

**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, November 30, 2017, I have filed with the Clerk of the Pollution Control Board “IDOT’s Response to Complainant’s Motion for leave to File Reply *Instanter* to IDOT’s Response to Complainant’s Brief Regarding Relevance of Discovery Sought by IDOT” and have served each person listed on the attached service list with a copy of the same.

Respectfully Submitted,

By: s/ Evan J. McGinley  
EVAN J. MCGINLEY  
ELLEN O’LAUGHLIN  
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Environmental Bureau  
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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, November 30, 2017, I caused to be served on the individuals listed below, by electronic mail, a true and correct copy of “IDOT’s Response to Complainant’s Motion for leave to File Reply *Instanter* to IDOT’s Response to Complainant’s Brief Regarding Relevance of Discovery Sought by IDOT” on each of the parties listed below:

Bradley Halloran  
Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center  
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Chicago, Illinois 60601  
[Brad.Halloran@illinois.gov](mailto:Brad.Halloran@illinois.gov)

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s/ Evan J. McGinley  
Evan J. McGinley

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**IDOT’S RESPONSE TO COMPLAINANT’S BRIEF REGARDING RELEVANCE OF DISCOVERY SOUGHT BY IDOT**

NOW COMES Respondent, the ILLINOIS DEPARTMENT OF TRANSPORTATION (“IDOT”) who herewith files its response to “Complainant’s Motion for leave to File Reply *Instanter* to IDOT’s Response to Complainant’s Brief Regarding Relevance of Discovery Sought by IDOT” (“Motion”).

**ARGUMENT**

For almost six months, IDOT, Johns Manville, and third party Commonwealth Edison have been litigating the issue of whether IDOT may take discovery from Commonwealth Edison. During this almost six month period, the parties have filed a number of motions, responses, and other pleadings with the Pollution Control Board setting forth their positions as to why/why not IDOT should be allowed to take this discovery. Early on, IDOT and Commonwealth Edison even attempted to informally resolve their disagreements about the scope of discovery IDOT sought to take from Commonwealth Edison. Unfortunately, despite their efforts, Commonwealth Edison and IDOT were unable to reach a resolution of this issue.

Now, after completing the most recent – and, presumably, final - round of briefing on this issue (as well as the question of whether IDOT should be allowed to retake the deposition

of Johns Manville's employee, Scott Myers), Johns Manville finds it necessary to file additional papers, seemingly to have the last word on the question of whether IDOT may proceed with obtaining discovery from Commonwealth Edison. IDOT believes that, in the interests of once and for all resolving the question of whether it is entitled to take discovery from Commonwealth Edison, the most appropriate course of action at this time would be for the Hearing Officer to deny Johns Manville's Motion. However, should the Hearing Officer decide to grant Johns Manville's Motion and to accept its sur-reply for filing, IDOT requests that it be given two weeks in which to file a sur-sur-reply.

Respectfully Submitted

By: s/ Evan J. McGinley  
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