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CERTIFICATE OF SERVICE

Johns Manville v. Illinois Department of Transportation, PCB 14-3 (Citizens)

I, EVAN J. MCGINLEY, do hereby certify that, today, April 13, 2016, I caused to be served on the individuals listed below, by electronic mail, true and correct copies of IDOT's Revised Responses to Johns Manville's 3rd Set of Interrogatories on each of the parties listed below:

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s/Evan J. McGinley
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THIS FILING IS SUBMITTED ON RECYCLED PAPER

**BEFORE THE ILLINOIS
POLLUTION CONTROL BOARD**

JOHNS MANVILLE, a Delaware corporation)	
)	
Complainant,)	
)	
v.)	PCB No. 14-3
)	(Citizen Suit)
ILLINOIS DEPARTMENT OF TRANSPORTATION,)	
)	
Respondent.)	

**RESPONDENT’S REVISED RESPONSES TO
COMPLAINANT’S THIRD SET OF INTERROGATORIES**

Respondent, the ILLINOIS DEPARTMENT OF TRANSPORTATION, through its attorney, LISA MADIGAN, Attorney General of the State of Illinois, herewith provides its revised responses to Complainant’s Third Set of Interrogatories.

GENERAL OBJECTIONS

To the extent applicable, IDOT states these general objections and hereby incorporates them by reference as objections into each and every one of its responses to Johns Manville’s interrogatories.

1. IDOT has not completed its investigation and discovery in this action nor its preparation for trial. Accordingly, all responses below are based only upon such information and documents that are presently available and specifically known to IDOT. As discovery progresses, IDOT reserves the right to supplement its responses to the discovery requests.

2. IDOT objects to the interrogatories insofar as they purport to seek information that is protected from discovery by the attorney-client privilege, the work product doctrine, the

deliberative due process privilege, or any other doctrine or privilege protecting information from discovery.

3. IDOT objects to these interrogatories to the extent they seek information pertaining to issues unrelated to the issues asserted in the Second Amended Complaint, the response to which, to the extent any response is otherwise possible, would require extensive and costly investigation and compilation of information not presently available.

4. IDOT objects to these interrogatories to the extent that they are oppressive, unduly broad and burdensome, or seek information not in its possession, custody or control.

5. IDOT objects to these interrogatories to the extent that they are vague or ambiguous and that any response to the same would be based on speculation as to the meaning or scope of a given interrogatory.

6. IDOT objects to these Interrogatories to the extent that they are duplicative of interrogatories included in Johns Manville's first two sets of interrogatories and further objects that the propounding of previously-propounded interrogatories in Johns Manville's Third Set of Interrogatories is burdensome and oppressive.

7. IDOT objects to these Interrogatories to the extent that they seek information previously available to Johns Manville or in Johns Manville's possession. The burden of obtaining the information necessary to respond to these interrogatories is the same for Johns Manville as it is for the IDOT.

8. IDOT objects to these Interrogatories to the extent they assume, imply or require any legal conclusions.

9. IDOT does not concede the relevancy of any information sought or discovered in responding to these interrogatories and requests for production.

10. IDOT objects to the instructions and definitions to these interrogatories insofar as they require IDOT to undertake or investigate or produce information in excess of what is required of it under the Board Regulations and the Illinois Code of Civil Procedure.

11. IDOT specifically objects to the definition for "Identify," insofar as it seeks the social security numbers of any individual who IDOT identifies in response to Johns Manville's interrogatories. The inclusion of such information is not reasonably related to Johns Manville's right to obtain discovery from IDOT and therefore IDOT declines to provide any information related to the social security numbers of any individuals it may identify in responding to these discovery requests, owing to the personal and sensitive nature of this information.

12. IDOT specifically objects to Johns Manville's inclusion of an undefined term (e.g., "any and all Bypasses") in the definition of the term "Amstuz Project," on the grounds that this undefined term is vague and ambiguous.

13. IDOT specifically objects to Johns Manville's inclusion of the term "Right of Way" in these interrogatories. For purposes of responding to these interrogatories, IDOT interprets the term "Right of Way" as instead meaning a "Grant for Public Highway," which is the term used in the document cited to in Johns Manville's definition for the term "Right of Way."

14. IDOT does not concede the relevancy of any information sought or discovered in responding to these interrogatories.

RESPONSES TO INTERROGATORIES

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.

RESPONSE

IDOT herewith incorporates by reference each and every objection set forth above under its General Objections. Further responding, IDOT objects to this interrogatory's use of the terms "interests," "rights," "possess," "hold," "transferred," "conveyed," "abandoned," "vacated," and "divested," as none of these terms are undefined within the "Instructions and Definitions" section of Johns Manville's Third Set of Interrogatories and accordingly, each of the objected to terms are vague, ambiguous and potentially contradictory.

Notwithstanding any of the foregoing objections, IDOT states that it held a "Grant of Public Highway" at one time, which was granted by Commonwealth Edison, the fee simple owner of the property, solely for "highway purposes." Such grants for public highways may not be transferred or reconveyed by IDOT to a third party. The Grant for Public Highway in question was only used in conjunction with the construction of an overpass 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 for 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.

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.

RESPONSE

IDOT herewith incorporates by reference each and every objection set forth above under its General Objections. Further responding, IDOT objects to this interrogatory's use of the terms "interest," or "rights," as neither of these terms are undefined within the "Instructions and

Definitions” section of Johns Manville’s Third Set of Interrogatories and accordingly, each of the objected to terms are vague and ambiguous. IDOT also objects to this interrogatory as being overbroad and beyond the scope of the limited discovery which has been authorized by the Board at this time. Further responding, IDOT responds see documents previously produced in this litigation, including but not limited to, IDOT 002827-002856. Further responding, on or about February 19, 2016, James Stumpner, Bureau Chief for Maintenance, IDOT District 1, directed Steve Hooghkirk to review IDOT maintenance records relative to the vicinity of Sites 3 and 6, including jurisdiction over and maintenance of all adjacent rights of way. Based on Mr. Hooghkirk’s review of IDOT records, he concluded that the City of Waukegan has always had jurisdiction and maintenance responsibility for Greenwood Avenue east of Pershing Road, as well as Pershing Road/Sand Street, in the vicinity of Sites 3 and 6. Mr. Hooghkirk found further support that the City of Waukegan has jurisdictional and maintenance responsibility for roads in the vicinity of Sites 3 and 6 by reviewing the 1990 transfer agreement between the City of Waukegan and IDOT, pursuant to which, IDOT assumed jurisdiction and maintenance responsibility for Greenwood Avenue from Sheridan Road east to the East Ramp Terminal of the Amstutz Highway. Based on this document review, Mr. Stumpner concluded IDOT’s responsibility for maintaining roads in the vicinity of Sites 3 and 6 ends at the previously-mentioned East Ramp Terminal . Further, Mr. Stumpner concluded that there would have been no need for maintaining the “Right of Way” following the construction of an 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 for 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.

3. Describe any and all instances in which You have performed or overseen any work (directly or under contract or other arrangement with any third party) including, but not limited to, upkeep, surveys, soil borings, maintenance and/or site inspection, at the property on which the Right of Way exists since January 1, 1965.

RESPONSE

IDOT herewith incorporates by reference each and every objection set forth above under its General Objections. Further responding, IDOT objects to the use of the terms “upkeep,” “surveys,” “soil borings,” maintenance and/or site inspection” neither of these terms are undefined within the “Instructions and Definitions” section of Johns Manville’s Third Set of Interrogatories and accordingly, each of the objected to terms are vague and ambiguous. IDOT further objects to this interrogatory on the grounds that it seeks the untimely disclosures on subjects that were properly within the scope of previously-permitted fact discovery in this case. Further responding, IDOT refers Johns Manville to the documents which it has previously produced in this case.

4. Describe IDOT’s understanding of the meaning of the phrases “for highway purposes only” and “for highway purposes” as set forth in IDOT 002799, IDOT 002808, and IDOT 002816 and the nature and scope of the interest in real property that is conveyed by the use of the phrase.

RESPONSE

IDOT objects to this interrogatory as being, on the whole, vague and ambiguous. IDOT further objects to this interrogatory’s use of the term “nature and scope of the interest in real property that is conveyed,” as neither that term or any of its subparts, are defined in the “Instructions and Definitions” section of Johns Manville’s Third Set of Interrogatories and accordingly, that term is both vague and ambiguous. Further responding, IDOT states that the cited term typically refers to a form of temporary easement through which IDOT is allowed to

enter onto the property of a third party, in order to conduct work related to an IDOT construction project, solely for highway purposes.

5. Identify 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.

RESPONSE

IDOT objects to the use of the term “remedial or removal actions” as that term is undefined, and therefore vague and ambiguous. Solely for purposes of responding to this interrogatory, IDOT assumes that the term “remedial or removal actions” refers to actions similar to those which Johns Manville and Commonwealth Edison are under an obligation to conduct at the Sites 3 and 6. Based strictly upon the foregoing assumption, IDOT responds that it has not conducted any such actions within the scope of this interrogatory.

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 Green and Sand Street.

RESPONSE

IDOT herewith incorporates by reference each and every objection set forth above under its General Objections. IDOT further specifically objects to the inclusion of references to Sites 3 and 6 within the scope of this interrogatory, as by doing so, the scope of this interrogatory goes beyond what was permitted in the limited discovery which the Board permitted in its March 3, 2016 opinion and order. Notwithstanding the foregoing objections, IDOT states that the “project” in question is not “contemplated to involve the Right of Way, Site 3, Site 6, and/or other areas at the intersection of Green and Sand Street.” Rather, the “project” in question, if constructed, will result in the removal of a currently-existing bridge, which is located west of

Sites 3, 6 and the “Right of Way,” and will replace the bridge with an embankment and then the repaving of that section of highway. Further responding, IDOT does not anticipate that it will need to acquire any additional “ROW” as part of this project. Further responding, IDOT directs JM to the February 17, 2012 IDOT document entitled “Preliminary Site Investigation Request” for “FAP 352: Ill. Route 137 (Amstutz Expy.)” (IDOT 008121-008133), and the June 2012 “Project Report: Illinois Route 137 (Greenwood Avenue) Over Illinois Route 137 (Amstutz Expressway)” (IDOT 008186-8499), which IDOT has recently produced to JM, as well as documents which IDOT has previously produced to JM in this action, including IDOT’s April 21, 2011 Preliminary Environmental Site Assessment: Final Report (IDOT 003296-3343).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN, Attorney
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