

**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, February 9, 2017, I have filed “Respondent’s Response to Complainant’s Proposed Discovery Schedule” with the Clerk of the Pollution Control Board, 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, February 9, 2017, I caused to be served on the individuals listed below, by electronic mail, a true and correct copy of “Respondent’s Response to Complainant’s Proposed Discovery Schedule” on each of the parties listed below:

Bradley Halloran  
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waste along the south side of Site 6 (1S-54S) and adjacent areas along the north edge of Site 3 (B3-25, B3-16, and B3-15). (Interim Order, p. 22.) Finally, the Board directed the Hearing Officer to hold a hearing on the following three issues:

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 JM's costs attributable to IDOT.

(Interim Order, p. 22.)

The Board's Interim Order raises issues concerning matters which the parties have never conducted discovery, presented evidence at hearing, nor addressed in their post-hearing briefs. Throughout this case, JM always claimed that IDOT was responsible for all of the costs which it incurred in investigating and remediating the entirety of Site 3 and a significant western portion of Site 6. (Status Report, p. 3.) The Board's Interim Order specifically rejected this claim by JM, instead finding IDOT liable for only very limited and discrete portions of the two Sites.

Given the Board's findings in the Interim Order, and its direction to conduct a hearing on issues which the parties have not yet addressed, IDOT should be allowed to conduct adequate written fact, oral and expert discovery related to the unexplored issues identified by the Board that it directed further hearing on, such as: 1) the total costs which JM now claims IDOT is liable for; 2) how JM determined those costs; 3) whether those costs are reasonable; and, 4) the share of JM's costs that are attributable to IDOT. Thus, IDOT should be allowed to take the fact depositions, if necessary, of Messrs. Dorgan, Ebihara, and Tracy, related to the three issues raised in the Board's Interim Order, because no prior relevant testimony exists. Additionally, sufficient time must be allowed for the parties to conduct expert discovery on the issues raised by the Board's Interim Order, as such discovery will assist the Board in determining how to rule on the issues to be decided at a future hearing.

Accordingly, IDOT requests that the Hearing Officer adopt the discovery and hearing schedule proposed by JM and specifically requests that the Hearing Officer adopt the portion of JM's schedule for the parties to conduct expert discovery.<sup>1</sup>

Respectfully Submitted,

ILLINOIS DEPARTMENT OF TRANSPORTATION

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<sup>1</sup> IDOT endorses JM's proposed discovery and hearing schedule because, with the inclusion of time for conducting expert discovery, it essentially tracks the time frame set forth in IDOT's previously-filed discovery and hearing schedule.