

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.)	

COMPLAINANT'S NOTICE OF CORRECTION

Complainant JOHNS MANVILLE ("JM") submits this Notice of Correction in order to correct a certain statement made in its Reply in Support of its Motion for Leave to File Second Amended Complaint to Conform Pleadings to Newly Discovered Facts Without Hearing Delay (Reply") filed on February 24, 2016, and in its Motion for Leave to File its Reply ("Motion for Leave") filed on February 26, 2016, as follows:

1. On February 16, 2016, JM filed a Motion for Leave to File Second Amended Complaint to Conform Pleadings to Newly Discovered Facts Without Hearing Delay.
2. Respondent ILLINOIS DEPARTMENT OF TRANSPORTATION ("IDOT") filed its response to that Motion on February 23, 2016. In that response, IDOT stated that it had "suggested an earlier hearing date for this case."
3. JM submitted its Reply on February 24, 2016 in which JM stated that it had no record of any efforts of IDOT to suggest an earlier hearing date in this matter. JM reiterated this in its Motion for Leave filed on February 26, 2016.

4. At the time, JM's Reply and Motion for Leave were filed, JM had no recollection of any effort to have any earlier hearing. However, on February 29, 2016, IDOT brought to JM's attention two emails between counsel for the parties. Based on those emails, JM seeks to correct its statement in its Reply and Motion for Leave that JM had no record of any efforts of IDOT suggesting an earlier hearing date, and to clarify the procedural history of this matter.

5. On August 18, 2015, IDOT issued notices for the depositions of Douglas Dorgan and Denny Clinton (without setting a date or time for those depositions), though fact discovery had long since closed on April 6, 2015 and though expert discovery had closed on August 14, 2015. In his August 18 email, counsel for IDOT suggested dispensing with dispositive motions and proposed requesting that the Hearing Officer set the matter for hearing.

6. For a litany of reasons, JM objecting to the taking of Mr. Dorgan and Mr. Clinton's depositions. JM set forth its objections in an email to IDOT's counsel on August 19, 2015. JM also responded to IDOT's proposal to dispense with the dispositive and stated that JM could not agree to do so at that time.

7. IDOT's counsel responded that same day reiterating IDOT's desire to go to hearing on this case and suggesting a hearing "at some point in mid-November, just prior to Thanksgiving."

8. A status hearing was held with the Hearing Officer on August 20, 2015. IDOT claims that it suggested setting this matter for hearing in mid-November. However, also during that status hearing, IDOT stated that it anticipated filing a motion to reopen discovery to depose additional fact witnesses within the next fourteen days. This was reflected in the Hearing Officer's Order of August 26, 2015.

9. IDOT subsequently moved to reopen discovery for an unspecified period of time on September 3, 2015 to which JM objected.

10. On September 29, 2015, the Hearing Officer granted IDOT's motion to reopen discovery for limited purposes, and allowed IDOT until November 6, 2015 to take that discovery.

11. Even though JM now does have a record of IDOT's efforts to suggest earlier hearing dates in this case, those efforts were unrealistic where IDOT failed to adhere to discovery deadlines by issuing deposition notices after the close of discovery and where IDOT prolonged this matter by reopening discovery until November 6.

12. In light of this, IDOT's attempts to schedule a hearing for mid-November, just two weeks after the reopened discovery was to conclude were both untenable and unrealistic, particularly where JM could not have made a determination about whether to file a motion for summary judgment until the belated depositions demanded by IDOT proceeded, until discovery was closed, and until all facts were in the record. JM did ultimately forego dispositive motion briefing.

13. Therefore, by failing to adhere to the discovery deadlines in this case and by seeking to reopen discovery in September 2015, it was IDOT, not JM, that sought to delay proceedings in this matter, regardless of any emails from IDOT's counsel about scheduling a hearing, sent at a time when IDOT knew it had planned to extend discovery.

Respectfully submitted,

BRYAN CAVE LLP

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CERTIFICATE OF SERVICE

I, the undersigned, certify that on February 29, 2016, I caused to be served a true and correct copy of *Complainant's Notice of Correction* 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