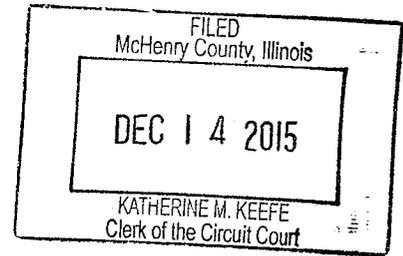


**IN THE CIRCUIT COURT OF THE TWENTY-THIRD JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS
CHANCERY DIVISION**



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

v.)

No. 13 CH 1046

300 WEST LLC, an Illinois limited liability,)
 co., and THE ARNOLD ENGINEERING)
 CO., an Illinois corporation,)
)
 Defendants.)

THIRD AGREED PRELIMINARY INJUNCTION ORDER

This cause coming before this Court on Plaintiff's Motion for Preliminary Injunction; due notice having been given; the Court having jurisdiction over the parties and the subject matter herein; and the Court otherwise being duly advised in the premises;

NOW THEREFORE, Plaintiff having alleged that a substantial danger to the environment or to the health and welfare of persons exists pursuant to the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.* (2014) ("Act"), and the parties having agreed to the entry of this Third Agreed Preliminary Injunction Order, the Court enters the following preliminary injunction pursuant to Section 43(a) of the Act, 415 ILCS 5/43(a) (2014), which shall remain in effect until further order of this Court. IT IS HEREBY ORDERED THAT:

I. BACKGROUND

1. Plaintiff incorporates by reference herein the allegations in its First Amended Complaint for Injunction and Civil Penalties filed on March 26, 2015 (the "First Amended Complaint"). On May 11, 2015, Defendant The Arnold Engineering Co. filed its Answer to the

First Amended Complaint. On May 11, 2015, Defendant 300 West LLC filed its Answer to the First Amended Complaint.

2. On June 11, 2014, this Court entered the Second Agreed Preliminary Injunction Order (the "June 11 2014 Order"). On March 12, 2015, the First Agreed Modification to Second Agreed Preliminary Injunction Order was filed. On May 8, 2015, the Second Agreed Modification to Second Agreed Preliminary Injunction Order was filed.

3. This Third Agreed Preliminary Injunction Order supersedes the June 11 Order, as modified.

II. GENERAL PROVISIONS

4. This Order is not a final resolution of the merits of Plaintiff's First Amended Complaint, including without limitation, a drinking water remedy. This Order does not, nor is it intended to, determine the liability of the Defendants for the subject matter of the First Amended Complaint, except as to their compliance with the requirements of this Third Agreed Preliminary Injunction Order itself.

5. This Third Agreed Preliminary Injunction Order and compliance therewith shall not be interpreted as constituting an admission to any of the allegations of the First Amended Complaint to which both Defendants have filed an Answer.

6. This Order shall apply to and bind the Plaintiff and the Defendants.

III. CONTINUED ACTION

7. Bottled Water Delivery. The Defendants are currently providing bottled water to certain private water well owners and shall continue to provide bottled water to the owners of the private water wells located at 4106 Ritz Road, 4210 Ritz Road, 4907 Ritz Road, 4913 Ritz Road, 4805 Ritz Road, 5010 Ritz Road, 5011 Ritz Road, 21902 Railroad St. and 22104 Railroad St. in

Marengo, McHenry County, Illinois (collectively, the "Private Well Properties") by replenishing the water consumed by the residents in each Private Well Property so as to provide at least 2 gallons per person per day at each Private Well Property, on a weekly basis or such other schedule as agreed to in writing by the resident.

a. The Defendants shall continue distributing bottled water to each of the owners of the Private Well Properties until the Defendants receive written authorization from the Illinois Attorney General's Office and the Illinois EPA that they may cease such drinking water distribution or until such further Order of the Court.

b. The Defendants may submit a written request to the Illinois Attorney General's Office and the Illinois EPA to modify this Paragraph III.7. To the extent the Illinois Attorney General's Office and the Illinois EPA approve such written request, the parties may modify this Paragraph III.7. without further Order of the Court.

8. Well Water Sampling. The Defendants shall conduct water sampling at the private water wells as follows:

a. Subject to Paragraph III.8.h. herein, the Defendants shall cause water sampling to be conducted from the drinking water wells at the following properties in Marengo, McHenry County, Illinois (the "Water Sampling Properties"):

4501 Ritz Road	4106 Ritz Road
4210 Ritz Road	4805 Ritz Road
4907 Ritz Road	4913 Ritz Road
5011 Ritz Road	5017 Ritz Road
5010 Ritz Road	22110 Railroad St.
22104 Railroad St.	22014 Railroad St.
21902 Railroad St.	21816 Railroad St.
21820 Railroad St.	21606 Railroad St.
21602 Railroad St.	22216 West Grant Hwy.

b. The Defendants shall test each water sample for 1,1-Dichloroethylene,

1,1,1-Trichloroethane, cis-1,2-Dichloroethylene, 1,2-Dichloroethane, trans-1,2-Dichloroethylene, Trichloroethylene, Tetrachloroethylene, Vinyl Chloride, Chloroform, Bromodichloromethane, Bromomethane and 1,4-Dioxane (P-Dioxane) (collectively referred to herein as the "Chlorinated VOCs").

c. Prior to conducting the water sampling at the Water Sampling Properties, the Defendants shall provide at least twenty-four hour advance notice to the owners of the Water Sampling Properties and the Illinois EPA that such water sampling shall be conducted.

d. Commencing with the quarter beginning January 1, 2016, the Defendants shall conduct the water sampling on a date within the first 30 calendar days of each quarter beginning January 1, April 1, July 1, and October 1 of each year.

e. Samples must be analyzed by an Illinois EPA accredited laboratory.

f. Within forty (45) calendar days of the date that each water sampling event occurs, the Defendants shall submit the results of such water sampling to the Illinois EPA.

g. The Defendants shall continue to conduct water sampling at the Water Sampling Properties until the Defendants receive written authorization from the Illinois EPA that they may cease conducting such sampling or until such further Order of the Court.

h. If the Defendants are unable to obtain access to any of the Water Sampling Properties to conduct the water sampling:

i. The Defendants shall promptly notify the Illinois Attorney General's Office and the Illinois EPA pursuant to Section V herein.

ii. To the extent an owner of a Water Sampling Property refuses to provide access for water sampling on such property, within five (5) calendar days after the scheduled sampling date, the Defendants shall provide the Illinois Attorney General's Office and the Illinois EPA pursuant to Section V herein with a notarized affidavit attesting as such.

IV. INVESTIGATION AND REMEDIATION OF SOIL AND GROUNDWATER

9. On-Site and Off-Site Investigation.

a. Definition. For purposes of this Third Agreed Preliminary Injunction Order, "Site" shall mean 300 North West Street, Marengo, McHenry County.

b. Deadline for Investigation Completion. In accordance with prior orders of this Court, as modified from time to time, the Defendants have been conducting an investigation to delineate the nature and extent of the soil and groundwater contamination on-Site and off-Site (both vertical and horizontal) (the "Investigation"). On or before February 16, 2016, the Defendants shall complete the Investigation.

c. Supplemental Analytical Sampling Results. Upon the Defendants' receipt of any supplemental analytical sampling results from soil borings or groundwater monitoring wells on-Site or off-Site, the Defendants shall provide, via email, a copy to the Illinois Attorney General's Office and the Illinois EPA pursuant to Section V herein.

10. Comprehensive Site Investigation and Remediation Objectives Report. On or before March 31, 2016, the Defendants shall submit to the Illinois EPA pursuant to Section V herein, for the Illinois EPA's review and approval, a Comprehensive Site Investigation and Remediation Objectives Report for on-Site and off-Site in accordance with the requirements detailed in Exhibit 1, attached hereto and incorporated herein. The Defendants shall also submit

the Comprehensive Site Investigation and Remediation Objectives Report to the Illinois Attorney General's Office via email. The Comprehensive Site Investigation and Remediation Objectives Report shall be signed and sealed by an Illinois Licensed Professional Engineer. If the Illinois EPA approves with conditions or disapproves of the Comprehensive Site Investigation and Remediation Objectives Report, within fourteen (14) calendar days after receiving the Illinois EPA's written notice of such approval with conditions or disapproval (unless the Illinois EPA grants, in writing, a longer time period), the Defendants shall submit a proposal to the Illinois EPA that addresses all conditions or deficiencies identified by the Illinois EPA in its approval with conditions or disapproval. If the Defendants disagree with the Illinois EPA's disapproval of, or conditions imposed with respect to, the Comprehensive Site Investigation and Remediation Objectives Report, within twenty-one (21) calendar days of receipt of the notice of disapproval or approval with conditions, the Defendants shall invoke Dispute Resolution in accordance with Section X herein.

11. **Remedial Action Plan.**

a. Within sixty (60) calendar days of the Illinois EPA's approval of the Comprehensive Site Investigation and Remediation Objectives Report, the Defendants shall submit to the Illinois EPA pursuant to Section V herein, for the Illinois EPA's review and approval, a Remedial Action Plan that meets the requirements of Exhibit 1. The Defendants shall also submit the Remedial Action Plan to the Illinois Attorney General's Office via email. The Remedial Action Plan shall also propose a detailed schedule for implementation, including a deadline for the completion of the soil remediation and the groundwater remediation. The Defendants may be required to submit more than one Remedial Action Plan (e.g., soil and groundwater, on-Site and off-

Site). If the Illinois EPA approves with conditions or disapproves of the Remedial Action Plan(s), within the time set forth in the Illinois EPA's written approval with conditions or disapproval, the Defendants shall submit a proposal to the Illinois EPA that addresses all conditions or deficiencies identified by the Illinois EPA. Until the Illinois EPA fully approves the Remedial Action Plan(s), the Defendants shall respond to the Illinois EPA's conditions or deficiencies in writing within the timeframes set forth in the Illinois EPA's written approval with conditions or disapproval. If the Defendants disagree with the Illinois EPA's disapproval of, or conditions imposed with respect to, the Remedial Action Plan(s), the Defendants shall, within twenty-one (21) calendar days of receipt of the notice of disapproval or approval with conditions, invoke Dispute Resolution in accordance with Section X herein.

b. Upon approval of the RAP(s) by the Illinois EPA, the Defendants shall implement the approved Remedial Action Plan(s) in accordance with the approved schedule and the terms contained in the approved Remedial Action Plan, including any modifications thereto and consistent with the Illinois EPA-approved remediation objectives.

c. If at any time the Illinois EPA or the Defendants determine that further modifications to the Remedial Action Plan(s) are necessary for achieving the Illinois-EPA approved remediation objectives, the Defendants shall submit a modified Remedial Action Plan(s) to the Illinois EPA within (a) thirty (30) calendar days of such determination by the Defendants or (b) forty-five (45) calendar days from the date of the Illinois EPA's letter notifying the Defendants that they must submit a modified Remedial Action Plan(s). The modified Remedial Action Plan(s) shall propose a schedule for its

implementation. Upon its approval, the Defendants shall implement the modified Remedial Action Plan(s) in accordance with the Illinois EPA-approved terms and schedule.

12. **Remedial Action Completion Report.** Within thirty (30) calendar days of completion of all tasks in the approved Remedial Action Plan(s) and in accordance with the approved schedule, as may be modified, including achieving the Illinois EPA-approved cleanup objectives in the Comprehensive Site Investigation and Remediation Objectives Report, the Defendants shall submit to the Illinois EPA pursuant to Section V herein, for its review and approval, a Remedial Action Completion Report ("RACR") in accordance with the requirements detailed in Exhibit 1. The Defendants shall also submit the RACR to the Illinois Attorney General's Office via email. The Defendants may be required to submit separate RACRs (e.g., soil and groundwater, on-Site and off-Site). Upon receipt of the RACR(s), the Illinois EPA shall either approve or disapprove in writing to the Defendants. The Illinois EPA reserves the right to disapprove the RACR(s) if (a) the Defendants fail to implement the Remedial Action Plan(s) approved by the Illinois EPA, or (b) the Illinois EPA-approved remediation objectives set forth in the Remedial Action Plan(s) are not met. If the Illinois EPA disapproves the RACR(s), the Defendants shall perform to completion any additional remedial action as necessary to satisfy the Illinois EPA-approved cleanup objectives within the time frame set forth in the Illinois EPA's notice of disapproval.

13. **Quarterly Reports.** Commencing on January 15, 2016, the Defendants shall submit Quarterly Reports to the Illinois Attorney General's Office and the Illinois EPA by the fifteenth (15) day of the month following the end of each quarter after the date of entry of this Third Agreed Preliminary Injunction Order (ie., April 15, July 15, October 15 and January 15).

Each Quarterly Report shall describe the work performed pursuant to this Third Agreed Preliminary Injunction Order during the previous quarter, the work anticipated during the next quarter, and any delays in work that may be anticipated. Quarterly Reports shall be submitted until such time that a final Remedial Action Completion Report for both soil and groundwater is approved by the Illinois EPA.

V. NOTICES

14. All submittals and correspondence relating to the requirements of this Order shall be directed to the following persons:

FOR PLAINTIFF

Kathryn Pamerter
Stephen Sylvester
Assistant Attorneys General
Illinois Attorney General's Office
Environmental Bureau North
69 W. Washington St., 18th Floor
Chicago, Illinois 60602
(312) 814-0608
KPamerter@atg.state.il.us
SSylvester@atg.state.il.us
(*Electronic Copy*)

Michelle Ryan
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62794
(217) 782-9817
Michelle.Ryan@illinois.gov
(*Electronic Copy*)

Andrew Catlin
Bureau of Land
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62794
(217) 524-3300
Andrew.Catlin@Illinois.gov
(*2 Hard Copies; 1 Electronic Copy*)

FOR DEFENDANTS

300 West LLC
Attn: John Daley
2340 River Road, Suite 310
Des Plaines, Illinois 60018
(312) 420-6046

300 West LLC
Klein, Thorpe & Jenkins, Ltd.
c/o Howard Jablecki and Dennis G. Walsh
20 North Wacker Drive, Suite 1660
Chicago, Illinois 60606
(312) 984-6400

The Arnold Engineering Co.
c/o Michael K. Ohm and Thor Ketzback
Bryan Cave LLP
161 North Clark Street, Suite 4300
Chicago, IL 60601-3315
(312) 602-5032

VI. COMPLIANCE WITH OTHER LAWS AND REGULATIONS

15. This Order in no way affects the responsibilities of the Defendants to comply with any other federal, state or local laws or regulations, including but not limited to the Act.

VII. STIPULATED PENALTIES

16. If the Defendants fail to complete any activity or fail to comply with any of the reporting requirements by the dates specified in this Order, the Defendants shall pay to Plaintiff stipulated penalties in the amount of \$300.00 per day, per violation, until such time that compliance is achieved. To the extent an owner of a Water Sampling Property refuses to grant access to the Defendants to conduct water sampling, this Section VII shall not apply solely to the extent the Defendants comply with Paragraph IV.8.h.

17. In the event Plaintiff determines that a violation that could be subject to stipulated penalties has occurred, Plaintiff will provide written notification of such violation to the

Defendants and their representatives identified in Section V of this Order. Failure by Plaintiff to provide such written notification shall not be construed as a waiver of Plaintiff's right to seek stipulated penalties under this Order.

18. All stipulated penalties owed shall be payable within forty-five (45) calendar days of the receipt of written demand from Plaintiff, unless such penalties, or any portion thereof, are disputed by the Defendants, which dispute shall be resolved pursuant to Section IX of this Order. All penalties shall be paid by certified check or money order payable to the "Illinois EPA" for deposit in the Environmental Protection Trust Fund and delivered to:

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

The case name and case number shall appear on the face of the certified check or money order.

A copy of the certified check or money order and any transmittal letter shall be sent to:

Kathryn A. Pamenter
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington St, 18th Flr.
Chicago, Illinois 60602

VIII. COST RECOVERY

19. The Defendants shall reimburse the Illinois EPA for all reasonable and necessary future costs incurred and documented by the Illinois EPA in its oversight of the on-Site and off-Site investigation and/or remediation for soil and groundwater contamination, and its review and evaluation of documents and reports submitted to it pursuant to the Third Agreed Preliminary Injunction Order or previously entered injunction orders consistent with the reimbursement of project costs incurred by the Illinois EPA under the Site Remediation Program, including, but not

limited to, all costs associated with Community Relations activities (“Future Response Costs”). Future Response Costs shall mean all unpaid, reasonable and necessary costs incurred by the Illinois EPA on and after July 1, 2013. Future Response Costs shall include direct program costs, allocated program costs and indirect costs.

a. Direct program costs shall include, but are not limited to, all related payroll costs for all applicable organizational units, outside contractor/consultants fees, travel costs, and costs associated with photographs, maps, and laboratory services.

b. Allocated program costs represent program costs that are related to the overall program operations, including but not limited to, fiscal services, bill preparation and clerical duties, Division of Legal Counsel program meetings and regulatory preparation and implementation, and staff program meetings and management oversight for the Bureau of Land, Bureau of Water, Office of Emergency Response, Toxicity Assessment Unit, and Office of Community Relations.

c. Indirect costs are those costs incurred by the Illinois EPA in day-to-day operations, including but not limited to, the operation and maintenance of buildings, utilities and administrative costs.

20. The Illinois EPA will submit to the Defendants on a quarterly basis invoices for Future Response Costs incurred during the billing period.

a. Within forty-five (45) days of the receipt of each invoice, the Defendants shall pay, unless contested pursuant to Section IX (Dispute Resolution) of this Third Agreed Preliminary Injunction Order, the Future Response Costs detailed therein by means of a certified or cashier’s check or checks made payable to the Illinois Environmental Protection Agency for deposit into the Hazardous Waste Fund.

b. The case name, case number, LPC # 1110650003, LP52-62W, and the Defendants' FEIN numbers shall appear on the face of the certified or cashier's check. The Defendants shall send each certified or cashier's check and a copy of the Illinois EPA invoice to:

Division of Administration
Fiscal Services Section
Illinois EPA
1021 North Grand Avenue East
P. O. Box 19276
Springfield, Illinois 62794-9276

c. If the Defendants do not receive an invoice in the time frame indicated in Paragraph 20, this does not waive the Illinois EPA's right to submit an invoice or receive cost reimbursement for Future Response Costs.

d. A copy of the certified or cashier's check(s) and the transmittal letter shall be sent to:

Kathryn A. Pamenter
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

21. The dispute resolution procedures set forth in Section IX of this Third Agreed Preliminary Injunction Order shall be the exclusive mechanism for resolving disputes regarding the Defendants' obligation to reimburse the Illinois EPA for its Future Response Costs; except that for purposes of this Section III only, the informal negotiation period shall be extended to twenty-one (21) days after written initiation of dispute resolution proceedings.

IX. DISPUTE RESOLUTION

22. The parties shall use their best efforts to resolve any and all disputes or

differences of opinion arising with regard to this Order, informally and in good faith, within seven (7) days of a party providing notice to the other parties of such a dispute. If, however, a dispute arises concerning this Order that the parties are unable to resolve informally, either party may, by written motion, within three (3) days of conclusion of the informal resolution efforts, request that an evidentiary hearing be held before the Circuit Court for the Twenty-Third Judicial Circuit, McHenry County, Illinois, to resolve the dispute between the parties. Upon Plaintiff's establishment of a prima facie violation of the Order, the Defendants shall bear the burden of proving that it did not violate this Order. Stipulated penalties shall not attach if the Defendants prevail in a dispute resolution.

X. FORCE MAJEURE

23. The Defendants may declare *force majeure* in appropriate circumstances as follows:

a. A *force majeure* event is an event arising solely beyond the control of the Defendants, which prevents the timely performance of any of the requirements of this Order. For the purposes of this Order, *force majeure* shall include, but is not limited to, events such as, floods, fires, tornadoes, other natural disasters, labor disputes beyond the reasonable control of the Defendants, or prohibitions imposed by any court having jurisdiction over the Defendants.

b. When, in the opinion of the Defendants, a *force majeure* event occurs which causes or may cause a delay in the performance of any of the requirements of this Order, the Defendants shall orally notify the Illinois Attorney General's Office and the Illinois EPA pursuant to Section V within forty-eight (48) hours of the occurrence. Written notice shall be given to the Illinois Attorney General's Office and the Illinois

EPA pursuant to Section V herein as soon as practicable, but no later than ten (10) business days after the claimed occurrence.

c. Failure by the Defendants to comply with the notice requirements of the preceding paragraph shall render this *force majeure* provision voidable by the Illinois Attorney General's Office and the Illinois EPA as to the specific event for which the Defendants have failed to comply with the notice requirement. If voided, this section shall be of no effect as to the particular event involved.

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

XI. RIGHT OF ENTRY

24. In addition to any other authority, the Illinois EPA, its employees and representatives, and the Attorney General, her agents and representatives, shall have the right of entry into and upon the portions of the Site owned by or under control of the Defendants and which are the subject of this Order, at all reasonable times for the purpose of carrying out inspections of the Site. Plaintiff agrees to comply with any safety regulations in effect at the Site at the time of inspection. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, may take photographs, samples, and collect information, as they deem necessary. Plaintiff shall provide upon the Defendants' written request copies of any photographs, files, records, data or information collected during said inspection.

XII. EXTENSIONS AND MODIFICATIONS

25. The parties may, by mutual consent, extend any compliance dates or modify the

terms of this Order without leave of court. Any such agreed modification shall be in writing, signed by authorized representatives of each party and incorporated into this Order by reference. Any request for modification shall be made by the Defendants in writing and shall be independent of any other submittal made pursuant to this Order. Moreover, notice of a request for any proposed modification shall be provided to the Plaintiff's representatives listed in Section V of this Order.

XIII. RESERVATION OF RIGHTS

26. Nothing contained herein shall be deemed at this time, and compliance with this Order by the Defendants shall not be deemed, an admission of any wrongful conduct or violation of any applicable statute, law or regulations thereunder by the Defendants, nor a finding of fact or adjudication by this Court of any of the facts or claims contained in the First Amended Complaint. Plaintiff reserves the right to seek additional technical relief and civil penalties in this matter.

27. This Order is without prejudice to and shall not act as a waiver of any right of contribution the Defendants may now or in the future have against any other person or entity.

28. Notwithstanding anything herein to the contrary, Plaintiff reserves all rights under the Second Agreed Preliminary Injunction Order, as modified from time to time, including the accrual of stipulated penalties, relating to the Defendants' alleged past violations of such Second Agreed Preliminary Injunction Order, as modified.

XIV. RETENTION OF JURISDICTION

29. This Court shall retain jurisdiction of this matter and shall consider any motion by Plaintiff or the Defendants for the purposes of interpreting and enforcing the terms and conditions of this Order.

XV. SIGNATURE

30. This Order may be signed in counterparts, all of which shall be considered one agreement.

XVI. STATUS CONFERENCE WITH THE COURT

31. This matter is set for a status conference on January 20, 2016 at 9:15 a.m. without further notice.

[Remainder of Page Blank; Continued on Page 18]

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

AGREED:

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

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

By: Elizabeth Wallace
Elizabeth Wallace, Chief
Environmental Bureau
Assistant Attorney General

Date: 12/11/15

FOR DEFENDANT 300 WEST LLC

BY: _____

Name
Title

DATE: _____

FOR DEFENDANT THE ARNOLD ENGINEERING CO.

BY: _____

Name
Title

DATE: _____

ENTERED:

JUDGE

Date: _____

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

AGREED:

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

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

By: _____
Elizabeth Wallace, Chief
Environmental Bureau
Assistant Attorney General

Date: _____

FOR DEFENDANT 300 WEST LLC

BY: Howard C. Jablecki

Name: Howard C. Jablecki
Title: Attorney for Defendant 300 West LLC

DATE: December 11, 2015

FOR DEFENDANT THE ARNOLD ENGINEERING CO.

BY: _____
Name
Title

DATE: _____

ENTERED: Michael G. Chinis
JUDGE

Date: _____

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

AGREED:

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

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

By: _____
Elizabeth Wallace, Chief
Environmental Bureau
Assistant Attorney General

Date: _____

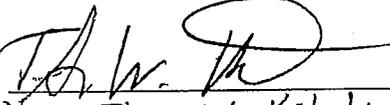
FOR DEFENDANT 300 WEST LLC

BY: _____

Name
Title

DATE: _____

FOR DEFENDANT THE ARNOLD ENGINEERING CO.

BY: 
Name Thor W. Ketzback
Title For Arnold

DATE: 12-11-15

ENTERED:

JUDGE

Date: _____

EXHIBIT 1

1. Reports – General

All plans and reports required by the Third Agreed Preliminary Injunction Order shall be submitted to the Illinois EPA with attachments and accompanying documentation as necessary. Plans and reports shall be mailed or delivered to the address designated by the Third Agreed Preliminary Injunction Order. Plans and reports that are hand-delivered to the Illinois EPA shall be delivered during the Illinois EPA's normal business hours.

All plans and reports submitted to the Illinois EPA shall include:

- a) The full legal name, address and telephone number of the Defendants or any authorized agent acting on behalf of the Defendants, and any contact persons to whom inquiries and correspondence must be addressed;
- b) The original signature of the Defendants or of any authorized agent acting on behalf of the Defendants;
- c) The name of the Licensed Professional Engineer (LPE) responsible for site activities and preparation of the plan or report, the date of preparation, registration number, license expiration date, and professional seal; and
- d) The LPE responsible for the site investigations, remedial activities, and preparation of the plans or reports shall affirm by original signature as follows:

"I attest that all site investigations or remedial activities, including review of laboratory data, that are the subject of this plan or report were performed under my direction and this document and all attachments were prepared under my direction or reviewed by me, and, to the best of my knowledge and belief, the work described in the plan or report has been designed or completed in accordance with the Act, and generally accepted engineering practices, and the information presented, including any qualified laboratory data, is accurate and complete."

2. Comprehensive Site Investigation

The comprehensive site investigation is designed to identify all recognized environmental conditions and all related contaminants of concern that may be expected to exist at a remediation site. The comprehensive site investigation shall be performed in two phases as set forth below.

- a) The phase II environmental site assessment shall determine the nature, concentration, direction and rate of movement, and extent of the contaminants of concern at the remediation site and the significant physical features of the remediation site and vicinity that may affect contaminant fate and transport and

risk to human health, safety and the environment. At a minimum, the phase II environmental site assessment shall include:

- 1) Sampling, analyses, and field screening measurements indicating the concentrations of contaminants, if any, from the Target Compound List and any other contaminants whose presence has been indicated by the phase I environmental site assessment. Based on the phase I environmental site assessment, the Illinois EPA may add or delete contaminants from the Target Compound List for sampling, analyses, and field screening measurements;
- 2) Characterization of sources and potential sources of recognized environmental conditions and the related contaminants of concern, identifying:
 - A) The sources or potential sources of contamination;
 - B) The contaminants of concern;
 - C) Statutory or regulatory classification of the contaminants of concern and contaminated materials (e.g., hazardous waste, hazardous substance, special waste);
- 3) Characterization of the extent of contaminants of concern, identifying:
 - A) The actual contaminated medium or media;
 - B) The three-dimensional configuration of contaminants of concern with concentrations delineated; and
 - C) The nature, direction, and rate of movement of the contaminants of concern;
- 4) Characterization of present and post-remediation exposure routes, identifying:
 - A) All natural and man-made pathways that are on the remediation site, in rights-of-way attached to the remediation site, or in any areas surrounding the remediation site that may be adversely affected as a result of a release (from the recognized environmental conditions) and whether there is evidence of migration of contaminants of concern, in either solution or vapors, along such pathways that may potentially threaten human or environmental receptors or that may cause explosions in basements, crawl spaces, utility conduits, storm or sanitary sewers, vaults or other spaces;

- B) The locations of any human and environmental receptors and receptor exposure routes; and
 - C) Current and post-remediation uses of affected or potentially affected land, groundwater, surface water, and sensitive habitats; and
- 5) Characterization of significant physical features of the remediation site and vicinity that may affect contaminant fate and transport and risk to human health, safety and the environment.

3. Comprehensive Site Investigation Report

- a) Site investigation results for both Phase I and Phase II of the comprehensive site investigation shall be combined into one Site Investigation Report.
- b) A Site Investigation Report for a comprehensive site investigation shall include, but not be limited to, the following chapters:
 - 1) Executive summary. This chapter shall identify the objectives of the site investigation and the technical approach utilized to meet such objectives. It shall state whether recognized environmental conditions were identified and the data limitations in the assessment;
 - 2) Site characterization. This chapter shall include the compilation of all sources reviewed and information obtained as a result of the site investigation as required by this Third Agreed Preliminary Injunction Order, including but not limited to:
 - A) Sources consulted or reviewed. This subchapter shall contain a list of reference documents used in completing the site investigation;
 - B) Site history. This subchapter shall present a chronological summary of the historic uses of the remediation site as prescribed by "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process" (ASTM E 1527-00).
 - C) Site description. This subchapter shall describe the regional location, pertinent boundary features, general facility physiography, geology, hydrogeology, existing and potential migration pathways and exposure routes, and current and post-remediation uses of the remediation site and surrounding areas that are immediately adjacent to the remediation site;
 - D) Site base map(s) including the following:

- i) A distance of at least 1,000 feet around the remediation site at a scale no smaller than one inch equal to 200 feet;
 - ii) Map scale, north arrow orientation, date, and location of the site with respect to township, range and section;
 - iii) Remediation site boundary lines, with the owners of property adjacent to the remediation site clearly indicated, if reasonably identifiable;
 - iv) Surrounding land uses (e.g., residential property, industrial/commercial property, agricultural property, and conservation property);
 - v) The sources or potential sources of the contaminants of concern, spill areas, and other suspected areas for any or all contaminants of concern;
 - vi) On-site and off-site injection and withdrawal wells; and
 - vii) All buildings, tanks, piles, utilities, paved areas, easements, rights-of-way and other features, including all known past and current product and waste underground tanks or piping; and
- E) A legal description or reference to a plat showing the boundaries of the remediation site, or, for a Federal Landholding Entity, a common address, notations in any available facility master land use plan, site specific GIS or GPS coordinates, plat maps, or any other means that identifies the site in question with particularity;
- 3) Site-specific sampling plan. This chapter shall indicate those applicable physical and chemical methods utilized for contaminant source investigations, soil and sediment investigations, hydrogeological investigations, surface water investigations, and potential receptor investigations;
- 4) Documentation of field activities. This chapter shall include the results of the field activities to determine physical characteristics. At a minimum, this chapter shall include the following elements:
- A) Narrative description of the field activities conducted during the investigation;

- B) The quality assurance project plan utilized to document all monitoring procedures (e.g., sampling, field measurements and sample analyses) performed during the investigation, so as to ensure that all information, data and resulting decisions are technically sound, statistically valid, and properly documented; and
 - C) Presentation of the data in an appropriate format (e.g., tabular and graphical displays) such that all information is organized and presented logically and that relationships between the different investigations for each medium are apparent;
- 5) Endangerment assessment. This chapter shall analyze the results of the field activities and characterize the extent of contamination (qualitative and quantitative) for contaminants of concern and compare the remediation site information with the applicable provisions of 35 Ill. Adm. Code 742. This chapter shall:
- A) Describe any recognized environmental conditions, evaluate exposure routes, including threatened releases, and evaluate exposure routes excluded under 35 Ill. Adm. Code 742;
 - B) Describe all conditions the LPE has determined to be de minimis along with the rationale for each such de minimis determination;
 - C) Describe the nature, concentration and extent of contaminants of concern within all environmental media at the remediation site and assess the observed and potential contaminant fate and transport;
 - D) Describe the significant physical features of the remediation site and vicinity that may affect contaminant transport and risk to human health, safety and the environment; and
 - E) Compare the concentrations of the contaminants of concern with the corresponding Tier 1 remediation objectives under 35 Ill. Adm. Code 742;
- 6) Conclusion. This chapter shall assess the sufficiency of the data in the report and recommend future steps;
- 7) Appendices. References and data sources, including but not limited to field logs, well logs, and reports of laboratory analyses, shall be incorporated into the appendices with reports containing laboratory analyses of samples collected on or after January 1, 2003, including the following:

- A) Accreditation status of the laboratory performing the quantitative analyses;
 - B) Certification by an authorized agent of the laboratory that all analyses have been performed in accordance with the requirements of 35 Ill. Adm. Code 186 and the scope of accreditation; and
- 8) Licensed Professional Engineer affirmation in accordance with 1(d) of this Exhibit 1.

4. Remediation Objectives Report

The Remediation Objectives Report shall address the recognized environmental condition(s) and related contaminants of concern that were identified in the site investigation conducted pursuant to this Part.

- a) If an exposure route is to be excluded, the Defendants shall prepare a Remediation Objectives Report demonstrating that the requirements for excluding an exposure route under 35 Ill. Adm. Code 742 have been satisfied.
- b) If the Defendants elect to use the Tier 1 remediation objectives under 35 Ill. Adm. Code 742, the Defendants shall prepare a Remediation Objectives Report stating the applicable remediation objectives for the contaminants of concern.
- c) If the Defendants elect to develop remediation objectives appropriate for the remediation site using Tier 2 or Tier 3 procedures under 35 Ill. Adm. Code 742, the Defendants shall prepare a Remediation Objectives Report demonstrating compliance with those procedures.
- d) If the Defendants elect to develop remediation objectives appropriate for the remediation site using the area background procedures under 35 Ill. Adm. Code 742, the Defendants shall prepare a Remediation Objectives Report demonstrating compliance with those procedures.
- e) If the recognized environmental condition requires remediation measures other than, or in addition to, remediation objectives determined under 35 Ill. Adm. Code 742 (e.g., removal of drums threatening a release), the Remediation Objectives Report shall describe those measures and demonstrate that the measures selected:
 - 1) Will prevent or eliminate the identified threat to human health and the environment;
 - 2) Are technically feasible and can be implemented without creating additional threats to human health and the environment; and
 - 3) Are not inconsistent with the Act and applicable regulations.

- f) In the event that the Illinois EPA has determined in writing that the background level for a regulated substance or pesticide poses an acute threat to human health or the environment at the Site when considering the post-remedial action land use, the Defendants shall develop appropriate risk-based remediation objectives in accordance with subsections (a), (b) and/or (c) above.
- g) The Remediation Objectives Report shall contain the affirmation of a Licensed Professional Engineer(s) in accordance with 1.d. of this Exhibit 1.

5. Remedial Action Plan

The plan shall describe the proposed remedy and evaluate its ability and effectiveness to achieve the remediation objectives approved for the remediation site, including but not limited to:

- a) Executive summary. This chapter shall identify the objectives of the Remedial Action Plan and the technical approach utilized to meet such objectives. At a minimum, this chapter shall include the following elements:
 - 1) The major components (e.g., treatment, containment, removal actions) of the Remedial Action Plan;
 - 2) The scope of the problems to be addressed by the proposed remedial action(s) including the specific contaminants of concern and the physical area to be addressed by the Remedial Action Plan; and
 - 3) Schedule of activities with estimated dates of completion through the recording of any institutional controls.
- b) Statement of remediation objectives or reference to Remediation Objectives Report;
- c) Remedial technologies selected. This chapter shall describe how each major remedial technology identified in the Remedial Action Plan fits into the overall strategy for addressing the recognized environmental conditions at the remediation site, including but not limited to:
 - 1) Feasibility of implementation;
 - 2) Whether the technologies will perform satisfactorily and reliably until the remediation objectives are achieved;
 - 3) Whether remediation objectives will be achieved within a reasonable period of time;

- d) Confirmation sampling plan. This chapter shall describe how the effectiveness of the remedial action will be measured. At a minimum, a site-specific sampling plan and quality assurance project plan must be prepared in accordance with the provisions set forth in the Site Investigation requirements in item 1 of this Exhibit 1;
- e) Current and post-remediation use of the property;
- f) Applicable engineered barriers, institutional controls, and groundwater monitoring. This chapter shall describe any such controls selected or relied upon in determining or achieving remediation objectives, including long-term reliability, operating and maintenance plans, and monitoring procedures;
- g) Appendices. References and other informational sources should be incorporated into the appendices; and
- h) Licensed Professional Engineer affirmation in accordance with item 1.d. of this Exhibit 1.

6. Remedial Action Completion Report

- a) Except as provided in subsection (b) below, upon completion of the Remedial Action Plan, the Defendants shall prepare a Remedial Action Completion Report. The report shall demonstrate whether the remedial action was completed in accordance with the approved Remedial Action Plan and whether the remediation objectives, as well as any other requirements of the plan, have been attained. The report shall include, but not be limited to:
 - 1) Executive summary. This chapter shall identify the overall objectives of the remedial action and the technical approach utilized to meet those objectives, including:
 - A) A brief description of the remediation site, including the recognized environmental conditions, the contaminants of concern, the contaminated media, and the extent of contamination;
 - B) The major components of the Remedial Action Completion Report;
 - C) The scope of the problems corrected or mitigated by the proposed remedial action(s); and
 - D) The anticipated post-remediation uses of the remediation site and areas immediately adjacent to the remediation site;
 - 2) Field activities. This chapter shall provide a narrative description of the:

- A) Field activities conducted during the investigation;
 - B) Remedial actions implemented at the remediation site and the performance of each remedial technology utilized
- 3) Special conditions. This chapter shall provide a description of any:
- A) Engineered barriers utilized in accordance with 35 Ill. Adm. Code 742 to achieve the approved remediation objectives as established in this Third Agreed Preliminary Injunction Order;
 - B) Institutional controls accompanying engineered barriers or industrial/commercial property uses in accordance 35 Ill. Adm. Code 742, including a legible copy of any such controls, as appropriate;
 - C) Post-remedial monitoring, including:
 - i) Conditions to be monitored;
 - ii) Purpose;
 - iii) Locations;
 - iv) Frequency; and
 - v) Contingencies in the event of an exceedance; and
 - D) Other conditions, if any, necessary for protection of human health and the environment that are related to this Third Agreed Preliminary Injunction Order.
- 4) Results. This chapter shall analyze the effectiveness of the remedial actions by comparing the results of the confirmation sampling with the remediation objectives prescribed in the Illinois EPA-approved Remedial Action Plan. The data shall state the remediation objectives or reference the Remediation Objectives Report and be presented in an appropriate format (e.g., tabular and graphical displays) such that all information is organized and presented logically and that relationships between the different investigations for each medium are apparent;
- 5) Conclusion. This chapter shall identify the success of the remedial action in meeting objectives. This chapter shall assess the accuracy and completeness of the data in the report and, if applicable, future work;

- 6) Appendices. References, data sources, and a completed environmental notice form as provided by the Illinois EPA shall be incorporated into the appendices. Field logs, well logs and reports of laboratory analyses shall be organized and presented logically with reports of laboratory analyses of samples collected on or after January 1, 2003, including the following:
 - A) Accreditation status of the laboratory performing the quantitative analyses;
 - B) Certification by an authorized agent of the laboratory that all analyses have been performed in accordance with the requirements of 35 Ill. Adm. Code 186 and the scope of the accreditation; and
 - 7) Licensed Professional Engineer affirmation in accordance with item 1.d. of this Exhibit 1.
- b) If the approved remediation objectives for the regulated substances of concern established under this Third Agreed Preliminary Injunction Order are equal to or above the levels existing at the site prior to any remedial action, notification and documentation of such, including a description of any engineered barriers, institutional controls, and post-remedial monitoring, shall constitute the entire Remedial Action Completion Report for purposes of this Third Agreed Preliminary Injunction Order.