

UNITED STATES DEPARTMENT OF JUSTICE
AND
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 5

IN THE MATTER OF:

Docket No. V-W-25-C-001

**Brandon Road Interbasin Project
Joliet, Illinois**

ADMINISTRATIVE SETTLEMENT
AGREEMENT FOR RESPONSE
ACTION BY PROSPECTIVE
PURCHASER

Illinois Department of Natural Resources,

Purchaser

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I. GENERAL PROVISIONS

1. This Administrative Settlement Agreement for Response Action by Prospective Purchaser (“Settlement”) is entered into voluntarily by the United States of America (“United States”) on behalf of the United States Environmental Protection Agency (“EPA”) and the prospective purchaser, Illinois Department of Natural Resources (“Purchaser”). This Settlement provides for the performance of a response action by Purchaser at or in connection with the property located at 1800 Channahon Road, in Joliet, Will County, Illinois.

2. This Settlement is entered into under the authority of the Attorney General to compromise and settle claims of the United States, consistent with the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) and the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments (“RCRA”). EPA is proceeding under the CERCLA authority vested in the President of the United States and delegated to the Administrator of EPA and further delegated to the undersigned EPA Regional official. This Settlement is also issued under the RCRA authority vested in the President of the United States and delegated to the Administrator of the EPA and redelegated to the undersigned Regional Official.

3. EPA has notified the State of Illinois (the “State”) of this action.

4. Purchaser agrees to undertake all actions required by this Settlement. In exchange for Purchaser’s performance of the Work, this Settlement resolves Purchaser’s potential CERCLA and RCRA liability in accordance with the covenants not to sue in Section XIV (Covenants by United States), subject to the reservations and limitations contained in Section XIV. This Settlement is fair, reasonable, in the public interest, and consistent with CERCLA and RCRA.

5. The United States and Purchaser (collectively, the “Parties”) recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Purchaser in accordance with this Settlement do not constitute an admission of any liability. Purchaser does not admit and retains the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this Settlement, the validity of the statement of facts and determinations in Sections IV (Statement of Facts) and V (Determinations). Purchaser agrees not to contest the basis or validity of this Settlement or its terms, or the United States’ right to enforce this Settlement.

II. PARTIES BOUND

6. This Settlement is binding upon the United States and upon Purchaser and its successors. Unless the United States otherwise consents, any change in ownership or corporate or other legal status of Purchaser does not alter Purchaser’s responsibilities under this Settlement. Except as provided in ¶ 45, Transfer of the Property or any portion thereof does not alter any of Purchaser’s obligations under this Settlement. Purchaser’s responsibilities under this Settlement cannot be assigned except under a modification executed in accordance with ¶ 87.

7. Purchaser shall provide notice of this Settlement to officers, directors, employees, agents, contractors, subcontractors, or any person representing Purchaser with respect to the Property or the Work. Purchaser is responsible for ensuring that such persons act in accordance with the terms of this Settlement.

III. DEFINITIONS

8. Terms not otherwise defined in this Settlement have the meanings assigned in CERCLA and/or RCRA or in regulations promulgated under CERCLA and/or RCRA. Whenever the terms set forth below are used in this Settlement, the following definitions apply:

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“Coal combustion residuals” or “CCR” is defined in 40 C.F.R. § 257.53 and means fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers.

“Contaminants of Concern” is defined in 35 Ill Adm. Code 740.120 and means any contaminant that is expected to be present at the site based upon past and current land uses and associated releases that are known to the Remediation Applicant based upon reasonable inquiry.

“Day” or “day” means a calendar day. In computing any period under this Settlement, the day of the event that triggers the period is not counted and, where the last day is not a working day, the period runs until the close of business of the next working day. “Working day” means any day other than a Saturday, Sunday, or federal or State holiday.

“DOJ” means the United States Department of Justice.

“Effective Date” means the effective date of this Settlement as provided in Section XXVI.

“EPA” means the United States Environmental Protection Agency.

“Existing Contamination” means:

a. any hazardous substances, pollutants or contaminants or Waste Material present or existing on or under the Property prior to or as of the Effective Date;

b. any hazardous substances, pollutants or contaminants or Waste Material that migrated from the Property prior to the Effective Date; and

c. any hazardous substances, pollutants or contaminants or Waste Material present or existing at the Site as of the Effective Date that migrate onto, under or from the Property after the Effective Date.

“Fund” means the Hazardous Substance Superfund established under section 9507 of the Internal Revenue Code, 26 U.S.C. § 9507.

“Illinois EPA” or “IEPA” means the Illinois Environmental Protection Agency.

“Illinois Site Remediation Program” or “SRP” means the program administered by the State of Illinois under 35 Ill. Adm. Code 740 which provides standards and procedures for voluntary remediation activities (also known as the Illinois Voluntary Program).

“IDNR” means the Illinois Department of Natural Resources.

“Including” or “including” means “including but not limited to.”

“National Contingency Plan” or “NCP” means the National Oil and Hazardous Substances Pollution Contingency Plan promulgated under section 105 of CERCLA, codified at 40 C.F.R. part 300, and any amendments thereto.

“Paragraph” or “¶” means a portion of this Settlement identified by an Arabic numeral or an upper- or lower-case letter.

“Parties” means the United States and Purchaser.

“PM” means the Project Manager designated by EPA to oversee the Work at the Site.

“Property” means that portion of the Site, located at 1800 Channahon Road, in Joliet, Will County, Illinois encompassing approximately 2.32 acres of land of varying width but generally described as a 70 foot wide strip of land on the upland right descending bank, and a parcel of 100 feet width as measured perpendicular to the Westerly right of way line of Brandon Road containing 0.43 acre more or less, to be acquired by Purchaser, which is depicted generally in Appendix B, and as described in the legal descriptions in Appendix B.

“Purchaser” means the Illinois Department of Natural Resources as the prospective purchaser of the Property.

“RCRA” means the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901-6992k (also known as the Resource Conservation and Recovery Act).

“Response Action” means the response action required under this Settlement, including the Remedial Action described in Paragraph 24.

“Section” means a portion of this Settlement identified by a Roman numeral.

“Settlement” means this Administrative Settlement Agreement for Response Action by Prospective Purchaser, all appendixes attached hereto (listed in Section XIX). If there is a conflict between a provision in Sections I through XXVI and a provision in any appendix, the provision in Sections I through XXVI controls.

“Site” means the Joliet Generating Station, owned by Midwest Generation, located at 1800 Channahon Road, in Joliet, Will County, Illinois. The Site includes all areas to which hazardous substances and/or pollutants or contaminants have been deposited, stored, disposed of,

placed, or otherwise come to be located and depicted generally on the map attached as Appendix A.

“State” means the State of Illinois.

“Transfer” means to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

“Transferee” means the party to whom a Transfer is made.

“United States” means the United States of America and each department, agency, and instrumentality of the United States, including EPA.

“Waste Material” means (a) any “hazardous substance” under section 101(14) of CERCLA; (b) any pollutant or contaminant under section 101(33) of CERCLA; (c) any “solid waste” under section 1004(27) of RCRA; (d) any “hazardous waste” under section 1004(5) of RCRA; (e) any “hazardous substance” as defined in title 35 section 750.105 of the Illinois Environmental Protection Act; (f) any special waste as defined in title 35 section 808.110 of the Illinois Environmental Protection Act; and (g) any PCB waste as defined in 40 C.F.R. § 761.3 including PCB bulk product waste and PCB remediation waste.

“Work” means all obligations of Purchaser under Sections VI (Coordination and Supervision) through X (Indemnification and Insurance).

“Work Takeover” means EPA’s assumption of the performance of any of the Work in accordance with ¶ 38.

IV. STATEMENT OF FACTS

9. Brandon Road Lock and Dam was constructed in the early 1930s. Aerial photographs and topographic maps indicate that the land adjacent to the lock and dam was used in the 1930s for sediment/rock handling/disposal associated with the construction of the lock and dam. The earliest aerial photograph, from 1939, appears to show sediment discharge areas and a pond or wet area.

10. Aerial photographs show that throughout the 1940s and 1950s, the pond area increased in size (for unknown reasons and by unknown hands) until by the early 1960s a pond appears to cover the majority of the Property. By the 1970s, the area appears to be in the process of being filled in. In the 1970s the Property was covered with fill and vegetated. By the early 1980s, the land appears vacant and vegetated. The Property appears in a similar condition from the late 1980s until now.

11. The Site is now owned by Midwest Generation, a power supply company. The Site had previously been owned by Commonwealth Edison and was part of a property transfer to Midwest Generation, along with the Joliet 29 Generating Station, Joliet 9 Generating Station, and boilers 7 and 8. These assets constituted the “Joliet Generating Station” a power plant originally

constructed circa 1917 as a coal fired power plant. The plant was converted to natural gas in 2016 and was used for “peaking” until it closed in September 2023.

12. A real estate disclosure statement from Commonwealth Edison for the property transfer to Midwest Generation in 1999 acknowledges that the Site was used for the generation, manufacture, processing, transportation, treatment, storage or handling of “hazardous substances” as defined by the Illinois Environmental Protection Act, as well as for petroleum and hazardous waste as defined under RCRA or special waste as defined in the Illinois Environmental Protection Act at 35 Ill. Adm. Code 808.110. The disclosure also acknowledges that the Site contains a landfill used to transfer or manage waste, hazardous waste, hazardous substances, or petroleum, as well as acknowledging the presence of surface impoundments, waste piles, underground storage tanks, above ground storage tanks, wastewater treatment facilities, and container storage areas. The disclosure is for multiple parcels and the waste features were not associated with specific parcels in the disclosure.

13. Prior to its conversion to natural gas in 2016, the Joliet Generating Station generated coal ash. Coal ash, also referred to as coal combustion residuals (“CCR”) is produced from the burning of coal in coal-fired power plants. The Site currently maintains CCR ponds for handling ash or other materials left from power generation. Only one pond remains in service.

14. The Illinois Environmental Protection Agency (“Illinois EPA”) has alleged that the coal ash ponds are a source of groundwater contamination. Groundwater contaminants that may be associated with the coal ash ponds include ammonia, arsenic, barium, boron, chloride, copper, fluoride, molybdenum, nitrates, sodium, sulfate, and an elevated pH. It is assumed that if the Site also contains ash waste as indicated by the aerial photos, the groundwater conditions may be similarly impacted as the area around the current ponds.

15. The Joliet Generating Station is subject to an NPDES permit, IL0064254, for its on-site wastewater treatment. Included in that permit is Outfall 003 which is adjacent to the Property, and which the permit holder Midwest Generation identified as being for the “abandoned ash landfill.”

16. The channel downstream of the Brandon Road Lock was dredged by the U.S. Army Corps of Engineers (“USACE”) 11 times during the period from 1974 to 2001. The dredged material was placed on either side of the lock tailwater, but more recent placements were on the east descending bank which includes the Property.

17. Sediment data collected by the Metropolitan Water Reclamation District (“MWRD”) from stations 2 and 5 in 2008, 2009 and 2011 are the most recent and proximate to the Site. Station 2 is located just below the Lockport Lock and Dam and Station 5 is located just below the Brandon Road Lock and Dam. These samples exceed the Illinois Clean Construction Demolition Debris (CCDD) reference criteria for five parameters: cadmium, chromium, iron, lead, and manganese. Illinois Tiered Approach to Corrective Action Objectives (TACO) reference criteria were exceeded for lead. Sediment data collected by Northern Illinois Hydropower (NIH) in 2008 exceeded Illinois TACO reference criteria for arsenic, chromium, lead and mercury. NIH also detected the presence of Aroclor 1242, a PCB congener, at concentrations up to 2.82 mg/kg.

Sediment data collected by USACE in 2002 detected total PCBs at concentrations up to 6.4 mg/kg.

18. Purchaser intends to acquire the Property and remediate it under the Illinois Environmental Protection Agency Site Remediation Program (“SRP”). Purchaser will then provide access to the USACE for use of the Property in the construction of the Brandon Road Interbasin Project. The Brandon Road Interbasin Project is a complex ecosystem protection effort designed to prevent upstream movement of invasive carp and other aquatic nuisance species into the Great Lakes from the Illinois Waterway. Brandon Road Lock and Dam near Joliet, Illinois, has been identified as the critical pinch point where layered technologies could be used to prevent movement of invasive carp populations into the Great Lakes.

19. Midwest Generation has declined to provide Purchaser with access to its property. Therefore, the full nature and extent of contamination on the Property is unknown.

20. On May 8, 2024, EPA finalized changes to the CCR regulations for inactive surface impoundments at inactive electric utilities, referred to as “legacy CCR surface impoundments,” and established requirements for CCR management units at active CCR facilities and at inactive CCR facilities with a legacy CCR surface impoundment (89 FR 38950). The rule went into effect on November 8, 2024.

21. The Property may be a CCR management unit as defined in 40 CFR § 257.53 and be subject to corrective action during Midwest Generation’s ownership.

V. DETERMINATIONS

22. Based on the Statement of Facts set forth above, and the administrative record, EPA has determined that:

a. The Site, which includes the Property, is a “facility” as defined by section 101(9) of CERCLA.

b. The contamination to be found at the Site and/or the Property, as identified in the Statement of Facts above, includes “hazardous substances” as defined by section 101(14) of CERCLA.

c. Purchaser is a “person” as defined by section 101(21) of CERCLA and Section 1004(15) of RCRA.

d. The conditions described in ¶¶ 9-21 of the Statement of Facts above constitute an actual or threatened “release” of a hazardous substance from the Site and/or the Property as defined by section 101(22) of CERCLA.

e. Certain wastes and constituents previously found at the Site and/or the Property are Hazardous Wastes pursuant to Sections 1004(5) and 3001 of RCRA.

f. The Work is necessary to protect the public health, welfare or the environment.

VI. COORDINATION AND SUPERVISION

23. a. EPA designates Jennifer Stanhope of Region 5's Land, Chemicals and Redevelopment Division, as its Project Manager ("PM"). All deliverables, notices, notifications, proposals, reports, and requests specified in this Settlement must be in writing, unless otherwise specified, and be submitted by email to the parties listed in Paragraph 85. The PM is responsible for overseeing Purchaser's implementation of this Settlement. The PM has the authority vested in an On-Scene Coordinator by the NCP to halt, conduct, or direct any Work required by this Settlement, or to direct any other removal action undertaken at the Site. Absence of the PM from the Property is not cause for stoppage of Work unless specifically directed by the PM.

b. Purchaser will employ the services of Kaskaskia Engineering Group LLC, a qualified geotechnical engineering firm/contractor currently under retainer by USACE, or another qualified geotechnical engineering firm/contractor subject to EPA approval, to perform a comprehensive site investigation of the Property pursuant to 35 Ill. Adm. Code 740.420 and ¶ 24.a.(1). The site investigation must include the collection of samples to define the extent of Waste Material. Purchaser shall notify EPA of the names, titles, addresses, telephone numbers, email addresses, and qualifications of this contractor or subcontractors within 90 days after the Effective Date. Based on the results of the comprehensive site investigation of the Property required by ¶ 24.a.(1), Purchaser shall solicit and select a qualified Professional Engineering firm and construction contractor or contractors, for a design-build contract to properly remediate the Property in accordance with the Illinois SRP and ¶ 24.a. Purchaser shall also notify EPA of the names, titles, contact information, and qualifications of any other contractors or subcontractors retained to perform the Work at least 30 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 Purchaser. If EPA disapproves of a selected contractor or subcontractor, Purchaser shall retain a different contractor or subcontractor and shall notify EPA of that contractor's or subcontractor's name, title, contact information, and qualifications within 30 days after EPA's disapproval. The qualifications of the persons undertaking the Work for Purchaser are subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and that they do not have a conflict of interest with respect to the project.

c. Purchaser has designated Lindell Loy as its Project Coordinator who will be responsible for administration of all actions by Purchaser required by this Settlement and shall submit to EPA within 30 days after the Effective Date the designated Project Coordinator's title, address, telephone number, email address, and qualifications. Purchaser will ensure, to the greatest extent possible, that the Project Coordinator is present on the Property or readily available during the Work. EPA retains the right to disapprove of a designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Purchaser shall retain a different Project Coordinator and shall notify EPA of that person's name, title, contact information, and qualifications within 30 days following EPA's disapproval. Notice or communication relating to this Settlement from EPA to Purchaser's Project Coordinator constitutes notice or communication to Purchaser. Purchaser has the right, subject to this Paragraph, to change its designated Project Coordinator. Purchaser shall notify EPA 30 days before such a change is made. The initial notification by Purchaser may be made orally to EPA but shall be promptly followed by a written notice.

VII. RESPONSE ACTION TO BE PERFORMED

24. a. Purchaser shall perform all actions necessary to implement, maintain, and monitor the effectiveness of the Response Action all in accordance with this Settlement and all EPA-approved, conditionally approved, or modified deliverables as required by this Settlement. Purchaser shall enroll the Property in the Illinois SRP within 30 days of acquisition of the Property and conduct a comprehensive site investigation of the Property consistent with subparagraph (1) below. Based on the results of the comprehensive site investigation Purchaser shall conduct a Remedial Action that generally includes the components described in subparagraphs (2) through (6) below.

(1) Conduct a comprehensive site investigation pursuant to 35 Ill. Adm. Code 740.420, including, but not limited to completing geotechnical and environmental investigations on the Property to determine the nature, concentration, direction and rate of movement, and extent of any soil and/or groundwater contamination. The investigations must include the collection of samples to define the extent of Waste Material;

(2) Address the presence of any Contaminants of Concern requiring remediation pursuant to the SRP;

(3) Construct a barrier to facilitate excavation and removal of Waste Material;

(4) Excavate all Waste Material, removing it from the Site, and properly disposing of it at a facility permitted to accept it, based upon waste profile;

(5) Relocate and extend a storm sewer; and

(6) Backfill with clean fill.

b. Purchaser shall submit to EPA for review and approval the Remedial Action Plan required under 35 Ill. Adm. Code 740.450 within 30 days of its approval by Illinois EPA. In addition to describing the actions required pursuant to the SRP, the Remedial Action Plan must describe the Response Actions outlined in ¶ 24.a subparagraphs (2) through (6). If a remedial decision is made to take no action or limited action in a report other than the Remedial Action Plan, Purchaser shall submit that report to EPA for review and approval within 30 days of submission to the Illinois EPA. The approvals by EPA are separate and distinct from the approval of the Remedial Action Plan by Illinois EPA required by 35 Ill. Adm. Code 740.505.

25. Purchaser shall complete all activities required by the Illinois Site Remediation Program and attain a No Further Remediation (NFR) Letter for the Property from Illinois EPA under 35 Ill. Adm. Code 740.605. Purchaser shall obtain a comprehensive NFR Letter, reflecting a comprehensive site investigation pursuant to 35 Ill. Adm. Code 740.420 and remediation of all Contaminants of Concern.

26. Upon request, Purchaser shall provide to EPA sampling and tests results and other data obtained or generated by or on behalf of Purchaser or in connection with the implementation

of this Settlement. Any sampling and test results should be submitted in standard regional Electronic Data Deliverable (“EDD”) format. See Region 5 EDD requirements at <https://www.epa.gov/superfund/region-5-superfund-electronic-data-submission>. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.

27. **Community Involvement:** Purchaser shall participate in community involvement activities, including participation in (a) the preparation of information regarding the Response Action to be Performed for dissemination to the public (including compliance schedules and progress reports), with consideration given to the specific needs of the community, including translated materials and mass media and/or Internet notification, and (b) public meetings that may be held or sponsored by EPA or Illinois EPA to explain activities at or relating to the Site.

28. **Deliverables:** Purchaser shall submit all deliverables to EPA in electronic form, unless otherwise specified by the PM.

29. **Approval of Deliverables.** After review of the Remedial Action Plan and any other deliverable required to be submitted for EPA approval under this Settlement, EPA shall: (a) approve, in whole or in part, the deliverable; (b) approve the submission upon specified conditions and/or require revisions to the deliverable; (c) disapprove, in whole or in part, the deliverable and require revisions to the deliverable; or (d) any combination of the foregoing. If EPA requires revisions, EPA will provide a deadline for the resubmission, and Purchaser shall submit the revised deliverable by the required deadline. Once approved or approved with conditions, Purchaser shall implement the Remedial Action Plan or other deliverables in accordance with the EPA-approved schedule. Upon approval or subsequent modification by EPA of any deliverable, or any portion thereof: (1) such deliverable, or portion thereof, and any subsequent modifications, will be incorporated into and enforceable under this Settlement; and (2) Purchaser shall take any action required by such deliverable, or portion thereof. Purchaser shall not commence or perform any Work except in conformance with the terms of this Settlement. This approval process is separate and distinct from Illinois EPA’s approval process under the Illinois SRP.

30. **Permits:** Nothing in this Settlement constitutes a permit issued under any federal or state statute or regulation.

31. **Emergency Response.** If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Property that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Purchaser shall: (a) immediately take all appropriate action to prevent, abate, or minimize such release or threat of release; (b) immediately notify the EPA Regional Duty Officer at 312-353-2000 of the incident or Property conditions; and (c) take such actions in consultation with the PM, IEPA or authorized EPA officer and in accordance with all applicable provisions of this Settlement.

32. **Release Reporting.** Upon the occurrence of any event during performance of the Work that Purchaser is required to report under CERCLA § 103 or section 304 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11004, Purchaser shall

immediately orally notify the PM or, in the event of their unavailability, the EPA Regional Duty Officer at 312-353-2000 and the National Response Center at (800) 424-8802.

33. **Progress Reports.** Commencing 60 days after the effective date of this Settlement, and until issuance of a notice of completion of work under ¶ 36, Purchaser shall submit written progress reports to EPA on a quarterly basis, or as otherwise directed in writing by the PM. These reports should describe all significant developments during the preceding period, including the actions performed and any problems encountered, and the developments anticipated during the next reporting period.

34. **No Further Remediation letter under the Illinois SRP:** Within 45 days of Purchaser's receipt of the NFR Letter, Purchaser shall submit the NFR Letter to the Office of the Recorder or the Registrar of Titles for Will County, in accordance with 35 Ill. Adm. Code 740.620. Once the NFR Letter is accepted and recorded in accordance with Illinois law Purchaser shall submit a copy of the NFR Letter, as recorded, within 30 days after recording to EPA.

35. **Final Report.** Within 60 days after receipt of the NFR Letter under the Illinois SRP, other than continuing obligations listed in ¶ 36, Purchaser shall submit for EPA review a final report regarding the Work.

a. The final report must:

- (1) summarize the actions taken to comply with this Settlement;
- (2) list the quantities and types of materials removed off-site or handled on-site;
- (3) describe the removal and disposal options considered for those materials; and
- (4) identify the ultimate destination(s) of those materials.

b. The final report must also include the following certification signed by a Signatory for Purchaser or Purchaser's Project Coordinator: "I certify under penalty of perjury that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than 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."

36. **Notice of Completion of Work**

a. If after reviewing the final report under ¶ 35, EPA determines that all Work, other than the continuing obligations, has been fully performed in accordance with this

Settlement, EPA will provide written notice to Purchaser. A notice of completion of work is not a protectiveness determination and does not affect the following continuing obligations:

- (1) obligations under Section VIII (Property Requirements); and,
- (2) obligations under Section XVII (Records).

b. If EPA determines that any Work other than the continuing obligations has not been completed in accordance with this Settlement, EPA will notify Purchaser and provide a list of the deficiencies. Purchaser shall promptly correct all such deficiencies. Purchaser shall submit a modified final report upon completion of the deficiencies.

37. **Compliance with Applicable Law.** Nothing in this Settlement affects Purchaser's obligations to comply with all applicable state and federal laws and regulations. Upon approval of the Final Report, EPA deems the activities conducted in accordance with this Settlement, to be consistent with the NCP and CCR corrective action and closure requirements under 40 C.F.R. part 257, subpart D.

38. **Work Takeover**

a. If EPA determines that Purchaser: (1) has ceased to implement any of the Work required under this Section, (2) is seriously or repeatedly deficient or late in its performance of the Work required under this Section, or (3) is performing the Work required under this Section in a manner that may cause an endangerment to public health or welfare or the environment, EPA may issue a notice of Work Takeover to Purchaser, including a description of the grounds for the notice and a period of time ("Remedy Period") within which Purchaser shall remedy the circumstances giving rise to the notice. The Remedy Period will be 20 days, unless EPA determines in its unreviewable discretion that there may be an endangerment, in which case the Remedy Period will be 10 days.

b. If, by the end of the Remedy Period, Purchaser does not remedy to EPA's satisfaction the circumstances giving rise to Work Takeover Notice, EPA may notify Purchaser and, as it deems necessary, commence a Work Takeover.

c. EPA may conduct the Work Takeover during the pendency of any dispute under Section XII but shall terminate the Work Takeover if and when: (1) Purchaser remedies, to EPA's satisfaction, the circumstances giving rise to the notice of Work Takeover; or (2) upon the issuance of a final determination under Section XII that EPA is required to terminate the Work Takeover.

VIII. PROPERTY REQUIREMENTS

39. **Notices.** Purchaser shall provide all legally required notices with respect to the discovery or release of any hazardous substance at the Property that occurs after the Effective Date.

40. **Non-Interference and Access.** Purchaser shall refrain from using the Property in any manner that EPA or IEPA determines will pose an unacceptable risk to public health or

welfare or the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the response action. Upon acquisition of the Property, Purchaser shall provide full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration at the Property (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response actions or natural resource restoration at the Property). Commencing on the Effective Date, Purchaser shall provide EPA, the State, and their representatives, including contractors, and subcontractors, access to the Property, and to any other property owned or controlled by Purchaser that is part of the Site, at all reasonable times to conduct any activity regarding the Settlement at the Property, including the following:

- a. implementing the Work and overseeing compliance with the Settlement;
- b. conducting investigations of contamination at or near the Property;
- c. assessing the need for planning, implementing, or monitoring additional response actions at or near the Property;
- d. implementing a response action by persons performing under EPA or State oversight;
- e. determining whether the Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under this Settlement; and
- f. implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions and any institutional controls.

41. **Appropriate Care.** Commencing on the Effective Date, Purchaser shall exercise appropriate care with respect to hazardous substances found at the Property by taking reasonable steps to stop any continuing release; prevent any threatened future release; and prevent or limit human, environmental or natural resource exposure to any previously released hazardous substance.

42. **Land, Water, or Other Resource Use Restrictions**

a. Purchaser shall: (1) remain in compliance with any land use restrictions established in connection with any response action at the Property; (2) implement, maintain, monitor, and report on institutional controls; and (3) not impede the effectiveness or integrity of any institutional control employed at the Property in connection with a response action.

43. **Notice to Successors-in-Title**

a. Purchaser shall within 15 days after the Effective Date, submit to EPA for approval a notice to be filed in the appropriate land records office regarding the Property. The notice must: (1) include a proper legal description of the Property; (2) provide notice to all successors-in-title that: (i) the Property is part of, or affected by, the Site, (ii) EPA has selected a response action for the Property, and (iii) Purchaser has entered into an Administrative Settlement Agreement requiring implementation of this response action and compliance with the property

requirements in this Section; and (3) identify the name, Docket number, and Effective Date of this Settlement. Purchaser shall record the notice within 10 days after EPA's approval of the notice and submit to EPA, within 10 days thereafter, a certified copy of the recorded notice.

b. Purchaser shall, prior to entering into a contract to Transfer any of the Property, or 60 days prior to transferring any of the Property, whichever is earlier:

- (1) notify the proposed Transferee that EPA has selected a response action regarding the Property, that Purchaser has entered into an Administrative Settlement Agreement requiring implementation of such response action and compliance with the requirements at the Property in this Section (identifying the name, Docket number, and the Effective Date of this Settlement); and
- (2) notify EPA of the name and address of the proposed Transferee and provide EPA with a copy of the above notice that it provided to the proposed Transferee, and notify EPA if Purchaser seeks termination of its obligations in accordance with ¶ 45.

44. For so long as Purchaser is an owner or operator of any of the Property, Purchaser shall require that Transferees and other parties with rights to use any of the Property provide access and cooperation to EPA and the IEPA and their authorized officers, employees, representatives, and all other persons performing response actions under EPA or IEPA oversight. Purchaser shall require that Transferees and other parties with rights to use any of the Property implement and comply with any land use restrictions and institutional controls on the Property in connection with any response action, and not contest EPA's authority to enforce any land use restrictions and institutional controls on any of the Property.

45. Upon sale or other conveyance of any of the Property, Purchaser shall require that each Transferee or other holder of an interest in any of the Property agrees to comply with Section XVII (Records) and this Section and not contest EPA's or IEPA's authority to enforce any land use restrictions and institutional controls on any of the Property. After EPA's issuance of a notice of completion of work under ¶ 36 and Purchaser's written demonstration to EPA that a Transferee or other holder of an interest in any of the Property agrees to comply with the requirements of this ¶ 45, EPA will notify Purchaser that its obligations under this Settlement, except obligations under Section XVII, are terminated with respect to any of the Property.

46. Purchaser shall provide a copy of this Settlement to any current lessee, sublessee, and other party with rights to use any of the Property as of the Effective Date.

47. Notwithstanding any provision of this Settlement, EPA retains all of its access authorities and rights, as well as all of its rights to require land, water, or other resource use restrictions and institutional controls, including related enforcement authorities, under CERCLA, RCRA, and any other applicable statute or regulations.

IX. FINANCIAL ASSURANCE

48. To ensure completion of the Work required under Section VII (Response Action to be Performed), Purchaser shall secure financial assurance, initially in the amount of \$30M (“Estimated Cost of the Work”), for the benefit of EPA.

49. The financial assurance must: (a) be one or more of the mechanisms listed in ¶ 50, in a form substantially identical to the relevant sample documents available from EPA; and (b) be satisfactory to EPA. As of the date EPA signs this Settlement, the sample documents can be found under the “Financial Assurance - Settlements” category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>. Purchaser may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, insurance policies, or some combination thereof.

50. The following are acceptable mechanisms:

- a. a surety bond guaranteeing payment, performance of the Work, or both, 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; or
- b. an irrevocable letter of credit, payable to EPA or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency; or
- c. a trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency; or
- d. a policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency; or
- e. a Certificate of Financial Assurance to be executed by Purchaser’s Chief Financial Officer.

51. Purchaser has selected, and EPA has found satisfactory, a Certificate of Financial Assurance to be executed by Purchaser’s Chief Financial Officer as the form of financial assurance. Purchaser shall submit a copy of the executed Certificate of Financial Assurance to EPA within 30 days of the effective date.

52. Purchaser shall diligently monitor the adequacy of the financial assurance. If Purchaser becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, Purchaser shall notify EPA of such information within 7 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify Purchaser of such determination. Purchaser shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure

and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for Purchaser, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. Purchaser shall follow the procedures of ¶ 54 in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Purchaser's inability to secure financial assurance in accordance with this Section does not excuse performance of any other requirement of this Settlement.

53. Access to Financial Assurance

a. If EPA issues a notice of a Work Takeover under ¶ 38, then, in accordance with any applicable financial assurance mechanism, EPA may require: (1) the performance of the Work; and/or (2) that any funds guaranteed be paid in accordance with ¶ 53.d.

b. If EPA is notified that the issuer of a financial assurance mechanism intends to cancel the mechanism, and Purchaser fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with ¶ 53.d.

c. If, upon issuance of a notice of a Work Takeover under ¶ 38, EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism, whether in cash or in kind, to continue and complete the Work, then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Purchaser shall, within 30 days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this ¶ 53.d must be, as directed by EPA: (1) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (2) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the Fund or into the Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the Fund.

54. Modification of Amount, Form, or Terms of Financial Assurance. On any anniversary of the Effective Date, or at any other time agreed to by the Parties, Purchaser may submit a request to change the form, terms, or amount of the financial assurance mechanism. Purchaser shall submit any such request to EPA in accordance with ¶ 51, and shall include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify Purchaser of its decision regarding the request. Purchaser may modify the form, terms, or amount of the financial assurance mechanism only: (a) in accordance with EPA's approval; or (b) in accordance with any resolution of a dispute under Section XII. Purchaser may initiate dispute resolution under Section XII regarding EPA's decision about a request to change the amount of financial assurance. Any decision made by EPA on a request to change the form or

terms of a financial assurance mechanism shall not be subject to challenge by Purchaser pursuant to the dispute resolution provisions under Section XII. Purchaser shall submit to EPA, within 30 days after receipt of EPA's approval or consistent with the terms of the resolution of the dispute, documentation of the change to the form, terms, or amount of the financial assurance instrument.

55. **Release, Cancellation, or Discontinuation of Financial Assurance.** Purchaser may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a notice of completion of work under ¶ 36; (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation, or discontinuance of any financial assurance, in accordance with the agreement or final administrative decision resolving such dispute under Section XII.

X. INDEMNIFICATION AND INSURANCE

56. Indemnification

a. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Purchaser as EPA's authorized representatives under section 104(e)(1) of CERCLA. Purchaser shall indemnify and save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Purchaser, its officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Purchaser's behalf or under its control, in carrying out activities under this Settlement, including any claims arising from any designation of Purchaser as EPA's authorized representatives under section 104(e)(1) of CERCLA. Further, Purchaser agrees to pay the United States all costs it incurs, including 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 Purchaser, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities under this Settlement. The United States shall not be held out as a party to any contract entered into by or on behalf of Purchaser in carrying out activities under this Settlement. Purchaser and any such contractor may not be considered an agent of the United States.

b. The United States shall give Purchaser notice of any claim for which the United States plans to seek indemnification under this ¶ 56, and shall consult with Purchaser prior to settling such claim.

57. Purchaser covenants not to sue and shall not assert any claim 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 Purchaser and any person for performance of Work or other activities on or relating to the Site, including claims on account of construction delays. In addition, Purchaser shall indemnify and save and hold the United States harmless with respect to any claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between

Purchaser and any person for performance of work on or relating to the Site, including claims on account of construction delays.

58. **Insurance.** Purchaser, as an executive department of the government of the State of Illinois, is self-insured pursuant to State Law (20 ILCS 405-105) and subject to legal liability only pursuant to state law (Court of Claims Act, 705 ILCS 505 et. seq.). Purchaser shall provide EPA with its standard Certificate of Self-Insurance. Purchaser shall require that its contractors or subcontractors secure, by no later than 15 days before commencing any on-site Work, the following insurance: (a) commercial general liability insurance with limits of liability of \$1 million per occurrence; (b) automobile liability insurance with limits of liability of \$1 million per accident; and (c) umbrella liability insurance with limits of liability of \$5 million in excess of the required commercial general liability and automobile liability limits. The insurance policy must name EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Purchaser under this Settlement. Purchaser shall provide EPA with a copy of its contractor's or subcontractor's certificate of insurance and insurance policy which names EPA as an additional insured. Purchaser shall ensure that its contractors or subcontractors maintain this insurance until the first anniversary after issuance of EPA's notice of completion of work under ¶ 36. In addition, for the duration of this Settlement, Purchaser shall satisfy, or shall ensure that its 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 Purchaser in furtherance of this Settlement. Prior to commencement of the Work, Purchaser shall provide to EPA certificates of such insurance and a copy of each insurance policy. Purchaser shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Purchaser demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering all of the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Purchaser need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Purchaser shall ensure that all submittals to EPA under this Paragraph identify the Brandon Road Interbasin Project, Joliet, Illinois and the Docket number for this action.

XI. FORCE MAJEURE

59. "Force Majeure," for purposes of this Settlement, means any event arising from causes beyond the control of Purchaser, of any entity controlled by Purchaser, or of Purchaser's contractors that delays or prevents the performance of any obligation under this Settlement despite Purchaser's best efforts to fulfill the obligation. Given the need to protect public health and welfare and the environment, the requirement that Purchaser exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work or increased cost of performance.

60. If any event occurs for which Purchaser will or may claim a force majeure, Purchaser shall notify EPA's PM by email. The deadline for the initial notice is 7 days after the date Purchaser first knew or should have known that the event would likely delay performance.

Purchaser shall be deemed to know of any circumstance of which any contractor of, subcontractor of, or entity controlled by Purchaser knew or should have known. Within 10 days thereafter, Purchaser shall send a further notice to EPA that includes: (a) a description of the event and its effect on Purchaser's completion of the requirements of the Settlement; (b) a description of all actions taken or to be taken to prevent or minimize the delay; (c) the proposed extension of time for Purchaser to complete the requirements of the Settlement; (d) a statement as to whether, in the opinion of Purchaser, such event may cause or contribute to an endangerment to public health or welfare or the environment; and (e) all available proof supporting its claim of force majeure. Failure to comply with the notice requirements herein regarding an event precludes Purchaser from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under ¶ 59 and whether Purchaser has exercised best efforts under ¶ 59, EPA may, in its unreviewable discretion, excuse in writing Purchaser's failure to submit timely or complete notices under this Paragraph.

61. EPA will notify Purchaser of its determination whether Purchaser is entitled to relief under ¶ 59, and, if so, the duration of the extension of time for performance of the obligations affected by the force majeure. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. Purchaser may initiate dispute resolution under Section XII regarding EPA's determination within 15 days after receipt of the determination. In any such proceeding, Purchaser has the burden of proving that it is entitled to relief under ¶ 59 and that its proposed extension was or will be warranted under the circumstances.

62. The failure by EPA to timely complete any activity under this Settlement is not a violation of the Settlement, provided, however, that if such failure prevents Purchaser from meeting one or more deadlines under this Settlement, Purchaser may seek relief under this Section.

XII. DISPUTE RESOLUTION

63. Unless otherwise provided in this Settlement, Purchaser shall use the dispute resolution procedures of this Section to resolve any dispute arising under this Settlement.

64. A dispute will be considered to have arisen when Purchaser sends EPA a timely written notice of dispute ("Notice of Dispute"). A notice is timely if sent within 30 days after receipt of the EPA notice or determination giving rise to the dispute or within 15 days in the case of a force majeure determination. Disputes arising under this Settlement must in the first instance be the subject of informal negotiations between EPA and Purchaser. The period for informal negotiations may not exceed 30 days after the dispute arises unless EPA otherwise agrees. If the parties cannot resolve the dispute by informal negotiations, the position advanced by EPA is binding unless Purchaser initiates formal dispute resolution under ¶ 65. By agreement of the parties, mediation may be used during this informal negotiation period to assist the parties in reaching a voluntary resolution or narrowing of the matters in dispute.

65. **Formal Dispute Resolution**

a. **Statement of Position.** Purchaser may initiate formal dispute resolution by submitting to EPA, within 20 days after the conclusion of informal dispute resolution under ¶ 64, an initial Statement of Position regarding the matter in dispute. EPA's responsive Statement of Position is due within 20 days after receipt of the initial Statement of Position. All statements of position must include supporting factual data, analysis, opinion, and other documentation. A reply, if any, is due within 10 days after receipt of the response. If appropriate, EPA may extend the deadlines for filing statements of position for up to 15 days and may allow the submission of supplemental statements of position.

b. **Formal Decision.** The Director of the Land, Chemicals, and Redevelopment Division, EPA Region 5, will issue a formal decision resolving the dispute ("Formal Decision") based on the statements of position and any replies and supplemental statements of position. The Formal Decision is binding on Purchaser and shall be incorporated into and become an enforceable part of this Settlement.

66. The initiation of dispute resolution procedures under this Section does not extend, postpone, or affect in any way any requirement of this Settlement, except as EPA agrees.

XIII. CERTIFICATION

67. Purchaser certifies to the best of its knowledge and belief that after thorough inquiry and as of the date of Purchaser's signature (a) it has not caused or contributed to a release or threat of release of hazardous substances, pollutants or contaminants at the Site; (b) it has fully and accurately disclosed to EPA all information known to Purchaser and all information in the possession or control of its officers, directors, employees, contractors, and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site; and (c) it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any documents and electronically stored information relating to the Site.

XIV. COVENANTS BY UNITED STATES

68. **Covenants for Purchaser.** Subject to ¶ 71, the United States covenants not to sue or to take administrative action against Purchaser under sections 106 and 107(a) of CERCLA, or 7003 of RCRA for Existing Contamination and the Work.

69. The covenants under ¶ 68: (a) take effect upon the Effective Date; (b) are conditioned on (1) the satisfactory performance by Purchaser of the requirements of this Settlement; and (2) the veracity of the information provided to EPA by Purchaser relating to Purchaser's involvement with the Site and the certification made by Purchaser in ¶ 67; (c) extend to the successors of Purchaser but only to the extent that the successor of Purchaser is assuming all obligations under this Settlement and the alleged liability of the successor of Purchaser is based solely on its status as a successor of Purchaser; and (d) do not extend to any other person.

70. Nothing in this Settlement constitutes a covenant not to sue or not to take action or otherwise limits the ability of the United States or EPA to seek or obtain further relief from Purchaser if the information provided to EPA by Purchaser relating to Purchaser's involvement with the Site or the certification made by Purchaser in ¶ 67 is false or in any material respect inaccurate.

71. **General Reservations.** Notwithstanding any other provision of this Settlement, the United States reserves, and this Settlement is without prejudice to, all rights against Purchaser regarding the following:

- a. liability for failure by Purchaser to meet a requirement of this Settlement;
- b. liability resulting from an act or omission that causes exacerbation of Existing Contamination by Purchaser, its successors, assigns, lessees, or sublessees;
- c. liability resulting from the disposal, release, or threat of release of hazardous substances, pollutants or contaminants at or in connection with the Site after the Effective Date, not within the definition of Existing Contamination;
- d. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site, except as provided in clause c of the definition of Existing Contamination;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; and
- f. criminal liability.

72. With respect to any claim or cause of action asserted by the United States, Purchaser shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

73. Subject to ¶ 68, nothing in this Settlement limits any authority of the United States or EPA to take, direct, or order all appropriate action to protect public health and welfare and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or to request a Court to order such action. Further, except as specifically provided in this Settlement, nothing in this Settlement shall prevent the United States from seeking legal or equitable relief to enforce the terms of this Settlement or from taking other legal or equitable action as it deems appropriate and necessary.

XV. COVENANTS BY PURCHASER

74. Covenants by Purchaser

a. Subject to ¶ 75, Purchaser covenants not to sue and shall not assert any claim or cause of action against the United States under CERCLA, RCRA § 7002(a), the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act,

28 U.S.C. § 2412, the State Constitution, State law, or at common law regarding Existing Contamination, the Work, and this Settlement.

b. Subject to ¶ 75, Purchaser covenants not to seek reimbursement from the Fund through CERCLA or any other law for the costs regarding the Existing Contamination, the costs of the Work, or any claim arising out of response actions at or in connection with the Property.

75. **Purchaser's Reservation.** The covenants in ¶ 74 do not apply to any claim or cause of action brought, or order issued, after the Effective Date by the United States to the extent such claim, cause of action, or order is within the scope of a reservation under ¶¶ 71.a through 71.e.

XVI. EFFECT OF SETTLEMENT; CONTRIBUTION

76. Except as provided in Section XV (Covenants by Purchaser), each of the Parties expressly reserves any and all rights (including under section 113 of CERCLA), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

77. The Parties agree that: (a) this Settlement constitutes an administrative settlement under which Purchaser has, as of the Effective Date, resolved liability to the United States within the meaning of sections 113(f)(2) and 113(f)(3)(B) of CERCLA; and (b) Purchaser is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Settlement. The “matters addressed” in this Settlement are the Work, and all response actions taken or to be taken and all response costs incurred or to be incurred in connection with Existing Contamination by the United States or any other person, except the State. However, if the United States exercises rights under the reservations in ¶¶ 71.a through 71.e, the “matters addressed” in this Settlement will no longer include those response costs or response actions or natural resource damages that are within the scope of the exercised reservation.

78. Purchaser shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify DOJ and EPA in writing no later than 60 days prior to the initiation of such suit or claim. Purchaser shall, with respect to any suit or claim brought against it for matters related to this Settlement, notify DOJ and EPA in writing within 10 days after service of the complaint or claim upon Purchaser. In addition, Purchaser shall notify DOJ and EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement.

79. Nothing in this Settlement diminishes the right of the United States under sections 113(f)(2) and (3) of CERCLA to pursue any person not a Party to this Settlement to obtain additional response costs or response actions and to enter into settlements that give rise to contribution protection pursuant to section 113(f)(2).

XVII. RECORDS

80. Retention of Records and Information

a. Purchaser shall retain, and instruct their contractors and agents to retain, the following documents and electronically stored data (“Records”) until 10 years after a notice of completion of the work under ¶ 36 (“Record Retention Period”):

- (1) All records regarding Existing Contamination or any release or threat of release of hazardous substances, pollutants or contaminants at or from the Site.
- (2) All records regarding Purchaser’s liability and the liability of any other person under CERCLA regarding the Site;
- (3) All reports, plans, permits, and documents submitted to EPA in accordance with this Settlement, including all underlying research and data; and
- (4) All data developed by, or on behalf of, Purchaser in the course of performing the Work.

b. At the end of the Record Retention Period, Purchaser shall notify EPA that it has 90 days to request Purchaser’s Records subject to this Section. Purchaser shall retain and preserve its Records subject to this Section until 90 days after EPA’s receipt of the notice. These record retention requirements apply regardless of any corporate record retention policy.

81. Purchaser shall provide to EPA, upon request, copies of all Records and information required to be retained under this Section. Purchaser shall also comply, as required by law, with any authorized request for information or administrative subpoena issued by EPA or the State.

82. Privileged and Protected Claims

a. Purchaser may assert that all or part of a record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the record, provided that Purchaser complies with ¶ 82.b, and except as provided in ¶ 82.c.

b. If Purchaser asserts a claim of privilege or protection, it shall provide EPA with the following information regarding such record: title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the record’s contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a record, Purchaser shall provide the record to EPA in redacted form to mask the privileged or protected portion only. Purchaser shall retain all records that it claims to be privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Purchaser’s favor.

c. Purchaser shall not make any claim of privilege or protection regarding: (1) any data regarding the Site, including all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological or engineering data, or the portion of any other record that evidences conditions at or around the Site; or (2) the portion of any record that Purchaser is required to create or generate in accordance with this Settlement.

83. **Confidential Business Information Claims.** Purchaser is entitled to claim that all or part of a record submitted to EPA under this Section is Confidential Business Information (“CBI”) that is covered by section 104(e)(7) of CERCLA and 40 C.F.R. § 2.203(b). Purchaser shall segregate all records or parts thereof submitted under this Settlement which it claims are CBI and label them as “claimed as confidential business information” or “claimed as CBI.” Records that Purchaser properly labels in accordance with the preceding sentence will be afforded the protections specified in 40 C.F.R. part 2, subpart B. If the records are not properly labeled when they are submitted to EPA, or if EPA notifies Purchaser that the records are not entitled to confidential treatment 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 records without further notice to Purchaser.

84. Notwithstanding any provision of this Settlement, EPA retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XVIII. NOTICES AND SUBMISSIONS

85. All agreements, approvals, consents, deliverables, modifications, notices, notifications, objections, proposals, reports, waivers, and requests specified in this Settlement must be in writing unless otherwise specified. Whenever a notice is required to be given or a report or other document is required to be sent by one Party to another under this Settlement, it must be sent as specified below. All notices under this Section are effective upon receipt, unless otherwise specified. In the case of emailed notices, there is a rebuttable presumption that such notices are received on the same day that they are sent. Any Party may change the method, person, or address applicable to it by providing notice of such change to all Parties.

As to DOJ: *via email to:*
eesdcopy.enrd@usdoj.gov
Re: DJ# 90-11-3-12995

As to EPA: *via email to:*
stanhope.jennifer@epa.gov

and
prout.susan@epa.gov

As to Purchaser: *via email to:*
Lindell Loy, IDNR Office of Water Resources
Lindell.loy@illinois.gov:

and
Renee.snow@illinois.gov

XIX. APPENDIXES

86. The following appendixes are attached to and incorporated into this Settlement.

“Appendix A” is the description and map of the Site.

“Appendix B” is the legal descriptions and map of the Property.

XX. MODIFICATIONS

87. If the PM determines a modification to any approved deliverable submitted to EPA after the Effective Date is appropriate, the PM may make such modification in writing or by oral direction. EPA will promptly memorialize in writing any oral modification, but the modification has as its effective date the date of the PM oral direction, unless otherwise indicated. Any other requirements of this Settlement may be modified by mutual agreement of the Parties, and any such modification has as its effective date the date of signature by all Parties.

88. If Purchaser seeks permission to deviate from any approved deliverable, Purchaser’s Project Coordinator shall submit a written request to the PM outlining the proposed modification and its basis. Purchaser may not proceed with a requested modification under this Paragraph until receiving approval under ¶ 87.

89. No informal advice, guidance, suggestion, or comment by the PM or other EPA representatives regarding any deliverable submitted by Purchaser shall relieve Purchaser of its obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

XXI. SIGNATORIES

90. Each undersigned representative of the United States and each undersigned representative of Purchaser certifies that the signatory is authorized to enter into the terms and conditions of this Settlement and to execute and legally bind Purchaser to this Settlement.

XXII. DISCLAIMER

91. This Settlement is in no way a finding by EPA as to the risks to public health and welfare and the environment that may be posed by contamination at the Property or the Site or a representation by EPA that the Property or the Site is fit for any particular purpose.

XXIII. ENFORCEMENT

92. The Parties agree that the United States District Court for the Northern District of Illinois (“Court”) will have jurisdiction, including under section 113(b) of CERCLA for any judicial enforcement action brought with respect to this Settlement.

93. Notwithstanding ¶ 68 of this Settlement, if Purchaser fails to comply with the terms of this Settlement, the United States may file a lawsuit for breach of this Settlement, or any provision thereof, in the Court. In any such action, Purchaser consents to and agrees not to contest the exercise of personal jurisdiction over it by the Court. Purchaser further acknowledges that venue in the Court is appropriate and agrees not to raise any challenge on this basis.

94. If the United States files a civil action as contemplated by ¶ 93 to remedy breach of this Settlement, the United States may seek, and the Court may grant as relief, the following: (a) an order mandating specific performance of any term or provision in this Settlement, without regard to whether monetary relief would be adequate; and (b) any additional relief that may be authorized by law or equity.

XXIV. INTEGRATION

95. This Settlement constitutes the entire agreement among the Parties regarding the subject matter of the Settlement and supersedes all prior representations, agreements, and understandings, whether oral or written, regarding the subject matter of the Settlement.

XXV. PUBLIC COMMENT

96. This Settlement is subject to a 30-day public comment period and may include a public meeting in the affected area, if requested, after which the United States may withdraw its consent or seek to modify this Settlement if comments received disclose facts or considerations that indicate that this Settlement is inappropriate, improper, or inadequate.

XXVI. EFFECTIVE DATE

97. The effective date of this Settlement is the date upon which both of the following have occurred: (a) EPA issues written notice to Purchaser that the United States, after review of and response to any public comments received, will not withdraw consent or seek to modify this Settlement, and (b) Purchaser acquires the Property. Purchaser shall notify EPA in writing within three days of acquiring the Property.

Signature Page for Administrative Settlement Agreement regarding the Brandon Road Interbasin Project (Docket No. V-W-25-C-001)

IT IS SO AGREED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

BY:

**THOMAS
SHORT**

Digitally signed by THOMAS
SHORT
Date: 2024.11.27 08:07:04
-06'00'

Doug Ballotti, Director
Superfund & Emergency Management Division
Region 5
U.S. Environmental Protection Agency

Date

U.S. ENVIRONMENTAL PROTECTION AGENCY:

BY:

EDWARD NAM

Digitally signed by EDWARD
NAM
Date: 2024.11.26 13:56:26
-06'00'

Ed Nam, Director
Land, Chemicals and Redevelopment Division
Region 5
U.S. Environmental Protection Agency

Date

Signature Page for Administrative Settlement Agreement regarding the Brandon Road Interbasin Project (Docket No. V-W-25-C-001)

IT IS SO AGREED:

U.S. DEPARTMENT OF JUSTICE:

Patricia A. McKenna
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

ALISON MCGREGOR

Digitally signed by ALISON
MCGREGOR
Date: 2024.12.02 13:16:07
-05'00

Dated

Alison C. McGregor
Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044-7611
202-514-1491
alison.mcgregor@usdoj.gov

Signature Page for Administrative Settlement Agreement regarding the Brandon Road Interbasin Project (CERCLA Docket No. _____)

IT IS SO AGREED:

ILLINOIS DEPARTMENT OF NATURAL RESOURCES

BY: *Natalie Finnie*
NATALIE PHELPS FINNIE, Director

DATE: 11/22/2024

BY: *Renee Snow*
RENEE SNOW, Chief Legal Counsel

DATE: 11/22/2024

BY: *Ellen King*
ELLEN KING, Chief Fiscal Officer

DATE: 11/21/24

OFFICE OF THE ILLINOIS ATTORNEY GENERAL

KWAME RAOUL
Attorney General of the State of Illinois

BY: *Matthew J. Dunn*
MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

DATE: 11/21/24

APPENDIX A

Figure N-7: Current Joliet Generating Station Facilities



APPENDIX B

EXHIBIT A
DESCRIPTION
PARCEL 2

Part of the Fractional Section 20, Township 35 North, Range 10 East of the Third Principal Meridian, described more particularly as follows:

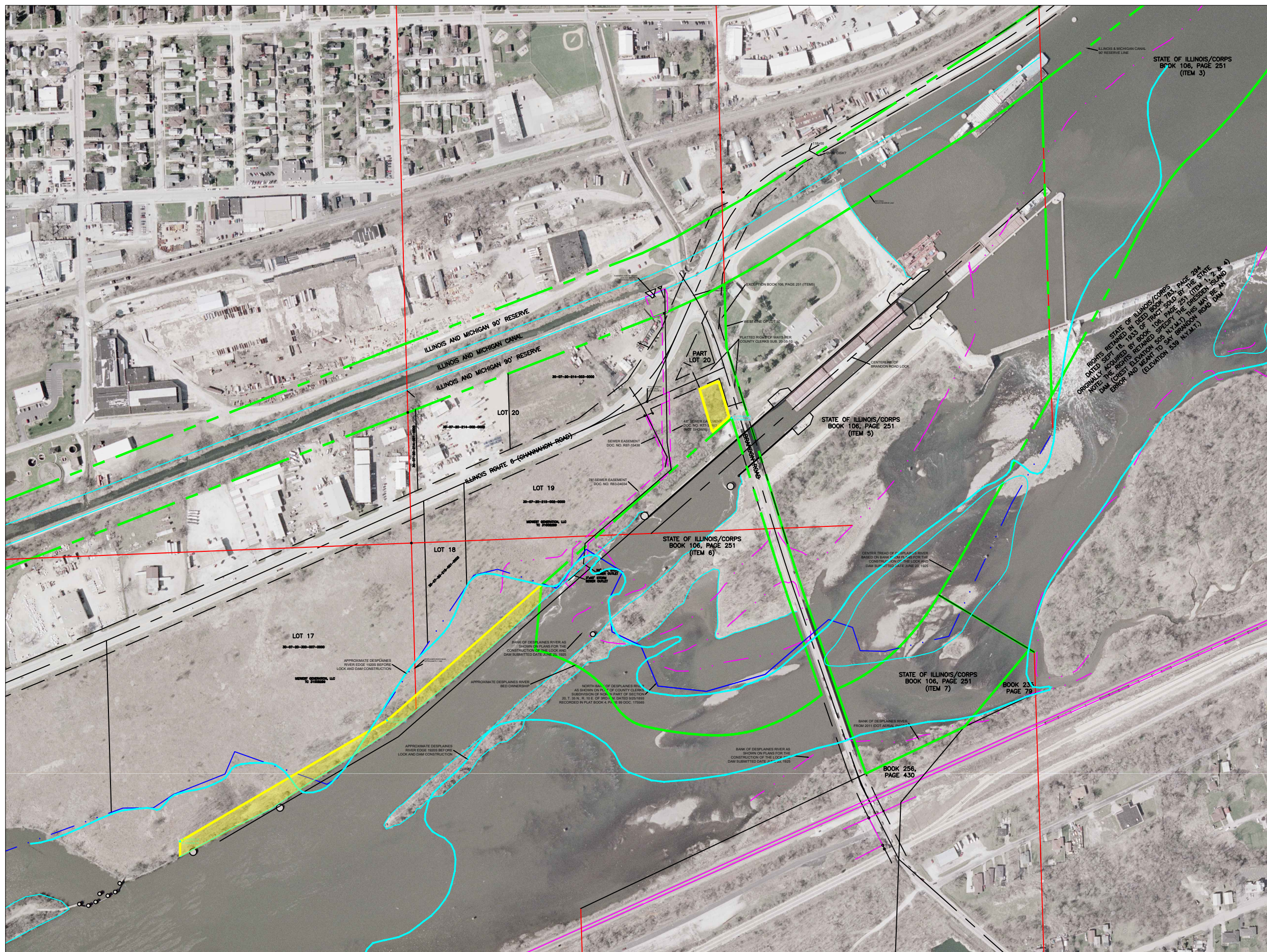
Commencing at an iron rod marking the Southwest corner of the Northeast Quarter of said Section 20; thence North 87 degrees 42 minutes 04 seconds East along the East/West Quarter Section line of said Section 20, 762.81 feet to the Northwesterly line of a parcel as described in Warranty deed dated January 31, 1928 from Public Service Company of Northern Illinois to the State of Illinois recorded in Will County, Illinois in Book 106, Page 251 as Item 6; thence South 48 degree 43 minutes 11 seconds West along said parcel, 306.16 feet to the Northerly Bank of the Des Plaines River as it existed prior to the construction of the Brandon Road Lock and Dam and also being the Point of Beginning; thence South 05 degrees 30 minutes 28 seconds West perpendicular to the center of said Des Plaines River as it existed prior to construction of the Brandon Road Lock and Dam and along said parcel, 75.28 feet to the approximate normal pool created by the Dresden Lock and Dam; thence generally following along said pool the next 14 courses: (1) South 46 degrees 14 minutes 58 seconds West, 59.86 feet; (2) South 48 degrees 15 minutes 42 seconds West, 87.99 feet; (3) South 48 degrees 25 seconds 43 minutes West, 62.77 feet; (4) South 49 degrees 19 minutes 44 seconds West, 104.58 feet; (5) South 48 degrees 58 minutes 45 seconds West, 124.63 feet; (6) South 50 degrees 21 minutes 46 seconds West, 146.37 feet; (7) South 50 degrees 38 minutes 03 seconds West, 182.79 feet; (8) South 55 degrees 32 minutes 12 seconds West, 163.79 feet; (9) South 57 degrees 23 minutes 32 seconds West, 130.56 feet; (10) South 58 degrees 31 minutes 52 seconds West, 98.40 feet; (11) South 56 degrees 49 minutes 13 seconds West, 106.78 feet; (12) South 55 degrees 04 minutes 31 seconds West, 117.29 feet; (13) South 63 degrees 42 minutes 07 seconds West, 185.66 feet; (14) South 61 degrees 17 minutes 36 seconds West, 236.28 feet; thence North 25 degrees 26 minutes 12 seconds West, 22.00 feet, thence North 12 degrees 31 minutes 55 seconds East, 43.55 feet; thence North 59 degrees 42 minutes 40 seconds East, 981.17 feet; thence North 48 degrees 43 minutes 11 seconds East, 840.21 feet to the Point of Beginning, containing 2.32 acres, more or less, in the County of Will, State of Illinois.

EXHIBIT A
DESCRIPTION
ACCESS PARCEL 3

Part of Lot 19 of the County Clerks Subdivision of North Part of Fractional Section 20, Township 35 North, Range 10 East of the third Principal Meridian, recorded in Plat Book 4, Page 99, described more particularly as follows:

Commencing at an iron rod marking the Southwest corner of the Northeast Quarter of said Section 20; thence North 87 degrees 42 minutes 04 seconds East along the East/West Quarter Section line of said Section 20, 762.81 feet to the Northwesterly line of a parcel as described in Warranty deed dated January 31, 1928 from Public Service Company of Northern Illinois to the State of Illinois recorded in Will County, Illinois in Book 106, Page 251 as Item 6; thence North 48 degree 43 minutes 11 seconds East along said parcel, 619.32 feet to a point 100.00 feet westerly, as measured perpendicular to the Westerly right of way line of Brandon Road also being the Point of Beginning; thence North 17 degrees 12 minutes 55 seconds West along a line parallel with said right of way line, 202.84 feet to the original platted southerly right of way line of U.S. Route 6 (Channahon Road); thence North 66 degrees 02 minutes 47 seconds East along said platted right of way line, 100.70 feet to the westerly right of way line of Brandon Road; thence South 17 degrees 12 minutes 55 seconds East along said westerly right of way line, 170.00 feet to the corner of a parcel as described in Warranty deed dated January 31, 1928 from Public Service Company of Northern Illinois to the State of Illinois recorded in Will County, Illinois in Book 106, Page 251 as Item 6; thence South 48 degree 43 minutes 11 seconds West along said parcel, 109.52 feet to the Point of Beginning, containing 0.43 acres, more or less, in the County of Will, State of Illinois.

And for all private interests in the roads which abuts said real property.



Property to be acquired
 outlined in yellow

PREPARED BY:
 State of Illinois
 Department of Natural Resources
 Division of Realty
 One Natural Resources Way
 Springfield, Illinois 62702-1271

UPLAND ACQUISITION