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January 9, 2008

Ms. Laura Mascuch  
Consolidated Edison of New York, Inc.  
4 Irving Place, Room 1650-S  
New York, NY 10003

Dear Ms. Mascuch,

On behalf of the Manhattan Center for Science and Mathematics High School Parent Teacher Association (MCSM PTA), I would like to thank you for meeting with the school community at MCSM on December 17, 2007 to discuss the contamination issues at the site. We appreciate having the opportunity to discuss our questions and concerns with you.

I write for several reasons; first, to recap what was discussed at our meeting and in subsequent correspondence, particularly with regard to our understanding of the actions to be taken as Con Edison moves towards site remediation. Second, I write on behalf of my clients to request formally that Con Edison provide funding to the school community to enable meaningful community participation in the cleanup planning process and to provide assurance that building occupants will be adequately protected. Finally, we also have further requests for information.

**December 17 Meeting & Subsequent Correspondence**

Based on our discussion on December 17 and subsequent correspondence, we understand the following:

1. Con Edison provided MCSM PTA (through NYLPI) a copy of its 2002 Voluntary Compliance Agreement (Agreement) with the NYS Department of Environmental Conservation (DEC). This document outlines the formal framework for remediation of MGP sites.
2. The MCSM PTA provided Con Edison, DOE, and DOH representatives with a print copy of its approved meeting minutes from its November 13, 2007 PTA Meeting at which Con Edison, DEC, and DOH representatives explained the MGP site contamination issue at the former 115 Street Standard Gaslight Company location (currently the MCSM building) and answered parent questions. A digital version of those meeting minutes has since been transmitted to Ms. Mascuch at Con Edison.
3. All parties agree that indoor air quality and soil gas testing during the heating season is essential for monitoring environmental safety at the MCSM site.
4. Because of their relative ease in accessing and working in their own facilities, DOE will initiate a round of multi-location indoor air quality tests using Summa canisters, most likely to occur during the weekend following our meeting. (Principal David Jimenez has confirmed that testing was conducted on Saturday,

December 22, 2007). Testing was to be conducted prior to the school's winter break before the usual vacation cleanup (wash-down, floor scraping/re-polishing, etc.) was to occur because it was expressed that products used might skew the air quality test results. Test data will be provided to DOH, the UFT, and Con Edison's medical consultant, Dr. Mark Wilkenfeld, for analysis. The results will also be provided to the MCSM PTA.

5. DOE, DOH, and Con Edison representatives have toured the building and identified common air or soil gas testing locations so that future test results can be directly compared to this one and each other.
6. On December 19, NYLPI, on behalf of MCSM PTA, requested documentation on the air sampling locations. NYLPI also requested that in addition to the planned testing locations that the elevator shaft be tested.
7. On December 20, Con Edison sent a draft work plan with probable sampling locations and noted that "There are many factors with sampling the [elevator] shaft, access to it in a safe manner and whether it is clean of hydraulic fluid and oil. In addition, we need to get an additional summa canister for this sampling location. This decision will be made on [the day of testing] once all of these factors are assessed." Con Edison committed to testing the elevator shaft in February.
8. Con Edison has applied to the DOE for an access agreement under which it will be able to conduct both indoor air quality and soil gas tests during the 2008 heating season. These tests are currently anticipated to take place during the mid-winter school recess (February 18 – 22, 2008).
9. Con Edison will conduct a second round of air quality tests during the July/August, 2008 summer break.
10. These indoor air quality tests will be repeated twice per year, one of which will be conducted during each year's heating season, at least until such time as the site remediation work is completed. Further monitoring beyond that time will depend on the degree to which contaminants remain and what is required in any OM&M plan.
11. All reports and data from the DOE and/or Con Edison air quality and soil gas tests will be made available in written and electronic form to the MCSM parent/teacher community for their review.
12. Con Edison has drafted a Remedial Alternatives Report detailing how the site will be cleaned up. DEC has reviewed this plan and has asked for a Pilot Study which is currently under review by DEC. Con Edison has stated that it hopes to conduct the Pilot Study in the summer of 2008. If successful, the Pilot Study will lead to the release of a Draft Remedial Alternative Selection Plan. This plan will go through a public review process with opportunity for public comment. This will be the only opportunity for formal comment. In addition to the cleanup plan, the Remedial Alternative Selection Plan will contain a Community Air Monitoring Program component, a Community Participation Plan and a timeline for remedial activities. In the interest of time, NYLPI asked if staff would be available to clarify the entire process at a later date. Con Edison (and DEC) agreed to this.
13. MCSM PTA members requested progress updates. Con Edison has kindly offered to meet with parents, teachers, and other members of the community upon request, as reasonably needed, to assist them in understanding the site remediation plans, processes, and results.

14. In response to a request from MCSM PTA for funding to enable the community to engage an independent consultant to review the testing data and remediation plans, Con Edison indicated that it is not their policy to provide such funding.

### **Formal Request for Funding for Independent Expert Consultation**

**MCSM PTA requests that Con Edison provide funding for the MCSM PTA to hire an independent expert to review the draft cleanup plan once it is proposed, as well as any air quality data produced and any operation, maintenance and monitoring plan that may be needed.** Based on NYLPI's experience, this would require no more than \$20,000.

At both the community forum held at MCSM on November 13, 2007, as well as during our last meeting on December 17, 2007, Con Edison expressed its belief that community participation in the cleanup planning process is important. Con Edison stated that it will create a Citizen Participation Plan, which also appears to be required in the Voluntary Cleanup Agreement between Con Edison and DEC.<sup>1</sup> We hope that Con Edison can appreciate that parents and teachers (not to mention most lawyers and elected officials) are often ill-equipped to fully analyze highly technical environmental data, and properly assess whether a proposed remedial scheme is sufficient to protect the health of children – the population most vulnerable to toxic chemicals.

Funding for communities for independent technical assistance is not a novel idea. Indeed, technical assistance grants are available to provide communities with funds to “obtain independent technical assistance in interpreting environmental and health information generated and/or evaluated under the State Superfund Program or Brownfield Cleanup Program about an eligible site.”<sup>2</sup> Where funding is not available by statute, we believe strongly that parties responsible for pollution and/or subsequent remedial activities at school sites have an obligation to provide funds to allow communities to *meaningfully* participate in public processes. Here, since Con Edison is the responsible party (and a cost agreement is already in place between DEC and Con Edison<sup>3</sup>), Con Edison should provide such funding.

To supply funding for independent expertise would be justified even if merely to calm fears in an already environmentally overburdened community. Yet, there is important additional value. NYLPI has witnessed oversights at other contaminated school sites that might have placed children at risk had independent experts not drawn attention to them. At the Mott Haven Site in the South Bronx, independent consultants who reviewed the City's cleanup plan noted, “Cancer-causing compounds will remain on the property in concentrations well above Recommended Soil Cleanup Objectives.”<sup>4</sup> The

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<sup>1</sup> See Paragraph III, pg. 8 of the Agreement.

<sup>2</sup> See DER-14/ Technical Assistance Grants Guidebook, New York State Dept of Environmental Conservation, DEC Program Policy, 27 Mar 2006; see also NYS ECL §27-1417 and §27-1316.

<sup>3</sup> Paragraph VI, pg. 9 of the Agreement (“Volunteer shall make payments to the Department [of Environmental Conservation] in order to pay for State expenses (including, but not limited to, direct labor and fringe benefits, overhead, travel, analytical costs and contractor costs”).

<sup>4</sup> Lenny Siegel (Center for Public Environmental Oversight) and Peter Strauss (P.M. Strauss & Associates),

experts went on to recommend removing those “hot spots,” which, thankfully, the City agreed to do. At the Information Technology High School in Long Island City, initial air quality testing results – used by City officials to assure parents that the air inside the school was safe – had in fact employed inappropriate instrumentality incapable of detecting lower levels of contamination that could be harmful to occupants. (As you will remember, this was confirmed by Bernard Orlan from the City Department of Education at our December 17 meeting.) Only after this error was pointed out by an independent consultant did the City retest the air. In both instances, had independent experts not been available, these flaws would almost certainly have gone unnoticed and unresolved.

The utmost precaution must be taken when dealing with the risk of toxic exposure to children – especially children from already overburdened communities. As explained above, there is precedent in both policy and past practice which justifies funding independent consultants. This funding is critical to my clients – members of the MCSM PTA who are also parents of children attending this school. We strongly urge Con Edison to agree to provide for independent experts for the community.

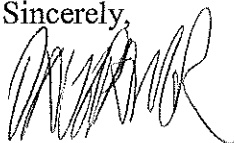
#### **Requests for Information**

- 1) Please let us know if your understanding of any of the items above differ from what we have documented here.
  - a. Most importantly, we would appreciate clarification in writing as to the process(es) and timeline described in number (12) twelve above.
  - b. According to the Agreement, “Work Plan Labels” include a “Site Characterization Work Plan,” a “Remedial Investigation Work Plan,” an “Interim Work Plan,” a “Remedial Action Work Plan,” and an “OM&M Work Plan.” However, at the December 17, 2008 Con Edison and DEC have described a “Pilot Plan,” “Pilot Study,” and “Remedial Action Selection Plan.” The slideshow provided on Con Edison’s website details a different process in its “Next Steps” slide. This is not necessarily problematic, but it does make the process more difficult to understand. If not included in your response to our request above (a.), can you please explain these apparent discrepancies, and provide written explanations of these plans and how they differ from the plans noted in the Agreement.
  - c. Will there be an Interim Remedial Plan?
- 2) When will the results of the December 22, 2007 air testing be available to MCSM PTA?
  - a. Was the elevator shaft tested on December 22?
- 3) Regarding numbers (10) ten and (8) eight above, will Con Edison also be conducting further soil gas testing along with air quality testing?

- 4) Section III of the Agreement (“Progress Reports”) requires providing “information regarding activities undertaken in support of the Citizen Participation Plan...” Has a Citizen Participation Plan been created?
  - a. Consistent with numbers (11) eleven and (13) above, will Con Edison provide these progress reports to MCSM PTA at: Parent Teacher Association, Manhattan Center for Science and Mathematics, 260 Pleasant Avenue, New York, NY 10029.
  
- 5) The definition of “existing contamination” in section I.B.2. of the Agreement seems to suggest that if non-MGP associated contamination is discovered commingled or intermingled with MGP waste below soil cleanup objectives, no action will be taken to remove those non-MGP associated wastes. Is that correct?
  - a. Has Con Edison discovered any such situations? (If so, MCSM PTA would like to follow-up with DEC.)
  
- 6) Section II.B.1. notes that, “The first proposed Work Plans to be submitted under this Agreement shall be submitted in accordance with the schedule set forth as part of Exhibit ‘A.’” This section also provides that “By November 15<sup>th</sup> of each year, [Con Edison] shall submit for the review and approval of the Department an updated schedule for the submission of additional work plans.” Exhibit “A” of the Agreement copy provided to NYLPI on December 17 includes only the “List of Sites and Contemplated Uses.” Does the above-mentioned schedule exist? Have there been subsequent updates?
  
- 7) It is our understanding, as noted in (12) twelve above, that there will only be a public review process for the Draft Remedial Action Selection Plan (RASP). If contamination is left in place and an Operation Maintenance and Monitoring Plan (OM&M) becomes necessary, will that OM&M plan be included in the RASP? If not, is Con Edison (and DEC) willing to hold another formal public review process for the OM&M? As you know, OM&M plans are essential to ensuring the long-term safety of contaminated properties where remedial action does not include full source removal.

Thank you very much for your attention to these matters and for engaging with the affected community in a meaningful way. We look forward to working with you and speaking with you again as these various initiatives move forward.

Sincerely,



David Palmer  
Staff Attorney  
*on behalf of* Manhattan Center  
for Science and Mathematics  
Parent Teacher Association

Cc: Simeon Banister, Office of the NYC Public Advocate  
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