

S. Singh

New York State Department of Environmental Conservation  
Office of Metropolitan Environmental Enforcement & Legal Affairs  
Region 2  
47-40 21st Street, Long Island City, N.Y. 11101  
Tel: 718/482-4965 Fax: 718/482-4962



John P. Cahill  
Commissioner

WRITER'S DIRECT DIAL  
(718) 482-6470

VIA REGULAR MAIL

Donna L. Riccobono, Esq.  
Long Island Lighting Company  
175 East Old Country Road  
Hicksville, NY 11801

RECEIVED  
N.Y.S.D.E.C. - REGION 2  
APR 27 1998  
HAZARDOUS WASTE  
REMEDIATION

April 27, 1998

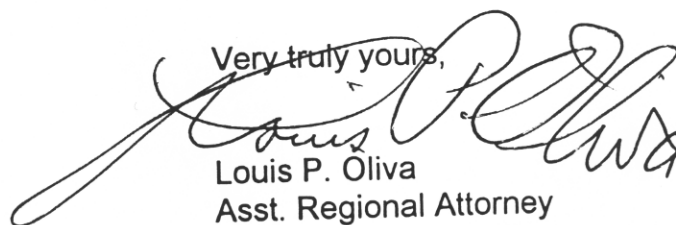
RE: EDGEMERE SUBSTATION - 52nd STREET - ROCKAWAY, QUEENS  
VOLUNTARY AGREEMENT

Dear Ms. Riccobono:

Enclosed is a copy of the fully executed LILCO - EDGEMERE SUBSTATION Voluntary Agreement. The Agreement was executed by the Department on April 19, 1998.

Please contact me at (718) 482-6470 if you have any questions.

Very truly yours,

  
Louis P. Oliva  
Asst. Regional Attorney

Enc.

cc: M.E. Kris (DEC)  
L. Silberfeld (DEC) w/o enc.  
S. Singh (DEC)

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Implementation of a  
Response Program for

AGREEMENT

**LILCO - EDMERE SUBSTATION**  
s/s Rockaway Beach Boulevard, w/o Beach,  
52nd Street, Edgemere,, ROCKAWAY  
QUEENS COUNTY

INDEX NUMBER:  
R2-0330-98-01

by

**LONG ISLAND LIGHTING COMPANY**

Volunteer.

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CONSIDERING,

1. The New York State Department of Environmental Conservation (the "Department" or "NYSDEC") is responsible for enforcement of the Environmental Conservation Law of the State of New York ("ECL"). This Agreement is entered into pursuant to the Department's authority under that law and constitutes an administrative settlement for purposes of 42 USC 9613(f).
2. A. The LILCO-Edgemere Substation Site (the "Site") is located at s/s Rockaway Beach Boulevard, w/o Beach, 52nd Street, Edgemere, Rockaway, Queens County, New York, Tax Section 61 Edgemere - Queens, Block 15891, Lot 10 (Western Part). The Site is situated on a lot of 0.49 acre(s) in an area that is primarily commercial and residential. Exhibit "A" of this Agreement is a map of the Site showing its general location.  
  
B. The Site is a retired LILCO electrical substation (structures and improvements have been removed) which is characterized by the presence of various types of fill material including fill from former gas manufacturing facilities. A fence surrounds the Site which also contains a concrete pad on a portion of the property. Certain of the unpaved areas are filled with coal ash, cinders and construction and demolition type waste. Soil sampling results exceed the

regulatory limit for leachable lead (TCLP 85 ppm) and tar sample exceeds the regulatory limit for leachable Benzene (TCLP - 0.72 mg/l). The fill material is also located on the southern portion of the adjoining parcel ("Adjoining Parcel") which at one time was owned by the Long Island Lighting Company but was sold in the 1960s. In addition, on October 4, 1995, during the substation decommissioning, vandalism of a 3,000 kva transformer resulted in a spill of 2,000 gallons of nonhazardous dielectric fluid (NYSDEC Spill No. 95-08222). 1,200 gallons have been recovered.

3. A. Long Island Lighting Company ("Volunteer" or "LILCO") is a corporation existing under the laws of the State of New York and has offices at 175 east Old Country Road, Hicksville, New York 11801.

B. Volunteer owns the Site and will maintain the Site in an undeveloped condition for future use for commercial or industrial utility purposes (the "Contemplated Uses").

C. Volunteer represents, and for the purposes of this Agreement, the Department relies on those representations, that Volunteer's involvement with the Site and with the facility on that Site is limited to the following: owner and operator.

4. The Department has the power, inter alia, to provide for the prevention and abatement of all water, land, and air pollution. ECL 3-0301.1.i.

5. Volunteer, desirous of implementing a remedial program acceptable to the Department sufficient to allow Volunteer to proceed with its plans to use the Site for the Contemplated Uses, consents to the terms and conditions of this Agreement.

6. Volunteer is also desirous of implementing a remedial program acceptable to the Department on a certain southern portion of an adjoining parcel ("Adjoining Parcel") which is not owned by the Volunteer, as more fully described on the map annexed to this Agreement as Exhibit A.

7. The Department and Volunteer agree that the goals of this Agreement are for Volunteer to, (i) implement the Department-approved remedial work plan pertaining to the Site and Adjoining Parcel; and (ii) reimburse the State's administrative costs as provided in this Agreement.

8. Volunteer agrees to be bound by the terms of this Agreement. Volunteer consents to and agrees not to contest the authority or jurisdiction of the Department to enter into or enforce this Agreement, and agrees not to contest the validity of this Agreement or its terms.

IN CONSIDERATION OF AND IN EXCHANGE FOR THE DEPARTMENT'S RELEASE AND COVENANT NOT TO SUE SET FORTH IN THIS AGREEMENT AND FOR THE MUTUAL COVENANTS AND PROMISES CONTAINED HEREIN, VOLUNTEER AGREES TO THE FOLLOWING:

I. Performance and Reporting of the Remedial Work Plan

A. 1. Within 21 days after the effective date of this Agreement, the Department will publish a notice in the Environmental Notice Bulletin to inform the public of the execution of this Agreement and of the public's opportunity to submit comments to the Department by no later than 30 days after the issue of the Environmental Notice Bulletin in which such notice shall appear on the remedial work plan (the "Work Plan") attached to this Agreement and made part of it as Exhibit "B;" and shall mail an equivalent notice to the local governmental representatives. If, as a result of its review of the comments received, the Department determines that the Work Plan must be revised:

- i. due to environmental conditions related to the Site or Adjoining Parcel that were unknown to the Department at the time of its approval of the Work Plan; or
- ii. due to information received, in whole or in part, after the execution of this Agreement, which indicates that the activities carried out in accordance with the Work Plan are not sufficiently protective of human health and the environment for the Contemplated Uses,

then the Department will so notify Volunteer and will immediately commence negotiations with Volunteer to revise the Work Plan and, if necessary, other components of this Agreement accordingly. If after good-faith negotiations, revisions to the Work Plan cannot be made, this Agreement shall terminate upon the Department's so informing Volunteer in writing, and both parties reserve whatever rights they may have had before the execution of this Agreement respecting the remediation of the Site and Adjoining Parcel. If both parties agree to a revised Work Plan, the revised Work Plan shall be attached to this Agreement as Exhibit "B-1;" Volunteer shall implement that Work Plan instead of the one contained in Exhibit "B;" and, unless revised as provided in Subparagraph I.B.2 of this Agreement, all references to "Work Plan" in this Agreement shall refer to the one contained in Exhibit "B-1."

2. Within 30 days after the effective date of this Agreement, Volunteer shall commence its implementation of the Work Plan in accordance with its provisions. This commencement is subject to negotiated modifications to the Work Plan, if any.

- B. 1. Volunteer shall carry out the Work Plan in accordance with its terms.
2. The parties agree that the Work Plan will be modified in the event that



contamination previously unknown or inadequately characterized is encountered during the Work Plan's implementation and that such modification(s) shall appear in Exhibit "B-2" and all references to "Work Plan" in this Agreement shall refer to the one contained in Exhibit "B-2." However, if after good-faith negotiations, Volunteer and the Department cannot agree upon modifications to the Work Plan, then except with respect to Volunteer's obligations under Paragraphs VI and VIII of this Agreement, this Agreement shall terminate effective the date of the Department's written notification to Volunteer that negotiations have failed to develop an acceptable modification to the Work Plan; Volunteer shall not leave the Site or Adjoining Parcel in a condition, from the perspective of human health and environmental protection, worse than that which prevailed before remedial activities were commenced; and (except with respect to the Department's right to enforce the obligations of Volunteer previously described in this sentence, which it may enforce under this Agreement) both parties retain whatever rights they may have had respecting each other as they had before the effective date of this Agreement.

3. Volunteer shall notify the Department of any significant difficulties that may be encountered in implementing the Work Plan, any Department-approved modification to the Work Plan, or any Department-approved detail, document, or specification prepared by or on behalf of Volunteer pursuant to the Work Plan and shall not modify any obligation unless first approved by the Department.

C. During implementation of all construction activities identified in the Work Plan, Volunteer shall have on-Site a full-time representative who is qualified to supervise the work done.

D. In accordance with the schedule contained in the Work Plan, as may be modified by agreement between the parties, Volunteer shall submit to the Department a final engineering report. The final engineering report shall include a detailed post-remedial operation and maintenance plan ("O&M Plan"), to the extent necessary; "as-built" drawings showing all changes made during construction, to the extent necessary; and a certification that all activities were completed in full accordance with the Work Plan, any Department-approved modification to the Work Plan, any Department-approved detail, document, or specification prepared by or on behalf of Volunteer pursuant to the Work Plan, and this Agreement. The O&M Plan, "as built" drawings, final engineering report, and certification must be prepared, signed, and sealed by a professional engineer.

E. Should post-remedial operation and maintenance prove to be necessary, upon the Department's approval of the O&M Plan, Volunteer shall implement the O&M Plan in accordance with the schedule and requirements of the Department-approved O&M Plan.

F. 1. i. Within 60 days after receipt of the final engineering report and certification, the Department shall notify Volunteer in writing whether the Department is satisfied with the implementation of the Work Plan, any Department-approved modification to

the Work Plan, any Department-approved detail, document, or specification prepared by or on behalf of Volunteer pursuant to the Work Plan, and this Agreement.

ii. Within 60 days after completion of the Department-approved O&M Plan, if any, Volunteer shall submit to the Department a final engineering report and certification that the post-remedial operation and maintenance activities identified in the Department-approved O&M Plan were implemented in accordance with that plan. The Department shall notify Volunteer whether it is satisfied with the O&M Plan's implementation.

2. Upon being satisfied that the cleanup identified in, or to be identified in accordance with, the Work Plan has been achieved, the Department shall notify Volunteer in writing of its satisfaction and, except for the reservations identified below, the Department releases, covenants not to sue, and shall forbear from bringing any action, proceeding, or suit against, Volunteer for the further investigation and remediation of the Site and Adjoining Parcel, based upon the release or threatened release of any Existing Contamination, provided that (a) timely payments of the amounts specified in Paragraph VI of this Agreement continue to be or have been made to the Department, (b) appropriate notices and deed restrictions have been recorded in accordance with Paragraphs IX and X of this Agreement, and (c) Volunteer and/or its lessees, sublessees, successors, or assigns promptly commence and diligently pursue to completion the Department-approved O&M Plan, if any. Nonetheless, the Department hereby reserves all of its rights concerning, and such release, covenant not to sue, and forbearance shall not extend to, any further investigation or remedial action the Department deems necessary:

i. due to off-Site migration of contaminants other than petroleum resulting in impacts to environmental resources, to human health, or to other biota that are not inconsequential and to off-Site migration of petroleum, irrespective of whether the information available to Volunteer and the Department at the time of the development of the Work Plan disclosed the existence or potential existence of such off-Site migration;

ii. due to environmental conditions related to the Site that were unknown to the Department at the time of its approval of the Work Plan which indicate that Site conditions are not sufficiently protective of human health and the environment for the Contemplated Uses;

iii. due to information received, in whole or in part, after the Department's approval of the final engineering report and certification, which indicates that the activities carried out in accordance with the Work Plan are not sufficiently protective of human health and the environment for the Contemplated Uses;

iv. due to Volunteer's failure to implement this Agreement to the

Department's satisfaction; or

v. due to fraud or mistake committed by Volunteer in demonstrating that the Site-specific cleanup requirements identified in, or to be identified in accordance with, the Work Plan were reached.

Additionally, the Department hereby reserves all of its rights concerning, and any such release, covenant not to sue, and forbearance shall not extend to, any further investigation or abatement the Department deems necessary to be undertaken in the event that Volunteer causes or suffers the release or threat of release at the Site of any hazardous substance (as that term is defined at 42 USC 9601[14]) or petroleum (as that term is defined in Navigation Law §172[15]) after the effective date of this Agreement; or Volunteer causes a, or suffers the use of the Site to, change from the Contemplated Uses to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment.

3. Notwithstanding any other provision in this Agreement, if with respect to the Site there exists or may exist a claim of any kind or nature on the part of the New York State Environmental Protection and Spill Compensation Fund against any party, nothing in this Agreement shall be construed, or deemed, to preclude the State of New York from recovering such claim.

G. If the Department is satisfied with the implementation of the Work Plan and Department-approved design, the Department shall provide Volunteer with a written "no further action" letter substantially similar to the model letter attached to this Agreement and incorporated in this Agreement as Exhibit "C;"

H. 1. Notwithstanding any other provision of this Agreement, with respect to any claim or cause of action asserted by the Department, the one seeking the benefit of the forbearance, covenant not to sue, or release set forth in Subparagraph I.F or in a "no further action" letter issued under Subparagraph I.G of this Agreement shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

2. Except as above provided in Subparagraph I.F of this Agreement and in the "no further action" letter issued under Subparagraph I.G of this Agreement, nothing in this Agreement is intended as a release, forbearance, 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 Department, or the State of New York may have against any person, firm, corporation, or other entity not a party to this Agreement. In addition, notwithstanding any other provision in this Paragraph I of this Agreement, the forbearance, covenant not to sue,

and release described in Subparagraph I.F and in the "no further action" letter issued under Subparagraph I.G of this Agreement shall not extend to parties (other than Volunteer) that were responsible under law before the effective date of this Agreement to address the Existing Contamination.

## II. Progress Reports

A. Volunteer shall submit to the parties identified in Subparagraph XI.A.1 in the numbers specified in that Subparagraph copies of written monthly progress reports that:

1. describe the actions which have been taken toward achieving compliance with this Agreement during the previous month;
2. include all results of sampling and tests and all other data received or generated by Volunteer or Volunteer's contractors or agents in the previous month, including quality assurance/quality control information, whether conducted pursuant to this Agreement or conducted independently by Volunteer;
3. identify all work plans, reports, and other deliverables required by this Agreement that were completed and submitted during the previous month;
4. describe all actions, including, but not limited to, data collection and implementation of the Work Plan, that are scheduled for the next month and provide other information relating to the progress at the Site;
5. include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of Volunteer's obligations under this Agreement, and efforts made to mitigate those delays or anticipated delays; and
6. include any modifications to the Work Plan that Volunteer has proposed to the Department and any that the Department has approved.

B. Volunteer shall submit these progress reports to the Department by the tenth day of every month following the effective date of this Agreement; and Volunteer's obligation to submit the progress reports shall terminate upon its receipt of the written satisfaction notification identified in Subparagraph I.F.2 of this Agreement approving Volunteer's final engineering report and certification concerning the Work Plan's implementation. However, Volunteer shall continue to submit reports concerning the implementation of any O&M Plan that may be required under this Agreement, in accordance with that Plan's requirements.

C. Volunteer also shall allow the Department to attend, and shall provide the Department at least five days advance notice of, any of the following: prebid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting.

### III. Review of Submittals

A. 1. The Department shall review each of the submittals Volunteer makes pursuant to this Agreement to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Agreement and with generally accepted technical and scientific principles. The Department shall notify Volunteer in writing of its approval or disapproval of the submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Agreement.

2. i. If the Department disapproves a submittal, it shall so notify Volunteer in writing and shall specify the reasons for its disapproval within 30 days (60 days, in the case of the final engineering report and certification) after its receipt of the submittal and may request Volunteer to modify or expand the submittal; provided, however, that the matters to be addressed by such modification or expansion are within the specific scope of work as described in the Work Plan. Within 30 days after receiving written notice that Volunteer's submittal has been disapproved, Volunteer shall make a revised submittal to the Department which endeavors to address and resolve all of the Department's stated reasons for disapproving the first submittal.

ii. After receipt of the revised submittal, the Department shall notify Volunteer in writing within 30 days of its approval or disapproval. If the Department disapproves the revised submittal, the Department and Volunteer may pursue whatever remedies at law or in equity (by declaratory relief) that may be available to them, without prejudice to either's right to contest the same. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Agreement.

B. Within 30 days after the Department's approval of the final engineering report and certification, Volunteer shall submit to the Department one microfilm copy (16 millimeter roll film M type cartridge) of that report and all other Department-approved drawings and submittals. Such submission shall be made to:

Director, Division of Environmental Remediation  
New York State Department of Environmental Conservation  
50 Wolf Road  
Albany, New York 12233-7010



#### IV. Enforcement

A. This Agreement shall be enforceable as a contractual agreement under the laws of the State of New York.

B. Volunteer shall not suffer any penalty under this Agreement or be subject to any proceeding or action if it cannot comply with any requirement of this Agreement because of fire, lightning, earthquake, flood, adverse weather conditions, strike, shortages of labor and materials, war, riot, obstruction or interference by adjoining landowners or the local community, or any other fact or circumstance beyond Volunteer's reasonable control ("force majeure event"). Volunteer shall, within five working days of when it obtains knowledge of any such force majeure event, notify the Department in writing. Volunteer shall include in such notice the measures taken and to be taken by Volunteer to prevent or minimize any delays and shall request an appropriate extension or modification of this Agreement. Volunteer shall have the burden of proving by a preponderance of the evidence that an event is a defense to compliance with this Agreement pursuant to this Subparagraph IV.B of this Agreement.

#### V. Entry upon Site

Volunteer hereby consents to the entry upon the Site or areas in the vicinity of the Site which may be under the control of Volunteer by any duly designated employee, consultant, contractor, or agent of the Department or any State agency having jurisdiction with respect to the matters addressed in the Work Plan for purposes of inspection, sampling, and testing and to ensure Volunteer's compliance with this Agreement. The Department shall abide by the health and safety rules in effect for work performed at the Site under the terms of this Agreement. Upon request, Volunteer shall provide the Department with suitable office space in the vicinity of the Site, where Volunteer has an office building, including access to a telephone, and shall permit the Department full access to all records relating to matters addressed by this Agreement and to job meetings.

#### VI. Payment of State Costs

Within thirty days after receipt of an itemized invoice from the Department, Volunteer shall pay to the Department a sum of money which shall represent reimbursement for the State's expenses including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for negotiating this Agreement, reviewing and revising submittals made pursuant to this Agreement, overseeing activities conducted pursuant to this Agreement, collecting and analyzing samples, and administrative costs associated with this Agreement, but not including the State's expenses incurred after the Department's notification identified in Subparagraph I.F.2 of this Agreement of its approval of the final engineering report and certification pertaining to the implementation of the Work Plan or, if any, of the Department-approved O&M Plan, whichever is later. Each such

3/24/98  
S/M  
L.P.O. (for DEC)  
3/25/98  
payment shall be made by certified check payable to the Department of Environmental Conservation and shall be sent to:

Bureau of Program Management  
Division of Environmental Remediation  
New York State Department of Environmental Conservation  
50 Wolf Road  
Albany, NY 12233-7010

Personal service costs shall be documented by reports of Direct Personal Service, which shall identify the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual) and shall be documented by expenditure reports.

VII. Department Reservation of Rights

3/24/98  
S/M  
L.P.O. (for DEC)  
3/25/98  
A. Except as provided in Subparagraph I.F.2 of this Agreement and in any "no further action" letter issued under Subparagraph I.G of this Agreement, nothing contained in this Agreement shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights (including, but not limited to nor exemplified by, the right to recover natural resources damages) with respect to any party, including Volunteer, except that any entity into which Volunteer merges (whether or not Volunteer is the surviving entity in such merger) also shall enjoy the protections of this Agreement to the same extent as Volunteer.

B. Nothing contained in this Agreement shall prejudice any rights of the Department to take any investigatory or remedial action it may deem necessary if Volunteer fails to comply with this Agreement or if contamination other than Existing Contamination is encountered at the Site or the Adjoining Parcel.

C. Nothing contained in this Agreement shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

D. Nothing contained in this Agreement shall be construed to affect the Department's right to terminate this Agreement at any time during its implementation if Volunteer fails to comply substantially with this Agreement's terms and conditions.

E. Except as otherwise provided in this Agreement, Volunteer specifically reserves all defenses Volunteer may have under applicable law respecting any Departmental assertion of



remedial liability against Volunteer; and reserves all rights Volunteer may have respecting the enforcement of this Agreement, including the rights to notice, to be heard, to appeal, and to any other due process. The existence of this Agreement or Volunteer's compliance with this Agreement shall not be construed as an admission of liability, fault, or wrongdoing by Volunteer, and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party.

#### VIII. Indemnification

Volunteer shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement by Volunteer and/or any of Volunteer's directors, officers, employees, servants, agents, successors, and assigns. This indemnification shall not apply to actions by the Department, the State of New York, or their representatives and employees which are shown to have been the result of negligence or reckless, wanton or intentional misconduct.

#### IX. Notice of Sale or Conveyance

A. Within 30 days after the effective date of this Agreement, Volunteer shall file the Notice of Agreement, which is attached to this Agreement as Exhibit "D," with the Queens County Clerk to give all parties who may acquire any interest in the Site notice of this Agreement. Volunteer may terminate the Notice when the Department notifies Volunteer in writing pursuant to Subparagraph I.F.2 of this Agreement that the Department is satisfied that the Site-specific cleanup levels identified in, or to be identified in accordance with, the Work Plan have been reached and that the O&M Plan has been successfully implemented.

B. If Volunteer proposes to convey the whole or any part of Volunteer's interest in the Site, Volunteer shall, not fewer than 60 days before the date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Agreement.

#### X. Deed Restriction

A. Within 30 days of its receipt of the Department's notification pursuant to Subparagraph I.F.2 of this Agreement approving Volunteer's final engineering report and certification concerning the Work Plan, Volunteer shall record an instrument with the Queens County Clerk, to run with the land, that:

1. shall prohibit the Site from ever being used for purposes other than for

the Contemplated Uses without the express written waiver of such prohibition by the Department, or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department;

2. shall prohibit the use of the groundwater underlying the Site without treatment rendering it safe for drinking water or industrial purposes, as appropriate, unless the user first obtains permission to do so from the Department, or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department; and

3. shall provide that Volunteer, on behalf of itself and its successors and assigns, hereby consents to the enforcement by the Department, or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department, of the prohibitions and restrictions that this Paragraph X requires to be recorded, and hereby covenants not to contest such enforcement.

B. Volunteer shall provide the Department with a copy of such instrument certified by the Queens County Clerk to be a true and faithful copy of the instrument as recorded in the Office of the Queens County Clerk.

#### XI. Communications

A. All written communications required by this Agreement shall be transmitted by United States Postal Service, by private courier service, or hand delivered.

1. Communication from Volunteer shall be sent to:

Richard A. Gardineer, P.E.  
Regional Remediation Engineer, Region 2  
New York State Department of  
Environmental Conservation  
47-40 21st Street  
Long Island City, New York 11101

with copies to:

G. Anders Carlson, Ph.D.  
Director, Bureau of Environmental Exposure Investigation  
New York State Department of Health  
2 University Place  
Albany, New York 12203

Lou Oliva, Esq.  
New York State Department  
of Environmental Conservation  
47-40 21st Street  
Long Island City, New York 11101

Copies of work plans and reports shall be submitted as follows:

- Four copies (one unbound) to Mr. Gardineer
- Two copies to Dr. Carlson
- One copy to Lou Oliva

2. Communication to be made from the Department to Volunteer shall be sent

to:

Robert D. Teetz  
Manager, Environmental Engineering Department  
Long Island Lighting Company  
445 Broadhollow Road  
Melville, New York 11747

with a copy to:

Donna L. Riccobono  
Long Island Lighting Company  
175 East Old Country Road  
Hicksville, New York 11801

B. The Department and Volunteer reserve the right to designate additional or different addressees for communication on written notice to the other given in accordance with this Paragraph XI.

## XII. Miscellaneous

A. 1. By entering into this Agreement, Volunteer certifies that it has fully and accurately disclosed to the Department all information reasonably known or accessible to Volunteer and all information in the possession or control of Volunteer's officers, directors, employees, contractors, and agents which relates in any way to the contamination existing on the effective date of this Agreement or any past or potential future release of hazardous substances, pollutants, or contaminants at or from the Site and to their application for this Agreement.

2. If the Department determines that information Volunteer provided and certifications made are not materially accurate and complete, this Agreement, within the sole discretion of the Department, shall be null and void *ab initio* except with respect to the provisions of Paragraphs VI and VIII and except with respect to the Department's right to enforce those obligations under this Agreement, and the Department shall reserve all rights that it may have.

B. Volunteer shall employ qualified technical personnel or professional consultants, contractors, laboratories, quality assurance/quality control personnel, and data validators acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Agreement. The responsibility for the performance of the professionals retained by Volunteer shall rest solely with Volunteer.

C. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Volunteer, and the Department also shall have the right to take its own samples. Volunteer shall make available to the Department the results of all sampling and/or tests or other data generated by Volunteer with respect to implementation of this Agreement and shall submit these results in the progress reports required by this Agreement.

D. Volunteer shall notify the Department at least five working days in advance of any field activities to be conducted pursuant to this Agreement, except that it will give the Department as much advance notice as is practicable for field activities required by extreme weather conditions or other emergencies

E. 1. Subject to Subparagraph XII.E.2 of this Agreement, Volunteer shall obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform Volunteer's obligations under this Agreement.

2. In carrying out the activities identified in the Work Plan, the Department shall exempt Volunteer from the requirement to obtain any Department permit for any activity that is conducted on the Site or Adjoining Parcel and that satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit.

F. Volunteer, Volunteer's officers, directors, agents, servants, and employees (in the performance of their designated duties on behalf of Volunteer), and Volunteer's lessees, sublessees, successors, and assigns shall be bound by this Agreement. Any change in ownership or corporate status of Volunteer including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Volunteer's responsibilities under this Agreement. Volunteer's officers, directors, employees, servants, and agents shall be obliged to comply with the relevant provisions of this Agreement in the performance of their

designated duties on behalf of Volunteer.

G. Volunteer shall provide a copy of this Agreement to each contractor hired to perform work required by this Agreement and to each person representing Volunteer with respect to the Site and shall condition all contracts entered into in order to carry out the obligations identified in this Agreement upon performance in conformity with the terms of this Agreement. Volunteer or Volunteer's contractors shall provide written notice of this Agreement to all subcontractors hired to perform any portion of the work required by this Agreement. Volunteer shall nonetheless be responsible for ensuring that Volunteer's contractors and subcontractors perform the work in satisfaction of the requirements of this Agreement.

H. All references to "professional engineer" in this Agreement are to an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law. If such individual is a member of a firm, that firm must be authorized to offer professional engineering services in the State of New York in accordance with Article 145 of the New York State Education Law.

I. All references to "days" in this Agreement are to calendar days unless otherwise specified.

J. The paragraph headings set forth in this Agreement are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Agreement.

K. 1. No term, condition, understanding, or agreement purporting to modify or vary any term of this Agreement shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Volunteer of Volunteer's obligation to obtain such formal approvals as may be required by this Agreement.

2. If Volunteer desires that any provision of this Agreement be changed, Volunteer shall make timely written application, signed by the Volunteer, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to project manager's supervisor and to project attorney's name.

L. In undertaking the work required under this Agreement, Volunteer and its officers, directors, employees, representatives, agents, contractors and subcontractors are deemed for the purpose of ECL 27-1321.3 and any other similar provision of state or federal law, to be performing services related to cleanup or restorative work which is conducted

pursuant to a contract with the Department.

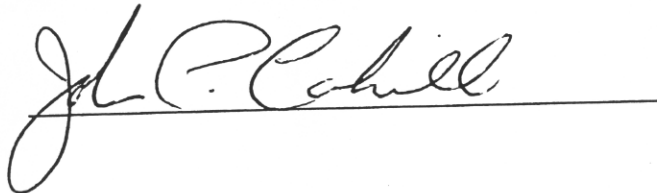
M. The provisions of this Agreement do not constitute and shall not be deemed a waiver of any right Volunteer otherwise may have to seek and obtain contribution and/or indemnification from other potentially responsible parties or their insurers, or Volunteer's insurers, for payments made previously or in the future for response costs. To the extent authorized under 42 USC 9613 and any other applicable law, Volunteer shall not be liable for any claim, now or in the future, in the nature of contribution by potentially responsible parties concerning the Existing Contamination. In any future action brought by Volunteer against a potentially responsible party under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the provision of 42 USC 9613(f)(3) shall apply.

N. Volunteer and Volunteer's employees, servants, agents, lessees, sublessees, successors, and assigns hereby affirmatively waive any right they had, have, or may have to make a claim pursuant to Article 12 of the Navigation Law with respect to the Site or the Adjoining Parcel, and further release and hold harmless the New York State Environmental Protection and Spill Compensation Fund from any and all legal or equitable claims, suits, causes of action, or demands whatsoever that any of same has or may have as a result of Volunteer's entering into or fulfilling the terms of this Agreement with respect to the Site and the Adjoining Parcel.

O. The effective date of this Agreement shall be the date it is signed by the Commissioner or his designee.

DATED: *April 19, 1998*

JOHN P. CAHILL, COMMISSIONER  
NEW YORK STATE DEPARTMENT  
OF ENVIRONMENTAL CONSERVATION

A handwritten signature in dark ink, appearing to read "John P. Cahill", is written over a horizontal line.

CONSENT BY VOLUNTEER

Volunteer hereby consents to the issuing and entering of this Agreement, waives Volunteer's right to a hearing herein as provided by law, and agrees to be bound by this Agreement.

Long Island Lighting Company

By: [Signature]

Title: Sr. Vice President - Engineering & Construction

Date: Feb. 11, 1998

STATE OF NEW YORK    )  
COUNTY OF Suffolk    ) s.s.:

On this 11<sup>th</sup> day of February, 1998, before me personally came Edward J. Youngling, to me known, who being duly sworn, did depose and say that he resides in Melville, New York; that he is Senior Vice President, the corporation described in and which executed the foregoing instrument; and that he signed on behalf of Long Island Lighting Company and was authorized to do so.

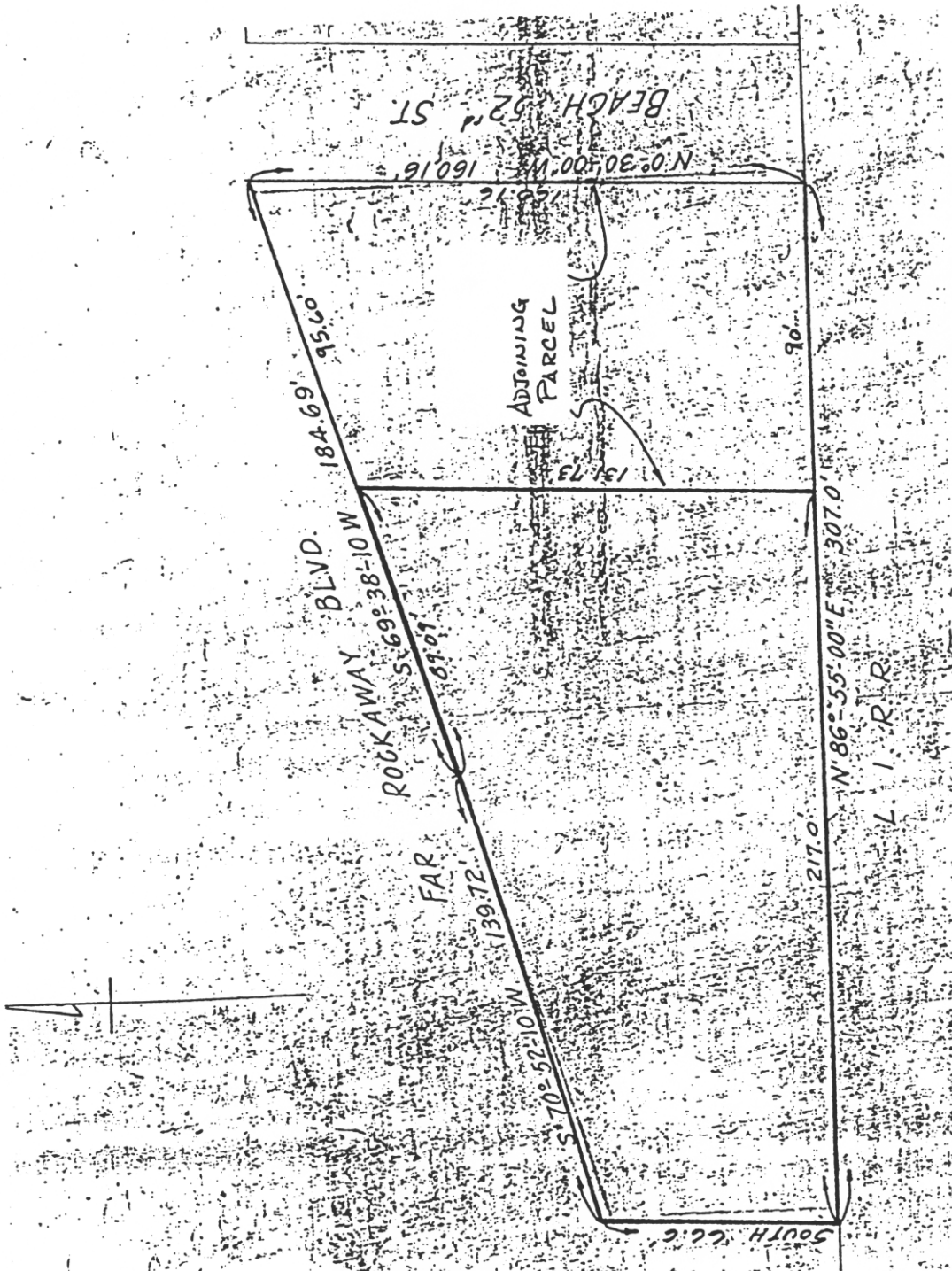
[Signature]  
Notary Public

MARIE VANACORE  
NOTARY PUBLIC, State of New York  
No. 30-4769813  
Qualified in Nassau County  
Commission Expires Sept 30, 1998



# EXHIBIT "A"

## Map of Site



EDGEHURST SUBSTATION SITE, SITUATED  
AT EDGEHURST, QUEENS COUNTY, N.Y.

**EXHIBIT "B"**

**Department-Approved Work Plan**

**EXHIBIT "C"**  
**Assignable Release and Covenant Not To Sue**

[On Department Letterhead]

[Insert Date]

To whom it may concern:

Unless otherwise specified in this letter, all terms used herein shall have the meaning assigned to them under the terms of the Voluntary Agreement entered into between the New York State Department of Environmental Conservation (the "Department") and Long Island Lighting Company ("Volunteer"), Index No. R2-0330-98-01 (the "Agreement").

The Department is pleased to report that the Department is satisfied that the Department-approved Work Plan to implement a response program at the parcel of land located at s/s Rockaway Beach Boulevard, w/o Beach, 52nd Street, Edgemere, Rockaway, Queens County, New York, Tax Section 61 Edgemere - Queens, Block 15891, Lot 10 (Western Part), a map of which is attached hereto as Appendix "A" (the "Site"), and at the Adjoining Parcel has been successfully implemented. So long as no information has been withheld from the Department or mistake made as to the hazard posed by any Site-related compound or analyte of concern, the Department believes that no further investigation or response will be required at the Site or Adjoining Parcel respecting the Existing Contamination to render the Site and the Adjoining Parcel safe to be used for the Contemplated Uses.

**Assignable Release and Covenant Not To Sue:**

The Department therefore, hereby releases, covenants not to sue, and shall forbear from bringing any action, proceeding, or suit against Volunteer and Volunteer's lessees and sublessees and Volunteer's successors and assigns and their respective secured creditors, for the further investigation and remediation of the Site and Adjoining Parcel based upon the release or threatened release of Existing Contamination, provided that (a) timely payments of the amounts specified in Paragraph VI of the Agreement continue to be or have been made to the Department, (b) appropriate notices and deed restrictions have been recorded in accordance with Paragraphs IX and X of the Agreement, and Volunteer and/or its lessees, sublessees, successors, or assigns promptly commence and diligently pursue to completion the Department-approved O&M Plan, if any. Nonetheless, the Department hereby reserves all of its rights concerning, and such release, covenant not to sue, and forbearance shall not extend to, any further investigation or remedial action the Department deems necessary:

- due to off-Site migration of contaminants other than petroleum resulting in impacts to

environmental resources, to human health, or to other biota that are not inconsequential and to off-Site migration of petroleum, irrespective of whether the information available to Volunteer and the Department at the time of the development of the Work Plan disclosed the existence or potential existence of such off-Site migration;

- due to environmental conditions related to the Site that were unknown to the Department at the time of its approval of the Work Plan which indicate that Site conditions are not sufficiently protective of human health and the environment for the Contemplated Uses;
- due to information received, in whole or in part, after the Department's approval of the final engineering report and certification, which indicates that the activities carried out in accordance with the Work Plan are not sufficiently protective of human health and the environment for the Contemplated Uses;
- due to Volunteer's failure to implement the Agreement to the Department's satisfaction; or
- due to fraud or mistake committed by Volunteer in demonstrating that the Site-specific cleanup levels identified in, or to be identified in accordance with, the Work Plan were reached.

Additionally, the Department hereby reserves all of its rights concerning, and any such release, covenant not to sue, and forbearance shall not extend to:

- Volunteer if it causes a, or suffers the, release or threat of release, at the Site of any hazardous substance (as that term is defined at 42 USC 9601[14]) or petroleum (as that term is defined in Navigation Law § 172[15]), other than Existing Contamination; or if it causes a, or suffers the use of the Site to, change from the Contemplated Uses to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment; nor to
- any of Volunteer's lessees, sublessees, successors, or assigns who causes a, or suffers the, release or threat of release, at the Site of any hazardous substance (as that term is defined at 42 USC 9601[14]) or petroleum (as that term is defined in Navigation Law § 172[15]), other than Existing Contamination, after the effective date of the Agreement; who causes a, or suffers the use of the Site to, change from the Contemplated Uses to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment; or who is otherwise a party responsible under law for the remediation of the Existing Contamination independent of any obligation that party may have respecting same

established resulting solely from the Agreement's execution.

Notwithstanding the above, however, with respect to any claim or cause of action asserted by the Department, the one seeking the benefit of this release shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

Notwithstanding any other provision in this release, if with respect to the Site or the Adjoining Parcel there exists or may exist a claim of any kind or nature on the part of the New York State Environmental Protection and Spill Compensation Fund against any party, nothing in this release shall be construed, or deemed, to preclude the State of New York from recovering such claim.

In conclusion, the Department is pleased to be part of this effort to return the Site to productive use of benefit to the entire community.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL  
CONSERVATION

By: \_\_\_\_\_

Its: \_\_\_\_\_

**Appendix "A"**

**(to Exhibit "C")**

**Map of the Site  
Exhibit "D"**

**NOTICE OF AGREEMENT**

**This Notice** is made as of the \_\_\_\_ day of \_\_\_\_\_, 1998 by Long Island Lighting Company, the fee owner of a parcel of real property located at s/s Rockaway Beach Boulevard, w/o Beach, 52nd Street, Edgemere, Rockaway, Queens County, New York, Tax Section 61 Edgemere - Queens, Block 15891, Lot 10 (Western Part), as more particularly described on Appendix "A" attached hereto (the "Property"); and

**WHEREAS**, Long Island Lighting Company, by authorized signature, entered into an administrative Agreement with the Department, Index #- R2-0330-98-01 ( the "Agreement"), concerning the remediation of contamination present on the Property and Adjoining Parcel and characterized to determine its nature and extent (the "Existing Contamination"), which Agreement was signed by the Commissioner of Environmental Conservation on \_\_\_\_\_, 1998; and

**WHEREAS**, in return for the remediation of the Property and Adjoining Parcel pursuant to the Agreement to the satisfaction of the Department, the Department will provide Long Island Lighting Company and its lessees and sublessees and its successors and assigns, including their respective secured creditors, with a release, covenant not to sue, and forbearance from bringing any action, proceeding, or suit related to the Site's or Adjoining Parcel's further investigation or remediation based upon the release or threatened release of Existing Contamination, subject to certain reservations set forth in the Agreement; and

**WHEREAS**, pursuant to the Agreement, Long Island Lighting Company agreed that it would give notice of the Agreement to all parties who may acquire any interest in the Property or Adjoining Parcel by filing this Notice with the Queens County Clerk,

**NOW, THEREFORE**, Long Island Lighting Company, for itself, its successors and its assigns declares that:

1. This Notice of the Agreement is hereby given to all parties who may acquire any interest in the Property or the Adjoining Parcel; and that

2. This Notice shall terminate upon the filing by Long Island Lighting Company, or its successors and assigns, of a termination of notice of Agreement after having first received approval to do so from the New York State Department of Environmental

Conservation.

**IN WITNESS WHEREOF**, Long Island Lighting Company has executed this Notice of Agreement by its duly authorized representative.

**Long Island Lighting Company**

Dated: \_\_\_\_\_, 1998

By: \_\_\_\_\_

Its: \_\_\_\_\_

[acknowledgment]