

ILLINOIS POLLUTION CONTROL BOARD  
October 5, 2017

JOHNS MANVILLE, a Delaware corporation, )  
)  
Complainant, )  
)  
v. ) PCB 14-3  
) (Citizens Enforcement)  
ILLINOIS DEPARTMENT OF )  
TRANSPORTATION, )  
)  
Respondent. )

**HEARING OFFICER ORDER**

On May 19, 2017, the Illinois Department of Transportation (IDOT) served a subpoena *duces tecum* (May 19<sup>th</sup> Subpoena) on non-party Commonwealth Edison Company (Com Ed). On May 30, 2017, IDOT filed with the Board a copy of the May 19<sup>th</sup> Subpoena for documents directed at Com Ed. IDOT requested generally the production of any documents maintained by Com Ed pertaining to payments made or to be made by Com Ed, or the liability of Com Ed, regarding the Southwestern Site area, including Sites 3 and 6.

On June 23, 2017, IDOT served another subpoena on Com Ed (June 23<sup>rd</sup> Subpoena), this time to depose the Com Ed representative most knowledgeable of (1) Com Ed's performance of its obligations under the 2007 Administrative Order on Consent (AOC); and (2) any agreements between Com Ed and Johns Manville (JM) regarding "the allocation, reimbursement, or payment of any and all costs incurred by either JM or Com Ed in the course of performing the 'Work' which [Com Ed and JM] were required by the terms of the AOC to perform" at the Southwestern Site Area. Exh. A to IDOT's response to JM's and Com Ed's in camera applications for non-disclosure and protective orders filed September 15, 2017.

On July 18, 2017, IDOT filed a motion to require JM to produce Fredrick Scott Myers for a second deposition (IDOT Mot. to Produce). IDOT argues that JM's attorney at Mr. Myer's initial deposition instructed him not to answer any questions regarding remediation costs, including any agreements between JM and Com Ed. JM's attorney invoked privilege claims.

On August 4, 2017, both JM and Com Ed filed their respective in camera applications for non-disclosure and protective orders.

On September 15, 2017, IDOT filed its response to those applications.

**DISCUSSION AND RULING**

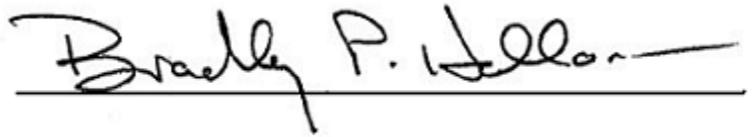
Discovery is intended to uncover all relevant information and information calculated to lead to relevant information. 35 Ill. Adm. Code 101.616(a). To date, IDOT's efforts have

addressed JM's and Com Ed's privilege defenses. Therefore, IDOT and JM are directed to file briefs by October 27, 2017, addressing whether the May 19<sup>th</sup> Subpoena, the June 23<sup>rd</sup> Subpoena and IDOT's Mot. to Produce seek relevant information. Com Ed, a non-party, is given permission to file a brief by the same date addressing the same subject. IDOT and JM are directed to file response briefs by November 13, 2017. Com Ed is given permission to file a response brief by the same date.

JM and Com Ed are reminded that their reply to IDOT's response to their applications for non-disclosure and protective orders are due October 6, 2017.

The parties or their legal representatives are directed to participate in a telephonic status conference with the hearing officer on October 19, 2017, at 9:30 a.m. The telephonic status conference must be initiated by the complainant, but each party is nonetheless responsible for its own appearance.

IT IS SO ORDERED.

A handwritten signature in black ink that reads "Bradley P. Halloran". The signature is written in a cursive style and is positioned above a solid horizontal line.

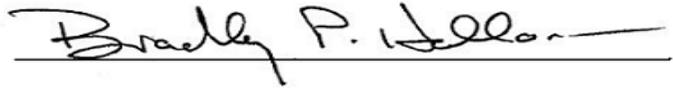
Bradley P. Halloran  
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312.814.8917  
[Brad.Halloran@illinois.gov](mailto:Brad.Halloran@illinois.gov)

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were e-mailed on October 5, 2017, to each of the persons on the attached service list.

It is hereby certified that a true copy of the foregoing order was e-mailed to the following on October 5, 2017:

Don Brown  
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph St., Ste. 11-500  
Chicago, Illinois 60601

A handwritten signature in black ink, reading "Bradley P. Halloran", is written over a horizontal line.

Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
100 W. Randolph Street, Suite 11-500  
Chicago, Illinois 60601

@ Consents to electronic service

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