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

AUG 1 1 2000

REPLY TO THE ATTENTION OF

Mr. Jeffrey Jeep
EMCO Waste Services, Inc.
2100 Commonwealth Avenue
P.O. Box 1030
North Chicago, Illinois 60064-1030

Re: Prospective Purchaser Agreement
Vacant Lot Site, North Chicago, Illinois
Docket No. V-W-00C-593

Dear Mr. Jeep:

This letter is to inform you on behalf of the Respondents to the above-referenced Agreement that after conclusion of the public comment period described in Section XXI of that Agreement, I hereby ratify the U.S. EPA's prior contingent signature of the Agreement.

A copy of the executed signature page is enclosed for your records. The Agreement takes effect on the date of this letter providing notice to you.

Sincerely yours,

William E. Muno, Director
Superfund Division

Enclosure

cc (w/encl.): Thomas Krueger, C-14J
John O'Grady, SR-6J
Anthony Audia, MF-10J
Alan Tenenbaum, U.S. DOJ

EPA Region 5 Records Ctr.
229915

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	) EPA Region 5 Docket Number: V-W-00-C-593
Vacant Lot Site	)
North Chicago, Illinois	) AGREEMENT AND COVENANT NOT TO SUE
	) EMCO CHEMICAL DISTRIBUTORS, INC.
	) BREMS REALTY, L.L.C.
	) SETTLING RESPONDENTS
	) UNDER THE AUTHORITY OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980, 42 U.S.C. § 9601 et seq., as amended.

I. INTRODUCTION

This Agreement and Covenant Not to Sue ("Agreement") is made and entered into by and between the United States on behalf of the United States Environmental Protection Agency ("EPA"), BREMS Realty, L.L.C., a Delaware limited liability company, ("BREMS") and EMCO Chemical Distributors, Inc. ("EMCO")(BREMS and EMCO collectively "Settling Respondents" and EPA and Settling Respondents collectively the "Parties").

This Agreement is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9601, et seq. and the authority of the Attorney General of the United States to compromise and settle claims of the United States.

The Vacant Lot Site is located at the northeast corner of Commonwealth Avenue and 22nd Street in North Chicago, Lake County, Illinois, and depicted generally on the map attached as Exhibit 1.

EMCO Chemical Distributors, Inc. is an Illinois corporation located at 2100 Commonwealth Avenue, North Chicago, Illinois. BREMS Realty, L.L.C., is a Delaware limited liability company also located at 2100 Commonwealth Avenue, North Chicago, Illinois. The shares of EMCO are held by [redacted]. The shares of BREMS are held by [redacted] BREMS has been established to advance the estate planning objectives of [redacted] BREMS proposes to take title to the Property, which is located immediately to the east of EMCO's current operations. BREMS proposes to lease the Property to EMCO. It is the intent of the Parties that BREMS and EMCO be jointly and severally liable for performance under this Agreement.

The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to reservations and limitations contained in Sections VII, VIII, IX, and X, the potential liability of the Settling Respondents for the Existing Contamination at the Property which would otherwise result from Settling Respondents becoming the owner or lessee of the property.

The Parties agree that the Settling Respondents' entry into this Agreement, and the actions undertaken by the Settling Respondents in accordance with the Agreement, do not constitute an admission of any liability by the Settling Respondents.

The resolution of this potential liability, in exchange for provision by the Settling Respondent to EPA of a substantial benefit, is in the public interest.

II. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto.

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

2. "Existing Contamination" shall mean any hazardous substances, pollutants or contaminants, present or existing on or under the Site as of the effective date of this Agreement.

3. "Parties" shall mean the United States on behalf of EPA and the Settling Respondents.

4. "Property" shall mean that portion of the Site, encompassing approximately 6.4 acres located at the northeast corner of Commonwealth Avenue and Martin Luther King Drive in North Chicago, Lake County, Illinois, which is described in Exhibit 2 of this Agreement.

5. "Settling Respondents" shall mean BREMS Realty, L.L.C. and EMCO Chemical Distributors, Inc.

6. "Site" shall mean the Vacant Lot Site, encompassing approximately 6.4 acres, located at the northeast corner of Commonwealth Avenue and Martin Luther King Drive in North Chicago, Lake County, Illinois, and depicted generally on the map attached as Exhibit 1. The Site shall include the Property, and all areas to which hazardous substances and/or pollutants or Contaminants, have come to be located.

7. "United States" shall mean the United States of America, its departments, agencies, and instrumentalities.

III. STATEMENT OF FACTS

8. Analyses of soil at the Site indicated elevated levels of lead, beryllium, polychlorinated biphenyls ("PCBs"), perchloroethene ("PERC"), polyaromatic hydrocarbons ("PAHs"), and other organic compounds. Analyses of sediments in Pettibone Creek at the Site

indicated elevated levels of lead, copper and PAHs. Analyses of ground water at the Site indicated elevated levels of vinyl chloride, PERC and other organic compounds.

9. EPA has undertaken response actions at the Site under Section 104 of CERCLA, 42 U.S.C. § 9604, pursuant to an Action Memorandum dated May 6, 1998, as amended on September 15, 1998, (hereafter "Action Memoranda"), including the completion of an Engineering Evaluation/Cost Analysis dated October 30, 1997 (EE/CA), and may continue to take response actions at the Site in the future. EPA has also initiated further investigation of possible ground water contamination sources to the east of the Property.

10. An Illinois land trust currently holds title to the Property. BREMS proposes to take title to the Property, subject to completion of this Agreement and a settlement agreement between EPA and the beneficiaries of the land trust ("Land Trust"). BREMS in turn proposes to lease the Property to EMCO.

11. The Settling Respondents represent, and for the purposes of this Agreement, EPA relies on those representations, that, except as disclosed in Section VII (CERTIFICATION) of this Agreement, Settling Respondents have not had any prior involvement with the Property and the Site.

12. Upon entering into an agreement with BREMS to lease the Property, EMCO intends to: (a) install storm piping in the portion of Pettibone Creek contained on the Property; (b) cover and re-grade the area where the storm piping has been placed; and (c) construct a truck shop and/or a building housing a "white room" meeting USP grade purity standards, along with associated appurtenances (such as above ground storage tanks and tank truck parking areas), with such foundation as required by the North Chicago Building Code, on the southern portion of the property, resurfacing the remainder of the Property area to be used for commercial purposes with pavement or fine, compacted gravel. On the northernmost portion of the Property, EMCO also either will construct a detention pond or will fill the currently excavated area to return that portion of the Property to grade. EMCO has submitted a Work Plan describing these activities to EPA. EMCO may also construct a warehouse or warehouses of approximately 75,000 total square feet

or such other structures as may be authorized by the City of North Chicago building code, zoning laws and by other applicable laws. The approximate locations of these activities are shown on Exhibit 3.

IV. PAYMENT

13. In consideration of and in exchange for the United States' Covenant Not to Sue in Section VIII herein, Settling Respondents agree to pay to EPA the sum of $35,000, within 30 days of the effective date of this Agreement. The Settling Respondents shall make all payments required by this Agreement in the form of a certified check or checks made payable to "EPA Hazardous Substance Superfund," referencing the Docket number, the Site/Spill ID# A527, and name and address of Settling Respondents. Payments shall be sent to: U.S. Environmental Protection Agency, Program Accounting & Analysis Section, P.O. Box 70753, Chicago, Illinois 60673. Notice of payment shall be sent to those persons listed in Section XV (Notices and Submissions).

14. Amounts due and owing pursuant to the terms of this Agreement but not paid in accordance with the terms of this Agreement shall accrue interest at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), compounded on an annual basis.

V. ACCESS/NOTICE TO SUCCESSORS IN INTEREST

15. Commencing upon the date that BREMS acquires title to the Property, Settling Respondents agree to provide to EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight, an irrevocable right of access at all reasonable times to the Property and to any other property to which access is required for the implementation of response actions at the Site, to the extent access to such other property is controlled by the Settling Respondents, for the purposes of performing and overseeing response actions at the Site under federal law. EPA agrees to provide reasonable notice to the Settling Respondents of the timing of response actions to be undertaken at the Property. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, the Solid Waste Disposal Act, as

amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901,("RCRA") et. seq., and any other applicable statute or regulation, including any amendments thereto.

16. Within 30 days after the effective date of this Agreement, the Settling Respondents shall record a certified copy of this Agreement with the Recorder's Office for Lake County, Illinois. Thereafter, each deed, title, or other instrument conveying an interest in the Property shall contain a notice stating that the Property is subject to this Agreement. A copy of these documents should be sent to the persons listed in Section XV (Notices and Submissions).

17. The Settling Respondents shall ensure that assignees, successors in interest, lessees, and sublessees, of the Property shall provide the same access and cooperation. The Settling Respondents shall ensure that a copy of this Agreement is provided to any current lessee or sublessee on the Property as of the effective date of this Agreement and shall ensure that any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property are consistent with this Section, and Section XI (Parties Bound/Transfer of Covenant), of the Agreement.

VI. DUE CARE/COOPERATION

18. The Settling Respondents shall exercise due care at the Site with respect to the Existing Contamination and shall comply with all applicable local, State, and federal laws and regulations. The Settling Respondents recognize that the implementation of response actions at the Site may interfere with the Settling Respondents' use of the Property, and may require closure of its operations or a part thereof. The Settling Respondents agree to cooperate fully with EPA in the implementation of response actions at the Site and further agree not to interfere with such response actions. EPA agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with the Settling Respondents' operations by such entry and response. In the event the Settling Respondents become aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Respondents shall

immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. §9603, or any other law, immediately notify EPA of such release or threatened release.

19. Settling Respondents shall submit a quarterly written progress report to EPA concerning construction activities undertaken at the Property, beginning 30 calendar days after the Effective Date of this Agreement until termination of the activities described in Paragraph 12 above. These reports shall describe all significant developments during the preceding period, including the work performed and any problems encountered, analytical data received during the reporting period, and developments anticipated during the next reporting period, including a schedule of Work to be performed, anticipated problems, and planned resolutions of past or anticipated problems. Within 90 days after completion of all construction activities described in Paragraph 12 above, the Settling Respondents shall submit for EPA review a final report summarizing the construction activities taken at the Property.

VII. CERTIFICATION

20. By entering into this agreement, the Settling Respondents certify that to the best of their knowledge and belief they have fully and accurately disclosed to EPA all information known to Settling Respondents and all information in the possession or control of their 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 to their qualification for this Agreement. The Settling Respondents also certify that to the best of their knowledge and belief they have not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site. EMCO has disclosed to EPA the nature of limited past spills at its facility that to the best of its knowledge have not entered Pettibone Creek, and did not contain any of the contaminants of concern at the Site. If the United States determines that information provided by Settling Respondents is not materially

accurate and complete, the Agreement, within the sole discretion of the United States, shall be null and void and the United States reserves all rights it may have.

VIII. UNITED STATES' COVENANT NOT TO SUE

21. Subject to the Reservation of Rights in Section IX of this Agreement, upon payment of the amount specified in Section IV (Payment), of this Agreement, the United States covenants not to sue or take any other civil or administrative action against Settling Respondents for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a), or Section 7003 of RCRA, 42 U.S.C. §6973, with respect to the Existing Contamination.

IX. RESERVATION OF RIGHTS

22. The covenant not to sue set forth in Section VIII above does not pertain to any matters other than those expressly specified in Section VIII (United States' Covenant Not to Sue). The United States reserves and the Agreement is without prejudice to all rights against Settling Respondents with respect to all other matters, including but not limited to, the following:

(a) claims based on a failure by Settling Respondents to meet a requirement of this Agreement, including but not limited to Section IV (Payment), Section V (Access/Notice to Successors in Interest), Section VI (Due Care/Cooperation), and Section XIV (Payment of Costs);

(b) any liability resulting from past or future releases of hazardous substances, pollutants or contaminants, at or from the Site caused or contributed to by Settling Respondents, their successors, assignees, lessees or sublessees;

(c) any liability resulting from exacerbation by Settling Respondents, their successors, assignees, lessees or sublessees, of Existing Contamination;

(d) any liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants, at the Site after the effective date of this Agreement, not within the definition of Existing Contamination;

(e) criminal liability;

(f) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment incurred by federal agencies other than EPA; *and*

(g) liability for violations of local, State or federal law or regulations.

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

24. Except as provided in Section XI (Parties Bound/Transfer of Covenant), nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a party to this Agreement.

25. Nothing in this Agreement is intended to limit the right of EPA to undertake future response actions at the Site or to seek to compel parties other than the Settling Respondents to perform or pay for response actions at the Site. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by EPA in exercising its authority under federal law. BREMS acknowledges that it is purchasing, and EMCO acknowledges that it will be leasing from BREMS, property where response actions may be required.

X. SETTLING RESPONDENT'S COVENANT NOT TO SUE

26. In consideration of the United States' Covenant Not To Sue in Section VIII of this Agreement, the Settling Respondents hereby covenant not to sue and not to assert any claims or causes of action against the United States, its authorized officers, employees, or representatives with respect to the Site or this Agreement, including but not limited to, any direct or indirect claims for reimbursement from the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507, through CERCLA Sections 106(b)(2), 111, 112, 113, or any other provision of law, any claim against the United States, including any department,

agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or any claims arising out of response activities at the Site, including claims based on EPA's oversight of such activities or approval of plans for such activities. Settling Respondents' covenant not to sue and agreement in this Paragraph shall not apply in the event that the United States brings a cause of action against Settling Respondents pursuant to Subparagraphs 22(b)-(g) of this Agreement, but only to the extent arising from the same cause of action asserted by the United States pursuant to those Subparagraphs.

27. The Settling Respondents reserve, and this Agreement is without prejudice to, actions against the United States based on negligent actions taken directly by the United States, not including oversight or approval of the Settling Respondent's plans or activities, that are brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA. Nothing herein shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XI. PARTIES BOUND/TRANSFER OF COVENANT

28. This Agreement shall apply to and be binding upon the United States, and shall apply to and be binding on the Settling Respondents, their officers, directors, employees, and agents. Each signatory of a Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party.

29. Notwithstanding any other provisions of this Agreement, all of the rights, benefits and obligations conferred upon Settling Respondents under this Agreement may be assigned or transferred to any person with the prior written consent of EPA. EPA does hereby approve the leasing of the Property by BREMS to EMCO and EMCO agrees, that by entering into such lease, EMCO is agreeing to be bound by the terms of this Agreement.

30. The Settling Respondents agree to pay the reasonable costs incurred by EPA to review any subsequent requests for consent to assign or transfer the benefits conferred by this Agreement.

31. In the event of an assignment or transfer of the Property or an assignment or transfer of an interest in the Property, the assignor or transferor shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Agreement except as EPA and the assignor or transferor agree otherwise and modify this Agreement, in writing, accordingly. Moreover, prior to or simultaneous with any assignment or transfer of the Property, the assignee or transferee must consent in writing to be bound by the terms of this Agreement including but not limited to the certification requirement in Section VII of this Agreement in order for the Covenant Not to Sue in Section VIII to be available to that party. The Covenant Not To Sue in Section VIII shall not be effective with respect to any assignees or transferees who fail to provide such written consent to EPA.

XII. DISCLAIMER

32. This Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Property or the Site nor constitutes any representation by EPA that the Property or the Site is fit for any particular purpose.

XIII. DOCUMENT RETENTION

33. The Settling Respondents agree to retain and make available to EPA all business and operating records, contracts, site studies and investigations, and documents relating to operations at the Property, for at least five years, following the effective date of this Agreement unless otherwise agreed to in writing by the Parties. At the end of five years, upon request of EPA, the Settling Respondents shall notify EPA of the location of such documents and shall provide EPA with an opportunity to copy any documents at the expense of EPA.

XIV. PAYMENT OF COSTS

34. If the Settling Respondents fail to comply with the terms of this Agreement, including,

but not limited to, the provisions of Section IV (Payment), of this Agreement, they shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Agreement or otherwise obtain compliance.

XV. NOTICES AND SUBMISSIONS

35. Notices and submissions made to EPA under this Agreement shall be provided to John O'Grady, Project Manager, U.S. Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago Illinois 60604-3590; with a copy to Thomas Krueger, Assistant Regional Counsel, U.S. Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604-3590. Notices and submissions made to Settling Respondent under this agreement shall be made to: Jeffrey Jeep, EMCO Waste Services, Inc., 2100 Commonwealth Avenue, P.O. Box 1030, North Chicago, Illinois 60064-1030.

XVI. EFFECTIVE DATE

36. The effective date of this Agreement shall be the date upon which EPA issues written notice to the Settling Respondents that EPA has fully executed the Agreement after review of and response to any public comments received.

XVII. TERMINATION

37. If any Party believes that any or all of the obligations under Section V (Access/Notice to Successors in Interest) are no longer necessary to ensure compliance with the requirements of the Agreement, that Party may request in writing that the other Parties agree to terminate the provision(s) establishing such obligations; provided, however, that the provision(s) in question shall continue in force unless and until the party requesting such termination receives written agreement from the other parties to terminate such provision(s).

XVIII. CONTRIBUTION PROTECTION

38. With regard to claims for contribution against Settling Respondents, the Parties hereto

agree that the Settling Respondents are entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Agreement. The matters addressed in this Agreement are all response actions taken or to be taken and response costs incurred or to be incurred by the United States or any other person for the Site with respect to the Existing Contamination.

39. The Settling Respondents agree that with respect to any suit or claim for contribution brought by all or one of them for matters related to this Agreement it will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

40. The Settling Respondents also agree that with respect to any suit or claim for contribution brought against one or both of them for matters related to this Agreement the Settling Respondent(s) will notify in writing the United States within 10 days of service of the complaint on one or both of them.

XIX. EXHIBITS

41. Exhibit 1 shall mean the map depicting the Site.

42. Exhibit 2 shall mean the description of the Property the subject of this Agreement.

43. Exhibit 3 shall mean the map depicting the approximate location of the activities that the Settling Respondents intend to undertake on the Property.

XXI. PUBLIC COMMENT

44. This Agreement shall be subject to a thirty-day public comment period, after which EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

Agreed this _____ day of _____, 1999.

BY: BREMS Realty, L.L.C.

Edward Polen
Manager

BY: EMCO Chemical Distributors, Inc.

Edward Polen
President

IT IS SO AGREED

BY: Mindy Larsen for
WILLIAM E. MUNO, Director
Superfund Division United States
Environmental Protection Agency Region 5

DATE: 5/19/00

BY:
LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

DATE:

IN THE MATTER OF:
Vacant Lot Site
EPA REGION 5
DOCKET NO.

V-W-[illegible]

IT IS SO AGREED

BY:_____ DATE:

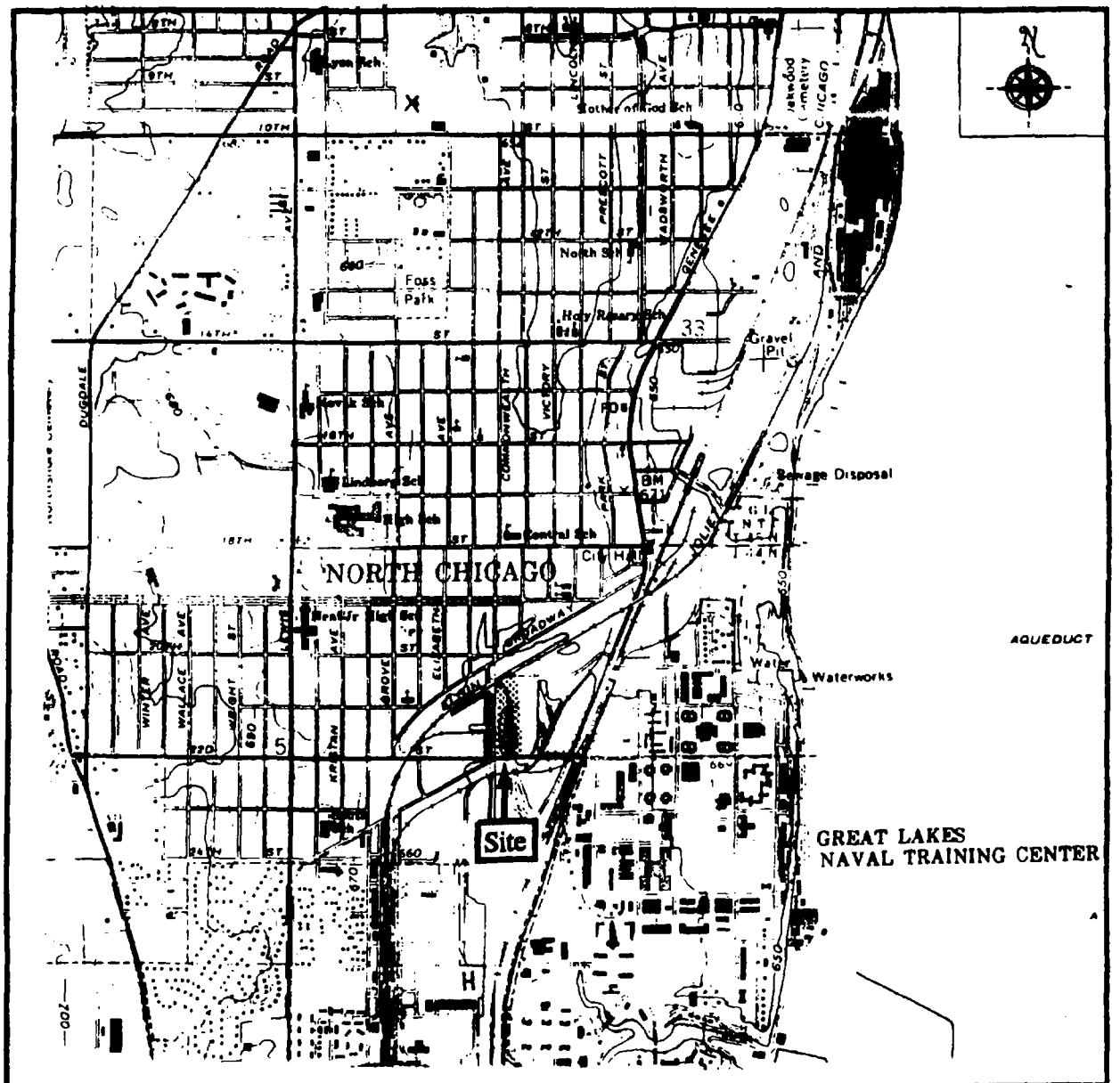
WILLIAM E. MUNO, Director
Superfund Division United States
Environmental Protection Agency Region 5

BY:_____

LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

DATE: 5/26/

IN THE MATTER OF:
Vacant Lot Site
EPA REGION 5
DOCKET NO.



Quadrangle Location

ecology and environment, inc.
Superfund Technical Assessment and Response Team
Region 5
33 North Dearborn Street, Suite 900, Chicago, Illinois 60602

TITLE	Site Location Map	FIGURE #	C-1
SITE	Vacant Lot	SCALE	1:24,000
CITY	North Chicago	STATE Illinois	TDD # S05-9609-017
SOURCE	USGS Map, 7.5 Minute Series, Waukegan Quadrangle	DATE	1960
		REVISED	1980

Exhibit 1

Legal Description

The West 300 feet in width of that part of the North West quarter of Section 4, Township 4 North, Range 12, East of the Third Principal Meridian, bounded on the North by the right-of-way of the Elgin, Joliet and Eastern Railway Company, on the West by the right-of-way of the Chicago North Shore and Milwaukee Railroad Company, and on the South by the center line of the highway (Twenty-second Street so called), in the City of North Chicago, Lake County, Illinois.

Exhibit 2