**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

## COMPLAINANT'S MOTION TO COMPEL

Complainant JOHNS MANVILLE ("JM") hereby moves, pursuant to 35 Ill. Admin. Code 101.500 and 35 Ill. Admin. Code 101.614, for an order compelling Respondent ILLINOIS DEPARTMENT OF TRANSPORTATION ("IDOT") to produce amended or supplemental responses to JM's First Set of Requests for Admission, Second Set of Document Requests, and Third Set of Interrogatories (collectively, "Discovery Requests."). In support of this Motion, JM states as follows:

## INTRODUCTION

In addition to IDOT's burial of asbestos containing material, at issue in JM's Second Amended Complaint is whether IDOT has an interest in or control over Parcel 0393, which JM has referred to as the "Right of Way" in these proceedings and its discovery. Parcel 0393 (plat attached as **Ex. A**) is located on the southern side of Greenwood Avenue and encompasses parts of both Sites 3 and 6. Following amendment of JM's complaint, at IDOT's insistence, discovery pertaining to Parcel 0393 was allowed, in expedited fashion, by the Board and Hearing Officer. After JM propounded its Discovery Requests, IDOT filed its Motion for a Protective Order,

seeking again to stonewall JM from discovering the truth about its interest in Parcel 0393. Despite the denial of that Motion for a Protective Order, IDOT has not responded to JM's discovery in good faith as demonstrated by four different tactics utilized by IDOT: (1) IDOT employs inappropriate objections in order to dodge responding to Discovery Requests; (2) IDOT erroneously argues that the Discovery Requests seek irrelevant material; (3) IDOT responds to the Discovery Requests with inaccurate information; and (4) IDOT recasts the Discovery Requests in order to answer questions other than those posed.

For example, IDOT refuses to answer Request for Admission No. 11 because various terms, including the term "written contract," is purportedly "vague and ambiguous" and thus, "IDOT will not speculate as to the intended meaning of these terms in the context of the Request for Admission." *See* JM's Discovery Requests and IDOT's Responses (attached as **Ex. B**). It is hard to image that the State of Illinois does not know the meaning of "written contract," but even if that were the case, the Request for Admission asks that the Request, and therefore the terms used therein, be viewed in light of 506 ILCS 5/4-409, a portion of the Illinois Highway Code. It is unfathomable how IDOT can deny understanding the statute that governs its operations. *See* 506 ILCS 5/4-101 *et seq*. (setting forth the general powers and duties of IDOT). Despite efforts to clarify the meaning of certain terms in JM's Discovery Requests in a 201(k) conference, IDOT still refuses to respond.

Likewise, in a Rule 201(k) conference held on April 4, 2016, IDOT claimed that documents relating to a 2011 IDOT project (hereinafter referred to as the "Project") that identifies Parcel 0393 as an area to be studied were entirely irrelevant. *See* Document Request No. 19 and Interrogatory No. 6. In order to convince JM of the immateriality of JM's Discovery Requests, following the 201(k) conference, IDOT produced an additional document, 008121-

008133, in hopes of convincing JM that the Project had "nothing to do with Site 3, Site 6, the 'Right of Way,' or any of the allegations contained in Johns Manville's Second Amended Complaint." *See* Correspondence from E. McGinley dated April 4, 2016, attached as **Ex. C**. To the contrary, that document (attached as **Ex. D**) underscores exactly why JM's Discovery Requests related to this Project are critical to this case. The document not only confirms that the Project studied Parcel 0393, but also that in 2012, IDOT labeled Parcel 0393 as "Ex. ROW." *See* IDOT 008126; IDOT 008130. Since the allegations in the case turn on whether Parcel 0393 is a right of way possessed by IDOT, the fact that IDOT labeled it an existing right of way in 2012 is plainly relevant. Nonetheless, IDOT refuses to produce any other documents relating to this 2011 IDOT Project, especially, for reasons unknown, any documents that predate 2012. The Project was studied in 2010 and 2011 and the scope of the Project might have changed from 2010 to 2012. JM is entitled to see all documents relating to the Project from its inception in 2010 through to the present. It is entirely possible that, in 2010, the Project contemplated impacting Parcel 0393 or that documents relating to the Project further characterized IDOT's interest in Parcel 0393.

IDOT urges JM to take IDOT at its word when it says the Project is immaterial to this suit. But as IDOT 008121-008133 demonstrates, this is clearly not the case. In fact, IDOT 008121-008133 (particularly IDOT 008130) should have been produced in response to JM's first Set of Document Requests served on March 17, 2014, which requested "[a]ny and all documents relating to Sites 3 and 6." *See* JM's First Set of Document Requests, attached as **Ex. E**. If IDOT had actually produced IDOT 008130 months ago, JM would have figured out that IDOT still held a right of way interest in Parcel 0393 and JM's Complaint could have been amended much earlier.

In the same vein, JM has discovered that IDOT's discovery responses are flat out inaccurate. Interrogatory No. 5, for example, seeks information regarding environmental work IDOT has performed on other rights of way in order to show that IDOT is empowered to do such work when it holds a right of way interest. IDOT's discovery responses stated that notwithstanding its objections, "IDOT responds that it has not conducted any such actions [similar to those which JM and Commonwealth Edison are under an obligation to conducted at Sites 3 and 6] within the scope of this interrogatory." But during the parties' Rule 201(k) conference, IDOT retracted its response and said that the Interrogatory was overly burdensome, indicating that there would be too many scenarios in which such environmental work had been performed to provide in a response. Nonetheless, IDOT refuses to amend its response that essentially says, "none." Likewise, JM found IDOT materials on the Internet responsive to its Discovery Requests that IDOT did not produce, namely IDOT's "Manual for Conducting Preliminary Environmental Site Assessments for Illinois Department of Transportation Infrastructure Projects," which is clearly responsive to Document Requests Nos. 13, 14 and 19. Nor did IDOT products its "Highway Jurisdiction Guidelines for Highway and Street Systems" also found by JM on the Internet, which would be responsive to all of JM's Discovery Requests exploring the nature and scope of IDOT's interests in rights of ways, specifically, Document Requests Nos. 9, 10, 11, and 12.

Finally, in certain situations, including Request for Admission No. 1, IDOT entirely fails to answer the question, and instead recasts the discovery request in order to answer a question that was not posed. While JM asked IDOT about its interests and rights in the Right of Way, IDOT response discussed the utility of a "Grant for Highway Purposes."

Once again, IDOT is hiding the ball. JM was forced to file a Motion for Leave to File a Second Amended Complaint after JM was misled into believing that IDOT did not have an interest in Parcel 0393. IDOT vigorously opposed the amendment of JM's Complaint, claiming that "the audacity of JM's Motion is truly breathtaking" and that JM's Motion "was not based upon new evidence not previously available to JM because IDOT produced the 'Grant Document' in discovery." *See* IDOT's Response to JM's Motion for Leave to File Second Amended Complaint. JM then sought leave to file a reply in support of its Motion for Leave to Amend to correct misrepresentations in IDOT's Response, including IDOT's misrepresentation of fact that the Motion for Leave to File Second Amended Complaint was not based on new evidence. Obviously, the newly discovered evidence was not the Grant Document, which merely showed that the interest was conveyed in 1971, rather it was the Property Insight Report, which showed that IDOT still held that interest. It was this Property Insight Report that explicitly contradicted IDOT's expert, who testified that IDOT "gave up the right of way" at some point and that the City of Waukegan currently "owns the right of way." When the Board granted JM's Motion for Leave to File Second Amended Complaint, IDOT demanded discovery. When IDOT was then served with Discovery Requests, not wanting to respond, it filed a Motion for a Protective Order, but IDOT was ordered to respond to all of JM's Discovery Requests. Unwilling to face the facts, IDOT is using absurd objections — such as claiming not to know the meaning of the words "right," "transferred," "conveyed" and "interest" — and recasting JM's Discovery Requests in order to avoid responding.

JM's Discovery Requests are all aimed to uncover the scope of IDOT's interest in Parcel 0393, IDOT's ability to control Parcel 0393, any work done on Parcel 0393 at IDOT's direction, and the extent to which IDOT concealed this information from JM — all issues relevant to the

new allegations in JM's Second Amended Complaint and all factors that can be considered by the Board in fashioning relief in this case under 415 ILCS 5/33. IDOT is in a far superior position to provide this information, yet has declined to do so throughout this litigation, even despite being ordered to respond to JM's Discovery Requests. JM requests that IDOT be compelled to do so now.

## ARGUMENT

Pursuant to the Board regulations, all relevant information, and even that which is merely calculated to lead to relevant information, is discoverable. *See* 35 Ill. Admin. Code. 101.614; 35 Ill. Admin. Code. 101.616(a); *see also People of the State of Illinois v. Skokie Valley Asphalt, Co. et al.*, PCB 96-98, 2003 WL 22134512, *2 (IPCB Sept. 4, 2003) (granting motion to compel). In fact, the goal of the discovery process in Illinois is full disclosure. *See Payne v. Hall*, 2013 IL App (1st) 113519, ¶ 13 (citing *Schuler v. Mid-Central Cardiology*, 313 Ill. App. 3d 326, 331 (4th Dist. 2000)). Given these considerations, IDOT should be required to provide JM with the information, documents, and admissions sought with respect to the Right of Way/Parcel 0393. Nevertheless, under no circumstances could IDOT's responses to JM's Discovery Requests be construed as "full disclosure."

### 1. IDOT Has Failed To Provide Documents Or Information Regarding Its Control Over the Right of Way (Requests for Admission Nos. 11 and 12) and the Extent Of Its Interest In The Right Of Way (Requests for Admissions Nos. 3, 4, 5, 6 and Document Requests Nos. 3, 5 and 6).

JM's Requests for Admission Nos. 11 and 12 ask IDOT for admissions regarding whether IDOT entered into contracts with other entities, or authorized other entities to enter into contracts, for the jurisdiction, maintenance, engineering, or improvement of the Right of Way:

> **REQUEST FOR ADMISSION NO. 11**: Admit that IDOT has not entered into any written contract with any other highway authority for the jurisdiction,

> maintenance, engineering, or improvement of the Right of Way, or any portion thereof or any improvement thereon, as provided for in 605 ILCS 5/4-409.
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> **REQUEST FOR ADMISSION NO. 12**: Admit that IDOT has not authorized any highway authority other than IDOT to enter into any written contract with another highway authority other than IDOT for the jurisdiction, maintenance, administration, engineering, or improvement of the Right of Way, or any portion thereof or any improvement thereon, as provided for in 605 ILCS 5/4-409.

As noted above, IDOT refuses to respond because certain terms, including "written contract," are not defined in JM's the "Instructions and Definitions" of JM's Discovery Requests and are "vague and ambiguous." But such "technical precision" is not required and commonly understood terms are not rendered "vague and ambiguous" merely by virtue of their exclusion from the "Definitions" section of a set of discovery requests. *See e.g., In re Folding Carton Antitrust Litig.*¸ 83 F.R.D. 251, 256 (N.D. Ill. 1978) (applying federal law and finding that, even where phrases or terms in discovery requests could have been more precise and definite, the phraseology used gave the defendants "a clear indication of the information to be included in their answer" and that "interrogatories need not be framed in terms of technical precision"); *John Wiley & Sons, Ltd. v. McDonnell Boehnen Hulbert & Berghoff LLP*, No. 12 C 1446, 2013 WL 505252, *4 (N.D. Ill. Feb. 12, 2013) (granting motion to compel under federal law and finding that the defendants' contention that the terms used in discovery requests were undefined, ambiguous, and vague was unavailing and that "[a]side from the boilerplate objections," defendants did not establish why the plaintiffs' discovery requests were improper).

IDOT claims that JM cannot attempt to clarify its Discovery Requests, or the meanings of terms included therein, in a Rule 201(k) conference. This is incorrect. The purpose of a Rule 201(k) conference is to adopt a spirit of cooperation and to resolve differences between the parties. *See* Ill. S. Ct. R. 201(k); *John Mathes & Assoc's, Inc. v. Noel*, 94 Ill. App. 3d 588, 594 (5th Dist. 1981). But even if IDOT were right, the two Requests for Admission track the

language of and reference the Illinois Highway Code (*compare with* 605 ILCS 5/4-409 ("The Department may enter into a written contract with any other highway authority for the jurisdiction, maintenance, administration, engineering, or improvement of any highway or portion thereof. The Department may also, upon application of any highway authority, authorize the highway authority to enter into a written contract with any other highway authority for the jurisdiction, maintenance, administration, engineering, or improvement of any highway or portion thereof")), and the terms defined therein (*see* 605 ILCS 5/2-213 (defining "highway authority"); 605 ILCS 5/2-202 (defining "highway"); 605 ILCS 5/2-203 (defining "state highway")). With the omission or addition of non-material words, such as "administration," in Request for Admission No. 11, this language is taken verbatim from the same statute which governs IDOT, its powers, and duties. IDOT's response to this question is critical to the issues in this case. IDOT is maintaining that it no longer has jurisdiction over Parcel 0393, but for this to be true, IDOT must have officially transferred jurisdiction through a "written contract" in accordance with 605 ILCS 5/4-409. Thus, JM is simply asking IDOT to admit that it has not gone through this process. IDOT will not answer because presumably it has not followed the procedures, which undercuts its defense. The Illinois Rules of Civil Procedure do not allow a defendant to refuse to answer a question simply because it hurts its defense. Consequently, IDOT should have no trouble understanding this language and properly responding to these Requests. IDOT should be required to unequivocally admit or deny JM's Requests for Admission Nos. 11 and 12 and JM requests that the Hearing Officer enter an Order to this effect.

IDOT uses this same approach of objecting to terms with plain meanings with respect to Requests for Admissions Nos. 3, 4, 5, 6 and Document Request No. 3, all of which relate to the extent of IDOT's interest in Parcel 0393 and when IDOT learned it possessed such an interest

during these proceedings.

> **REQUEST FOR ADMISSION NO. 3**: Admit that IDOT currently has a right to use the Right of Way.
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> **REQUEST FOR ADMISSION NO. 4**: Admit that IDOT has had a right to use the Right of Way since 1971.
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> **REQUEST FOR ADMISSION NO. 5**: Admit that IDOT never transferred, conveyed, or divested itself of its interest in the Right of Way.
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> **REQUEST FOR ADMISSION NO. 6**: Admit that IDOT has never vacated or abandoned the Right of Way.
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> **DOCUMENT REQUEST NO. 3**: Any and all Communications relating to the Right of Way from January 1, 1965 to the filing of JM's original Complaint in this cause, including, but not limited to, Communications internal to You and Communications with others (including the City of Waukegan, utilities, and/or Comed).
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> **DOCUMENT REQUEST NO. 5**: Any and all documents relating to efforts by You or others doing work for You since the filing of JM's original Complaint in this cause to determine what, if any, interest You have ever held and/or what, if any, rights You have ever possessed relating to the Right of Way.
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> **DOCUMENT REQUEST NO. 6**: Any and all documents relating to efforts by You or others doing work for You between the time IDOT received the 104(e) Request from USEPA on or about September 29, 2000 and the filing of JM's original Complaint in this cause to determine what, if any, interest You have ever held and/or what, if any, rights You have ever possessed relating to the Right of Way.

Rather than admitting to or disclosing information regarding its interest in Parcel 0393 — the purpose for which discovery, in part, was reopened — IDOT objected to these Discovery Requests on the ground that it would not "speculate on the intended meaning of" certain terms, such as "right," "transferred," "conveyed," "divested," "interest," "vacated," and "abandoned" — all terms with common sense meanings. In an effort to reach accord, in its Rule 201(k) letter dated April 1, 2016 (attached hereto as **Ex. F**), JM defined for IDOT the purportedly objectionable terms — "right," "transferred," "convey," "interest," "vacate," and

"abandonment." Nonetheless, despite JM's efforts to define these terms in its Rule 201(k) letter for IDOT, IDOT states that it is standing on its objection refuses to respond. IDOT cannot reasonably withhold full responses to JM's Discovery Requests based upon a "vague and ambiguous" objection, particularly where these terms are used and defined in IDOT's own Highway Jurisdictional Guidelines and where IDOT actually uses some of these terms in its own responses to JM's Discovery Requests (*see e.g.*, IDOT's response to Interrogatory No. 1). Further, JM believes that IDOT maintains an electronic system or database, possibly known as IRIS and/or GIS, for tracking right of ways that it controls and maintains, yet IDOT has not produced any information or documents relating to this system or this system's records regarding the Right of Way.

IDOT's refusal to respond to these Discovery Requests can only be construed as an attempt to evade the Hearing Officer's Orders regarding the scope and timing of discovery in this matter. JM, however, is entitled to this information. As such, the Hearing Officer should compel IDOT's responses to JM's Requests for Admissions Nos. 11, 12, 3, 4, 5, 6, and Document Requests Nos. 3, 5, and 6.

**2. IDOT Has Failed To Provide Documents Or Information Regarding The "Project" Pertaining To The Right Of Way Identified In IDOT's Preliminary Environmental Site Assessment (Interrogatory No. 6 and Document Request No. 19).**

JM's Interrogatory No. 6 and Document Request No. 19 seek information and documents related to the Project identified in a Preliminary Environmental Site Assessment conducted for IDOT and specifically including Parcel 0393:

> **INTERROGATORY NO. 6**: Identify the "project" which "involve[d] acquisition of additional ROW or easement, and subsurface utility relocation or linear excavation" referred to in IDOT 003303, including, but not limited to, identifying the right of way that had previously been acquired that the document is referring to; the "additional" right of way to be acquired that the document is referring to; each task contemplated or performed regarding the project; how and

to what extent the project was contemplated to involve the Right of Way, Site 3, Site 6, and/or other areas at the intersection of Greenwood and Sand Street.

**DOCUMENT REQUEST NO. 19**: Any and all documents relating to the "project" identified in IDOT 003303.

While that Preliminary Environmental Site Assessment, portions of which are attached hereto as **Ex. G**, explained that "[w]ork on this project involves acquisition of additional ROW or easement," and identified the Right of Way as an existing one that IDOT investigated (*see* IDOT 00303, IDOT 003336), IDOT has failed to produce all but one document related to that Project (**Ex. D**). While IDOT claims that this Project is not relevant to Site 3, Site 6, or the Right of Way, IDOT 003336 unambiguously includes the Right of Way within the project limits.

As discussed above, based upon the IDOT 003336, IDOT 008126, and IDOT 008130, the Project studied does involve Site 3 and Site 6, including Parcel No. 0393, the Right of Way. Similarly, IDOT 008130 plainly identifies the area on Site 3 and 6 in question as "Ex ROW." As such, it is inaccurate to characterize the Project as unrelated to Sites 3, 6, or the Right of Way. The mere fact that IDOT 008130 characterized Parcel 0393 as an existing right of way in 2012 shows that documents relating to the Project are undeniably germane to this case.

IDOT's refusal was particularly strident when JM explained that it should produce documents relating to the Project as originally envisioned in 2010, including the correspondence between IDOT and the Illinois State Geological Survey requesting the Preliminary Environmental Site Assessment. Undoubtedly, there are internal IDOT documents relating to this Project and how it evolved over time, including, perhaps, whether the Project was altered in order to avoid Parcel 0393 for some other relevant reason. JM is entitled to them. As noted at the outset, IDOT 008130 should have been produced long ago when JM requested all documents

relating to Site 3 and Site 6. IDOT now should be compelled to fuly respond to Interrogatory No. 6 and Document Request No. 19..

**3. IDOT's Responses to Interrogatories No. 2 And 5 And To Document Requests Nos. 4 And 7 Are Inaccurate Or Incomplete.[1]**

In an effort to determine the level of control IDOT possesses over rights of way in which IDOT has an interest, including the Right of Way at issue here, and particularly with respect to environmental concerns, JM's Interrogatory No. 5 asked IDOT to "[i]dentify in the last 7 years occurrences in which You have performed remedial or removal actions relating to Contamination within, on, under, or above right of ways in which IDOT or its predecessor currently holds an interest and/or held an interest in the past." IDOT responded "that it has not conducted any such actions within the scope of this interrogatory." Yet, when JM agreed to define the terms "remedial or removal actions" as they are defined in CERCLA, 42 U.S.C. §§ 9601 (23), (24), counsel for IDOT responded by stating that there would be too many actions to list. As such, IDOT's initial response to JM's Interrogatory No. 5 cannot be correct. Still, IDOT has refused to supplement its response. JM asks that IDOT be required to do so now.

Similarly, IDOT's responses to JM's Document Requests Nos. 4 and 7 are so incomplete such that they are inaccurate. Those Document Requests sought:

> **DOCUMENT REQUEST NO. 4**: Any and all Communications relating to the Right of Way since the filing or JM's original Complaint in this cause, including, but not limited to, Communications internal to You and Communications with others ( including the City of Waukegan, utilities, and/or Comed).

[1] While during the parties' Rule 201(k) conference, IDOT agreed to supplement its response to JM's Document Requests Nos. 4 and 7 and Interrogatory No. 2. IDOT then provided additional documents involving Keith Stoddard. JM subsequently outlined its concerns with respect to IDOT's responses to these particular Discovery Requests in an additional Rule 201(k) email dated April 6, 2016, which IDOT stated it would review. *See* Correspondence, attached hereto as **Ex. H**. JM does not expect to receive that supplementation until after its deadline for filing the instant Motion and accordingly, addresses the supplementation needed here.

> **DOCUMENT REQUEST NO. 7**: Any and all documents involving Steven Gobelman and/or Keith Stoddard and the Right of Way, including but not limited to Communications to or from either of them.

IDOT initially responded to the Document Requests by claiming that "all non-privileged documents responsive to this request for production have been produced during prior discovery." That turned out to be far from the truth. IDOT purported to cure the deficiencies in its responses by producing a mere fifty-two pages of additional communications involving IDOT's proffered expert witness, Keith Stoddard, on April 5, 2016. Those documents produced, however, only further served to reveal substantial gaps missing from IDOT's document production and discovery responses. The pages that were produced by IDOT refer to other documents and correspondence with Mr. Stoddard, including, but not limited to, including attachments to numerous emails, manuals from 1973, 2001, and 2011, communications relating to a Title Commitment obtained by IDOT, and files sent to Mr. Stoddard regarding the Right of Way, that were not turned over to IDOT.

Those documents also clearly demonstrated that IDOT's response to JM's Interrogatory No. 2 was neither a full nor complete disclosure. JM's Interrogatory No. 2 sought:

> **INTERROGATORY NO. 2**: Describe any and all steps taken by You or anyone doing work for You (including, but not limited to, Steven Gobelman, Keith Stoddard and/or any third party consultant, contractor, or agent) to determine whether and to what extent You were holding or held an interest in or rights with respect to the Right of Way, including the outcome of each step taken, since You received the 104(e) Request from USEPA on or about September 29, 2000.

IDOT responded:

> IDOT staff have reviewed various documents related to the "Right of Way" and concluded that there would have been no need for maintaining the "Right of Way" following the construction of the overpass on Greenwood Avenue across railroad tracks as part of the construction of the Amstutz Expressway. Once construction of the expressway and the Greenwood Avenue overpass was completed, IDOT had no further use for the Grant of Public Highway, as roads adjacent to the land on which the Grant for Public Highway was located (i.e.,

> Greenwood Avenue and Sand Street), were and have always been, roads under the exclusive control of the City of Waukegan and were never state highways.

Notably, in this response IDOT omits explanation or production of a single document related to the Title Commitment obtained by IDOT from the Wheatland Title Guaranty Company on or around February 19, 2016, and a revised Title Commitment dated March 30, 2016. The earlier commitment has not been produced.

The emails produced by IDOT further show that Mr. Stoddard created documents for his use and review, the creation, review, or discussion of which was not documented as a step in the process to determine IDOT's interest in the Right of Way. Moreover, as with IDOT's responses to all of JM's other Discovery Requests, in responding to JM's Interrogatory No. 2, IDOT fails to include all of the information requested, instead ignoring JM's offered definitions for certain terms and providing information non-responsive to the Interrogatory. For example, in its Interrogatories, JM defined "[d]escribe" to request that IDOT identify the substance of events, the place and date of the events, all persons involved or having knowledge thereof, and all documents referring or relating to the event. Rather than providing this specific information requested, IDOT identified "staff" and "documents." This is insufficient. *See In re Blank*, 145 Ill. 2d 534, 549 (Ill. 1991) (holding that answering "interrogatories with vague, general responses" was not a practice considered "to be an acceptable substitute for the answers required by our Rule 213(c)"); *In re Marriage of Barnett*, 344 Ill. App. 3d 1150, 1153 (4th Dist. 2003). Consequently, JM requests that the Hearing an Officer required IDOT to provide accurate and complete responses to these Discovery Requests.

**4. IDOT's Answers To JM's Discovery Requests Are Non-Responsive (Requests for Admissions Nos. 1, 2, and 9 and Interrogatory No. 1).**

In some instances, where JM did provide specific definitions for terms, IDOT disregarded those and imposed its own, making IDOT's answers to JM's Discovery Requests non-responsive

or unclear. In its Discovery Requests, JM specifically defined "Right of Way" as "the IDOT right of way within the southeast quadrant of the intersection of Greenwood Avenue and Sand Street in Waukegan, Illinois, designated as Parcel No. 0393, as described at IDOT 002800." JM then propounded several Discovery Requests related to this particular parcel:

> **REQUEST FOR ADMISSION NO. 1**: Admit that the Right of Way encompasses portions of Site 6.
>
> **REQUEST FOR ADMISSION NO. 2**: Admit that the Right of Way encompasses portions of Site 3.
>
> **REQUEST FOR ADMISSION NO. 9**: Admit that the Right of Way is part of a "State highway" (as defined in 605 ILCS 5/2-203).

Nevertheless, IDOT disregarded JM's "Right of Way" terminology and used its own phrase, "Grant for Public Highway," in responding to several of JM's Discovery Requests. IDOT's use of the phrase "Grant for Public Highway," however, is misleading as the "Grant for Public Highway" produced by IDOT in this case is a document which encompasses many different parcels, not merely Parcel 0393, the subject of JM's Discovery Requests. As such, IDOT's use of the phrase "Grant for Public Highway" in these responses to JM's Discovery Requests is non-responsive to the questions posed.

IDOT's response to JM's Interrogatory No. 1 is similarly non-responsive. Interrogatory No. 1 asks:

> **INTERROGATORY NO. 1**: Describe what, if any, interests or rights, You currently possess or hold with respect to the Right of Way. If none, describe how and to whom You transferred, conveyed, abandoned, vacated, or divested Your interests or rights previously held with respect to the Right of Way.

In addition to again objecting to numerous ordinary terms as "vague, ambiguous, and potentially contradictory" despite the use of the disjunctive "or" in the Interrogatory, IDOT failed to adequately respond to the Interrogatory. Rather than describing the nature of IDOT's

interests or rights in the Right of Way, or even how IDOT divested itself of those rights, IDOT responded by discussing whether it had "use" for the "Grant of Public Highway." Such a response is evasive and irrelevant. Whether IDOT felt the "Grant of Public Highway" had utility is a different question than whether IDOT possesses any interests or rights with respect to the Right of Way/Parcel 0393. Accordingly, IDOT should be required to respond to JM's Requests for Admission and Interrogatory as-posed.

**CONCLUSION**

Though depositions and the hearing in this case are fast approaching, IDOT has deprived JM of documents and information constituting critical evidence of JM's claims. The information above requested by JM is relevant and material to the issues in this case. WHEREFORE, Complainant JOHNS MANVILLE respectfully requests that the Hearing Officer enter an Order compelling IDOT to respond in full, within three (3) days of the date of the Hearing Officer's Order, to JM's First Set of Requests for Admission, Second Set of Document Requests, and Third Set of Interrogatories.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on April 8, 2016, I caused to be served a true and correct copy of *Complainant's Motion to Compel* 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*
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