

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on February 2, 2017, I caused to be filed with the Clerk of the Pollution Control Board of the State of Illinois, *Complainant's Proposed Discovery Schedule*, a copy of which is attached hereto and herewith served upon you via e-mail. Paper hardcopies of this filing will be made available upon request.

Dated: February 2, 2017

Respectfully submitted,

BRYAN CAVE LLP

Attorneys for Johns Manville

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be adjudicated at hearing. As a result, JM presented its case on liability and remedy together during the five days of hearing. Dr. Tatsuji Ebihara, Brent Tracy and Mr. Douglas Dorgan, Jr. offered testimony on these subjects. IDOT chose not to offer any evidence rebutting the testimony of any of these witnesses on the issues of remedy, which included testimony about certain investigation and remediation costs previously incurred and the anticipated costs associated with remedy implementation. In fact, IDOT elected not to depose either Dr. Ebihara or Mr. Tracy and decided not to ask Mr. Dorgan about his opinions on these topics in his deposition or at hearing. IDOT should not get a second bite at the apple and therefore should not be allowed to depose or re-depose these witnesses.

5. The Board's December 15, 2016 Interim Order and Opinion (p. 22) identified the issues to be addressed in the next hearing as follows: "1. The cleanup work performed by JM in the portions of Site 3 and Site 6 where the Board found IDOT responsible for ACM waste present in soil. 2. The amount and reasonableness of JM's costs for this work. 3. The share of the JM's costs attributable to IDOT." (*Id.*) At this point, JM does not anticipate offering any witnesses other than Dr. Ebihara, Mr. Tracy and Mr. Dorgan at hearing. However, to the extent written discovery changes this belief, JM agrees that IDOT should be given the opportunity to depose any new witnesses offered and therefore is willing to consider limited, oral fact discovery. Likewise, to the extent IDOT identifies any fact witnesses not previously disclosed who IDOT plans to call on these topics, JM should be given the opportunity to depose them.

6. In any event, given that extensive discovery has been conducted in this matter, including discovery on issues regarding the costs and remedy, JM believes that any oral fact discovery must be limited to persons identified as witnesses by the other side.

7. JM believes that limited oral fact discovery, if necessary, could be completed by **May 30, 2017**.

Expert Discovery

8. JM does not believe that additional expert discovery is needed in this matter. Both parties were provided the opportunity to disclose experts and expert opinions on remedies. JM disclosed an expert; IDOT did not. If no expert discovery is allowed, a hearing can be scheduled for **June 2017**.

9. However, if the Hearing Officer allows additional expert discovery, both sides should be given the same opportunity to address the issues. In the event additional expert discovery is permitted, JM is amenable to the following schedule, which aligns with the prior schedule proposed by IDOT (taking the briefing on scheduling into account):

Deadline for JM to file expert report(s): **June 30, 2017**

Deadline for completion of deposition(s) of JM's expert(s): **July 28, 2017**

Deadline for IDOT file expert report(s): **August 25, 2017**

Deadline for completion of deposition(s) of IDOT's expert(s): **September 22, 2017**

Hearing: **Week of October 30, 2017**

10. WHEREFORE, Complainant JOHNS MANVILLE respectfully requests that the Hearing Officer enter an Order consistent with this Response to IDOT's Proposed Discovery Schedule.

February 2, 2017

Respectfully submitted,

BRYAN CAVE LLP

Attorneys for Complainant Johns Manville

By: /s/ Lauren J. Caisman

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CERTIFICATE OF SERVICE

I, the undersigned, certify that on February 2, 2017, I caused to be served a true and correct copy of *Complainant's Proposed Discovery Schedule* 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

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