

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

**NOTICE OF FILING**

To: See Attached Service List

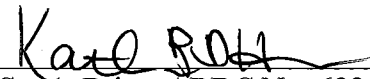
PLEASE TAKE NOTICE that on March 12, 2014, I caused to be filed with the Clerk of the Pollution Control Board of the State of Illinois, Complainant's Motion for Leave to File Its First Amended Complaint, copies of which are attached hereto and herewith served upon you via e-mail. Paper hardcopies of this filing will be made available upon request.

Dated: March 12, 2014

Respectfully submitted,

BRYAN CAVE LLP

Attorneys for Complainant Johns Manville

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<b>ILLINOIS DEPARTMENT OF TRANSPORTATION,</b>	)	
	)	
<b>Respondent.</b>	)	

**COMPLAINANT’S MOTION FOR LEAVE TO FILE ITS FIRST AMENDED COMPLAINT**

Complainant JOHNS MANVILLE (“JM”), by and through its attorneys, and pursuant to 35 IAC 101.500 and 735 ILCS 5/2-616, hereby moves for leave to amend its Complaint to include additional claims against Respondent ILLINOIS DEPARTMENT OF TRANSPORTATION (“IDOT”). In support of this motion for leave to file its First Amended Complaint, Complainant states as follows:

1. Complainant JM filed its original Complaint in this matter on July 8, 2013.
2. Per the Hearing Officer’s Scheduling Order dated February 24, 2014, the parties are currently engaged in preparing discovery requests, which are currently scheduled to be served by no later than March 17, 2014.
3. Based upon information recently discovered, JM now seeks leave to amend its Complaint to add claims against IDOT alleging violations of Section 21 of the Illinois Environmental Protection Act by dumping and disposing of asbestos-containing wastes on and under an area designated as “Site 6” in the Administrative Order on Consent referenced in the

original Complaint. A copy of JM's proposed Amended Complaint is attached hereto as Exhibit 1.

4. Under Illinois law, leave to amend is properly granted at any time before final judgment is entered. *See* 735 ILCS 5/2-616(a).<sup>1</sup> The Court possesses broad discretion to allow an amendment and in exercising this discretion, the Court should consider: "(1) whether the proposed amendment would cure the defective pleading; (2) whether other parties would sustain prejudice or surprise by virtue of the proposed amendment; (3) whether the proposed amendment is timely; and (4) whether previous opportunities to amend the pleading could be identified." *Loyola Acad. v. S&S Roof Maint., Inc.*, 146 Ill. 2d 263, 273 (1992).

5. Consideration of the factors identified by the Illinois Supreme Court in *Loyola* demonstrates that the Court should grant HG leave to file its First Amended Complaint. In regard to the first factor, the First Amended Complaint serves to conform the pleadings to the additional facts learned by Complainant. As to the second factor, Respondent will not suffer prejudice by the amendment, as Complainant is willing to extend the discovery period by up to thirty (30) additional days to accommodate the filing of a supplemental Answer. As for the third and fourth factors, the amendment is timely, since it is sought promptly after discovery of the new information, this action is still in the early stages, and no discovery has yet been served. Moreover, JM has not requested or been granted any previous opportunities to amend.

6. Accordingly, JM seeks leave to file its First Amended Complaint.

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<sup>1</sup> The Board's procedural rules provide that, although the provisions of the Code of Civil Procedure [735 ILCS 5] and the Supreme Court Rules [Ill. S. Ct. Rules] do not expressly apply to proceedings before the Board, the Board may look to the Code of Civil Procedure and the Supreme Court Rules for guidance where, as here, the Board's procedural rules are silent. 35 IAC 101.100(b).

WHEREFORE, Complainant JM respectfully requests the Board to grant it leave to file its First Amended Complaint, and that the Board grant such other and further relief as the Board deems just and proper.

Dated: March 12, 2014

Respectfully submitted,

BRYAN CAVE LLP

Attorneys for Complainant Johns Manville

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<b>ILLINOIS DEPARTMENT OF TRANSPORTATION,</b>	)	
	)	
<b>Respondent.</b>	)	

**AMENDED COMPLAINT FOR ORDER COMPELLING EQUITABLE RELIEF**

Complainant JOHNS MANVILLE (“JM”) hereby complains of Respondent ILLINOIS DEPARTMENT OF TRANSPORTATION (“IDOT”) as follows:

**GENERAL ALLEGATIONS**

**Jurisdiction and Parties**

1. This Complaint is brought before the Illinois Pollution Control Board (the “Board”) by Complainant JM on its own motion, pursuant to Section 31(d) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/31(d).

2. Section 31(d) of the Act provides that “[a]ny person may file with the Board a complaint . . . against any person allegedly violating this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order.” 415 ILCS 5/31(d).

3. “Person” is defined under the Act as “any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust,

estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.” 415 ILCS 5/3.315.

4. Complainant JM is a Delaware corporation authorized to do business in Illinois.

5. Respondent IDOT is an agency of the State of Illinois and was formerly known as the Division of Highways (a division of the Department of Public Works and Buildings).

### **Factual Background**

6. Complainant JM owned and operated a manufacturing facility on property consisting of approximately 300 acres in Waukegan, Illinois, which manufactured construction and other materials, some of which contained asbestos (the “JM Site”).

7. On September 8, 1983, the United States Environmental Protection Agency (“EPA”) added a portion of the JM Site to the National Priorities List (“NPL”) under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), due to asbestos materials.

8. JM has conducted and completed certain remediation activities at the JM Site under the direction and oversight of the EPA.

9. JM ceased operations onsite in approximately 1998. Thereafter, asbestos-containing material (“ACM”) was discovered beyond the boundaries of the JM Site, on adjacent property owned by Commonwealth Edison (“ComEd”) and by the City of Waukegan.

10. On June 11, 2007, Complainant JM entered into an Administrative Order on Consent (“AOC”) with EPA whereby JM agreed to conduct a “removal” action at four specific off-site areas. These sites are individually designated as Site 3, Sites 4 and 5 (combined under the AOC as “Site 4/5”) and Site 6 and are collectively referred to as the “Southwestern Site Areas.”

11. ComEd is also a party to the AOC, as the current owner of Site 3 and Site 4/5, and pursuant to the terms of the AOC has agreed to undertake certain response activities at these sites.

12. Site 6 is currently owned by the City of Waukegan, which is not a party to the AOC.

13. Site 3 is located south of the Greenwood Avenue right-of-way and east of North Pershing Road in Waukegan, Illinois.

14. Site 6 is located on the north and south edges of Greenwood Avenue east of North Pershing Road and north of Site 3 in Waukegan, Illinois.

15. In December 1998, ACM was discovered at the surface of the area currently designated as Site 3.

16. Subsequent sub-surface investigations of Site 3 have revealed ACM at the surface and at a depth of one to three feet below ground surface (bgs), primarily at the north end of the site, and at a depth of up to four feet bgs in at least two areas of the site.

17. Investigations of Site 6 have similarly revealed ACM at the surface and at a depth of one to three feet below ground surface. Pieces of Transite® pipe, a non-friable form of ACM, are the predominant ACM found at Site 3 and Site 6..

18. The northwest portion of Site 3 and the west portion of Site 6 also contain miscellaneous fill material, some of which has been found to contain asbestos.

19. Many utility lines run through Site 3 and Site 6.

20. In approximately the 1950s and 1960s, JM used Site 3 as a parking lot for its employees and invitees, pursuant to a license agreement with ComEd.

21. Asbestos-containing Transite® pipes were used for curb bumpers on the parking lot surface. Aerial photographs show that these bumpers were in place in the 1950s.

22. Records show that in approximately 1971 Respondent IDOT began construction of a ramp to the Amstutz Expressway as part of its reconstruction of the Pershing Road/Greenwood Avenue intersection.

23. During this construction, IDOT built embankments on the north and south side of Greenwood Avenue. These embankments involved the removal of “unsuitable material” and the placement of fill up to and above the original grade.

24. Also during construction, IDOT built three detour roads (the “Detour Roadways”).

25. Two of these detour roads, Bypasses A and B, cut through Sites 3 and 6.

26. Bypass A begins on Site 6 and cuts a large, curved swath through the former parking lot of Site 3, which was destroyed by IDOT during this construction.

27. Bypass B cuts through the western portion of Sites 3 and 6.

28. Bypasses A and B were used until the ramp construction was completed in approximately 1976.

29. Records show that a contractor was paid a “special excavation” fee to “remove and obliterate the Detour Roadways” after construction was complete. Neither Bypasses A or B nor the former parking lot are intact at Sites 3 and 6.

30. IDOT has admitted to EPA that it dealt with asbestos pipe during the construction project. IDOT stated in a CERCLA Section 104(e) Response that a retired engineer, Mr. Duane Mapes, recalled “dealing with asbestos pipe during the project and burying some of it. As the Department does not have information about where ACM was located at the start of the project



and where it is alleged to have been disposed, he was unable to ask Mr. Mapes to provide more information.”

31. IDOT was not ultimately made a party to the 2007 AOC with EPA. At the time the AOC was signed, EPA took the position that there was insufficient evidence to name IDOT because IDOT did not admit to burying any ACM on or near Site 3 or 6.

32. Subsequent investigations have revealed buried Transite® pipe in the area. Portions of Transite® pipe have been found in the south side shoulder of Greenwood Avenue on parts of Site 3 and 6 at various depths, including at a depth of approximately 2.5 feet below the ground surface. The elevation of this Transite® pipe is roughly one foot higher than the adjacent surface.

33. Review of IDOT engineering drawings indicates that IDOT, among other things, used ACM as fill when building the embankments to Greenwood Avenue on Sites 3 and 6.

34. Review of IDOT engineering drawings indicates that IDOT, among other things, used, spread and/or buried ACM during its construction and/or obliteration of Bypasses A and B.

35. Pursuant to the terms of the AOC, on June 13, 2008, JM and ComEd submitted to EPA for its review and approval an initial “Engineering Evaluation and Cost Analysis” (“EE/CA”) for a proposed response action at the Southwestern Sites.

36. After several rounds of revisions in consultation with EPA, JM and ComEd submitted their final EE/CA to EPA on April 4, 2011 (“EE/CA Revision 4”). EE/CA Revision 4 evaluated four potential response action options for Sites 3 and 6, based on discussions with EPA.

37. EE/CA Revision 4 identified “Alternative 2” as the preferred remedy for Site 3. This alternative included limited soil excavation (approximately 660 cubic yards) in the northeast

corner of Site 3 to a depth of approximately three (3) feet below the ground surface and installation of a vegetated soil barrier over the entire site, at an estimated cost of between \$595,000 and \$630,000.

38. EE/CA Revision 4 identified “Alternative 3” as the preferred remedy for Site 6. This alternative was described as a “hybrid remedy” combining excavation and off-site disposal of approximately 2400 cubic yards of ACM-affected soil with a vegetated soil barrier running adjacent to Site 3 to avoid disrupting current stormwater drainage patterns. The total cost to implement Alternative 3 on Site 6 was estimated at between \$417,500 and \$500,000.

39. EE/CA Revision 4 was approved by EPA with modifications on February 1, 2012. In its EE/CA approval letter, EPA proposed a new alternative remedy, which it termed “Alternative 5.”

40. EPA’s Alternative 5 included a new proposed remedy for Site 3—termed “Modified Alternative 2”—which was a markedly different remedy from those previously proposed by JM and ComEd. This modified alternative not only included a requirement to remove all asbestos-impacted soils to a depth of four (4) feet below the ground surface in the northeast portion of Site 3, but also required JM and ComEd to create a clean corridor for all utilities running through Site 3 by excavating all soil to a depth of two (2) feet below each utility line and a minimum width of twenty-five (25) feet centered on each utility line. EPA’s estimated cost for construction of this Modified Alternative 2 was \$2,196,000.

41. EPA’s Alternative 5 also included a new proposed remedy for Site 6. This alternative—which EPA termed “Modified Alternative 1”—required excavation of “all soil contaminated with ACM and/or asbestos fibers at Site 6 including, but not limited to the area identified as “Area of Excavation for ACM Affected Soil” and “Paving and Potential Subsurface

ACM” in Figure 13 in EE/CA” and to make special arrangements necessary for utilities (e.g., additional support or removal and replacement) in areas where removal of ACM is required below three (3) feet below the ground surface. Further, because “Greenwood Avenue was not sampled during the EE/CA Study” and “[i]t is unknown if ACM is located under the Greenwood Avenue Paved Road Surface,” EPA required JM to obtain an environmental covenant signed by the owner of Site 6, the City of Waukegan. EPA’s estimated cost for construction of this Modified Alternative 1 was \$1,869,000.

42. On November 30, 2012, EPA issued an Action Memorandum selecting a remedy for the Southwestern Sites, including the Modified Alternative 2 that it had proposed for Site 3 and the Modified Alternative 1 it had proposed for Site 6. However, the Action Memorandum included further modifications that were not previously included in the February 1, 2012 EE/CA approval letter.

43. Specifically, as to Site 3, the Modified Alternative 2 set forth in the Action Memorandum requires JM and ComEd to create a clean corridor for each utility line “extending to a depth requested by the owner of the utility line with placement of a continuous barrier at the base and sides of the excavation to inhibit further excavation and/or exposure beyond the clean fill.” It also includes a new “compliance alternative” of abandoning and relocating utility lines in lieu of creating clean utility corridors, pending written approval from EPA and provided that each utility owner signs a voluntary subrogation agreement to abandon its line(s). Any new utility lines would be required to bypass the ACM-contaminated areas of the site or to be fully enclosed within utility vaults so as to eliminate the need for excavation during repair or maintenance activities.

44. Similarly, as to Site 6, whereas the Modified Alternative 1 set forth in the EE/CA approval letter had merely required JM and ComEd to “make special arrangements necessary for utilities” in areas where ACM may extend below three (3) feet below the ground surface, the Modified Alternative 1 set forth in the Action Memorandum requires JM and ComEd to create a clean corridor for each utility line by excavating “all soil and sediment to a minimum width of 25 feet centered on any utility line (limited only by the edge of Greenwood Avenue to the extent it is demonstrated to provide a competent barrier to excavation) and to a minimum depth of two feet below the deepest utility line (and extending to a depth needed for protectiveness of utility workers at the deepest utility line) with placement of a continuous barrier at the base and sides of the excavation to inhibit further excavation beyond the clean fill.” No “alternative compliance alternative” was proposed for Site 6.

45. The Action Memorandum states that a response action at the Southwestern Sites is necessary “to abate or mitigate releases of hazardous substances that may present an imminent and substantial endangerment to public health and the environment posed by the presence of soils that are contaminated with hazardous substances.” It further states that a response action is necessary to “reduce the actual and potential exposure to the nearby human population and the food chain to hazardous substances” and that the action is “expected to result in the removal and capping of contaminated materials at or near the surface which present a threat to trespassers or workers at the Site.”

46. According to the Action Memorandum, the potential health risks associated with ACM contamination at the Southwestern Sites include “exposure to asbestos fibers via inhalation [which] results in significant health effects including mesothelioma, lung cancer, asbestosis, thickening of pleural lining around the lungs and pulmonary deficits. Exposures to soils

containing asbestos fibers have been associated with all of these health effects including cancer.” Due to the presence of asbestos in soils, the Action Memorandum indicates that “adverse health risks are reasonably anticipated in the event that exposure occurs.”

47. The Action Memorandum directs JM and ComEd to conduct the following response actions as the selected remedy for Site 3:

- a. Excavate soil in the northeast portion of the Site 3 (approximately 0.14 acres) identified as the “limited excavation area,” to remove all ACM and asbestos fibers (estimated to a depth of 4 feet);
- b. Excavate soil and sediments contaminated with ACM and/or asbestos fibers to a minimum depth of 2 feet below each utility line and extending to a depth requested by the owner of each utility line with placement of a continuous barrier at the base and sides of the excavation to inhibit further excavation and/or exposure beyond the clean fill and a minimum width of 25 feet centered on each utility line and clean backfill to provide a clean corridor for utility maintenance on Site 3 or, alternatively, abandon and relocate utility lines, conditioned on signed voluntary subrogation agreements from the utility owners;
- c. Conduct post-excavation sampling and analysis to confirm there are no remaining ACM or asbestos fibers in soil or sediment within either the limited excavation area or within each utility corridor;
- d. Dispose of all excavated materials in an off-site landfill;
- e. Place and maintain a vegetated soil cover in any areas of Site 3 where ACM or asbestos fibers remain in place;

- f. Implement certain institutional controls in the form of an environmental covenant, pursuant to the Illinois Environmental Covenants Act, 765 ILCS Ch. 122;
- g. Reroute, pipe, or remove surface water as needed to perform the required excavation;
- h. Install and maintain security fencing with warning signs every 100 feet and at all gates completely surrounding all areas where ACM or asbestos fibers remain in place;
- i. Conduct long-term operation and maintenance (O&M) of the vegetated soil cover for a minimum of 30 years beginning when construction is completed.

48. EPA has estimated the cost of construction of the selected remedy for Site 3 at between \$1,705,696 and \$2,107,622. JM disputed portions of EPA's remedy selected for the Southwestern Sites on December 20, 2012 and May 16, 2013, including certain of EPA's cost analyses.

49. The Action Memorandum directs JM and ComEd to conduct the following response actions as the selected remedy for Site 6:

- a. Excavate all soil contaminated with ACM and/or asbestos fibers without limitation to depth including at a minimum, but not limited to the area identified as "Area of Excavation for ACM Affected Soil" and "Paving and Potential Subsurface ACM" in Figure 13 of the EE/CA (which, in non-utility areas, is anticipated to extend to a minimum depth of three (3) feet below ground surface);
- b. Excavate soil and sediments contaminated with ACM and/or asbestos fibers to a minimum depth of 2 feet below each utility line and extending to a depth requested by the owner of each utility line with placement of a continuous barrier

at the base and sides of the excavation to inhibit further excavation and/or exposure beyond the clean fill and a minimum width of 25 feet centered on each utility line and clean backfill to provide a clean corridor for utility maintenance on Site 6;

- c. Conduct post-excavation sampling and analysis to confirm there are no remaining ACM or asbestos fibers in soil or sediment within either the limited excavation area or within each utility corridor;
- d. Dispose of all excavated materials in an off-site landfill or, with approval from EPA, in the JM industrial canal and/or pumping lagoon under a vegetated soil cover;
- e. Implement certain institutional controls in the form of an environmental covenant signed by the City of Waukegan, pursuant to the Illinois Environmental Covenants Act, 765 ILCS Ch. 122, or, if this environmental covenant is not feasible, provide for the investigation and full removal of any ACM or asbestos fibers that may remain under Greenwood Avenue to prevent its potential release during road or utility maintenance;
- f. If during or after soil excavation at Site 6, samples and/or visual observation indicate the presence of ACM or asbestos fibers under Greenwood Avenue, then install and maintain security fencing with warning signs every 100 feet and at all gates completely surrounding all areas where ACM or asbestos fibers remain in place.

50. EPA has estimated the cost of construction of the selected remedy for Site 6 at \$1,868,790. JM disputed portions of EPA's remedy selected for the Southwestern Sites on December 20, 2012 and May 16, 2013, including certain of EPA's cost analyses.

51. EPA issued a Notice to Proceed with the selected remedy for all of the Southwestern Sites on May 6, 2013. Under the terms and conditions of the AOC, this Notice to Proceed triggers a 120-day period within which JM and ComEd must submit to EPA a Removal Action Work Plan ("RAWP") for performing the response actions at the Southwestern Site Area.<sup>1</sup>

52. JM submitted a draft RAWP for the Southwestern Site Area to EPA in November 2013 and the agency provided comments on December 11, 2013.

53. JM submitted a final RAWP to EPA on January 24, 2014. The agency has not yet approved the final RAWP.

54. With the exception of removing surficial ACM, no response action has commenced at Site 3 or Site 6.

## **COUNT I**

### **Violations of Section 21 of the Illinois Environmental Protection Act**

55. Complainant realleges and incorporates herein the allegations contained in paragraphs 1-54 of this First Amended Complaint as if set forth herein in full.

56. Respondent IDOT's actions in using, spreading, burying, placing, dumping, disposing of and abandoning ACM waste, including Transite® pipe, throughout Site 3 and portions of Site 6 and in using ACM waste as fill during construction of the Greenwood Avenue

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<sup>1</sup> JM and ComEd have disputed the selected remedy, pursuant to the dispute resolution provisions of the AOC, on grounds that the EPA substantially modified the selected remedy between its final approval of the EE/CA and the issuance of the Action Memorandum. However, despite this ongoing dispute, EPA did not agree to toll the 120-day period for preparing the Removal Action Work Plan.



ramp and expressway bypass from 1971 to 1976 constitute violations of Section 21 of the Illinois Environmental Protection Act (“Act”).

57. Section 21 of the Act, 415 ILCS 5/21, provides, in pertinent part:

No person shall:

(a) Cause or allow the open dumping of any waste; [or]

(e) Dispose, treat, store, or abandon any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder.

58. Section 3.535 of the Act, 415 ILCS 5/3.535, defines “waste” as:

any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows, or coal-combustion products . . . or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as now or hereafter amended, or source, special nuclear, or by-product materials as defined by the Atomic Energy Act of 1954 . . . or any solid or dissolved material from any facility subject to the Federal Surface Mining Control and Reclamation Act of 1977 or the rules and regulations thereunder or any law or rule or regulation adopted by the State of Illinois pursuant thereto.

59. Discarded ACM at Sites 3 and 6 are “waste” within the meaning of the Act.

60. Section 3.305 of the Act, 415 ILCS 5/3.305, defines “open dumping” as “the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.”

61. Section 3.185 of the Act, 415 ILCS 5/3.185, defines “disposal” as “the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste or hazardous waste into or on any land or water or into any well so that such waste or hazardous waste or any constituent

thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.”

62. Section 3.445 of the Act, 415 ILCS 5/3.445, defines “sanitary landfill” as:

a facility permitted by the Agency for the disposal of waste on land meeting the requirements of the Resource Conservation and Recovery Act, P.L. 94-580, and regulations thereunder, and without creating nuisances or hazards to public health or safety, by confining the refuse to the smallest practical volume and covering it with a layer of earth at the conclusion of each day’s operation, or by such other methods and intervals as the Board may provide by regulation.

63. Section 3.540 of the Act, 415 ILCS 5/3.540, defines “waste disposal site” as “a site on which solid waste is disposed.”

64. Site 3 and Site 6 are not disposal sites that fulfill the requirements of a sanitary landfill.

65. Site 3 and Site 6 are not permitted waste disposal sites or facilities which meets the requirements of the Act or its regulations as they relate to the disposal or abandonment of waste.

66. IDOT engaged in the open dumping of waste and disposed of ACM waste between 1971 and 1976 when it: (a) used as fill, spread, buried, dumped, placed, disposed of and abandoned ACM waste on Sites 3 and 6 when it built an embankment on the north and south sides of Greenwood Avenue; (b) used as fill, spread, buried, dumped, placed, disposed of and abandoned ACM waste on Sites 3 and 6 when constructed and obliterated Bypasses A and B; and (c) generally used as fill, spread, buried, dumped, placed, disposed of and abandoned ACM waste on Sites 3 and 6 during construction of the Greenwood Avenue ramp and expressway bypass from 1971 to 1976..

67. The ACM waste dumped and disposed of on and under Sites 3 and 6 was abandoned by IDOT around 1976 and currently remains in situ.

68. IDOT caused the open dumping of ACM waste in violation of Section 21(a) of the Act, 415 ILCS 5/21(a).

69. IDOT disposed of and abandoned ACM waste in an area that does not meet the requirements of the Act or its regulations in violation of Section 21(e) of the Act, 415 ILCS 5/21(e).

70. IDOT's violations are continuing in nature.

71. By moving ACM materials both horizontally and vertically within and outside the boundaries of the areas currently designated as Sites 3 and 6, IDOT introduced contamination to Site 3 and 6; exacerbated any existing contamination at those Sites and directly contributed to the scope of the EPA's selected remedy for Site 3 and for Site 6, which requires Complainant JM and ComEd to conduct extensive sub-surface excavation, including by creating clean corridors for each of the utilities running through the site.

72. JM contends that because IDOT's violations of the Act have directly impacted the scope of the proposed remedy for Sites 3 and 6, including the need to excavate buried portions of Transite® pipe and to create clean corridors around the six utilities (portions of the remedy not proposed by JM and ComEd but ordered by EPA in 2012), IDOT should be required to participate in the response action for Sites 3 and 6.

73. As JM submitted a final Remedial Action Work Plan to EPA on January 24, 2014 and must begin implementation of EPA's proposed remedy shortly after the RAWP is approved, it stands to suffer immediate and irreparable injuries for which there is no adequate remedy at law.

74. Complainant JM is not aware of any identical or substantially similar action pending before the Board or in any other forum against Respondent IDOT based on the same conduct or alleging the same violations of the Act.

**PRAYER FOR RELIEF**

WHEREFORE, Complainant JOHNS MANVILLE respectfully requests that the Board enter an Order against Respondent ILLINOIS DEPARTMENT OF TRANSPORTATION:

A. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;

B. Finding that the Respondent has violated Section 21(a) and (e) of the Act, 415 ILCS 5/21, as alleged herein;

C. Requiring Respondent to participate in the future response action on Sites 3 and 6—implementing the remedy approved or ultimately approved by EPA—to the extent attributable to IDOT’s violations of the Act, pursuant to the Board’s broad authority to award equitable relief under Section 33 of the Act, 415 ILCS 5/33; and

D. Grant such other and further relief as the Board deems appropriate.

Dated: March 12, 2014

Respectfully submitted,


BRYAN CAVE LLP

Attorneys for Complainant Johns Manville

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**CERTIFICATE OF SERVICE**

I, the undersigned, an attorney, hereby certify that on March 12, 2014, I caused to be served a true and correct copy of Complainant's Motion for Leave to File Its First Amended Complaint 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. Paper hardcopies of this filing will be made available upon request.

  
Kathrine Hanna

**SERVICE LIST**

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