BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter Of:)
JOHNS MANVILLE, a Delaware corporation,)))
Complainant,) PCB No. 14-3
v.)
ILLINOIS DEPARTMENT OF TRANSPORTATION,)))
Respondent.)

NOTICE OF FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on December 30, 2019, I caused to be filed with the Clerk of the Pollution Control Board of the State of Illinois, *Complainant's Response to Respondent's Motion to Reschedule Hearing*, a copy of which is attached hereto and herewith served upon you via e-mail. Paper hardcopies of this filing will be made available upon request.

Dated: December 30, 2019

Respectfully submitted,

BRYAN CAVE LEIGHTON PAISNER LLP

Attorneys for Johns Manville

By: /s/ Lauren J. Caisman
Susan Brice, ARDC No. 6228903
Lauren J. Caisman, ARDC No. 6312465
161 North Clark Street, Suite 4300
Chicago, Illinois 60601
(312) 602-5079
Email: susan.brice@bclplaw.com

mail: susan.brice@bclplaw.com lauren.caisman@bclplaw.com

SERVICE LIST

Evan J. McGinley Office of the Illinois Attorney General 69 West Washington Street, Suite 1800 Chicago, IL 60602

E-mail: emcginley@atg.state.il.us

Matthew D. Dougherty
Assistant Chief Counsel
Illinois Department of Transportation
Office of the Chief Counsel, Room 313
2300 South Dirksen Parkway
Springfield, IL 62764
E-mail: Matthew.Dougherty@illinois.gov

Ellen O'Laughlin Office of Illinois Attorney General 69 West Washington Street, Suite 1800 Chicago, IL 60602

E-mail: eolaughlin@atg.state.il.us

Illinois Pollution Control Board Brad Halloran, Hearing Officer James R. Thompson Center 100 W. Randolph, Suite 11-500 Chicago, IL 60601

E-mail: Brad.Halloran@illinois.gov

Illinois Pollution Control Board Don Brown, Clerk of the Board James R. Thompson Center 100 W. Randolph, Suite 11-500 Chicago, IL 60601

E-mail: Don.Brown@illinois.gov

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter Of:)
JOHNS MANVILLE, a Delaware corporation,)))
Complainant,	PCB No. 14-3
v.))
ILLINOIS DEPARTMENT OF TRANSPORTATION,)))
Respondent.	<i>,</i>)

COMPLAINANT JOHNS MANVILLE'S RESPONSE TO RESPONDENT'S MOTION TO RESCHEDULE HEARING

Complainant JOHNS MANVILLE ("JM") hereby submits its response in opposition to Respondent ILLINOIS DEPARTMENT OF TRANSPORTATION ("IDOT")'s Motion to Reschedule Hearing (the "Motion") as follows:

ARGUMENT

- 1. IDOT's Motion seeks a two-week postponement of the Hearing of this case—scheduled for February 3, 2020—based solely on speculative concerns regarding potentially "inclimate weather" more than a month from now. (*See* Motion, p. 3.) IDOT cites an ankle injury that its expert, Mr. Gobelman, suffered in November and his nervousness about using crutches.
- 2. While JM is sympathetic to Mr. Gobelman's condition, the Motion offers no explanation as to how or why a two-week delay of Hearing would make any difference in the Chicago weather or Mr. Gobelman's ability to travel. As discussed during the parties' last telephonic conference with the Hearing Officer on December 21, 2019, Mr. Gobelman has been going to work *every day* despite his injury.

Electronic Filing: Received, Clerk's Office 12/30/2019

3. Given the lack of snowy conditions Chicago has experienced to date, the

regulatory requirements that all sidewalks be clear, and the numerous transportation methods

available, if careful, Mr. Gobelman should similarly have no issue attending the February 3

Hearing.

4. Extending the Hearing date, even two weeks, because of a "preference" (Motion,

Exhibit A, ¶ 12) and not any medical requirement, will cause more prejudice to JM than IDOT

portrays. Given the number of witnesses requiring coordination on JM's side and given already-

existing scheduling conflicts, if IDOT's Motion is granted, it is unlikely that Hearing could

proceed before late April 2020.

5. IDOT has already been granted one hearing cancellation in this matter. (See April

28, 2016 Hearing Officer Order.) That it occurred in the "first phase" of the case makes no

difference under the Board rules. 35 Ill. Admin. Code 101.510(b). This 2014 case should

proceed as scheduled, particularly where the Motion was not diligently filed. Mr. Gobelman was

given the three-month estimate of his recovery time in mid-November 2019. (Motion, Exhibit

A, ¶¶ 7-9.) Yet IDOT's Motion was not filed until more than a month later.

6. JM is prepared to go to Hearing. IDOT's Motion should be denied.

CONCLUSION

Accordingly, Complainant Johns Manville respectfully requests that the Hearing Officer

deny IDOT's Motion to Reschedule Hearing.

Dated: December 30, 2019

Respectfully submitted,

BRYAN CAVE LEIGHTON PAISNER LLP

Attorneys for Complainant Johns Manville

2

Electronic Filing: Received, Clerk's Office 12/30/2019

By: ___/s/ Lauren J. Caisman_

Susan E. Brice, ARDC No. 6228903 Lauren J. Caisman, ARDC No. 6312465 161 North Clark Street, Suite 4300 Chicago, Illinois 60601 (312) 602-5124

Email: susan.brice@bclplaw.com
Lauren.caisman@bclplaw.com

Electronic Filing: Received, Clerk's Office 12/30/2019

CERTIFICATE OF SERVICE

I, the undersigned, certify that on December 30, 2019, I caused to be served a true and

correct copy of Complainant's Response to Respondent's Motion to Reschedule Hearing upon all

parties listed on the Service List by sending the documents via e-mail to all persons listed on the

Service List, addressed to each person's e-mail address.

/s/ Lauren J. Caisman____

Lauren J. Caisman

4

SERVICE LIST

Evan J. McGinley Office of the Illinois Attorney General 69 West Washington Street, Suite 1800 Chicago, IL 60602 E-mail: emcginley@atg.state.il.us

Matthew D. Dougherty Assistant Chief Counsel Illinois Department of Transportation Office of the Chief Counsel, Room 313 2300 South Dirksen Parkway Springfield, IL 62764 E-mail: Matthew.Dougherty@illinois.gov

Ellen O'Laughlin Office of Illinois Attorney General 69 West Washington Street, Suite 1800 Chicago, IL 60602 E-mail: eolaughlin@atg.state.il.us

Illinois Pollution Control Board Brad Halloran, Hearing Officer James R. Thompson Center 100 W. Randolph, Suite 11-500 Chicago, IL 60601 E-mail: Brad.Halloran@illinois.gov

Illinois Pollution Control Board Don Brown, Clerk of the Board James R. Thompson Center 100 W. Randolph, Suite 11-500 Chicago, IL 60601 E-mail: Don.Brown@illinois.gov