BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING AND SERVICE

To: ALL PERSONS ON THE ATTACHED CERTIFICATE OF SERVICE

Please take note that today, September 15, 2017, I have filed with the Clerk of the Pollution Control IDOT's Response to Johns Manville's and Commonwealth Edison's *In Camera* Applications for Non-Disclosure and for Protective Order and have served each person listed on the attached service list with a copy of the same.

Respectfully Submitted,

By: s/ Evan J. McGinley

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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, September 15, 2017, I caused to be served on the individuals listed below, by electronic mail, a true and correct copy of IDOT's Response to Johns Manville's and Commonwealth Edison's *In Camera* Applications for Non-Disclosure and for Protective Order on each of the parties listed below:

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s/Evan J. McGinley

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	)	
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ILLINOIS DEPARTMENT OF TRANSPORTATION,	)	
	)	
	)	
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IDOT's RESPONSE TO JOHNS MANVILLE'S AND COMMONWEALTH EDISON'S *IN CAMERA* APPLICATIONS FOR NON-DISCLOSURE AND FOR PROTECTIVE ORDER

NOW COMES Respondent, the ILLINOIS DEPARTMENT OF TRANSPORTATION ("IDOT") who hereby files its response to Johns Manville's and Commonwealth Edison's ("Com Ed") *In Camera* Application for Non-Disclosure and for Protective Order in Response to Subpoena *Duces Tecum* ("Application").[1] In support of its Response, IDOT states as follows:

STATEMENT OF FACTS

On May 19, 2017, IDOT's counsel served a subpoena *duces tecum* on Commonwealth Edison ("May 19th Subpoena"). (A copy of the Subpoena is attached as Exhibit 1 to Com Ed's Application.) The Subpoena sought three categories of documents from Com Ed through the May 19th Subpoena, which generally sought the production of any documents held by Com Ed pertaining to any arrangements between Com Ed and Johns Manville, relative to payments made or to be made by Com Ed related to the Southwestern Site Area, including Sites 3 and 6.

[1] For purposes of this Response, as Johns Manville only served IDOT with a Notice of Filing and nothing further, while Com Ed served its redacted application on IDOT, IDOT assumes that Johns Manville's bases for its application essentially rely upon the same grounds as those likely asserted by Com Ed in its application. Accordingly, all arguments contained in this Response should be understood as and are intended to apply to both Com Ed and Johns Manville.

On June 20, 2017, Com Ed filed a Motion to Quash or for Protective Order in Response to Subpoena *Duces Tecum* ("Motion"). The Board has never ruled on the Motion, owing to other intervening events, as further described below.

On June 23, 2017, IDOT served a subpoena to Com Ed ("June 23rd Subpoena"), for the deposition of the person most knowledgeable regarding Com Ed's performance of various obligations as result of its entry into the 2007 Administrative Order on Consent ("AOC") with USEPA and Johns Manville. (A copy of the June 23rd Subpoena is attached to this Response as Exhibit A and a copy of the AOC is attached as Exhibit 1 to Com Ed's Application.) IDOT also sought to depose a Com Ed representative regarding the existence and terms of any agreement between Com Ed and Johns Manville, relating to the performance of their joint obligations under the AOC.

After a series of communications between Com Ed's and IDOT's respective counsel, on July 18, 2017, Com Ed's counsel sent an email to IDOT's counsel memorializing the agreement reached between the parties regarding a limitation to the scope of documents sought by IDOT through its May 17th and June 23rd subpoenas ("July 18th Email"). (A copy of the July 18th Email is attached as Exhibit 4 to Com Ed's Application.)

In the July 18th Email, Com Ed's counsel stated that Com Ed would file the Application that is the subject of this Response, in order for the Board to rule on whether, if at all, certain privileges applied to the documents and information that IDOT sought through its two subpoenas.[2] The July 18th Email identified the possible privileges that could apply to the documents and information sought through the two subpoenas as including: the confidentiality of any information contained or sought through IDOT's subpoenas, attorney client privilege, attorney work product, and joint defense/common interest protection.

[2] Such a ruling would likely obviate the need for a decision on Com Ed's Motion.

On August 4, 2017, Johns Manville filed *In Camera/Ex Parte* Application for Non-Disclosure, Protective order, and *In Camera* Inspection of Privileged and Confidential Material As it served IDOT with only a copy of its August 4th notice of filing which accompanied its application, IDOT knows nothing about the contents of this filing. It is unknown what arguments or materials were attached to Johns Manville's application.

On August 8, 2017, Com Ed filed its Application with the Board. The copy served on IDOT did not contain either a copy of Com Ed's actual application or the affidavit supporting the Application, as required by Sections 130.404(e) of the Board's Rules, 35 Ill. Adm. Code 130.404(e)(4). Com Ed's Application also included seven exhibits, including one group exhibit (i.e., Exhibit 7), which consists of three Board opinions in other matters, as well as unpublished Illinois appellate opinion, specifically *Geraci v. Amidon*, 2013 IL App (2d) 120023-U*.[3] Because the copy of the Application served on IDOT does not contain any of the items specified under 35 Ill. Adm. Code 130.404(e)(1)-(5), IDOT is unable to determine what purpose, if any, is served by the inclusion of this group exhibit.

ARGUMENT

A. Standards Governing Applications for Non-Disclosure and for Discovery

As IDOT has not seen the substantive portion of Com Ed's Application, it must make certain assumptions about the contents of that document. The most significant challenge for IDOT in responding to the Application is discerning what the underlying legal basis/bases are for Com Ed's application. Com Ed's Application is apparently brought pursuant to Part 130,

[3] The text of the *Geraci* opinion states that it "MAY NOT BE CITED AS PRECEDENT BY ANY PARTY EXECPET IN THE LIMITED CIRCUMSTANCES ALLOWED UNDER RULE 23(e)(1)." These "limited circumstances" are: "support[ing] contention[s] of double jeopardy, *res judicata,* collateral estoppel or law f the case." Ill. Sup. Ct. Rule 23(e)(1). Based on the information contained within the Application, IDOT is unable to determine whether any of the limited circumstances set forth in Rule 23(e)(1) permit Com Ed's use of the *Geraci* opinion in its Application.

Subpart D of the Board's Rules. Section 130.400 *et seq.* of the Board's Rules provides the framework for the Board's "determinations of whether articles are 'non-disclosable information other than trade secrets.'" 35 Ill. Adm. Code 130.400. Section 101.202 of the Board's Rules, in relevant part, defines "Non-disclosable information" as "*information which constitutes . . . information privileged against introduction in judicial proceedings; ...*" (Italics in original.)

Presumably, Com Ed is asserting at least some, if not all, of the privileges which its counsel identified in her July 18th Email. (Exhibit 4, at 1.) However, given the lack of information contained in the copy of the Application which Com Ed served on IDOT, IDOT has no idea what specific privileges Com Ed is asserting as providing the legal underpinnings for their Application. Accordingly, IDOT does not know what documents and information sought through its two subpoenas constitute "information which is privileged against introduction in judicial proceedings." IDOT thus finds it necessary to discuss each of these privileges, as part of its response to Com Ed's Application.

As the Board has noted in its prior decisions, privileges, such as the attorney-client privilege, represent an "exception to the general duty [of parties] to disclose information." *Timber Creek Homes, Inc. v. Village of Round Lake Park*, PCB 14-99 (May 12, 2014), Slip Op. at 2. As such, any claim of privilege by Com Ed in its Application must be narrowly interpreted by the Board. *Id.*

B. None of the Privileges Which Com Ed Could Possibly Assert Can Thwart IDOT from Obtaining the Documents and Information Sought Through its Subpoenas

As discussed in more depth below, each of the four possible privileges that Com Ed may seek to raise in its Application in an effort to thwart IDOT from obtaining the documents and information which it seeks through its two subpoenas are unavailing. This is particularly

true where IDOT's subpoenas seek the disclosure of facts (i.e., whether an agreement between Com Ed and Johns Manville exists and whether Com Ed has made any payments to Johns Manville), and neither, for example, information concerning client confidences nor case strategies.

1. Confidentiality

Com Ed's Application may be asserting confidentiality as a grounds for non-disclosure of the documents and information sought by IDOT's two subpoenas. (Application, Ex. 4, "Agreed Scope Documents in Response to IDOT's Subpoena(s)", ¶ B.) One of the categories of documents sought by IDOT through its subpoenas are copies of:

> [A]ny agreements between Com Ed and Johns Manville with respect to the allocation, reimbursement, or payment of any and all costs incurred by either Johns Manville or Com Ed in the course of performing the "Work" which the Respondents were required by the terms of the AOC to perform at the "Southwestern Site Area."
> (Exhibit A, ¶2.)

The Illinois Rule of Evidence 408 mirrors Federal Rule of Evidence 408. *Control Solutions, LLC v. Elecsys*, 2014 IL App (2d) 120251, fn. 2. Therefore, Illinois courts will look to federal case law interpreting the federal rule, as guidance in analyzing Illinois Rule of Evidence 408. *Id.* Federal courts analyzing FRE 408 have held that no federal privilege prevents the discovery of settlement agreements. *Board of Trustees the Leland Stanford Junior University v. Tyco Intern. Ltd.*, 253 F.R.D. 521, 523 (N.D.Cal. 2008). As another federal court has noted, "[a] concern for protecting confidentiality does not equate to privilege, and several courts have found that settlement agreements are not shielded from discovery simply because they are confidential." *Blount v. Major*, 2016 WL 6441597 (Nov. 1, 2016) (E.D. Mo.) (citations omitted.)

In *Blount*, the defendant/movant sought to compel discovery of the settlement agreement previously obtained by the plaintiff from other defendants who had settled with plaintiff earlier in the case. *Blount*, at 1-2. The defendant argued that it was entitled to obtain information regarding the amounts which plaintiff had previously obtained from its settlements with the former defendants, as this information was relevant to the issue of "what, if any, damages plaintiff may still allege.". *Id.* at 2. The court ultimately granted defendant's motion, placing limits on the disclosure of certain information within the settlement agreement. *Id.*

IDOT is in a position that is similar to the defendant in *Blount*. Johns Manville seeks to have IDOT reimburse it for an as yet to be determined amount of money. As such, IDOT has the right to conduct discovery on whether any agreements exist between the Johns Manville and Com Ed, pursuant to which Com Ed may have already reimbursed Johns Manville for some portion of the costs which it has incurred, which it may also attempt to seek from IDOT. The fact that such an agreement may be held as confidential by Johns Manville and Com Ed is not a proper reason for it not to be produced in response to IDOT's subpoenas.

2. Attorney-Client Privilege

Com Ed may also be asserting attorney-client privilege as a basis for not producing documents and information sought by IDOT's subpoenas. Such a claim seems to be based on Com Ed's erroneous application of law. As the Illinois Supreme Court stated in its decision in *Waste Management, Inc., v. International Surplus Lines Insurance Co.*, 144 Ill.2d 178 (1991), "attorney-client privilege is limited solely to those communications which the claimant either expressly made confidential or which he could reasonably believe . . . would be understood by the attorney as such." *Id.* at 191 (citation omitted.) If Com Ed is claiming that the attorney-client privilege justifies their withholding of documents or information pertaining to matters

such as whether any sort of agreement exists between it and Johns Manville or whether it has paid Johns Manville for some portion of the investigation and remediation costs at the sites, it faces a heavy burden. How would the existence of any final agreement(s) between the parties be shielded from discovery under this privilege? Similarly, in what way would the possible fact that Com Ed made payments to Johns Manville be covered by attorney-client privilege? Any assertion of attorney-client privilege for such documents and information cannot stand and IDOT is entitled to obtain them through its subpoenas. *Janousek v. Slotky*, 2012 IL App (1st) 113432 (2012), ¶ 24 (the court holding that plaintiff, a former LLC member, had the right to inspect records of the business during the time he was a member of the LLC, which withstood any claim of privilege by the defendant).

3. Attorney Work Product

It is also possible that Com Ed will attempt to assert attorney work product as a basis for withholding the documents and information IDOT seeks through its subpoenas. As the Illinois Supreme Court stated in in 1966 in *Monier v. Chamberlin*, the purpose of this privilege is to "protect notes and memoranda (actually) prepared by counsel for use in trial." 35 Ill.2d 351, 358 (Parentheses in original, citations omitted.) As the *Monier* court further stated, "[o]ther material, not disclosing such conceptual data but containing relevant and material evidentiary details must, under our discovery rules, remain subject to the truth-seeking processes thereof." *Id.* at 360. (Emphasis added.)

It is difficult to see how any agreement between Com Ed and Johns Manville constitutes work product, as it would, by definition, not have been created for trial. It is also difficult to see how any records of payments from Com Ed to Johns Manville would contain any attorney's "mental impressions." To the extent that any documents setting forth any

agreements between Johns Manville and Com Ed exist, or records of any payments between those parties that relate to the sites at issue in this case, they are relevant and material to the issue before the Board and IDOT should be permitted to obtain them through discovery. *Id.*

4. Joint Defense/Common Interest Privilege

The purpose of the common interest doctrine (otherwise known as the "joint defense privilege") is to "'protect the confidentiality of communications . . . where a joint . . . effort or strategy has been decided upon or undertaken by the parties and their respective counsel.'" *Dexia Credit Local v. Rogan*, 231 F.R.D. 268, 273 (N.D. Ill 2004) (ellipses in original, internal citations omitted.) The privilege is an extension of both the work product privilege (*In re Megan-Racine Assocs., Inc.*, 189 B.R. 562, 574(N.D. NY 1995), as well as the attorney client privileges. *Securities Investor Protection Corp. v. Stratton Oakmont, Inc.* 213 B.R. 433, 435 (S.D. NY 1997).

"Only those communications made in the course of an ongoing common enterprise are intended to further the enterprise are protected." *U.S. v. Schwimmer*, 892 F.2d 237, 243 (2nd Cir. 1989). As further noted by the *Schwimmer* court, "'what is vital to the [joint defense] privilege is that the communication be made in *confidence* for the purpose of obtaining *legal* advice *from the lawyer.*'" *Id.* (Emphasis in original.)

There does not seem to be any valid basis for Com Ed to claim that it is withholding documents and information under a claim of joint defense privilege. First, as already argued above, Com Ed cannot plausibly make out a claim that the information sought by IDOT is protected under either attorney client or attorney work product privileges. Much of the information which IDOT seeks to obtain through its subpoenas simply concerns facts; i.e., whether Com Ed has made any payments to Johns Manville, and, if so, how many and for what

amounts? Quite simply, the joint defense privilege (nor any other privilege, for that matter), does not shield such facts from discovery.

Second, as for any agreements which may exist between Johns Manville and Com Ed, the subject matter of any such agreements would seem to be concerned with how those two parties would deal with the United States Environmental Protection Agency and the AOC. It is difficult to see how any such agreement would have any bearing on the issues related to this case. Indeed, in their June 20, 2017 Motion to Quash IDOT's May 19th subpoena, Com Ed is on record as having said that it was "a non-party to this action . . ." (Motion, at 1.)

Finally, in order for Com Ed to even hope to make out this claim, it would need to demonstrate that would have to show how documents which were purportedly prepared in anticipation of litigation for a prior matter have bearing on the present case. *Megan-Racine Assocs.,* at 575. In order for this privilege to apply to the documents and information sought by IDOT's subpoenas, Com Ed must show that the prior case and this case (a case to which Com Ed is an admitted non-party), "are *closely related.*" Id. (emphasis in original, citations omitted.) IDOT highly doubts that Com Ed can may such a showing here.

C. Even if the Documents and Information Sought by IDOT Through its May 19th and June 23rd Subpoenas Are Privileged, IDOT is Still Entitled to Obtain Them, Under Well-Recognized Exceptions to Privileges

It is well recognized that at times, documents which would otherwise be protected from disclosure under some form of privilege, can nevertheless be required to produced, where the party seeking the documents or information can demonstrate a "'substantial need.'" *Sandra T.E. v. S. Berwyn Sch. Dist.*, 600 F.3d 612, 622 (7th Cir. 2010) (citing *Upjohn Co. v. United States*, 449 U.S. 383, 398-99 (1981). The party seeking to obtain privileged material has a heavy burden to meet. *Republic Gear Co. v. Borg-Warner Corp.*, 381 F.2d 551, 557 (2nd Cir.

1967). However, "[s]uch necessity may arise when the documents would 'give rise to the existence or location of relevant facts . . ." *Id.* (citing *Hickman v. Taylor,* 329 U.S. 495, 511 (1947).

Here, the documents and the information which IDOT seeks to obtain from Com Ed concerns matters such as: 1) whether Com Ed has made any payments to Johns Manville with respect to the work which Johns Manville has performed at the Southwestern Site Area, particularly the areas which are at issue in the Board's December 15, 2016 Interim Opinion and Order; and, 2) whether Com Ed and Johns Manville ever entered into any sort of written agreement regarding how they would address their joint and several obligations under the AOC.

As the next and final phase of this case concerns, among other matters, "[t]he amount and reasonableness of JM's costs for this work [i.e., the portion of the work which is attributable to IDOT's work on the Amstuz Project], (Application, Ex. 2, at 22), it is absolutely imperative that IDOT be able to know whether Johns Manville has already been reimbursed for the costs of any work which it might otherwise seek to obtain from IDOT. To deny IDOT the opportunity to conduct full discovery on such a fundamentally important issue would be highly prejudicial to its ability to prepare its defense for the remaining issues to be addressed at hearing.

Just as importantly, without full discovery on the relationship between Johns Manville and Com Ed being conducted with respect to how they have chosen to deal with performing the required work under the AOC, the Board would be unable to fully evaluate one of the designated issues that are to be addressed during the next round of hearing.

Additionally, assuming that any sort of agreement exists between Johns Manville and Com Ed - or that Com Ed has made any payments to Johns Manville - Johns Manville has waived its right to bar disclosure of these documents and information to IDOT under any claim of confidentiality or privilege. Such documents and information would go directly to the heart of at least one of the issues which the Board has directed the parties to address during the next hearing in this case. Johns Manville, in particular, cannot have it both ways: to seek recoupment of some portion of its investigation and cleanup costs from IDOT on the one hand, while simultaneously seeking to bar IDOT from attempting to learn whether it has already recouped any of such costs from Com Ed.

CONCLUSION

WHEREFORE, Respondent, the Illinois Department of Transportation, requests that the Hearing Officer:

1) Deny Com Ed's Application in its entirety;
2) Issue an order requiring Com Ed to timely produce the documents sought by IDOT in its May 19th subpoena;
3) Require Com Ed to produce a corporate representative for deposition; and,
4) Grant such other relief as the Board may find to be appropriate.

Respectfully Submitted,

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	)	
ILLINOIS DEPARTMENT OF TRANSPORTATION,	)	
	)	
	)	
Respondent.	)	

SUBPOENA DUCES TECUM

TO: Gabrielle Sigel
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Pursuant to Section 101.622 of the Illinois Pollution Control Board Rules, 35 Ill. Adm. Code 101.622, Commonwealth Edison is hereby ordered to present the company representative that is most knowledgeable regarding Commonwealth Edison's ("Com Ed") knowledge or understanding of the following issues:

1) Com Ed's performance of its obligations as a "Respondent" under the "Administrative Settlement Agreement and Order on Consent for Removal Action" ("AOC"), U.S. EPA Region 5, CERCLA Docket No. V-W-07-C-870, as that term is defined at Paragraph III(o) of the AOC. A copy of the AOC is attached as Exhibit A to this subpoena.

2) Any agreements between Com Ed and Johns Manville with respect to the allocation, reimbursement, or payment of any and all costs incurred by either Johns

Manville or Com Ed in the course of performing the "Work" which the Respondents were required by the terms of the AOC to perform at the "Southwestern Site Area." (Note: The definitions for the terms "Work," and "Southwestern Site Area," are defined in Paragraphs III(x) and III(v) of the AOC, respectively.)

You are also directed to produce copies of all documents identified in the attached rider.

The deposition of this corporate representative will take place on **July 7, 2017, commencing at 1:30 p.m.**, at the offices of Illinois Attorney General, 69 West Washington Street, Suite 1800, Chicago, Illinois 60602.

ENTER:

Don A. Brown

Don A. Brown, Assistant Clerk
Pollution Control Board

Date: June 23, 2017

DOCUMENT RIDER

1. "AOC" or "Administrative Order on Consent" shall mean the "Administrative Settlement Agreement and Order on Consent for Removal Action" entered "In the Matter of: Johns Manville Southwestern Site Area, Including Sites 3, 4, 5, and 6, Waukegan, Lake County, Illinois," Docket Number V-W-07-C-870.

2. "Communication" shall mean, without limitation, any and all forms of transferring information, including discussions, conversations, meetings, conferences, interviews, negotiations, agreements, understandings, inquiries, correspondence, documents, or other transfers of information whether written or oral or by any other means, including electronic and includes any document which abstracts, digests, transcribes or records any communication.

3. "Complainant" shall mean Johns Manville and any of Complainant's employees, agents, representatives, successors or assigns, or any other person acting or believed by Complainant to have acted on its behalf.

4. "Consultant" shall mean any type of environmental professional, including, but not limited to, any type of engineer, geologist, hydrologist, chemist, retained for the purpose of conducting environmental studies of the Site or Facility.

5. "Document" or "documents" shall be construed in its customary broad sense and shall include, but is not limited to, the original and any non-identical copy, whether different from the original because of notes made on said copy or otherwise, or any agreement, bank record or statement; book of account, including any ledger, sub-ledger, journal, or sub-journal; brochure; calendar; chart; check; circular; communication (intra- or inter-company or governmental entity or agency or agencies); contract; copy; correspondence; diary; draft of any document; electronic mail (e-mail); facsimile (fax); graph; index; instruction; instruction manual or sheet; invoice; job requisition; letter; log; license; manifest; manual; memorandum; minutes; newspaper or other clipping; note; note book; opinion; pamphlet; paper; periodical or other publication; photograph; print; receipt; record; recording; report; statement; study; summary including any memorandum, minutes, note record, or summary of any (a) telephone, videophone or intercom conversation or message, (b) personal conversation or interview, or (c) meeting or conference; telegram; telephone log; ticket; travel or expense record; trip ticket; voucher; worksheet or working paper; writing; any other handwritten, printed, reproduced, recorded, typewritten, or otherwise produced graphic material from which the information inquired of may be obtained, or any other documentary material of any nature, in the possession, custody or control of the Respondent.

6. "Facility" or "Site" shall mean the real property and any structures thereon located in Waukegan County, Illinois and referred to in the Complaint as the "Southwestern Site Areas."

7. "IDOT" means the Respondent, Illinois Department of Transportation.

8. "USEPA" means the United States Environmental Protection Agency.

9. "Johns Manville" shall mean Johns Manville and any of its officers, directors, employees, agents, representatives, successors or assigns, or any other person acting on behalf of Johns Manville.

10. "Commonwealth Edison" shall refer to Johns Manville's joint potentially responsible party, any of its officers, directors, employees, agents, representatives, successors or assigns, or any other person acting on behalf of Commonwealth Edison.

11. "Related to" or "relating to" or "in relation to" shall mean anything which, directly or indirectly, concerns, consists of, pertains to, reflects, evidences, describes, sets forth, constitutes, contains, shows, underlies, supports, refers to in any way, is or was used in the preparation of, is appended to, is legally, logically or factually connected with, proves, disproves, or tends to prove or disprove.

12. "Site 3" shall have the same meaning as used in the Third Amended Complaint.

13. "Site 6" shall have the same meaning as used in the Third Amended Complaint.

14. "Southwestern Sites" shall have the same meaning as used in the Third Amended Complaint.

15. "You" and "your" shall refer to and mean the Complainant, Johns Manville.

16. "Sites" shall have the same meaning as that term is used in the Status Report.

17. "Removal action" the shall refer to the removal action which Johns Manville and Commonwealth Edison were required to undertake, pursuant to USEPA's November 30, 2012 Enforcement Action Memorandum ("EAM").

18. "Work to Be Performed" shall refer to and mean the actions to be performed by Johns Manville and Commonwealth Edison, pursuant to Section VIII of the AOC.

19. "Future Response Costs" shall refer to and have the same meaning as the definition for that term under Paragraph III(8)(f) of the AOC.

20. "Contractor" shall refer to any third party retained by you to perform or conduct any site investigation or removal work at the Sites.

21. "Interim Order" shall refer to the Pollution Control Board's December 15, 2016 Interim Opinion and Order in this matter.

22. All terms not specifically defined herein shall have their logical ordinary meaning, unless such terms are defined in the Act or the regulations promulgated under the Act, in which case the appropriate or regulatory definitions shall apply.

Documents to be Produced

The deponent is directed to produce the following documents at the time of your deposition:

1. Copies of all documents which were either received by Commonwealth Edison or created by Commonwealth Edison regarding costs associated with the work to be performed at the Southwestern Site Area.

2. Copies of all documents which were either received by Commonwealth Edison or created by Commonwealth Edison any issues related to the implementation of the work to be performed at the Southwestern Site Area.

3. Copies of all documents which Commonwealth Edison either received or created regarding any issues related to USEPA's future response costs at the Southwestern Site Area.

4. Copies of all documents related to any payments made by or on behalf of Commonwealth Edison as a result of the AOC.

5. Copies of all emails sent by Brent Tracy or Scott Myers at Johns Manville to anyone at Commonwealth Edison regarding cost or implementation issues with respect to the work to be performed at the Southwestern Site Area.

I, Evan J. McGinley, Assistant Attorney General, and counsel for Respondent, hereby swear that I emailed this subpoena *duces tecum* to be personally served on this date to the deponent, at the address listed on the front of this subpoena, on June 23, 2017.

Subscribed and sworn to before me this 23rd day of June, 2017.

Arlene Maryanski
Notary Public

OFFICIAL SEAL
ARLENE MARYANSKI
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 06-06-2020