

**Alan Cooper**

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**From:** "Alan Cooper" <cooplaw@rochelle.net>  
**To:** "sue messer" <smesser@rochelleil.us>; "David Plyman" <dplyman@rochelleil.us>  
**Sent:** Thursday, April 26, 2012 10:25 AM  
**Attach:** jandloil.highwayauthorityagreementsideagreement (1).docx  
**Subject:** agenda item--J & L Oil agreements

Sue: We have finalized two agreements related to the J & L Oil Company property located at 901 South 7th Street, subject to council approval. This property was formerly used as a gas station, and there was apparently a release of contaminants into the soil which prompted IEPA action.

As part of the cleanup requirements, the property owner has entered into a "highway authority agreement" (HAA) with IDOT, and needs a similar HAA with the City. Under the HAAs, IDOT and the City agree to prohibit the use of groundwater in their respective right-of-ways for potable water and domestic use, and to limit access to the soil. The HAA poses no difficulty for the City because there are not, and will not be, any wells in the r-o-w and the water mains are impermeable cast iron. The agreements would last until the IEPA determines that they are no longer necessary.

The IDOT HAA contains certain indemnification clauses covering the costs of any environmental cleanup caused by J & L. The same clauses do not appear in the City HAA, and IEPA will not allow the City HAA to be modified. However, I am advised that the indemnifications may be incorporated in a side agreement, and that this procedure has been followed by other municipalities in similar situations. Hence the need for two agreements.

Under the agreements, J & L Oil will remain liable to the City for contamination cleanup costs caused by them, but their liability will not pass to any new owner.

The side agreement is attached. I am having two originals of the HAA agreement delivered to you, so that you can make electronic copies for the agenda packet. After approval, the two originals will need to be signed by all parties.

Alan

ALAN H. COOPER  
Attorney at Law  
233 East Route 38, Suite 202  
P. O. Box 194  
Rochelle, IL 61068  
(815) 562-2677

## HIGHWAY AUTHORITY AGREEMENT

This Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 201\_\_ pursuant to 35 Ill. Adm. Code 742.1020 by and between (1) J&L Oil, Inc. (“Owner/Operator”) and (2) the City of Rochelle (“Highway Authority”), collectively known as the “Parties.”

**WHEREAS**, J&L Oil, Inc. is the owner or operator of one or more leaking underground storage tank formerly located at 901 South 7<sup>th</sup> Street, Rochelle, Illinois 61235 (“the Site”);

**WHEREAS**, as a result of one release of contaminants from the above referenced underground storage tanks (“the Release”), soil and groundwater contamination at the Site exceeds Tier 1 residential remediation objectives of 35 Ill. Adm. Code 742;

**WHEREAS**, the soil and groundwater contamination exceeding Tier 1 residential remediation objectives may extend into the Highway Authority’s right-of-way;

**WHEREAS**, the Owner/Operator is conducting corrective action in response to the Release(s);

**WHEREAS**, the Parties desire to prevent groundwater beneath the Highway Authority’s right-of-way that exceeds Tier 1 remediation objectives from use as a supply of potable or domestic water and to limit access to soil within the right-of-way that exceeds Tier 1 residential remediation objectives so that human health and the environment are protected during and after any access;

**NOW, THEREFORE**, the Parties agree as follows:

1. The recitals set forth above are incorporated by reference as if fully set forth herein.
2. The Illinois Emergency Management Agency has assigned incident number 20040687 to the Release.
3. Attached as **Exhibit A** are scaled maps prepared by the Owner/Operator that shows the Site and surrounding area and delineates the current and estimated future extent of soil and groundwater contamination above the applicable Tier 1 residential remediation objectives as a result of the Release.
4. Attached as **Exhibit B** are tables prepared by the Owner/Operator that lists each contaminant of concern that exceeds its Tier 1 residential remediation objective, its Tier 1 residential remediation objective and its concentrations within the zone where Tier 1 residential remediation objectives are exceeded. The locations of the concentrations listed in **Exhibit B** are identified on the map in **Exhibit A**.
5. Attached as **Exhibit C** is a scaled map prepared by the Owner/Operator showing the area of Highway Authority’s right-of-way that is governed by this agreement (“Right-of-Way”). Because **Exhibit C** is not a surveyed plat, the Right-of-Way boundary may be an approximation of the actual Right-of-Way lines.
6. The Highway Authority stipulates it has jurisdiction over the Right-of-Way that gives it sole control over the use of groundwater and access to the soil located within or beneath the Right-of-Way.

7. The Highway Authority agrees to prohibit within the Right-of-Way all potable and domestic uses of groundwater exceeding Tier 1 residential remediation objectives.
8. The Highway Authority further agrees to limit access by itself and others to soil within the Right-of-Way exceeding Tier 1 residential remediation objectives. Access shall be allowed only if human health (including worker safety) and the environment are protected during and after any access. The Highway Authority may construct, reconstruct, improve, repair, maintain and operate a highway upon the Right-of-Way, or allow others to do the same by permit. In addition, the Highway Authority and others using or working in the Right-of-Way under permit have the right to remove soil or groundwater from the Right-of-Way and dispose of the same in accordance with applicable environmental laws and regulations. The Highway Authority agrees to issue all permits for work in the Right-of-Way, and make all existing permits for work in the Right-of-Way subject to the following or a substantially similar condition:

As a condition of this permit the permittee shall request the office issuing this permit to identify sites in the Right-of-Way where a Highway Authority Agreement governs access to soil that exceeds the Tier 1 residential remediation objectives of 35 Ill. Adm. Code 742. The permittee shall take all measures necessary to protect human health (including worker safety) and the environment during and after any access to such soil.

9. This agreement shall be referenced in the Agency's no further remediation determination issued for the Release.
10. The Agency shall be notified of any transfer of jurisdiction over the Right-of-Way at least 30 days prior to the date the transfer takes effect. This agreement shall be null and void upon the transfer unless the transferee agrees to be bound by this agreement as if the transferee were an original party to this agreement. The transferee's agreement to be bound by the terms of this agreement shall be memorialized at the time of transfer in a writing ("Rider") that references this Highway Authority Agreement and is signed by the Highway Authority, or subsequent transferor, and the transferee.
11. This agreement shall become effective on the date the Agency issues a no further remediation determination for the Release. It shall remain effective until the Right-of-Way is demonstrated to be suitable for unrestricted use and the Agency issues a new no further remediation determination to reflect there is no longer a need for this agreement, or until the agreement is otherwise terminated or voided.
12. In addition to any other remedies that may be available, the Agency may bring suit to enforce the terms of this agreement or may, in its sole discretion, declare this agreement null and void if any of the Parties or any transferee violates any terms of this agreement. The Parties or transferee shall be notified in writing of any such declaration.
13. This agreement shall be null and void if a court of competent jurisdiction strikes down any part or provision of the agreement.
14. This agreement supercedes any prior written or oral agreements or understandings between the Parties on the subject matter addressed herein. It may be altered, modified or amended only upon the written consent and agreement of the Parties.

15. Any notices or other correspondence regarding this agreement shall be sent to the Parties at following addresses:

Manager, Division of Remediation Management  
Bureau of Land  
Illinois Environmental Protection Agency  
P.O. Box 19276  
Springfield, IL 62974-9276

Owner/Operator  
Mr. Gene Wright, Agent  
J&L Oil, Inc.  
204 Route 45  
Vernon Hills, IL 60061

City of Rochelle  
Sam Tesreau, City Engineer  
417 North 6<sup>th</sup> Street  
Rochelle, IL 61068

IN WITNESS THEREOF, the Parties have caused this agreement to be signed by their duly authorized representatives.

Date: \_\_\_\_\_

CITY OF ROCHELLE

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

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

Date: \_\_\_\_\_

OWNER/OPERATOR

J&L Oil, Inc.

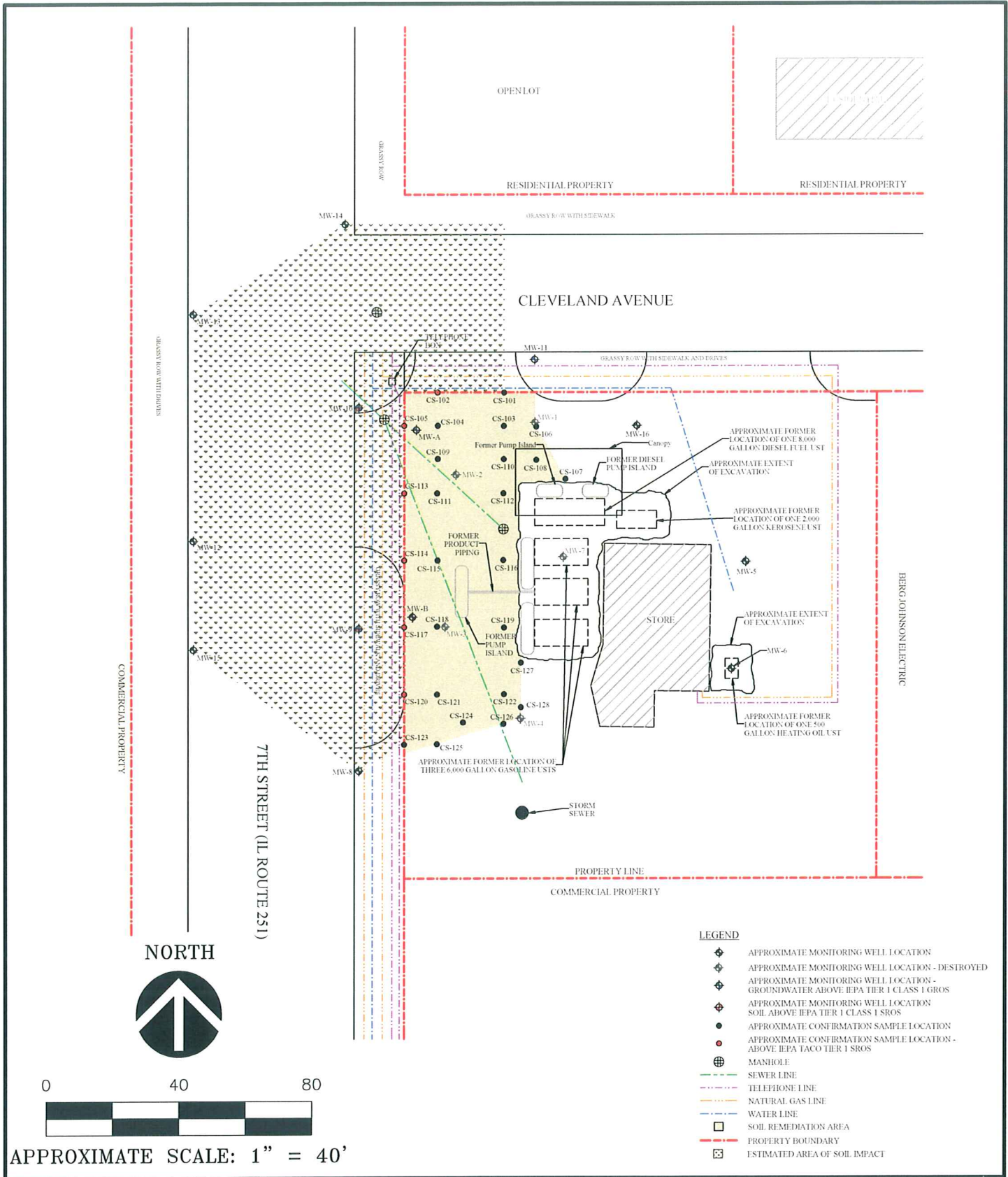
By: \_\_\_\_\_

Gene Wright, Agent

EXHIBIT A

CITY OF ROCHELLE  
HIGHWAY AUTHORITY AGREEMENT

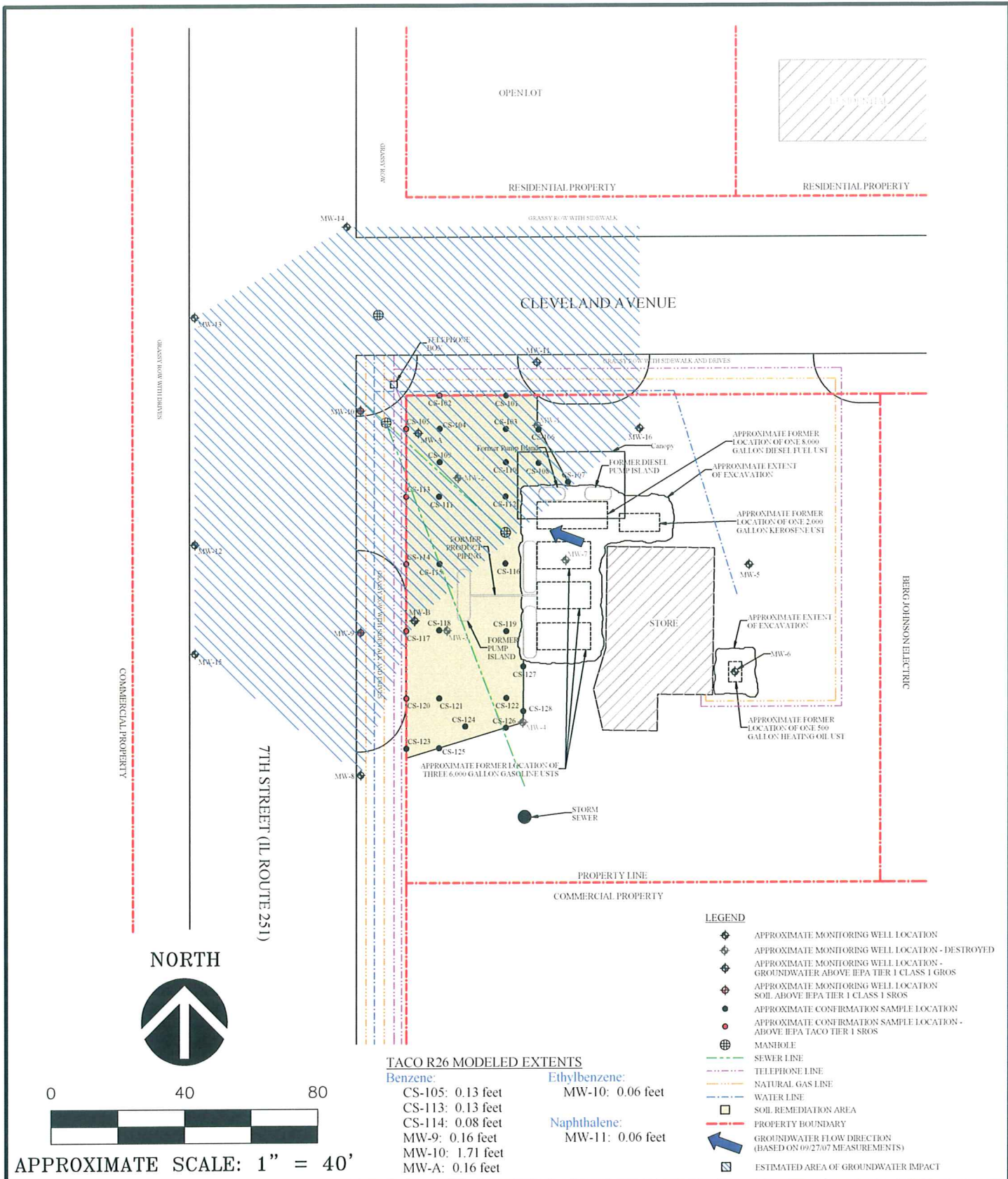
J&L Oil, Inc.  
901 South 7<sup>th</sup> Street  
Rochelle, Illinois



**MARLIN ENVIRONMENTAL, INC.**  
 3935 COMMERCE DR.  
 ST. CHARLES, ILLINOIS 60174  
 (630) 444-1933



**ESTIMATED SOIL IMPACT MAP**  
 J&L OIL, INC. - ROCHELLE (#79)  
 901 SOUTH 7TH STREET  
 ROCHELLE, ILLINOIS



MARLIN ENVIRONMENTAL, INC.



3935 COMMERCE DR.  
ST. CHARLES, ILLINOIS 60174  
(630) 444-1933

**ESTIMATED GROUNDWATER IMPACT MAP**

J&L OIL, INC. - ROCHELLE (#79)  
901 SOUTH 7TH STREET  
ROCHELLE, ILLINOIS

EXHIBIT A - FIGURE 2

11/2011

EXHIBIT B

CITY OF ROCHELLE  
HIGHWAY AUTHORITY AGREEMENT

J&L Oil, Inc.  
901 South 7<sup>th</sup> Street  
Rochelle, Illinois

TABLE I

Summary of Soil Analytical Results

Date of Sample Collection:	MW-11 5'-7'	MW-14 7'-9'	MW-14 15'-16'	CS-101	CS-102	IEPA TACO Tier 1 Soil Remediation Objectives								
						Soil Component of the Groundwater Ingestion Exposure Pathway			Ingestion Exposure Pathway			Inhalation Exposure Pathway		
						Class I			Residential	Industrial/ Commercial	Construction Worker	Residential	Industrial/ Commercial	Construction Worker
Contaminants of Concern:														
<b>BTEX Organic Compounds (5035A/8260B)</b>														
<b>Date Analyzed:</b>	<b>Units</b>	<b>1/12/2006</b>	<b>1/12/2006</b>	<b>8/9/2007</b>	<b>8/10/2007</b>									
Benzene	µg/kg	<2.0	<2.0	<30.0	<b>118</b>	12,000	100,000	2,300,000	800	1,600	2,200			
Toluene	µg/kg	<5.0	<5.0	<50.0	<50.0	16,000,000	410,000,000	410,000,000	650,000	650,000	42,000			
Ethylbenzene	µg/kg	<5.0	<5.0	1,270	6,060	7,800,000	200,000,000	20,000,000	400,000	400,000	58,000			
Total Xylenes	µg/kg	<5.0	<5.0	960	<b>6,090</b>	160,000,000	1,000,000,000	410,000,000	320,000	320,000	5,600			
Methyl-tert-butylether (MTBE)	µg/kg	<5.0	<5.0	<50.0	<50	780,000	20,000,000	2,000,000	8,800,000	8,800,000	140,000			
<b>Polynuclear Aromatic Hydrocarbons (8270C)</b>														
<b>Date Analyzed:</b>	<b>Units</b>	<b>4/19/2005</b>	<b>1/13/2006</b>	<b>8/12/2007</b>	<b>8/12/2007</b>									
Acenaphthene	µg/kg	<50	<50	<50	<50	4,700,000	120,000,000	120,000,000	---	---	---			
Acenaphthylene	µg/kg	<50	<50	<50	<50	---	---	---	---	---	---			
Anthracene	µg/kg	<50	<50	<50	<50	23,000,000	610,000,000	610,000,000	---	---	---			
Benzo(a)anthracene	µg/kg	<8.7	<8.7	<8.7	<8.7	900	8,000	170,000	---	---	---			
Benzo(a)pyrene	µg/kg	<15	<15	<15	<15	8,000	800	17,000	---	---	---			
Benzo(b)fluoranthene	µg/kg	<11	<11	<11	<11	900	8,000	170,000	---	---	---			
Benzo(k)fluoranthene	µg/kg	<11	<11	<11	<11	49,000	78,000	1,700,000	---	---	---			
Benzo(ghi)perylene	µg/kg	<50	<50	<50	<50	---	---	---	---	---	---			
Chrysene	µg/kg	<50	<50	<50	<50	160,000	780,000	17,000,000	---	---	---			
Dibenzo(a,h)anthracene	µg/kg	<20	<20	<20	<20	90	800	17,000	---	---	---			
Fluoranthene	µg/kg	<50	<50	<50	<50	3,100,000	82,000,000	82,000,000	---	---	---			
Fluorene	µg/kg	<50	<50	<50	<50	3,100,000	82,000,000	82,000,000	---	---	---			
Indeno(1,2,3-cd)pyrene	µg/kg	<29	<29	<29	<29	900	8,000	170,000	---	---	---			
Naphthalene	µg/kg	<25	<25	380	603	1,600,000	41,000,000	4,100,000	170,000	270,000	1,800			
Phenanthrene	µg/kg	<50	<50	<50	<50	---	---	---	---	---	---			
Pyrene	µg/kg	<50	<50	<50	<50	4,200,000	61,000,000	61,000,000	---	---	---			
<b>Solids, Total (160.3)</b>														
<b>Date Analyzed:</b>	<b>Units</b>	<b>4/18/2005</b>	<b>1/11/2006</b>	<b>8/9/2007</b>	<b>8/9/2007</b>									
Total Solids	%	81.50	84.01	76.61	79.25	---	---	---	---	---	---			

Note: Analytical testing results for BTEX, MTBE and PNAs are expressed in parts-per-billion (ppb) concentrations.  
 Note: Exceedences of the IEPA TACO Tier 1 SROs (or PNA background concentrations) in bold.

TABLE II

## Summary of Analytical Results - Groundwater

	MW-A	MW-10	MW-11	MW-14	IEPA TACO Tier 1 Groundwater Remediation Objectives
Date of Sample Collection:	9/27/2007	9/27/2007	9/27/2007	9/27/2007	Class I
Contaminants of Concern:					
<b>BTEX/MTBE Organic Compounds (5030B/8260B)</b>					
<b>Date Analyzed:</b>	<b>Units</b>	<b>10/2/2007</b>	<b>10/3/2007</b>	<b>10/2/2007</b>	<b>10/2/2007</b>
Benzene	µg/L	<b>13.8</b>	<b>5,990</b>	<5.0	<5.0
Toluene	µg/L	<5.0	202	<5.0	<5.0
Ethylbenzene	µg/L	<5.0	<b>2,060</b>	<5.0	<5.0
Total Xylenes	µg/L	<5.0	4,970	<5.0	<5.0
MTBE	µg/L	<5.0	61.7	30	<5.0
<b>Polynuclear Aromatic Hydrocarbons (8270C)</b>					
<b>Date Analyzed:</b>	<b>Units</b>	<b>10/4/2007</b>	<b>10/4/2007</b>	<b>10/4/2007</b>	<b>10/4/2007</b>
Acenaphthene	ug/L	<10	<10	<10	<10
Acenaphthylene	ug/L	<10	<10	<10	<10
Anthracene	ug/L	<5	<5	<5	<5
Benzo(a)anthracene	ug/L	<0.13	<0.13	<0.13	<0.13
Benzo(a)pyrene	ug/L	<0.2	<0.2	<0.2	<0.2
Benzo(b)fluoranthene	ug/L	<0.18	<0.18	<0.18	<0.18
Benzo(k)fluoranthene	ug/L	<0.17	<0.17	<0.17	<0.17
Benzo(ghi)perylene	ug/L	<0.4	<0.4	<0.4	<0.4
Chrysene	ug/L	<1.5	<1.5	<1.5	<1.5
Dibenzo(a,h)anthracene	ug/L	<0.3	<0.3	<0.3	<0.3
Fluoranthene	ug/L	<2	<2	<2	<2
Fluorene	ug/L	<2	<2	<2	<2
Indeno(1,2,3-cd)pyrene	ug/L	<0.3	<0.3	<0.3	<0.3
Naphthalene	ug/L	<10	<10	<b>401</b>	<10
Phenanthrene	ug/L	<5	<5	<5	<5
Pyrene	ug/L	<2	<2	<2	<2

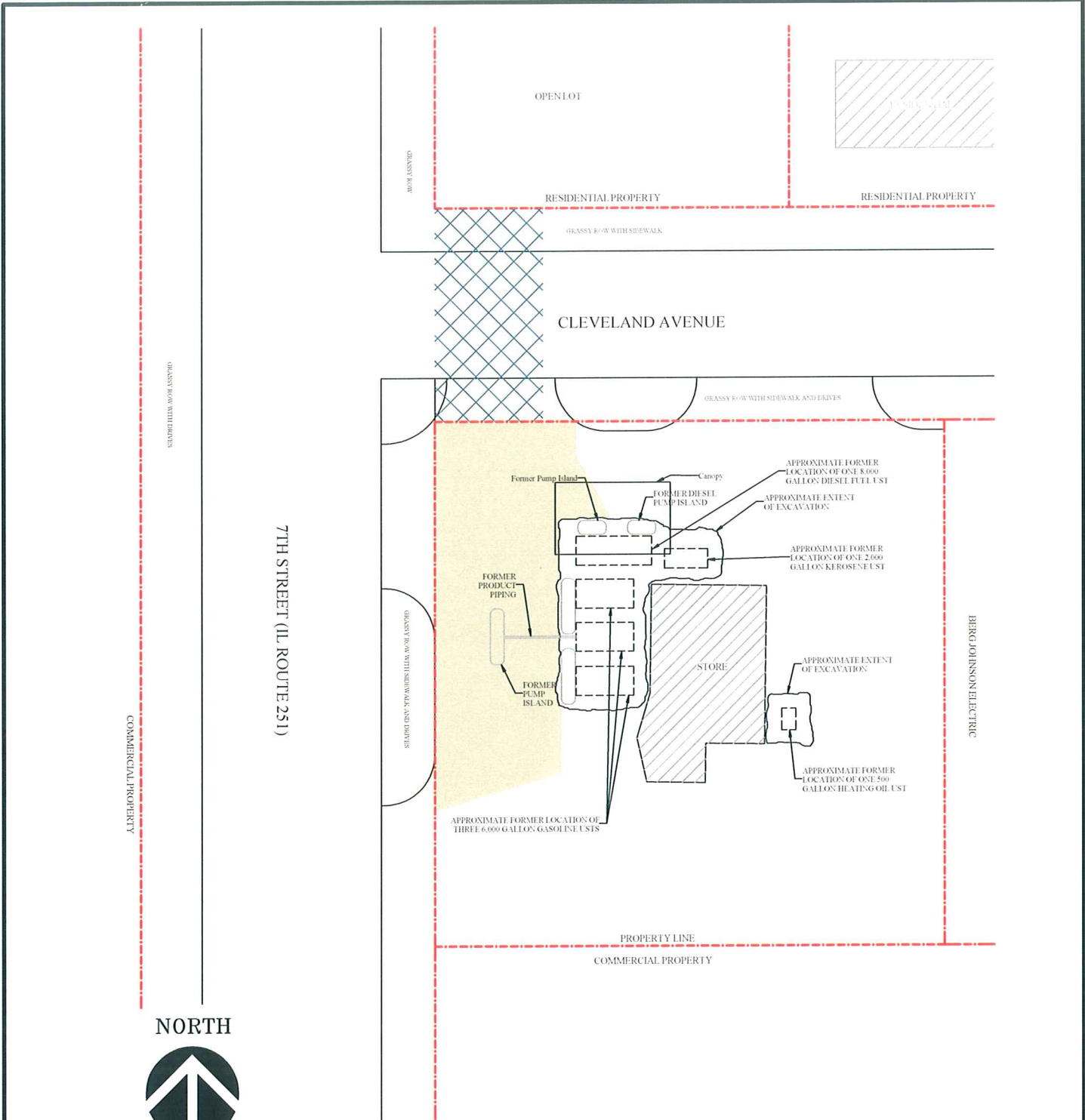
Note: Analytical testing results for BTEX/MTBE and PNAs are expressed in parts-per-billion (ppb) concentrations.

Note: Exceedences of the IEPA TACO Tier 1 GROs in **bold**.

EXHIBIT C

CITY OF ROCHELLE  
HIGHWAY AUTHORITY AGREEMENT

J&L Oil, Inc.  
901 South 7<sup>th</sup> Street  
Rochelle, Illinois



APPROXIMATE SCALE: 1" = 40'

**LEGEND**

- SOIL REMEDIATION AREA
- PROPERTY BOUNDARY
- HIGHWAY AUTHORITY AGREEMENT AREA - BETWEEN J&L OIL INC. AND CITY OF ROCHELLE

**MARLIN ENVIRONMENTAL, INC.**



3935 COMMERCE DR.  
ST. CHARLES, ILLINOIS 60174  
(630) 444-1933

**HIGHWAY AUTHORITY AGREEMENT AREA MAP**

J&L OIL, INC. - ROCHELLE (#79)  
901 SOUTH 7TH STREET  
ROCHELLE, ILLINOIS  
EXHIBIT C 11/2011

**AGREEMENT BETWEEN  
CITY OF ROCHELLE AND J&L OIL, INC.**

This agreement (“Agreement”) entered into by and between the CITY OF ROCHELLE, an Illinois municipal corporation (“City”) and J & L OIL, INC., an Illinois corporation (“J & L Oil”).

**WITNESSETH**

**THAT WHEREAS**, contemporaneously with the execution of this Agreement, City and J & L Oil have entered into a Highway Authority Agreement (“Highway Authority Agreement”) of even date herewith; and

**WHEREAS**, as a part of the consideration for the City’s execution of the Highway Authority Agreement, the parties have agreed to execute this Agreement setting forth certain rights and responsibilities relating to their respective undertakings under the Highway Authority Agreement; and

**NOW, THEREFORE**, the parties agree as follows:

1. The terms used in this Agreement shall have the meanings given to such terms in the Highway Authority Agreement.
2. This Agreement shall take effect at the same time the Highway Authority Agreement takes effect and shall remain in effect as long as the Highway Authority Agreement remains in effect. This Agreement shall expire at such time as the Highway Authority Agreement expires.
3. The Owner/Operator (“Indemnitor”) agrees to defend, indemnify and hold harmless the City, and the City’s agents, contractors or employees (“Indemnitees”) from all obligations asserted against or costs incurred by Indemnitees, including reasonable attorney’s fees and court costs, associated with the release of Contaminants from the Site, regardless

whether said obligations or costs were caused by the negligence, but not the gross negligence, of Indemnitees.

4. As an additional consideration, Owner/Operator agrees to reimburse the City for reasonable costs to protect human health and the environment, including, but not limited to, identifying, investigating, handling, storing and disposing of contaminated soil and/or groundwater in the Right-of-Way as a result of the release of Contaminants at this Site. It has been determined that the City has not incurred any reimbursable costs at the time this Agreement is executed by the undersigned representative of the City. If future costs are incurred, a cashier's check made payable to "City of Rochelle" shall be tendered to the City upon demand by the City.

5. Violation of the terms of the Highway Authority Agreement by Owner/Operator, or its successors in interest, may be grounds for voidance of the Highway Authority Agreement as a Highway Authority Agreement. Violation of the terms of the Highway Authority Agreement by the City will not void the Highway Authority Agreement, unless the IEPA has determined that the violation is grounds for voiding the Highway Authority Agreement as a Highway Authority Agreement and the City has not cured the violation within such time as IEPA has granted to cure the violation.

6. This Agreement, and the Highway Authority Agreement referenced herein, are in settlement of claims the City may have arising from the release of Contaminants into the Right-of-Way associated with IEMA incident number 20040687.

7. Prior to accessing or granting access to the soil as provided in Paragraph 8 of the Highway Authority Agreement, the City will first give Owner/Operator written notice, unless there is an immediate threat to the health or safety of any individual or to the public, that it intends to perform a site investigation in the Right-of-Way and remove or dispose of

contaminated soil or groundwater to the extent necessary for its work. Failure to give notice is not a violation of this Agreement. The removal or disposal shall be based upon the site investigation (which may be modified by field conditions during excavation). A copy of the site investigation report will be provided to Owner/Operator. If practicable, as reasonably determined by the City, the City may provide Owner/Operator with an opportunity to perform the Site investigation and to remove and dispose of the contaminated soil and/or groundwater necessary for the City's work in advance of that work.

The Owner/Operator shall reimburse the reasonable costs incurred by the City to perform the site investigation and to dispose of any contaminated soil or groundwater, provided, however, that if notice to Owner/Operator has not been given and there was no immediate threat to health or safety, reimbursement for those costs shall be limited to \$10,000.00. There is a rebuttable presumption that the Contaminants found in the highway Right-of-Way arose from the release of Contaminants from the Site. Should Owner/Operator not reimburse the reasonable costs under the conditions set forth herein, this Agreement and the Highway Authority Agreement shall be null and void, at the City's option, upon written notice to Owner/Operator by the City that those costs have not been reimbursed and Owner/Operator's failure to make the required payment within twenty (20) days after receipt of notice.

8. The City's sole responsibility under the Highway Authority Agreement with respect to others using the highway Right-of-Way under permit from the City is to include the following, or similar language, in the future standard permit provisions and to make an effort to notify its current permit holders of the following:

As a condition of this permit the permittee shall request the office issuing this permit to identify sites in the Right-of-Way where a Highway Authority Agreement governs access to soil that exceeds the Tier 1 residential remediation objectives of 35 Ill. Adm. Code 742. The permittee

shall take all measures necessary to protect human health (including worker safety) and the environment during and after any access to such soil.

Owner/Operator hereby releases the City from liability for breach of the Highway Authority Agreement by others under permit and agrees to defend and indemnify the City against claims that may arise from others under permit causing a breach of the Highway Authority Agreement. Owner/ Operator agrees that its personnel, if any, at the Site who are aware of the Highway Authority Agreement will notify anyone they know is excavating in the Right-of-Way about the Highway Authority Agreement.

9. Should the City breach this Agreement or the Highway Authority Agreement, Owner/Operator's sole remedy is an action for damages in the Circuit Court for the 15<sup>th</sup> Judicial Circuit, Ogle County, Illinois. Any and all claims for damages against the City, its agents, contractors, employees or its successors in interest arising at any time for a breach of the Highway Authority Agreement are limited to an aggregate maximum of \$20,000.00. No other breach by the City, its agents, contractors, employees and its successors in interest of a provision of this Agreement or the Highway Authority Agreement is actionable in either law or equity by Owner/Operator against the City or them and Owner/Operator hereby releases the City, its agents, contractors, employees and its successors in interest for any cause of action it may have against them, other than as allowed in this paragraph, arising under this Agreement or the Highway Authority Agreement or environmental laws, regulations or common law governing the contaminated soil or groundwater in the highway Right-of-Way. Should the City convey, vacate or transfer jurisdiction of that highway Right-of-Way, Owner/Operator may pursue an action under the Highway Authority Agreement against the successors in interest, other than a State agency, in a court of law. In addition to any other remedies provided herein, City shall have all

remedies at law or in equity for a breach of this Agreement or the Highway Authority Agreement by Owner/Operator.

10. This Agreement and the Highway Authority Agreement are entered into by the City in recognition of laws passed by the General Assembly and regulations adopted by the Pollution Control Board which encourage a tiered-approach to remediating environmental contamination. The Highway Authority Agreement is entered into by the City in the spirit of those laws and under its rights and obligations as a highway authority.

Should any provisions of this Agreement or the Highway Authority Agreement be struck down as beyond the authority of the City, however, this Agreement and the Highway Authority Agreement shall be null and void.

**IN WITNESS THEREOF**, the Parties have caused this agreement to be signed by their duly authorized representatives.

CITY OF ROCHELLE

Date: \_\_\_\_\_

By: \_\_\_\_\_  
David S. Plyman, City Manager

Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
Bruce McKinney, City Clerk

OWNER/OPERATOR

J&L Oil, Inc.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Gene Wright, Agent

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