

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 May 31, 2017, I caused to be filed with the Clerk of the Pollution Control Board of the State of Illinois, *Complainant's Proposed Amended 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: May 31, 2017

Respectfully submitted,

BRYAN CAVE LLP

Attorneys for Johns Manville

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Electronic Filing: Received, Clerk's Office 5/31/2017

Deadline for IDOT file expert report(s): **September 7, 2017**

Deadline for completion of deposition(s) of IDOT's expert(s): **September 28, 2017**

Deadline for JM to file expert report: **October 18, 2017**

Deadline for completion of deposition(s) of JM's rebuttal expert: **November 2, 2017**

Deadline to file prehearing motions, including motions *in limine*: **November 16, 2017**

Deadline to file responses to prehearing motions: **November 21, 2017**

Hearing: **Week of December 11, 2017 (JM's in-house counsel has a conflict the week of 12/4)**

Based upon email correspondence late on May 26, 2017, JM expects IDOT to make two very unconventional proposals regarding expert discovery: (1) that JM submit its expert report *before* oral fact discovery is closed (or possibly before *any oral fact discovery is taken*) and (2) that all discovery dates shift *except* for JM's expert report. This would turn case scheduling on its head, but as to only one party, and thus would unfairly prejudice JM and its expert. *See Illinois v. The Highlands, LLC et al.*, PCB 00-104, 2005 WL 4708804, *1 (July 26, 2005) (Hearing Officer requiring expert report to be served only after the completion of fact discovery); *Illinois v. Community Landfill Co., Inc.*, PCB 03-191, 2005 WL 4684527, *1 (May 24, 2005) (same); *Illinois v. Packaging Personified, Inc.*, PCB 04-16, 2004 WL 4951201, * (Dec. 16, 2004) (same). JM's expert should not be required to submit an expert report without a fully developed factual record. Facts disclosed during oral discovery of JM employees or third parties will certainly impact JM's expert's opinions. Moreover, oral fact discovery is not one-sided. Since oral fact discovery is being extended, JM has the right to take oral fact discovery of IDOT employees or third parties that would likewise impact its expert's opinions.

IDOT's idea to turn the order of discovery upside down was only first raised in an email from IDOT on May 26. Prior to that, IDOT (which insisted that experts be used in this phase of the trial) had always maintained, and JM had always understood, that expert reports would be due after the close of fact discovery and that if the discovery schedule changed, all future dates would be shifted. (See January 20, 2017 IDOT Proposed Schedule for Conducting Further Proceedings in this Matter and JM/IDOT joint revised discovery schedule on March 1, 2017.) After the status call on May 25, JM told its expert that his expert report would not be due on June 19, 2017. He is currently on vacation. Under the circumstances, even if it were not inequitable to require JM's expert to file an expert report without a fully developed record and to move all discovery dates except for JM's expert report, it would be extremely difficult for JM's expert to complete an expert report by June 19, 2017.

WHEREFORE, Complainant JOHNS MANVILLE respectfully requests that the Hearing Officer enter an Order consistent with this Proposed Amended Discovery Schedule.

Dated: May 31, 2017

Respectfully submitted,

BRYAN CAVE LLP

Attorneys for Complainant Johns Manville

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CERTIFICATE OF SERVICE

I, the undersigned, certify that on May 31, 2017, I caused to be served a true and correct copy of *Complainant's Proposed Amended 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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