

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, December 8, 2016, I have filed the "Response of Illinois Department of Transportation to Complainant's Status Report on Remediation of the Sites" 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,

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**RESPONSE OF ILLINOIS DEPARTMENT OF TRANSPORTATION TO
COMPLAINANT'S STATUS REPORT ON REMEDIATION OF THE SITES**

NOW COMES RESPONDENT, the Illinois Department of Transportation (“IDOT”), through its attorney LISA MADIGAN, Attorney General of the State of Illinois, and submits this Response the November 30, 2016 request for leave to provide a Status Report on Remediation of Site 3 and the western end of Site 6 (the “Sites”) by Complainant, Johns Manville (“JM”). Leave should be denied by the Board on the following basis:

1. JM purports that the above-referenced filing is a status report on the progress of remediation of the Sites, however, a cursory review of the pleading demonstrates that the requested leave should be denied, as the “Status Report” contains no new information about the status of the clean-up, and only parrots various arguments that counsel already aggressively and unsuccessfully advanced, *ad nauseam*, at hearing and in its post-hearing brief.

2. Specifically, JM’s strategy appears not to be to inform the Board of new data with its “Status Report,” but to flood the Board with yet another inconsequential filing that contains slightly different iterations of the same frivolous arguments, packaged, in this instance, as a “Status Report,” hoping that repetition will somehow dull the arguments’ absurdity.

3. For example, with inexplicably no relevance to recent clean-up activities at the Sites, JM’s “Status Report” once again suggests that IDOT “misled the U.S. EPA, the Board and

JM about its ownership interest in the right of ways,” without citing to a shred of evidence or any fact, whatsoever, that IDOT “misled” anyone about anything related to this case. (Complainant John’s Manville’s Status Report on Remediation of the Sites, filed November 30, 2016, ¶ 5).

4. Similarly, leave should be denied because, with no logical connection to information related to recent clean up activities at the Sites, nearly a quarter of JM’s “Status Report” is essentially copy-and-pasted from prior JM pleadings that alleged, without any evidence of intent or motivation to do so in any filing, that IDOT deliberately delayed the proceedings in this matter. (Complainant John’s Manville’s Status Report on Remediation of the Sites, filed November 30, 2016, ¶ 5).

5. The few lines of the “Status Report” that actually refer to clean-up activities are so vague and general, the information is meaningless, i.e., “JM has just completed the majority of the active cleanup work on the Sites necessary to implement the RAWP. Only minor work remains to be done.” (Complainant John’s Manville’s Status Report on Remediation of the Sites, filed November 30, 2016, ¶ 3).

6. There is no reference to the specific dollar amount that JM has actually paid out for the activities, there is no specific information about what clean-up activities are occurring, who is conducting the activities, where this “majority” of work has been completed, or any other substantive detail.

7. Indeed, the only dollar figures cited in the entire “Status Report” pleading are the previously available estimated total clean-up cost of \$2,897,000, and preliminary expenses of approximately \$685,000. (Complainant John’s Manville’s Status Report on Remediation of the Sites, filed November 30, 2016, ¶¶ 1, 3-4). There is no new, relevant information in the “Status Report” because, again, JM has not filed an actual “Status Report,” but has heaped yet another

unnecessarily filing, containing its empty, repetitive arguments onto the Board. For this reason, leave to file the "Status Report" should be denied.

8. Finally, even if leave is granted and the "Status Report" is entered into the record, it should be dually noted that JM's statements in the "Status Report" make it clear that it seeks a money judgment award from the Board: "JM points out that its request for relief can be satisfied by the Board ordering IDOT to pay JM \$2,897,000 as its way of participating in the remedy." (Complainant John's Manville's Status Report on Remediation of the Sites, filed November 30, 2016, ¶ 4). JM neither requests nor proposes any other remedy than reimbursement for its past and future clean-up expenses.

9. Illinois law states that the Illinois Court of Claims has exclusive jurisdiction over all "claims against [IDOT] founded upon any law of the State of Illinois or upon any regulation adopted thereunder by an executive or administrative officer or agency..." 705 ILCS 505/8. It is undisputed that JM's monetary claim for \$2,897,000 against IDOT is based under the Illinois Environmental Protection Act. Consequently, JM has asked the Board to fashion a remedy that would unequivocally violate Illinois law.

WHEREFORE, Respondent ILLINOIS DEPARTMENT OF TRANSPORTATION, moves the Board to:

1. Deny the Complainant, JOHNS MANVILLE, leave to provide a Status Report to the Board regarding remediation of Site 3 and the western end of Site 6.
2. To grant such other relief as the Hearing Officer believes to be appropriate and just.

Respectfully Submitted,

ILLINOIS DEPARTMENT OF TRANSPORTATION

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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, December 8, 2016, I caused to be served on the individuals listed below, by electronic mail, a true and correct copy of IDOT's "Response of Illinois Department of Transportation to Complainant's Status Report on Remediation of the Sites" on each of the parties listed below:

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