of Illinois approve in writing, the grantee, as JM's contractor, may perform some or all of the Work under this First Amended Consent Decree.

26. Conveyance of Property within the Facility owned by JM - Reservation of Environmental Easement and Declaration of Restrictive Covenants

(a) If JM conveys any interest in the property delineated in Exhibit 10, or any portion thereof owned by JM, JM shall reserve an environmental easement and restrictive covenants, running with the land in the conveyance instrument that (i) reserves the right of access for the purpose of conducting any activity related to this First Amended Consent Decree, and (ii) reserves the right to enforce the land/water use restrictions listed in Paragraph 23. JM shall reserve the access right and the right to enforce the land/water use restrictions for (i) JM, (ii) the United States, on behalf of U.S. EPA, and its representatives, as a third party beneficiary, and (iii) the State of Illinois, on behalf of Illinois EPA, and its representatives, as a third party beneficiary.

(b) At least 45 days prior to such conveyance, JM shall:

(1) give written notice to U.S. EPA and the State of the proposed

conveyance, including the name and address of the grantee, and the date on which notice of the First Amended Consent Decree and a copy of the draft Deed With Reservation of Environmental Easement and Declaration of Restrictive Covenants was provided to the grantee.

(2) submit to U.S. EPA and the State for review and approval with respect to such conveyance:

(i) a draft Deed With Reservation of Environmental Easement and Declaration of Restrictive Covenants ("Deed") that reserves the environmental easement/restrictive covenants, in substantially the form attached hereto as Exhibit 13, prepared in contemplation of the proposed conveyance (the draft model deed attached as Exhibit 10 is for a fee conveyance, but if the estate being conveyed is something other than a fee, such as a lease, easement or mortgage, the instrument should be modified accordingly) that is in recordable form and is enforceable under the laws of the State of Illinois; and

(ii) a current title insurance commitment or some other evidence of title acceptable to U.S. EPA and the State, which shows title to the land described in the Deed to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by U.S. EPA and the State or when, despite best efforts, JM is unable to obtain release or subordination of such prior liens or encumbrances).

(c) After U.S. EPA and the Illinois EPA, approve and accept the draft Deed (or other instrument of conveyance, including any lease) and the title evidence, JM may convey the interest in property pursuant to the approved Deed (or other instrument of conveyance), provided a title update determines that nothing has occurred between the effective date of the commitment and the date of recording to affect the title adversely. JM shall record such Deed

(or other instrument of conveyance) with the Recorder of Deeds of Lake County, State of Illinois. Within 30 days of recording the Deed (or other instrument of conveyance), JM shall provide U.S. EPA and the Illinois EPA with a final title insurance policy, or other final evidence of title acceptable to U.S. EPA and the Illinois EPA, and a certified copy of the original Deed (or instrument of conveyance) showing the clerk's recording stamps.

27. SRP Property Owned by JM - Reservation of Environmental Easement and Declaration of Restrictive Covenants

(a) If JM conveys any interest in the SRP Property, or any portion thereof owned by JM, JM shall reserve an environmental easement and a restrictive covenant running with the land in the conveyance instrument that (i) reserves the right of access for the purpose of determining compliance with this First Amended Consent Decree and for conducting periodic reviews of the protectiveness of the Remedial Action, and (ii) reserves the right to enforce the groundwater use restrictions listed in Paragraph 23(f). JM shall reserve the access right and the right to enforce the groundwater use restrictions for (i) JM, (ii) the United States, on behalf of U.S. EPA, and its representatives, as a third party beneficiary, and (iii) the State of Illinois, on behalf of Illinois EPA, and its representatives, as a third party beneficiary. In addition, if JM conveys any interest in Site Y, Site Z or the western parking lot portion of the SRP Property as identified in Exhibit 5, JM shall reserve an environmental easement and restrictive covenants running with the land in the conveyance instrument that (i) reserves the right to enforce land use restrictions with respect to interference with the asphalt cover on those parcels. JM shall reserve the access right and the right to enforce the land/water use restrictions for (i) JM, (ii) the United States, on behalf of U.S. EPA, and its representatives, as a third party beneficiary, and (iii) the

State of Illinois, on behalf of Illinois EPA, and its representatives, as a third party beneficiary.

(b) At least 45 days prior to such conveyance, JM shall:

(1) give written notice to U.S. EPA and the State of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the First Amended Consent Decree, access easement, and a copy of the draft Deed With Reservation of Environmental Easement and Declaration of Restrictive Covenants was given to the grantee.

(2) submit to U.S. EPA and the State for review and approval with respect to such conveyance:

(i) a draft Deed With Reservation of Environmental Easement and Declaration of Restrictive Covenants ("Deed") that reserves the environmental easement and restrictive covenants, in substantially the form attached hereto as Exhibit 14, prepared in contemplation of the proposed conveyance (the draft Deed attached as Exhibit 14 is for a fee conveyance, but if the estate being conveyed is something other than a fee, such as a lease, easement or mortgage, the instrument should be modified accordingly) that is in recordable form and that is enforceable under the laws of the State of Illinois; and

(ii) a current title insurance commitment or some other evidence of title acceptable to U.S. EPA and the State, which shows title to the land described in the Deed to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by U.S. EPA and the State or when, despite best efforts, JM is unable to obtain release or subordination of such prior liens or encumbrances).

(3) After U.S. EPA's and the State's approval and acceptance of the draft Deed (or other instrument of conveyance, including a lease) and the title evidence, JM may

convey the interest in property pursuant to the approved Deed (or other instrument of conveyance), provided a title update determines that nothing has occurred between the effective date of the commitment and the date of recording to affect the title adversely. JM shall record such Deed (or other instrument of conveyance) with the Recorder of Deeds of Lake County, State of Illinois. Within 30 days of recording the Deed (or other instrument of conveyance), JM shall provide U.S. EPA and the Illinois EPA with a final title insurance policy, or other final evidence of title acceptable to U.S. EPA and the Illinois EPA, and a certified copy of the original Deed (or instrument of conveyance) showing the clerk's recording stamps.

(c) JM agrees to conduct operation and maintenance of the asphalt cap on Site Y, Site Z and the western parking lot of the SRP Property as identified and approximately depicted in Exhibit 5 in accordance with the O & M Plan. Pursuant to Paragraph 23(g), JM may petition U.S. EPA and the State for termination of the land use restrictions on Site Y, Site Z and the western parking lot of the SRP Property if JM imposes land use restrictions on Site Y, Site Z and the western parking lot as part of any environmental land use control and/or no further action letter recorded as part of the SRP program.

28. Access/Agreements/Easement By Other Persons. For any property where access is needed to implement this First Amended Consent Decree, and such property is owned or controlled by persons other than JM, JM shall use best efforts to secure from such persons, an agreement to provide access thereto for JM, its agents and contractors, as well as for the United States on behalf of U.S. EPA, and the State, as well as their representatives (including contractors), for the purpose of conducting any activity related to this First Amended Consent Decree including, but not limited to, those activities listed in Paragraph 22 of this First Amended

Consent Decree within 30 days of the date such access is determined to be necessary.

29. For purposes of this Section, "best efforts" includes paying reasonable sums of money in consideration of access. If JM is unable to obtain the access agreement(s) required under Paragraph 28, JM shall promptly notify the United States in writing, and shall include in that notification a summary of the steps (including requests, offers and responses thereto) that JM has taken in attempting to comply with this Section. The United States may in its unreviewable discretion and as it deems appropriate, assist JM in obtaining such access. JM shall reimburse the United States in accordance with the procedures in Section XIV (Reimbursement of Response Costs), for all costs incurred by the United States in obtaining such access, including, but not limited to the cost of attorney time and the amount of monetary consideration paid.

30. If U.S. EPA or Illinois EPA determine that additional land/water restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the Remedial Action, ensure its integrity and protectiveness, or ensure non-interference with it, JM shall cooperate with U.S. EPA's and the Illinois EPA's efforts to secure such controls.

31. JM shall amend the O & M Manual to include an annual inspection of the institutional controls at the Facility and the submittal of an annual written certification to U.S. EPA and the State that the vegetative soil cover, riprap, asphalt and environmental easement/restrictive covenants set forth in this Section remain in place and are effective. JM has the responsibility to monitor, maintain and enforce the land use restrictions in Paragraphs 26, 27 and 28 and Exhibits 13 and 14.

IX. REPORTING REQUIREMENTS

32. JM shall provide to U.S. EPA and Illinois EPA written monthly progress reports which: (a) describe the actions which have been taken toward achieving compliance with this First Amended Consent Decree during the previous month, as well as such actions, sample collection, data and plans which are scheduled for the next month; (b) include all results of sampling and tests and all other data received by JM during the previous month; (c) include all plans and procedures completed under the O&M Plan and the Phase II Remedial Work Plans during the previous month; and (d) include a statement of the escrow account balances and other financial assurances required by Section IV. These progress reports are to be submitted to U.S. EPA and Illinois EPA by the tenth day of every month following the effective date of this First Amended Consent Decree. Upon request of U.S. EPA, JM shall submit data or reports electronically to U.S. EPA according to U.S. EPA formatting requirements.

33. Upon the occurrence of any event during performance of the remedial action which, pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, requires reporting to the National Response Center, JM shall promptly orally notify the U.S. EPA representative or, in the event of his unavailability, the Emergency Response Unit, Region V, United States Environmental Protection Agency, in addition to the reporting and other procedures required by Section 103. Such events shall be reported in the required monthly progress reports.

34. If the date for submission of any item or notification required by this First Amended Consent Decree falls upon a weekend or state or federal holiday, the time period for submission of that item or notification is extended to the next working day.

X. REMEDIAL PROJECT MANAGER/PROJECT COORDINATORS

35.. U.S. EPA has designated a Remedial Project Manager ("RPM") and Illinois EPA has designated a Project Coordinator for the Facility. JM has also designated a Project Coordinator who has primary responsibility for implementation of the Work at the Facility. U.S. EPA may designate other representatives, including U.S. EPA and Illinois EPA employees, and federal and State contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this First Amended Consent Decree. The RPM shall have the authority lawfully vested in an RPM by the NCP. Except as specifically provided in the First Amended Consent Decree, communications between and among the Parties with respect to implementation of the Work shall be between the Project Coordinators and the RPM.

36. The RPM and Project Coordinators are identified below:

Brad Bradley
Remedial Project Manager
Mail Code SR-6J
U.S. Environmental Protection Agency
77 West Jackson Blvd.
Chicago, Illinois 60604

Sandra Bron
Illinois Environmental Protection Agency
Federal Site Remediation Section
Division of Remediation Management
Bureau of Land
1021 N. Grand Ave East
Springfield, Illinois 62794-92

Denny Clinton
Johns Manville
1871 N. Pershing Road
Waukegan, IL 60087

If the Project Coordinator or RPM initially designated is changed, the identity of the successor

will be provided to the other Parties at least five working days before the change is made.

XI. FORCE MAJEURE

37. "Force Majeure" for purposes of this First Amended Consent Decree is defined as any event arising from causes beyond the control of JM or any entity controlled by JM which delays or prevents the performance of any obligation under this First Amended Consent Decree. "Force Majeure" shall not include contractor or subcontractor misfeasance, malfeasance or nonfeasance, increased costs or expenses, or non-attainment of the goals and standards set forth in Section V hereof and the O&M Plan.

38. When circumstances are occurring or have occurred which may preclude compliance with the schedule set forth in this First Amended Consent Decree or the O&M Plan or the Phase II Remedial Work Plans, whether or not caused by a "force majeure" event, JM shall promptly notify the RPM and the State Project Coordinator or their alternates by telephone within 24 hours. Within five days of the event which JM contends is responsible for the delay, JM shall supply to U.S. EPA in writing the reason(s) for and anticipated duration of such delay, the measures taken and to be taken by JM to prevent or minimize the delay, and the timetable for implementation of such measures. Failure to give such notice and explanation in a timely manner shall constitute a waiver of any claim of force majeure.

39. If U.S. EPA agrees that a delay is or was attributable to a "force majeure" event, the Parties shall modify the O&M Plan or the Phase II Remedial Work Plans to provide such additional time as may be necessary to allow the completion of the specific phase of Work and/or any succeeding phase of the Work affected by such delay, with such additional time not to exceed the actual duration of the delay.

40. If U.S. EPA and JM cannot agree whether the reason for the delay was a "force majeure" event, or whether the duration of the delay is or was warranted under the circumstances, the Parties shall resolve the dispute according to the dispute resolution procedures in Section XII herein. JM has the burden of proving force majeure as a defense to noncompliance with this Decree.

XII. DISPUTE RESOLUTION

41. Unless otherwise expressly provided for in this First Amended Consent Decree, the dispute resolution procedures of this Section are available and shall be the exclusive mechanism to resolve all disputes arising under this First Amended Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of JM that have not been disputed in accordance with this Section.

42. Informal Negotiations. Any dispute that arises under or with respect to this First Amended Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute.

43. Formal Dispute Resolution

(a) In the event that the parties cannot resolve a dispute by informal negotiations under the preceding paragraph, then the position advanced by U.S. EPA shall be considered binding unless, within 20 days after the conclusion of the informal negotiation period, JM invokes the formal dispute resolution procedures of this Section by serving on the U.S. EPA

and the State a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by JM. The Statement of Position shall specify JM's position as to whether formal dispute resolution should proceed under Subparagraph (c) or (d) of this paragraph.

(b) Within 20 days after receipt of JM's Statement of Position, U.S. EPA and the State, if applicable, will serve on JM its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by U.S. EPA or the State. These Statements of Position shall also specify the U.S. EPA or State position as to whether formal dispute resolution should proceed under Subparagraph (c) or (d) of this paragraph. If there is disagreement on this issue, the dispute shall proceed under the subparagraph determined by U.S. EPA to be applicable. However if JM ultimately appeals to the Court to resolve the dispute, the Court shall determine which subparagraph is applicable. Within 10 days after receipt of the U.S. EPA Statement of Position and the State's Statement of Position, if applicable, JM may submit a Reply.

(c) Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action, and all other disputes that are accorded review on the administrative record under applicable provisions of administrative law, shall be conducted pursuant to the procedures in this Subparagraph. For purposes of this Subparagraph, the adequacy of any response action includes, without limitation, the adequacy or appropriateness of plans, procedures to implement plans or any other items requiring approval by U.S. EPA, and the adequacy of performance of response actions taken pursuant to this First Amended Consent

Decree. Nothing in this First Amended Consent Decree shall be construed to allow any dispute by JM regarding the validity of the ROD as Modified. In the case of disputes under this Subparagraph (c), an administrative record of the dispute shall be maintained by U.S. EPA and shall contain all Statements of Position, including supporting documentation, submitted by the parties to the dispute. The Director of the Superfund Division, U.S. EPA Region 5 will issue a final administrative decision resolving the dispute based on the administrative record. This decision shall be binding on JM, subject only to the right to seek judicial review pursuant to Paragraph 44 (a)-(c).

(d) In the case of disputes that pertain neither to the selection or adequacy of any response action or are not otherwise accorded review on the administrative record under applicable provisions of administrative law, following receipt of the parties' Statements of Positions, the Director of the Superfund Division, U.S. EPA Region 5, will issue a final decision resolving the dispute, which shall be binding on JM, subject to the right to seek judicial review.

44. Judicial Review

(a) Any administrative decision made by the Director of the Superfund Division, U.S. EPA Region 5 pursuant to the preceding paragraph shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by JM with the Court and served on all parties to the dispute within 10 days of receipt of U.S. EPA's final decision.

(b) The motion for judicial review shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this First Amended Consent Decree. The United States may file a response to JM's motion.

(c) In proceedings on any dispute governed by Subparagraph 43 (c), JM shall have the burden of demonstrating that the decision of the Superfund Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of U.S. EPA's decision shall be on the administrative record.

(d) Judicial review of any dispute governed by Subparagraph 43(d), shall be governed by applicable provisions of law.

45. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of JM under this First Amended Consent Decree not directly in dispute, unless U.S. EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this First Amended Consent Decree. In the event that JM does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XV (Stipulated Penalties).

XIII. RETENTION AND AVAILABILITY OF RECORDS

46. JM shall make available to U.S. EPA and Illinois EPA, and shall retain, during the pendency of this First Amended Consent Decree, and for a period of ten years after its termination, all records and documents in its possession, custody, or control, or in the possession, custody or control of its contractors and subcontractors, which relate to the performance of this First Amended Consent Decree, including, but not limited to, documents reflecting the results of any sampling, tests, or other data or information generated or acquired by JM, or on JM's behalf, with respect to the implementation of this First Amended Consent Decree. After the ten year

period of document retention, JM shall notify U.S. EPA, Illinois EPA and U.S. DOJ at least 90 calendar days prior to the destruction of any such documents, and upon request by U.S. EPA or Illinois EPA, JM shall relinquish custody of the documents to U.S. EPA or Illinois EPA.

47. JM may assert business confidentiality claims covering part or all of the information submitted under this First Amended Consent Decree in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and pursuant to 40 C.F.R. § 2.203(b) and applicable State law. Information determined to be confidential by U.S. EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B and, if determined to be entitled to confidential treatment under State law by Illinois EPA, afforded protection under State law. If no such claim accompanies the information when it is submitted to the U.S. EPA and the State, the public may be given access to such information without further notice to JM.

48. JM may assert that certain documents, records or information are privileged under the attorney-client privilege or any other privilege recognized under federal law. However, no records, documents or information created or generated pursuant to the requirements of this First Amended Consent Decree shall be withheld on the grounds that they are privileged.

XIV. REIMBURSEMENT OF RESPONSE COSTS

49. JM has paid $153,114.15 to the EPA Hazardous Substances Response Trust Fund for reimbursement of certain response costs incurred by the United States prior to entry of the Original Consent Decree. JM has also paid certain response costs incurred by the United States at the Facility subsequent to entry of the Original Consent Decree. By November 15, 2003, JM shall pay to U.S. EPA by certified or cashiers check to the address in Paragraph 51, the outstanding balance including interest that has accrued on certain oversight billings under the

Original Consent Decree, in the amount of $171on bill #2T067X, $4,496 on bill #0T113A, and $12,362 on bill #9T147A. JM shall pay all unreimbursed response costs incurred by the United States in connection with the Facility between entry of the Original Consent Decree and the entry of the First Amended Consent Decree, which are not inconsistent with the NCP. Such response costs shall include all direct and indirect costs incurred by the United States in overseeing, implementing, enforcing and amending the Original Consent Decree.

50. JM shall pay to U.S. EPA all response costs incurred by the United States after entry of the First Amended Consent Decree in connection with the Facility, which are not inconsistent with the NCP. Such response costs shall include all direct and indirect costs incurred by the United States in overseeing, implementing and enforcing the First Amended Consent Decree, including the environmental easement/restrictive covenants in Section VIII.

51. Payments shall be made by JM on a periodic basis and within 30 days of the submission of an itemized cost statement by the United States. Payments shall be made by certified or cashier's check payable to EPA Hazardous Substance Superfund and forwarded to the following address:

Environmental Protection Agency, Region 5
Attention: Program Accounting and Analysis Section
P.O. Box 70753
Chicago, Illinois 60673

The checks shall reference the name and address of the party making the payment, the EPA Site/Spill number O5A5, and the DOJ case number 90-11-1-7B. Notice that the payment has been made is also to be sent to the United States and to U.S. EPA, in accordance with Section XVIII (Notices). In the event that a payment is not made within 30 days of submission of U.S.

EPA's itemized cost statement, JM shall pay interest on the unpaid balance through the date of payment, at the rate of interest on investments for the Hazardous Substance Superfund in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). If any response costs are outstanding at the time the U.S. EPA with the concurrence of Illinois EPA issues the Certificate of Completion of the Work under this First Amended Consent Decree, JM shall, within 30 days of the submission of an itemized cost statement pay such response costs. The total amount to be paid by JM pursuant to Paragraph 51 shall be deposited in the Johns Manville Special Account within the U.S. EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by U.S. EPA to the U.S. EPA Hazardous Substance Superfund.

52. JM has paid $15,571.00 to the State as reimbursement for certain response costs incurred by Illinois EPA in connection with the Facility prior to September 30, 1987. JM has also paid certain response costs incurred by the State at the Facility after September 30, 1987. JM shall pay all unreimbursed response costs incurred by the State in connection with the Facility between entry of the Original Consent Decree and the entry of the First Amended Consent Decree, which are not inconsistent with the NCP. Such response costs shall include all direct and indirect costs incurred by the State in overseeing, implementing, enforcing and amending the Original Consent Decree. JM shall also pay to the State all response costs incurred by the State after entry of the First Amended Consent Decree in connection with the Facility, which are not inconsistent with the NCP. Such response costs shall include all direct, indirect and allocated program costs incurred by the State in overseeing, implementing and enforcing the First Amended Consent Decree, including the environmental easement/restrictive covenants in

Section VIII.

53. Payments shall be made by JM on a periodic basis and within 30 days of submission of an itemized cost statement and supporting documentation by the Illinois EPA. Payments shall be made by JM to the "Illinois Environmental Protection Agency" designated to be deposited in the "Hazardous Waste Fund." JM shall include the name and number of this case, along with the Illinois Site identification number and FEIN Number 13-0889690. Payments shall be made by certified or cashier's check sent to: Fiscal Services Section, Accounts Receivable Unit, Illinois EPA, P.O. Box 19276, 1021 North Grand Avenue East, Springfield, Illinois 62794-9276.

54. JM may contest payment of any response costs if it determines that the United States or the State has made an accounting error or if it alleges that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States (if the United States' accounting is being disputed) or the State (if the State's accounting is being disputed). Any such objection shall specifically identify the contested response costs and the basis for objection and any request for supporting documentation. In the event of an objection, JM shall within the 30 day period pay all uncontested response costs to the United States or the State and shall initiate the Dispute Resolution procedures in Section XII. JM shall send to the United States and the State a copy of the check paying the uncontested response costs. If the United States or the State prevails in the dispute, within 5 days of the resolution of the dispute, JM shall pay the sums due (with accrued interest) to the United States or the State, if the State costs are disputed, in the

manner described above. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding JM's obligation to reimburse the United States or the State for their response costs.

XV. STIPULATED PENALTIES

55. (a) JM shall be liable for stipulated penalties in the amounts set forth below if JM fails to fully perform any requirement of this First Amended Consent Decree, the Phase II Work Plans and O & M Manual in accordance with the schedules established therein and all applicable requirements of law.

Deliverable/Activity	Days 1-7	Days Greater than 7
Failure to submit a Draft Phase II Work Plan in accordance with Paragraph 15	$2,000/day	$4,000/day
Failure to submit a Final Phase II Work Plan in accordance with Paragraph 15	$2,000/day	$4,000/day
Failure to close the miscellaneous disposal pit and collection basin in accordance with Paragraph 15	$2000/day	$4,000/day
Failure to close the wastewater treatment ponds and system in accordance with Paragraph 15	$2,000/day	$4,000/day
Failure to cap or remove the asbestos containing sediment in the collection basin, industrial canal and pumping lagoon in accordance with Paragraph 15	$2,000/day	$4,000/day
Failure to perform requirements in the O & M Manual and Phase II Work Plans	$2,000/day	$4,000/day
Failure to reserve environmental easement/	$2,000/day	$4,000/day

restrictive covenants on conveyance of title in accordance with Section VIII.		
Failure to comply with the restrictions in Paragraph 23 and the environmental easement/restrictive covenants in Section VIII	$2,000/day	$4,000/day
Failure to submit progress reports or other miscellaneous reports	$500/day	$1,000/day
Failure to meet any other scheduled deadline in the First Amended Consent Decree, Phase II Work Plans or O & M Manual	$500/day	$1,000/day

If JM fails to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. JM shall pay interest on the unpaid balance, which shall begin to accrue on the date of demand made.

(b) 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 U.S. EPA's receipt of such submission until the date that U.S. EPA notifies JM of any deficiency; (2) with respect to a decision by the Superfund Director, U.S. EPA Region 5, under Section XII (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that JM's reply to U.S. EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XII (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.

(c) All penalties accruing under this Section shall be due and payable to the United States within 30 days of JM's receipt from U.S. EPA of a demand for payment of the penalties, unless JMs invoke the dispute resolution procedures under Section XII. All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "U.S. EPA Hazardous Substances Superfund," shall be mailed to Environmental Protection Agency, Region 5, Attention: Program Accounting and Analysis Section, P.O. Box 70753, Chicago, Illinois 60673, shall indicate that the payment is for stipulated penalties, and shall reference the U.S. EPA Region and Site/Spill ID # 05A5, the DOJ Case Number 90-11-1-7B, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XVIII (Notices), and to the Project Coordinator.

(d) The payment of penalties shall not alter in any way JM's obligation to complete the performance of the Work required under this Consent Decree.

56. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until the following:

(a) If the dispute is resolved by agreement or by a decision of U.S. EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to U.S. EPA within 15 days of the agreement or the receipt of U.S. EPA's decision or order;

(b) If the dispute is appealed to this Court and the United States prevails in

whole or in part, JM shall pay all accrued penalties determined by the Court to be owed to U.S. EPA within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph (c) below;

(c) If the District Court's decision is appealed by any Party, JM shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to U.S. EPA or to JM to the extent that they prevail.

57. Nothing in this First Amended Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of JM's violation of this First Amended Consent Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. 9622(l) provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this First Amended Consent Decree.

XVI. COVENANTS NOT TO SUE

58. In consideration of actions which will be performed and payments which will be made by JM under the terms of the First Amended Consent Decree, and except as otherwise

specifically provided in this Decree, the United States and the State hereby covenant not to sue or take administrative action against JM or its officers, directors, employees, or agents acting in such capacity, pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607 for performance of the Work/Remedial Action as defined in Paragraph (4)(z) and recovery of response costs as defined in Section XIV. These covenants not to sue shall take effect upon the receipt of the payments required by Section XIV. With respect to future liability within the Facility boundaries depicted in Exhibit 3, this covenant not to sue shall take effect upon certification by U.S. EPA with the concurrence of Illinois EPA of completion of the Work required under this First Amended Consent Decree and payment of all costs required under Section XIV. These covenants not to sue are conditioned upon satisfactory performance by JM of its obligations under this First Amended Consent Decree.

59. Notwithstanding any other provision of this First Amended Consent Decree, the United States and the State reserve and this Decree is without prejudice to claims based on :

(a) Liability for any area located adjacent to and/or outside of the boundaries of the Facility as set forth in Exhibit 3, including but not limited to areas where asbestos and/or other Waste Material have or may have come to be located from the Facility;

(b) Liability for Johns Manville's former manufacturing facility (the SRP Property), which is approximately depicted in Exhibit 5;

(c) Liability arising from hazardous substances removed from the Facility;

(d) Liability for damages for injury to, destruction of or loss of natural resources and for the costs of any natural resource damages assessment;

(e) Criminal liability;

(f) Claims based on a failure by JM to meet the requirements of this First Amended Consent Decree;

(g) Liability for violations of federal or state law which occur during or after implementation of the Remedial Action;

(h) Liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Facility; and

(i) Liability, prior to Certification of Completion of the Work/Remedial Action, for additional response actions that U.S. EPA determines are necessary to achieve performance standards.

60. Notwithstanding any other provision in this First Amended Consent Decree, (1) the United States and the State reserve the right to institute proceedings in this action or in a new action or to issue an Administrative Order seeking to compel JM to perform any additional response actions relating to the Facility, or (2) the United States and the State reserve the right to institute proceedings in this action or in a new action seeking to reimburse the United States or the State for its response costs for action undertaken under CERCLA, relating to the Facility, if:

(a) Prior to Certification of Completion of the Work/Remedial Action:

(1) conditions at the Facility, previously unknown to the U.S. EPA or Illinois EPA, are discovered after lodging of this First Amended Consent Decree, or (2) information is received, in whole or in part, after lodging of this First Amended Consent Decree, and U.S. EPA determines that these previously unknown conditions or this information together with any other relevant information indicate that the remedial action is not protective of human health and the environment.

(b) Subsequent to Certification of Completion of the Work/Remedial Action:

(1) conditions at the Facility, previously unknown to the U.S. EPA or Illinois EPA, are discovered, or (2) information previously unknown to U.S. EPA and the Illinois

EPA is received in whole or in part, and these previously unknown conditions or this information together with other relevant information indicate that the Work/Remedial Action is not protective of human health and the environment.

(c) For purposes of Paragraph 60(a), the information and the conditions known to U.S. EPA and Illinois EPA shall include only that information and those conditions known to U.S. EPA and Illinois EPA as of the date of lodging and set forth in the ROD as Modified and the administrative record. For purposes of Paragraph 60(b), the information and the conditions known to U.S. EPA and Illinois EPA shall include only that information and those conditions known to U.S. EPA and Illinois EPA as of the date of Certification of Completion of the Work/Remedial Action and set forth in the ROD as modified, the administrative record, the post-ROD administrative record, or in any information received by U.S. EPA and Illinois EPA pursuant to the requirements of this First Amended Consent Decree prior to Certification of Completion of the Work/Remedial Action.

61. Notwithstanding any other provision in this First Amended Consent Decree, the covenants not to sue in this Section shall not relieve JM of its obligation to maintain compliance with this First Amended Consent Decree. The United States and the State reserve their rights to take response actions at the Facility in the event of a breach of the terms of this First Amended Consent Decree and to seek recovery of costs resulting from such a breach, or relative to any portion of the work funded or performed by the United States or the State, or incurred by the United States or the State as a result of having to seek judicial assistance to remedy conditions at the Facility.

62. Nothing in this Decree shall constitute or be construed as a release or a covenant

not to sue regarding any claim or cause of action against any person corporation or other entity not a signatory to this Decree for any liability it may have arising out of or relating to the JM Waukegan Facility. The United States and the State expressly reserve the right in their unreviewable discretion to sue any person other than JM in connection with the Facility.

XVII. COVENANTS BY JM, OTHER CLAIMS, CONTRIBUTION PROTECTION

63. JM agrees to indemnify, save and hold harmless the United States, the State and/or their representatives from any and all claims or causes of action arising from acts or omissions of JM and/or its representatives in carrying out the activities pursuant to this First Amended Consent Decree, except for such claims or causes of action arising from acts or omissions of the United States, and the State, their employees, agents, and assigns. The United States and the State shall notify JM of any such claims or actions within 60 working days of receiving notice that such a claim or action is anticipated or has been filed. The United States and the State agree not to act with respect to any such claim or action without first providing JM an opportunity to participate.

64. The United States and the State are not to be construed as parties to, and do not assume any liability for, any contract entered into by JM in carrying out the activities pursuant to this First Amended Consent Decree. The proper completion of the Work under this First Amended Consent Decree is solely the responsibility of JM.

65. JM hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States or the State with respect to the Facility or this First Amended Consent Decree, including, but not limited to:

(a) any direct or indirect claim for reimbursement from the Hazardous Substance

Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;

(b) any claims against the United States and/or the State under CERCLA Sections 107 or 113, 42 U.S.C. §§ 9607 or 9613; or

(c) any claim arising out of response actions or in connection with the Facility, 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.

66. U.S. EPA agrees that upon entry of the Original Consent Decree, the June 14, 1984 Administrative Order by Consent described in the Preamble (B above), has been completed by JM to U.S. EPA's satisfaction and has been terminated. On September 1, 1987, U.S. EPA entered an Administrative Order against JM requiring JM to implement the ROD at the Facility. U.S. EPA agrees that upon entry of the Original Consent Decree, the September 1, 1987 Administrative Order was withdrawn and is of no further force or effect.

67. The parties agree that the Facility defined herein is a "Manville Owned Site" within the meaning of paragraphs 27 and 41 of the Stipulation and Order of Dismissal and Settlement entered by the Court on October 28, 1994 in Manville Corp. et al. v. United States of America, United States District Court for the Southern District of New York (91 Civ. 6683 [RWS]) ("Global Settlement Order"). Nothing contained herein is intended to or shall be interpreted as waiving any rights that the parties may have under the Global Settlement Order with respect to areas outside of the boundaries of the Facility.

68. In any subsequent administrative or judicial proceeding initiated by the United

States or the State for injunctive relief, recovery of response costs, or other appropriate relief relating to the Facility, JM shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case.

69. The Parties agree, and by entering this First Amended Consent Decree this Court finds, that JM is entitled, as its effective date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this First Amended Consent Decree. Matters addressed include the Work set forth in Section V and the response costs pursuant to Section XIV.

XVIII. NOTICES

70. Whenever, under the terms of this First Amended Consent Decree, notice is required to be given by one party to another, or service of any papers or process is necessitated by the dispute resolution provisions of Section XII hereof, 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 the United States:

Chief, Environmental Enforcement Section
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
DJ# 90-11-1-7B

As to U.S. EPA:
Regional Counsel
Attn: Johns Manville
Staff Attorney
U.S. Environmental
Protection Agency
Mail Code C14J
77 W. Jackson Boulevard
Chicago, Illinois 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, Illinois 62794-9276

Director, Superfund Division
Attn: Johns Manville
Remedial Project Manager
Mail Code SR 6J
U.S. Environmental Protection Agency
77 W. Jackson Boulevard
Chicago, Illinois 60604

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

As to JM:
Bruce D. Ray
Associate General Counsel
Johns Manville
717 17th Street (80202)
P.O. Box 5108
Denver, CO 80217-5108
(303) 978-3527
(888) 629-6374 FAX

XIX. CONSISTENCY WITH NATIONAL CONTINGENCY PLAN

71. The United States and the State agree that the Work, if properly performed as set forth in Section V hereof, is consistent with the provisions of the National Contingency Plan, pursuant to 42 U.S.C. § 9605.

XX. RESPONSE AUTHORITY

72. Notwithstanding any other provision of this First Amended Consent Decree, the United States and the State retain all authority and reserve all rights to take any and all response actions authorized by law.

XXI. MODIFICATION

73. Except as provided for herein, there shall be no modification of this First Amended Consent Decree without written approval of all Parties.

XXII. EFFECTIVE DATE AND CERTIFICATION OF COMPLETION

74. This First Amended Consent Decree shall be effective upon the date of its entry by the Court.

75. Completion of Construction: When JM determines that it has completed construction of each of the remedial activities required under Paragraph 15 and the performance standards have been attained for each remedial activity, JM shall submit a written report to U.S. EPA for approval, with a copy to Illinois EPA. In the report, a registered professional engineer and the JM Project Coordinator shall state that the construction of the remedial activity has been completed in full satisfaction of the requirements of this First Amended Consent Decree. 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 JM or JM'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, U.S. EPA, with concurrence by the State, determines that the remedial activity or any portion thereof has not been completed in accordance with this First Amended Consent Decree or that the performance standards have not been achieved, U.S. EPA will notify JM in writing of the activities that must be undertaken by JM pursuant to this First

Amended Consent Decree to complete the remedial activity and achieve the performance standards. U.S. EPA will set forth in the notice a schedule for performance of such activities consistent with the First Amended Consent Decree or require JM to submit a schedule to U.S. EPA for approval. JM 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.

76. Completion of the Work/Remedial Action. When JM determines that it has completed the Work (including O & M), it shall submit to U.S. EPA a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this First Amended Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of JM or JM'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, U.S. EPA, with concurrence by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, U.S. EPA will notify JM in writing of the activities that must be undertaken by JM pursuant to this Consent Decree to complete the Work. U.S. EPA will set forth in the notice a schedule for performance of such activities consistent with the First Amended Consent Decree or require JM to submit a schedule to U.S. EPA for approval. JM shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to its right to invoke the dispute resolution procedures. If U.S. EPA concludes, based on the initial or any

subsequent request for Certification of Completion by JM and concurrence by the State, that the Work has been performed in accordance with this First Amended Consent Decree, U.S. EPA will so notify the JM in writing.

XXIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

77. This First Amended Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent to entry of the Decree if comments received disclose facts or considerations which indicate that the Decree is inappropriate, improper or inadequate. JM consents to entry of this First Amended Consent Decree without further notice.

XXIV. NOTICE TO THE FEDERAL NATURAL RESOURCES TRUSTEE

78. Pursuant to Section 122(j) of CERCLA, 42 U.S.C. § 9622(j), U.S. EPA has given notice to the Federal natural resource trustee of the negotiations with potentially responsible parties regarding the scope of remedial action at the Facility.

XXV. EXHIBITS

79. The following Exhibits are attached to and incorporated into this First Amended Consent Decree:

Exhibit 1: First Explanation of Significant Differences

Exhibit 2: Second Explanation of Significant Differences

Exhibit 3: Facility Map

Exhibit 4: Sites 1, 2, 3, 4, 5, 6 and 7

Exhibit 5: Johns Manville Owned Property that is enrolled in the State of

Illinois Site Remedial Program ("SRP Property")

Exhibit 6: Areas of the Facility remediated under Phase I Work Plan and Johns Manville Waukegan Disposal Area

Exhibit 7: Phase I Groundwater and Surface Water Monitoring Well Locations

Exhibit 7A: Phase II Groundwater and Surface Water Monitoring Well Locations

Exhibit 8: Phase I Air Monitoring

Exhibit 9: Areas of the Facility to be remediated under Phase II Work Plans

Exhibit 10: Area of Facility Subject to Land Use Restrictions in Paragraph 25(a)

Exhibit 11: Notice - Johns Manville Waukegan Disposal Area NPL Site

Exhibit 12: Notice - SRP Property

Exhibit 13: Model Deed: Johns Manville Waukegan Disposal Area NPL Site

Exhibit 14: Model Deed: SRP Property

XXVI. SERVICE

80. JM shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this First Amended Consent Decree. JM hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

XXXVII. RETENTION OF JURISDICTION/ FINAL JUDGMENT

81. This Court retains jurisdiction over the subject matter of the First Amended Consent Decree and over JM for the duration of performance of the provisions of the Decree, for the purpose of enabling any of the Parties to apply to the Court for such further order, direction and relief as may be necessary for construction or modification of the Decree, to enforce compliance with its terms or to resolve disputes in accordance with Section XII (Dispute Resolution).

82. This First Amended Consent Decree and its exhibits constitute the final, complete, and exclusive agreement and understanding among the parties with respect to the settlement embodied in the First Amended Consent Decree. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this First Amended Consent Decree.

83. Upon approval and entry by the Court, this First Amended Consent Decree shall constitute a final judgment between and among the United States, the State and JM. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS __ DAY OF _____, 20__.

_____

United States District Judge

The undersigned parties enter into this First Amended Consent Decree in the matter of United States et al. v. Manville Sales Corporation (now known as Johns Manville), Civil Action No. 88C 630, N.D. Illinois, Eastern Division

FOR THE UNITED STATES OF AMERICA

Date: 2.2.04

Tom Sansonetti

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date: 2.4.04

Miriam L. Chesslin by STW

MIRIAM L. CHESSLIN
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Post Office Box 7611
Washington, DC 20044
(202) 514-1491

PATRICK FITZGERALD
United States Attorney for the
Northern District of Illinois

Date: _____

_____

LINDA WAWZENSKI
Assistant U.S. Attorney
219 S. Dearborn Street
Chicago, IL 60604
(312) 353-1994

The undersigned parties enter into this First Amended Consent Decree in the matter of United States et al. v. Manville Sales Corporation (now known as Johns Manville), Civil Action No. 88C 630, N.D. Illinois, Eastern Division

Date: 1.12.04

THOMAS V. SKINNER
Regional Administrator
U.S. Environmental Protection
Agency, Region 5

Date: 1-5-04

JANET R. CARLSON
Associate Regional Counsel
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604
(312) 886-6059

The undersigned parties enter into this First Amended Consent Decree in the matter of United States et al. v. Manville Sales Corporation (now known as Johns Manville), Civil Action No. 88C 630, N.D. Illinois, Eastern Division

FOR THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

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

Date: 12/2/03

BY: _____
ROSEMARIE CAZEAU
Chief, Environmental Bureau
Assistant Attorney General
188 West Randolph St
20th Floor
Chicago, IL 60601
(312) 814-3094

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

Date: 11/25/03

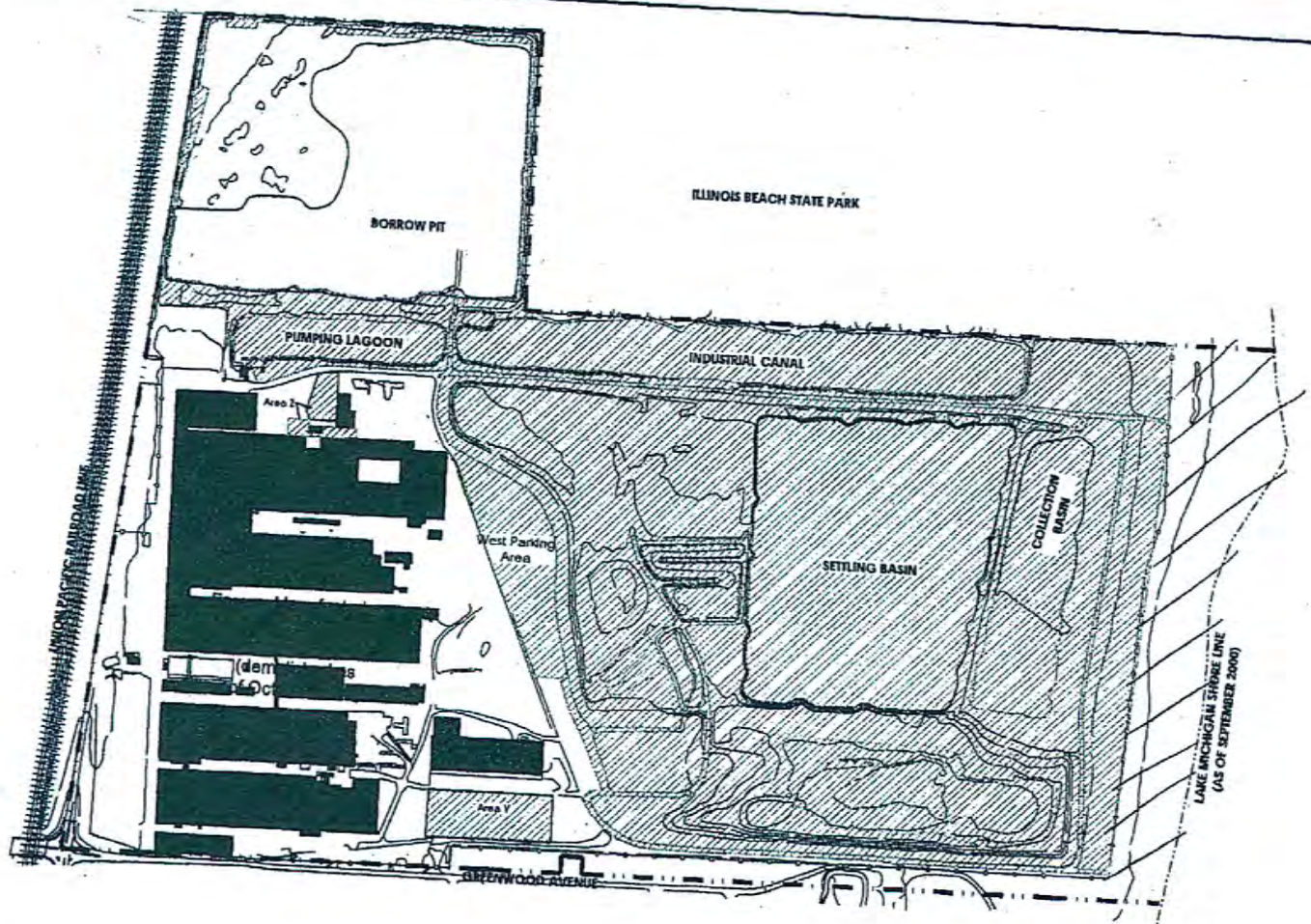
BY: _____
JOSEPH E. SVOBODA
Chief Counsel
Division of Legal Counsel
1021 Grand Avenue East
Springfield, Illinois 62794-9276
(217) 782-5544

The undersigned parties enter into this First Amended Consent Decree in the matter of United States et al. v. Manville Sales Corporation (now known as Johns Manville), Civil Action No. 88C 630, N.D. Illinois, Eastern Division

FOR JOHNS MANVILLE

12/17/03
Date

BRUCE D. RAY
Associate General Counsel
717 17th Street (80202)
P.O. Box 5108
Denver, Colorado 80217
(303) 978-3527



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August 2003, Revision 0

JOHNS MANVILLE
Waukegan, Illinois

FACILITY MAP

Exhibit 3 to First Amended Consent Decree in United States et al. v. Manville Sales Corporation (N.D. Ill. Civ. Action No. 88C 630)

ORIGINAL

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 5

ORIGINAL

IN THE MATTER OF:

Johns Manville
Southwestern Site Area
including Sites 3, 4, 5, and 6
Waukegan, Lake County, Illinois

Johns Manville and
Commonwealth Edison Company,

Respondents

ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON CONSENT
FOR REMOVAL ACTION

U.S. EPA Region 5
CERCLA Docket No. V-W- '07-C-870

Proceeding under Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. Sections 9604, 9606(a), 9607 and 9622

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I. JURISDICTION AND GENERAL PROVISIONS

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

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

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

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

II. PARTIES BOUND

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

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

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

III. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

l. "Parties" shall mean EPA and Respondents.

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

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

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

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

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

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

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

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

u. "State" means the State of Illinois.

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

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

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

IV. FINDINGS OF FACT

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

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

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

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

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

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

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

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

V. CONCLUSIONS OF LAW AND DETERMINATIONS

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

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

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

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

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

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

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

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

VI. SETTLEMENT AGREEMENT AND ORDER

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

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

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

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

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

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

VIII. WORK TO BE PERFORMED

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

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

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

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

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

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

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

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

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

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

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

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

16. Review of Plans.

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

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

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

18. Quality Assurance and Sampling.

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

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

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

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

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

20. Reporting.

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

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

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

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

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

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

22. Off-Site Shipments.

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

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

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

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

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

IX. SITE ACCESS

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

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

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

X. ACCESS TO INFORMATION

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

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

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

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

XI. RECORD RETENTION

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

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

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

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

XII. COMPLIANCE WITH OTHER LAWS

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

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

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

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

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

XIV. AUTHORITY OF ON-SCENE COORDINATOR

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

XV. PAYMENT OF RESPONSE COSTS

37. Payment for Past Response Costs.

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

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

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

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

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

38. Payments for Future Response Costs.

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

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

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

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

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

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

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

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

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

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

XVI. DISPUTE RESOLUTION

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

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

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

XVII. FORCE MAJEURE

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

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

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

XVIII. STIPULATED PENALTIES

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

48. Stipulated Penalty Amounts - Work.

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

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

$10,000.00	31st day and beyond

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

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

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

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

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

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

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

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

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

XIX. COVENANT NOT TO SUE BY EPA

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

XX. RESERVATIONS OF RIGHTS BY EPA

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

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

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

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

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

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

d. criminal liability;

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

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

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

XXI. COVENANT NOT TO SUE BY RESPONDENTS

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

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

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

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

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

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

XXII. OTHER CLAIMS

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

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

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

XXIII. CONTRIBUTION

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

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

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

XXIV. INDEMNIFICATION

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

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

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

XXV. INSURANCE

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

XXVI. FINANCIAL ASSURANCE

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

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

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

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

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

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

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

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

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

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

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

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

XXVII. MODIFICATIONS

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

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

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

XXVIII. NOTICE OF COMPLETION OF WORK

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

XXIX. SEVERABILITY/INTEGRATION/APPENDICES

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

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

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

XXX. NOTICES

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

As to U.S. EPA

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

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

As to the State of Illinois

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

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

As to Johns Manville:

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

As to Commonwealth Edison Company:

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

XXXI. EFFECTIVE DATE

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

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

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

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

EFFECTIVE DATE:

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

Agreed this 23rd day of May, 2007.

For Respondent Johns Manville

By Brent A Trapp

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.

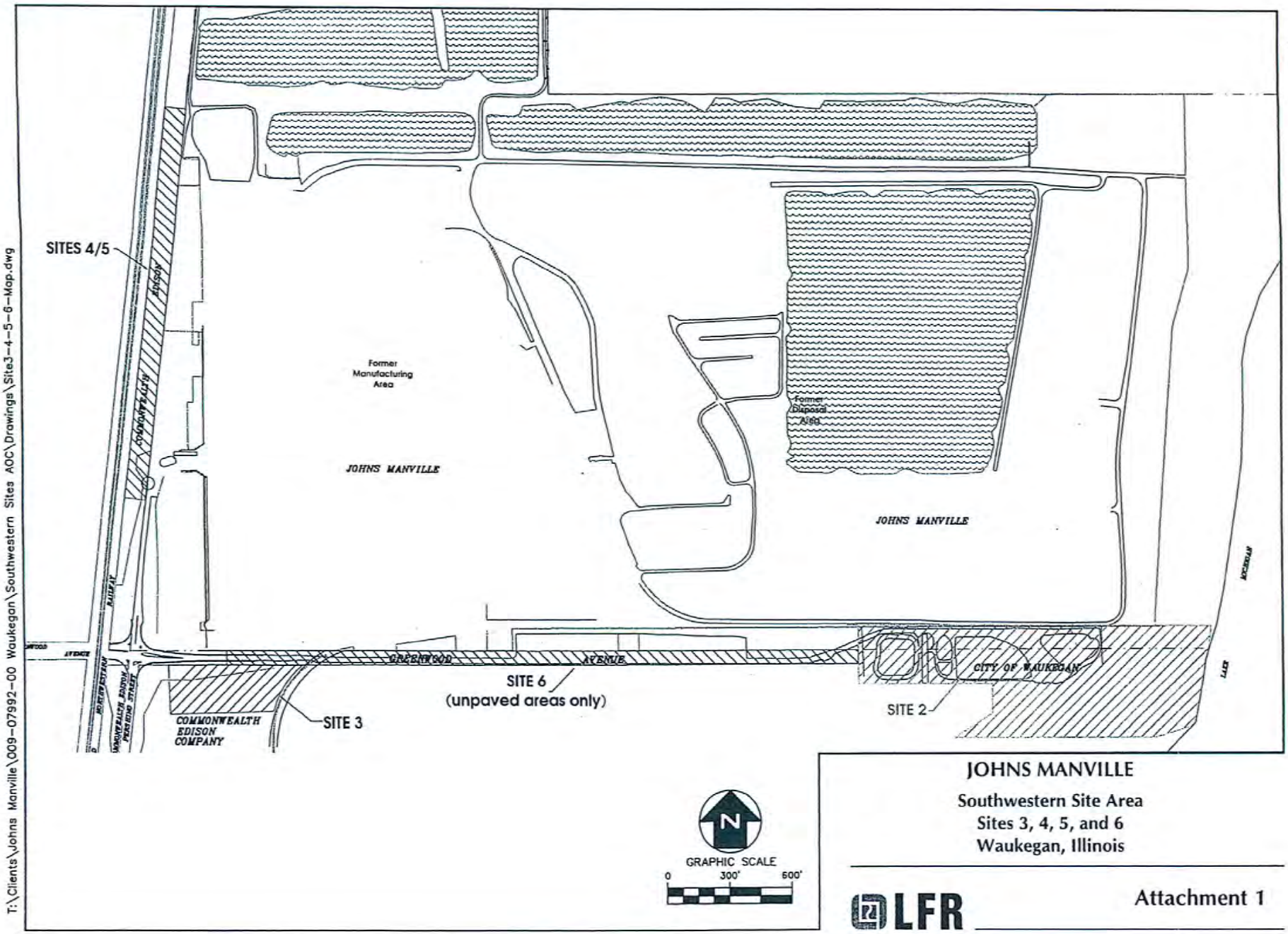
Agreed this 23rd day of May, 2007

For Respondent Commonwealth Edison Company

By Neena Hemmady

Title Manager Environmental

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



T:\Clients\Johns Manville\009-07992-00 Waukegan\Southwestern Sites AOC\Drawings\Site3-4-5-6-Map.dwg

JOHNS MANVILLE

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

LFR

Attachment 1

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter Of:	)	
	)	
JOHNS MANVILLE, a Delaware corporation,	)	
	)	
	)	
Complainant,	)	**PCB No. 14-3**
	)	
v.	)	
	)	
ILLINOIS DEPARTMENT OF TRANSPORTATION,	)	
	)	
	)	
Respondent.	)	

AFFIDAVIT OF BRENT TRACY

COMES NOW Brent Tracy being of lawful age and duly sworn upon his oath, and states:

1. I am over the age of 18 and competent to testify as to the matters set forth herein.
2. I am employed as Associate General Counsel for Johns Manville ("JM") and have personal knowledge of the facts set forth herein and state that they are true and correct to the best of my knowledge.
3. In responding to a request for information from EPA pursuant to Section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") related to the United States Environmental Protection Agency's ("EPA") investigation of asbestos contamination at Site 3, IDOT provided a map showing the approximate location of the detour road used during the construction of the ramp to the Amstutz Expressway at Greenwood Avenue. Attached hereto as Complainant's Exhibit A is a true and correct copy of the map as found when JM and Commonwealth Edison obtained a copy of IDOT's response to EPA from EPA.

4. Attached hereto as Complainant's Exhibit B is a true and correct copy of the First Amended Consent Decree (the "2004 Consent Decree") governing portions of the JM property in Waukegan, Illinois (the "Facility").
5. The boundaries of the area covered by the 2004 Consent Decree are depicted on a map attached as Exhibit 3 to the consent decree. A true and correct copy of this map is attached hereto as Complainant's Exhibit C.
6. On or about January 2007, EPA initiated a separate investigation of asbestos contamination on the "Southwestern Site Area," which consists of property located on or adjacent to the southern and western property lines of the JM property and outside of the 2004 Consent Decree's definition of the "Facility."
7. On June 11, 2007, JM entered into an Administrative Order on Consent ("AOC") with the EPA providing for the performance of a "removal action" for the Southwestern Site Area. Attached hereto as Complainant's Exhibit D is a true and correct copy of the AOC.
8. The State of Illinois, the Illinois Environmental Protection Agency, and the Illinois Department of Transportation ("IDOT") are not parties to the AOC.
9. This administrative settlement contained in the AOC does not require court approval and has not been approved or entered by any state or federal court.
10. The AOC is not currently under review by any state or federal court or administrative tribunal.
11. The "Global Settlement Order" entered by the Southern District of New York on October 28, 1994 in *Manville Corporation v. United States*, No. 91 Civ. 6683, was intended to address certain respects of JM's liability to EPA under CERCLA in light of JM's bankruptcy filed in 1981 and consummated in 1988.

12. Neither Illinois nor IDOT were parties to the Global Settlement Order, and this Global Settlement Order does not address violations of the Illinois Environmental Protection Act.

Further, affiant sayeth not.

Brent Tracy

Subscribed and sworn before me this 11 day of October, 2013.

Notary Public

DAYNA METZ
NOTARY
PUBLIC
STATE OF COLORADO