

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, July 9, 2019, I have filed with the Clerk of the Pollution Control Board the attached Motion to Compel 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, July 9, 2019, I caused to be served on the individuals listed below, by electronic mail, a true and correct copy of the attached Motion to Compel on each of the parties listed below:

Bradley Halloran
Hearing Officer
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s/ Evan J. McGinley
Evan J. McGinley

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JOHNS MANVILLE, a Delaware corporation,)	
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Complainant,)	
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v.)	PCB No. 14-3
)	(Citizen Suit)
ILLINOIS DEPARTMENT OF)	
TRANSPORTATION,)	
)	
Respondent.)	

MOTION TO COMPEL

NOW COMES Respondent, the ILLINOIS DEPARTMENT OF TRANSPORTATION (“IDOT”) who hereby moves the Hearing Officer, pursuant to Sections 101.610(g) and 101.614 of the Pollution Control Board Regulations, 35 Ill. Adm. Code 101.610(g) and 101.614, compelling Complainant, JOHNS MANVILLE, to produce the AECOM CAD file which Johns Manville’s expert, Douglas Dorgan used in forming his opinions in this matter and made reference to in his deposition of June 12, 2019. In support of its motion, IDOT states as follows:

STATEMENT OF FACTS

On June 13, 2018, October 25, 2018, and April 30, 2019, Johns Manville’s expert, Douglas Dorgan, submitted, respectively, his initial expert, his rebuttal report, and his supplementary rebuttal report in support of Johns Manville’s claim for its alleged damages attributable to IDOT.¹ All of these reports contain a number of maps and figures which Mr.

¹ The three reports referenced are: the “Expert Rebuttal Supplemental Report of Douglas G. Dorgan Jr. On Damages Attributable to IDOT” dated April 30, 2019, the “Expert Report of Douglas G. Dorgan Jr. On Damages Attributable to IDOT” dated June 13, 2018, and, Expert Rebuttal Supplemental Report of Douglas G. Dorgan Jr. On Damages Attributable to IDOT” dated October 25, 2018.

Dorgan makes substantial reliance upon, in order to visualize his underlying opinions and assertions.

On May 24, 2019, IDOT served and filed its Notice of Expert Deposition on Johns Manville (“Dorgan Notice”), for the deposition of Johns Manville’s expert witness, Douglas Dorgan. The deposition was scheduled for June 12, 2019. (A copy of the Dorgan Notice is include as Exhibit A to this motion.) Included in the Dorgan Notice was a request for documents (“Document Request”) to be produced by Mr. Dorgan in advance of his deposition. For purposes of the Document Request, the term “Document” included “CAD files or CAD-related files.”² (Notice, at 3, Definition 7.)

Among the documents which IDOT directed Mr. Dorgan to produce in advance of his June deposition were:

- 1) Copies of any documents related to any work you performed on the April 30th Dorgan Report or October 25th Dorgan Report.
- 2) Copies of any documents related to any work that Weaver performed on the April 30th Dorgan Report or October 25th Dorgan Report.

(Exhibit A, Notice, p. 5.)

On June 12, 2019, IDOT took the deposition of Johns Manville’s expert witness, Douglas Dorgan.

During his June 12th deposition, Mr. Dorgan was asked about a September 5, 2019 email he received from Riah Dunton, a fellow employee of Weaver Consultant’s Group, who was assisting Mr. Dorgan in the preparation of the opinions he has given in this case. Ms. Dunton’s email to Mr. Dorgan, in part read: “[w]e have noted that the site layout was supplied

² “CAD” is an acronym for “computer-assisted drafting.” Both parties to this matter have produced expert reports that contain figures and maps that were created using CAD technology.

by AECOM[.]” (The portion of the email in question, which was introduced as Exhibit 10 to Mr. Dorgan’s deposition, is included as Exhibit B to this motion.)

During his deposition, Mr. Dorgan was asked about this email and gave the following testimony in response:

19 Q Second paragraph of this September 5th
20 e-mail, it says "We have noted that the site
21 layout was supplied by AECOM". What does she
22 mean by "site layout was supplied by AECOM"?
23 THE WITNESS: A Earlier in this proceeding
24 we received a CAD drawing I believe in a DWG
1 format that would have served as the basis for
2 the figures that we were preparing, the
3 underlying information.

(Exhibit C, Excerpts from the Deposition of Douglas R. Dorgan, Jr. (“Dorgan Dep.”) 52:19 to 53:3.)

Immediately after Mr. Dorgan made the above-referenced statement, a discussion ensued between IDOT’s and Johns Manville’s respective counsel regarding whether the referenced CAD file (“AECOM CAD File”), had ever been produced during prior discovery or document production in this case:

4 Q Did you -- You didn't produce that in
5 response to our document request?
6 MS. BRICE: It would have been produced at
7 the beginning of the case.
8 MR. MCGINLEY: The CAD file itself?
9 MS. BRICE: I think so, yes --
10 THE WITNESS: I don't recall specifically;
11 but it would not have -- that would have been my
12 assumption, which is why it wouldn't have been
13 produced here. I assumed it had already been
14 produced earlier.
15 MR. MCGINLEY: Q But it's your testimony
16 that it would have been a DWG file, that's what's
17 being referenced here?
18 A I don't know if it would have been
19 produced as a DWG or it would have been a print
20 of that document. It may have been a print of

21 the document.

22 Q Okay. If there's a DWG file that is
23 related to what she's talking about here, about
24 the site layout supplied by AECOM, we would like

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1 to get that because we have not seen that, okay?

2 A Um-hum.

3 Q And, as a result, it's not entirely clear
4 to me which AECOM site layout we're talking about
5 here right now.

6 MS. BRICE: Can I ask you a question? Have
7 you gone back from the first production, the
8 first case, and looked through everything?
9 Because that's what I would --

10 MR. MCGINLEY: Everything that was produced
11 to us was produced as a pdf, or as Excel in some
12 rare instances. There's also photos, okay; but
13 we have never actually --

14 MS. BRICE: I mean the initial case.

15 MR. MCGINLEY: No, I understand. But we have
16 never actually gotten a DWG file.

17 MS. BRICE: Okay, you're sure on that?

18 MR. MCGINLEY: I am 100% sure of that.

19 MS. BRICE: Okay.

20 MR. MCGINLEY: Without any doubt in my mind.

21 MS. BRICE: Okay.

22 THE WITNESS: And, Susan, you're making notes
23 of the follow-up items?

24 MS. BRICE: Yeah, I have, yes. I mean I

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1 don't know what a DWG file is --

2 MR. MCGINLEY: Well, by this point I think we
3 have some idea.

4 MS. BRICE: Generally, an idea. But I
5 certainly didn't know earlier --

6 MR. MCGINLEY: But it's because of that, it's
7 because of having gone through this issue of late
8 that I can tell you that we've never actually
9 gotten a DWG file for this.

10 MS. BRICE: Okay.

11 MR. MCGINLEY: So we want to see that.

12 MS. BRICE: Okay.

(Exhibit C, Dorgan Dep., Pages 53:4 to 55:12.)

Later on June 12, 2019, IDOT's counsel sent a Rule 201(k) email to Johns Manville's counsel reiterating IDOT's request that Johns Manville produce the AECOM CAD File. (A copy of this email is attached to this motion as Exhibit D.)

Still later on June 12th, Johns Manville's counsel responded that they would "produce the DWG electronic file once Mr. Dorgan locates it." (Exhibit E, June 12th email from S. Brice to E. McGinley.)

On June 25, 2019, Johns Manville's counsel responded to IDOT's June 12th email advising IDOT's counsel that: "Mr. Dorgan has not been able to locate the DWG file (i.e., the AECOM CAD File)" discussed in his deposition." (Exhibit F, June 25, 2019 email from L. Caisman to E. McGinley.)

On June 19, 2019, IDOT noticed the deposition of Riah Dunton, the CAD operator that assisted Mr. Dorgan in the creation of various maps and figures which he has included in the most recent reports he has produced for Johns Manville in this matter. (A copy of the June 19th deposition notice ("Dunton Notice") is attached hereto as Exhibit G.) As with the Dorgan Notice, the Dunton Notice included a document request that defined the term "Document" to include all "CAD files or CAD-related files." (Dunton Notice, Definition 7, p. 3.) The document request also sought copies of all documents that Ms. Dunton had reviewed or relied upon in the process of assisting Mr. Dorgan in the creation of his reports. (See, Dunton Notice, Document Requests 1-3.)

On July 2, 2019, pursuant to the production deadline specified in the Dunton Notice, Johns Manville's counsel produced a number of documents to IDOT's counsel. The AECOM CAD File was not included amongst those documents.

On July 9, 2019, IDOT's counsel renewed its demand to Johns Manville's counsel to produce the AECOM CAD File. As of the filing of this motion, Johns Manville has yet to produce the AECOM CAD File. This is a stunning omission by Johns Manville, given the number of documents exchanged and the age of the case.

ARGUMENT

A. Johns Manville Failed to Meet its Obligations to Fully Respond to IDOT's Discovery Requests

“The Illinois Supreme Court rules on discovery are mandatory rules of procedure subject to strict compliance by the parties.” *Seef v. Ingalls Memorial Hospital*, 311 Ill.App.3d 7, 21 (1999). These rules serve the dual purposes of avoiding surprise and discouraging tactical gamesmanship. *Gee v. Treece*, 365 Ill. App.3d 1029, 1038 (5th Dist. 2006). Johns Manville has failed to satisfy the “strict compliance” standard articulated by the *Seef* Court, because it did not produce documents that were clearly identified by IDOT in the document requests contained in the Dorgan Notice (i.e., any CAD files that Mr. Dorgan relied upon or were otherwise utilized in the course of producing his October 25th and April 30th reports).³

Johns Manville's failure to comply with the Illinois Supreme Court rules governing discovery meant that IDOT did not learn about Mr. Dorgan's reliance on the AECOM CAD File until he was deposed on June 12, 2019. This revelation occurred long after IDOT initially deposed Mr. Dorgan on July 31, 2018 and the documents requested by IDOT prior to that deposition. As such, Mr. Dorgan's and/or Johns Manville's failure to produce this file in advance of his June 12, 2019 deposition was prejudicial to IDOT, because it did not allow

³ Arguably, Johns Manville should have produced the AECOM CAD File in response to the document requests contained in the July 11, 2018 Amended Notice of Expert Deposition. Specifically, Document Request Number 9 sought the production of: “To the extent not already provided to IDOT in this matter, obtained by IDOT in this matter, or contained in Your Report, **any and all documents You received from Johns Manville, its attorneys or its consultants following the Interim Order.**” (Emphasis added.)

IDOT to understand what information was included in the file or how Mr. Dorgan might have used the file in the course of preparing his opinions. This failure might possibly have been rectified, had Johns Manville taken all reasonable steps to locate the AECOM CAD File and timely produced it to IDOT. However, as of the time that this motion was filed, Johns Manville has yet to produce the AECOM CAD File to IDOT.

The AECOM CAD File is foundational to Mr. Dorgan's opinions. As he testified at his June 12th deposition, the AECOM CAD File "served as the basis for the figures that we were preparing, the underlying information." (Exhibit D, Dep. Transcript, p. 53:1-3.) Given that this file serves "as the basis for the figures" in his reports, it is simply mind-boggling that Johns Manville has, to date, been unable to produce this file. More importantly, however, Johns Manville – and Mr. Dorgan – have an affirmative duty to preserve all relevant evidence, such as the AECOM CAD File. *See Boyd v. Traveller's Ins. Co.*, 166 Ill.2d 188, 195 (1995) (in a case involving issues of spoliation of evidence, the Illinois Supreme Court noted that a party has a duty to preserve evidence where the party "should have foreseen that the evidence was material to a potential civil action."); *See also, Shimanovsky v. General Motors Corp.*, 181 Ill.2d 112, 121 (1998) (finding that even potential litigants have a duty to "take all reasonable measures to preserve the integrity of relevant and material evidence.") Clearly, given Mr. Dorgan's reliance on the AECOM CAD File, Johns Manville should have realized that this file was relevant and should have taken steps to ensure that it was preserved and produced.

B. Assuming Johns Manville's Expert Has Lost the AECOM CAD File, Johns Manville Still Has an Obligation to Expend All Reasonable Efforts to Locate the File

Even if - for whatever reasons - Mr. Dorgan apparently did not preserve critical evidence, Johns Manville has failed to discharge its discovery obligations, by not asking

AECOM, *Johns Manville's environmental consultant*, to provide a copy of the apparently missing AECOM CAD File. Apparently, it was only after IDOT's counsel broached this possibility with Johns Manville's counsel that it even occurred to their counsel to follow up with AECOM. Pursuant to the Illinois Supreme Court's Rules, Johns Manville has an obligation to take all reasonable measures to locate this file and this obligation has yet to be satisfied.

C. If Johns Manville Cannot Find the AECOM CAD File, It Raises the Question of Whether Its Expert's Opinions Can Still Stand

Should Johns Manville be unable to locate the AECOM CAD File, it then raises the question of whether sanctions are necessary and, if they are, what the nature and scope of such sanctions might be. A court, when seeking to determine what sanctions might be appropriate is instructed to consider the following factors:

(1) the surprise to the adverse party; (2) the prejudicial effect of the proffered testimony or evidence; (3) the nature of the testimony or evidence; (4) the diligence of the adverse party in seeking discovery; (5) the timeliness of the adverse party's objection to the testimony or evidence; and (6) the good faith of the party offering the testimony or evidence.

Shimanovsky, 181 Ill.2d at 124.

Applying these factors to the issue raised by IDOT's motion, it is clear that unless Johns Manville produces the AECOM CAD File, the imposition of sanction is warranted. Clearly, IDOT was surprised to learn for the first time that the figures and maps which Douglas Dorgan has created in the course of developing his opinions for Johns Manville were based on a file which had never been produced to IDOT. With respect to the second factor – i.e., the prejudicial effect of this new revelation – IDOT is not in a position to say at this point just how significant Johns Manville's failure to produce the AECOM CAD File is. But what is critical is that IDOT has the right to see the file so that it can make a determination as to how it may

have been prejudiced. As for the nature of the evidence, the AECOM CAD File was, by Mr. Dorgan's own testimony, foundational to his work for Johns Manville. As for the fifth factor, IDOT believes that its objections are timely raised and part of an ongoing dispute between it and Johns Manville. Finally, IDOT does not believe that there is any good faith basis for Johns Manville having failed to produce the AECOM CAD File. Johns Manville was on notice through IDOT's deposition notices to Mr. Dorgan and Ms. Dunton that it was requesting the production of CAD files. Moreover, it does not show good faith on Johns Manville's part to say, in effect, the AECOM CAD File has been lost and take no further action to satisfy its discovery obligations.

In light of these circumstances, if Johns Manville cannot produce the AECOM CAD File, it would be appropriate for the Pollution Control Board to impose a sanction on Johns Manville that would bar the company from being able to offer any testimony from Mr. Dorgan at hearing that is based on his figures or maps or to seek to enter any of the figures or maps contained in his October 25th and April 30th reports into evidence.

WHEREFORE, Respondent, the Illinois Department of Transportation, requests that the Hearing Officer issue an order requiring Complainant Johns Manville to:

- 1) Immediately produce the AECOM CAD File;
- 2) Alternatively, bar Douglas Dorgan from being able to rely upon any of the figures or maps used in his October 25, 2018 or April 30, 2019 reports at any future hearing in this matter;
- 3) Bar Johns Manville from presenting any testimony at hearing which either in whole or in part relies upon any of Mr. Dorgan's figures or maps in his June 18, 2018, October 25, 2018, or April 30, 2019 reports; and,

- 4) Grant such other relief as the Board may find to be appropriate.

Respectfully Submitted,

By: s/ Evan J. McGinley
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EXHIBIT A – NOTICE OF EXPERT DEPOSITION

CERTIFICATE OF SERVICE

Johns Manville v. Illinois Department of Transportation, PCB 14-3 (Citizens)

I, EVAN J. MCGINLEY, do hereby certify that, today, May 24, 2019, I caused to be served on the individuals listed below, by electronic mail, a true and correct copy of the attached

Notice of Expert Deposition on each of the parties listed below:

Bradley Halloran
Hearing Officer
Illinois Pollution Control Board
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100 West Randolph, Suite 11-500
Chicago, Illinois 60601
Brad.Halloran@illinois.gov

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s/ Evan J. McGinley
Evan J. McGinley

You are hereby further notified that pursuant to this notice, deponent shall produce to the undersigned counsel, by the close of business on June 5, 2019, all of the documents specified in the attached Exhibit A, to the extent such documents have not already been produced.

Respectfully Submitted,

By: /s/ Evan J. McGinley
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EXHIBIT A

DEFINITIONS

1. "Communication" shall mean, without limitation, any and all forms of transferring information, including discussions, conversations, meetings, conferences, interviews, negotiations, agreements, understandings, inquiries, correspondence, documents, or other transfers of information whether written or oral or by any other means, including electronic and includes any document which abstracts, digests, transcribes or records any communication.
2. "Complainant" shall mean Johns Manville and any of Complainant's employees, agents, representatives, successors or assigns, or any other person acting or believed by Complainant to have acted on its behalf.
3. "Computer-Assisted Design" or "CAD" shall refer to any form of computer system, software or combination of computer system and software that has been used to create, among other things, maps, schematics, sort of visual representation of Site 3 or Site 6.
4. "Consultant" shall mean any type of environmental professional, including, but not limited to, any type of engineer, geologist, hydrologist, chemist, retained for the purpose of conducting environmental studies of the Site or Facility.
5. "Current" or "Present" shall mean the date on which Complainant serves its Response to these Interrogatories on IDOT's attorneys.
6. "Describe" shall mean to depict in written words or give an account of.
7. "Document" or "documents" shall be construed in its customary broad sense and shall include, but is not limited to, the original and any non-identical copy, whether different from the original because of notes made on said copy or otherwise, or any agreement, bank record or statement; book of account, including any ledger, sub-ledger, journal, or sub-journal; brochure; CAD files or CAD-related files, calendar; chart; check; circular; communication (intra- or inter-company or governmental entity or agency or agencies); contract; copy; correspondence; diary; draft of any document; electronic mail (e-mail); facsimile (fax); graph; index; instruction; instruction manual or sheet; invoice; job requisition; letter; log; license; manifest; manual; memorandum; minutes; newspaper or other clipping; note; note book; opinion; pamphlet; paper; periodical or other publication; photograph; print; receipt; record; recording; report; statement; study; summary including any memorandum, minutes, note record, or summary of any (a) telephone, videophone or intercom conversation or message, (b) personal conversation or interview, or (c) meeting or conference; telegram; telephone log; text message or any other form of instant message; ticket; travel or expense record; trip ticket; voucher; worksheet or working paper; writing; any other handwritten, printed, reproduced, recorded, typewritten, or otherwise produced graphic material from which the information inquired of may be obtained, or any other documentary material of any nature, in the possession, custody or control of the Respondent.
8. "Governmental agency" means any government agency, including federal, municipal, county, or state, or any subdivisions thereof.

9. "IDOT" means the Respondent, Illinois Department of Transportation.
10. "Knowledge" means first-hand information and/or information derived from any other source, including hearsay.
11. "Johns Manville" shall mean Johns Manville and any of its officers, directors, employees, agents, representatives, successors or assigns, or any other person acting on behalf of Johns Manville.
12. "Matter" shall mean the case entitled *Johns Manville v. Illinois Department of Transportation*, PCB 14-3 (Enforcement).
13. "Operate" or "operation" shall mean use, exercise control over, supervise or having responsibility for the daily performance of.
14. "Or" shall mean and/or wherever appropriate.
15. "Person" shall include, but is not limited to, any natural person; business or corporation, whether for profit or not, whether currently dissolved, or not; firm, partnership, or other non-corporate business organization; charitable, religious, education, governmental, or other non-profit institution, foundation, body, or other organization; or employee, agent, or representative of any of the foregoing.
16. "Related to" or "relating to" or "in relation to" shall mean anything which, directly or indirectly, concerns, consists of, pertains to, reflects, evidences, describes, sets forth, constitutes, contains, shows, underlies, supports, refers to in any way, is or was used in the preparation of, is appended to, is legally, logically or factually connected with, proves, disproves, or tends to prove or disprove.
17. "Relied upon" shall mean being or having been depended upon or referred to or being or having been arguably appropriate for such reliance.
18. "Site 3" shall have the same meaning as used in the February 2016 Remedial Action Work Plan.
19. "Site 6" shall have the same meaning as used in the February 2016 Remedial Action Work Plan.
20. "Southwestern Sites" shall have the same meaning as used in the February 2016 Remedial Action Work Plan.
21. "You" and "your" shall refer to the deponent, Douglas Dorgan.
22. "Weaver" shall refer to Weaver Consultants Group, its employees, officers, or contractors.

23. "Removal action" shall refer to the removal action which Johns Manville and Commonwealth Edison were required to undertake, pursuant to USEPA's November 30, 2012 Enforcement Action Memorandum ("EAM").

24. "Selected Remedy" shall refer to the remedy for the Southwestern Sites which was selected by the USEPA.

25. "Interim Order" shall refer to the Pollution Control Board's December 15, 2016 Interim Opinion and Order in this matter.

26. "April 30th Dorgan Report" shall refer to the "Expert Rebuttal Supplemental Report of Douglas G. Dorgan Jr. On Damages Attributable to IDOT" dated April 30, 2019.

27. "June 13th Dorgan Report" shall refer to the "Expert Report of Douglas G. Dorgan Jr. On Damages Attributable to IDOT" dated June 13, 2018.

28. "October 25th Dorgan Report" shall refer to the "Expert Rebuttal Supplemental Report of Douglas G. Dorgan Jr. On Damages Attributable to IDOT" dated October 25, 2018.

29. "August 21st Gobelman Report" shall refer to the "Expert Rebuttal Report of Steven Gobelman on Damages Attributable to IDOT Based on IPCB Order of December 16, 2016," dated August 21, 2018.

30. "November 7th Gobelman Report" shall refer to the "Expert Rebuttal Report of Steven Gobelman on Damages Attributable to IDOT Based on IPCB Order of December 16, 2016," dated November 7, 2018.

31. All terms not specifically defined herein shall have their logical ordinary meaning, unless such terms are defined in the Act or the regulations promulgated under the Act, in which case the appropriate or regulatory definitions shall apply.

DOCUMENTS TO BE PRODUCED AT YOUR DEPOSITION

1) Copies of any documents related to any work you performed on the April 30th Dorgan Report or October 25th Dorgan Report.

2) Copies of any documents related to any work that Weaver performed on the April 30th Dorgan Report or October 25th Dorgan Report.

3) Copies of any documents you created or caused to be created which are related to either the August 21st or November 7th Gobelman Report.

- 4) Copies of any documents that Weaver created or caused to be created which are related to either the August 21st or November 7th Gobelman Report.
- 5) Copies of all documents you reviewed in the course of preparing either the October 25th or April 30th Dorgan Reports.
- 6) Copies of all publications that you have authored or co-authored, to the extent not already produced to IDOT in this matter.
- 7) Copies of all presentations you have given, to the extent not already produced to IDOT in this matter.
- 8) Copies of all expert reports you have authored, to the extent not already produced to IDOT in this matter.
- 9) Copies of all billing statements or invoices for all work performed by either you or Weaver on the matter from August 21, 2018 to the current day.

CERTIFICATE OF SERVICE

Johns Manville v. Illinois Department of Transportation, PCB 14-3 (Citizens)

I, EVAN J. MCGINLEY, do hereby certify that, today, May 24, 2019, I caused to be served on the individuals listed below, by electronic mail, a true and correct copy of IDOT's Notice of Expert Deposition to on each of the parties listed below, prior to the hour of 5:00 p.m.:

Susan Brice
Lauren Caisman
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Susan.Brice@bryancave.com
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/s/ Evan J. McGinley
Evan J. McGinley

EXHIBIT B – SEPTEMBER 5, 2019 EMAIL FROM RIAH DUNTON
TO DOUGLAS DORGAN
(EXHIBIT 10 TO 6/12/19 DORGAN DEPOSITION)

Electronic Filing: Received, Clerk's Office 07/09/2019

From: Dunton, Riah
To: Dorgan, Doug
Subject: FW: Johns Manville v. IDOT, PCB 14-3 - Service of Gobelman Rebuttal Report
Date: Thursday, September 27, 2018 6:12:21 PM
Attachments: Report Section 5.pdf

Doug,

Further review of the Section 5 report, in addition to my previous comments attached is the section in question. Plus, following notes:

- I found the grid used on Atwell Topographic Survey and the AECOM Action Work Plan set also showing Site 3 boundary appears to be the same grid. This is also the grid Gobelman is referring.
- The fence Andrews Engineering is referencing around Site 3 was installed sometime between June 2016 and April 2017, its base of location must be per some construction documents or a contractors instruction, no evidence of legal papers to support its location in relation to boundary lines.
- Parcel 0393 per document 1649408 is located on Atwell's topo survey, AECOM figures in the same location. Without the document, I cannot verify which bearing/ section line it was read from and if the grid is laid out by this document.
- Parcel 0393 does have bearings/distances noted on AECOM figures we had used for the base of our figures.
- I found no evidence on where Atwell located Site 3, they have the base grid but no measurements off of it. Also, a note in the General Notes that states NOT to use a scale for dimensions.
- The bearings on the Atwell topo of Site 3 show that the ROW line (aka Parcel 0393) are not parallel to each other and therefore neither is parallel to the grid. Measuring off of the grid to locate Site 3 boundary corners would require multiple points.
- Please also note that if measuring with a scale(ruler), the thickness of the lines noting Site 3 boundary and Parcel 0393 are thick and overlap, this can cause faults in distances. It is common practice to use the center of a thick line as the 'actual' line.

This is a link to the documents I collected that I used for review.

<J:\Projects\2500-2999\2570\312\07\01\Review of Rebuttal Reports>

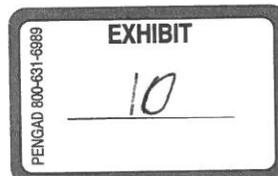
I will be out of the office Friday and Monday, I may be available via phone on Monday or possibly come into the office if need be on Monday as well. Call/text me if you want to discuss more.

Unfortunately, As I had mentioned many documents are no longer available for reference or how our drawings came about. I wasn't the only one working on these either.

Thanks,

Riah

Riah M. Dunton



DORGAN-0001064

Designer

 Weaver Consultants Group

35 E. Wacker Drive | Suite 1250

Chicago, IL 60601

O: 312-922-1030 | D: 312-496-3713 | F: 312-922-0201 | M: 574-520-3140

www.wcgrp.com | rdunton@wcgrp.com



DISCLAIMER

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From: Dunton, Riah

Sent: Wednesday, September 05, 2018 1:10 PM

To: Dorgan, Doug

Subject: RE: Johns Manville v. IDOT, PCB 14-3 - Service of Gobelman Rebuttal Report

Doug,

I've read Section 5 and have marked a few inconsistencies within that section on the attached pdf. I measured as Andrews Engineering claims to have for the dimensions highlighted/commented. In the section 5.2, even Andrews Engineering states that the exact location was not identified for B3-45.

We have noted that the site layout was supplied by AECOM, this would have included the boundary for SITE 3 and SITE 6. The use of AECOM " 'SITE 3' Figure 1" and its Legal Description supplied us with the boundary for PARCEL 0393. The sample/test pits/boring locations also came from AECOM and their site layout information.

Please note that the 'Plat of Topographic Survey' by ATWELL has the contours and survey information we had used for the supporting base information, however it does not have the boundary of SITE 3 or SITE 6. It appears to match up the IDOT R.O.W of Parcel 0393 with our Parcel 0393 lines.

Having no knowledge of where Andrews Engineering got their SITE 3 boundary other than following a fence line, I can't confirm its location.

EXHIBIT C – TRANSCRIPT EXCERPTS FROM JUNE 12, 2019 DEPOSITION
OF DOUGLAS DORGAN

Transcript of the Testimony of
DOUGLAS DORGAN, JR.

Date: June 12, 2019

Case: JOHNS MANVILLE VS. IDOT

TOOMEY REPORTING

312-853-0648

toomeyrep@sbcglobal.net

www.toomeyreporting.com

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JOHNS MANVILLE, A DELAWARE)
CORPORATION, ET AL.,)
Complainant,)
)
-vs-) PCB 14-3
) (Citizen Suit)
ILLINOIS DEPARTMENT OF)
TRANSPORTATION,)
Respondent.)

Deposition of DOUGLAS G. DORGAN, JR.,
taken before NANCY K. SPEARE, C.S.R. and Notary
Public, pursuant to all applicable rules
pertaining to the taking of depositions, at 69
West Washington Street, Suite 1800, in the City
of Chicago, Cook County, Illinois at
10:00 o'clock a.m. on the 12th of June, A.D.,
2019.

There were present at the taking of
this deposition the following counsel:

Page 2	<p>1 BRYAN CAVE LEIGHTON & PAISNER by 2 MS. SUSAN BRICE 161 North Clark Street 3 Suite 4300 Chicago, Illinois 60601-3315 4 (312) 602-5124 susanbrice@bcplaw.com, 5 on behalf of the Complainant; 6 OFFICE OF THE ATTORNEY GENERAL 7 STATE OF ILLINOIS by MR. EVAN J. MCGINLEY and 8 MS. ELLEN F. O'LAUGHLIN 69 West Washington Street 9 Suite 1800 Chicago, Illinois 60602 10 (312) 814-3094 emcginley@atg.state.il.us and 11 eolaughlin@atg.state.il.us, 12 on behalf of the Respondent. 13 14 15 16 17 18 19 20 21 22 23 24</p>	Page 4	<p>1 Exhibit No. 15 104 2 Exhibit No. 16 105 3 Exhibit No. 17 107 4 Exhibit No. 18 110 5 Exhibit No. 19 113 6 Exhibit No. 20 115 7 Exhibit No. 21 116 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>
Page 3	<p>1 DEPOSITION OF 2 DOUGLAS G. DORGAN, JR. 3 Taken: June 12, 2019 4 5 EXAMINATION BY PAGE 6 Mr. McGinley 5 7 8 9 EXHIBITS 10 PAGE 11 Exhibit No. 1 10 12 Exhibit No. 2 10 13 Exhibit No. 3 23 14 Exhibit No. 4 26 15 Exhibit No. 5 27 16 Exhibit No. 6 37 17 Exhibit No. 7 38 18 Exhibit No. 8 40 19 Exhibit No. 9 44 20 Exhibit No. 10 49 21 Exhibit No. 11 61 22 Exhibit No. 12 77 23 Exhibit No. 13 79 24 Exhibit No. 14 91</p>	Page 5	<p>1 MR. MCGINLEY: Swear him in, please. 2 DOUGLAS G. DORGAN, JR., 3 called as a witness herein, having been first 4 duly sworn, was examined upon oral 5 interrogatories and testified as follows: 6 EXAMINATION 7 by Mr. McGinley: 8 Q Sir, can you state your name for the 9 record, please. 10 A Douglas G. Dorgan, Junior, D-O-R-G-A-N. 11 Q Mr. Dorgan, as Miss O'Laughlin and I were 12 talking about before, I think this is the fourth 13 time we've taken your deposition. So, as a 14 result, I get to like at least go through and do 15 the shorthand version of the preliminaries. You 16 know what you have to do, right, you have to give 17 clear answers, no gestures. I'll ask the 18 questions. Please let me finish the questions. 19 I'll let you finish the answer. We'll make for a 20 clear record that way; and, hopefully, we can get 21 to the end of this that much sooner. 22 Any reason why you can't give full and 23 complete testimony today? 24 A No.</p>

Page 46

1 **change line types, we may add information, we may**
2 **take information off. It just depends on the**
3 **process that we're driving towards the ultimate**
4 **presentation.**
5 Q Okay, so when you talk about -- you're
6 saying there's an end goal, if you will, that
7 you're hoping to have these figures achieved for
8 you, is that a fair way to put it?
9 **A Yes.**
10 Q Okay. So how do you actually communicate
11 that to Miss Dunton? I mean do you say this is
12 what I want things to look like at the end or --
13 I mean help me understand that because that's
14 kind of a general statement.
15 **A There's a little bit of that; but,**
16 **certainly, you know, you have a vision for what**
17 **you think the end product needs to look like.**
18 **But there's also looking at the information**
19 **that's already been presented and understanding**
20 **how we're going to translate, in this case, say**
21 **Mr. Gobelman's figures in his report onto a**
22 **figure that we're going to produce to allow the**
23 **comparison that we were able to do. So there's**
24 **some back and forth in terms of we need to add**

Page 47

1 **this, we need to add that; and then, ultimately,**
2 **she does the actual drawing and produces**
3 **something for me to review.**
4 Q Okay. When she creates that first
5 go-round of a figure does she keep that -- I mean
6 does she work off of that figure and subsequent
7 revise -- revisions or refinements of that
8 figure?
9 **A Yeah, you'd, basically, have one project**
10 **file that those, all those changes are made in;**
11 **and those changes just are cumulative, so as you**
12 **make changes that file just keeps getting**
13 **changed.**
14 Q Do you have any understanding of how --
15 you sit down, you talk about what revisions you
16 want made with, you talked with Miss Dunton about
17 wanted to see done, you talked with her about how
18 you want to see the figures revised. Are you
19 having these meetings at her work station where
20 she's got her CAD or are you meeting someplace
21 else?
22 **A Sometimes it can be at her work station,**
23 **it could in one of the small conference rooms, or**
24 **we can pull the figures up on a monitor and be**

Page 48

1 **able to look at them in, you know, a larger view.**
2 **Sometimes it could be at my desk.**
3 Q If she's someplace besides her CAD
4 station, you're in your conference room, you're
5 in your office, you're meeting with her and you
6 say, Riah, I'd like to change these three
7 features of this figure, maybe I want this line
8 bigger, maybe I want to see a different color for
9 representing the boundaries, how is she -- is she
10 writing this down, is she taking notes as you
11 have this discussion? I mean how is she making
12 sure that she's going to deliver for you the end
13 product that you want?
14 **A Well, she's making the changes in the**
15 **document and then she produces the next revision**
16 **for me to look at; and I decide whether they're**
17 **changes I want to keep and they're responsive to**
18 **my request.**
19 Q Okay, but my question to you is slightly
20 different. What I'm asking is is she doing
21 something to like note what it is that
22 Mr. Dorgan, Doug Dorgan wants to see in the
23 revised figure?
24 **A Yeah, she could be making notes on a**

Page 49

1 **draft.**
2 Q Okay. And when you say "notes on a
3 draft" how would that actually take place, how
4 would those notes be memorialized?
5 **A She would write them on a hard copy of**
6 **the figure.**
7 Q Okay. And what do you think she does
8 with the hard copy of the figure after she's gone
9 back and revised the figure; is she keeping them
10 someplace?
11 **A No, drafts all get discarded before we go**
12 **final. It's company policy.**
13 Q This should be 10.
14 (document marked as requested)
15 MR. MCGINLEY: Q Take a moment -- this is
16 Exhibit 10 is Dorgan 1064 through 1071. It is an
17 e-mail thread from you -- I'm sorry -- from
18 Miss Dunton to you, that's the top level e-mail,
19 dated September 27, 2018; and just after you've
20 had a chance to look it over please let me know.
21 THE WITNESS: A Okay.
22 Q If I could direct your attention to
23 Dorgan 1066, this is the third page of the
24 e-mail, you'll see that there's an August 23rd,

EXHIBIT D – June 12, 2019 EMAIL FROM EVAN MCGINLEY TO SUSAN
BRICE

McGinley, Evan

From: McGinley, Evan
Sent: Wednesday, June 12, 2019 4:45 PM
To: Brice, Susan
Cc: 'Caisman, Lauren'; O'Laughlin, Ellen; 'Dougherty, Matthew D. (Matthew.Dougherty@Illinois.gov)'
Subject: Johns Manville v. IDOT - 201(k) Communication

Susan:

This email will serve to memorialize our discussions during Douglas Dorgan's deposition in our offices earlier today and is also being sent pursuant to Rule 201(k). As you know, during today's deposition, Mr. Dorgan testified that the AECOM map which he has referenced in his expert reports is based on a CAD file created by AECOM ("AECOM CAD File").

As we discussed during today's deposition, the AECOM CAD File has not yet been produced to us (nor, to date, has Johns Manville produced any CAD files for any of the figures used in Mr. Dorgan's reports). As further discussed during the deposition, you agreed to produce the AECOM CAD File to us. We are also requesting that you produce all Weaver CAD files that have been created to date for this matter.

Finally, we would ask that you remind Mr. Dorgan to review the subdirectory that is mentioned in Exhibit 10 (Dorgan 1064-1071)

This is a link to the documents I collected that I used for review.
<J:\Projects\2500-2999\2570\312\07\01\Review of Rebuttal Reports>

As requested during today's deposition, we would like Mr. Dorgan to review this subdirectory ("Review of Rebuttal Reports") and to make sure that all of the files in this subdirectory have been produced to IDOT.

Thank you for your attention to this matter.

Evan J. McGinley
Senior Assistant Attorney General
Environmental Bureau
69 West Washington Street, Suite 1800
Chicago, IL 60602
312.814.3153 (phone)
312.814.2347 (fax)
emcginley@atg.state.il.us

EXHIBIT E – JUNE 12, 2019 EMAIL FROM SUSAN BRICE TO EVAN
McGINLEY

McGinley, Evan

From: Brice, Susan <susan.brice@bclplaw.com>
Sent: Wednesday, June 12, 2019 4:59 PM
To: McGinley, Evan
Cc: Caisman, Lauren; O'Laughlin, Ellen; Dougherty, Matthew D. (Matthew.Dougherty@Illinois.gov)
Subject: RE: Johns Manville v. IDOT - 201(k) Communication

Evan: As stated in the deposition, I believe that a printout the DWG file that you asked for today (not a CAD file) was produced. You have never asked for any electronic DWG files before and you did not produce any to us until we specifically asked for it after Mr. Dorgan was having a hard time figuring out Mr. Gobelman's map and we were told what exactly to ask for. I think it is fair to say that neither of us understood what a DWG file was until recently.

As you requested earlier today, we will produce the DWG electronic file once Mr. Dorgan locates it. I am not sure what you mean by produce all "Weaver CAD files that have been created to date." This is not something that was discussed in the deposition or previously requested as far as I know and I need to look into this further before I more fully respond.

Finally, Mr. Dorgan will review his subdirectory that is mentioned in Exhibit 10 (Dorgan 1064-1071).



SUSAN BRICE
Partner
susan.brice@bclplaw.com
T: +1 312 602 5124

From: McGinley, Evan [mailto:emcginley@atg.state.il.us]
Sent: Wednesday, June 12, 2019 4:45 PM
To: Brice, Susan
Cc: Caisman, Lauren; O'Laughlin, Ellen; Dougherty, Matthew D. (Matthew.Dougherty@Illinois.gov)
Subject: Johns Manville v. IDOT - 201(k) Communication

Susan:

This email will serve to memorialize our discussions during Douglas Dorgan's deposition in our offices earlier today and is also being sent pursuant to Rule 201(k). As you know, during today's deposition, Mr. Dorgan testified that the AECOM map which he has referenced in his expert reports is based on a CAD file created by AECOM ("AECOM CAD File").

As we discussed during today's deposition, the AECOM CAD File has not yet been produced to us (nor, to date, has Johns Manville produced any CAD files for any of the figures used in Mr. Dorgan's reports). As further discussed during the deposition, you agreed to produce the AECOM CAD File to us. We are also requesting that you produce all Weaver CAD files that have been created to date for this matter.

Finally, we would ask that you remind Mr. Dorgan to review the subdirectory that is mentioned in Exhibit 10 (Dorgan 1064-1071)

Electronic Filing: Received, Clerk's Office 07/09/2019

This is a link to the documents I collected that I used for review.

<J:\Projects\2500-2999\2570\312\07\01\Review of Rebuttal Reports>

As requested during today's deposition, we would like Mr. Dorgan to review this subdirectory ("Review of Rebuttal Reports") and to make sure that all of the files in this subdirectory have been produced to IDOT.

Thank you for your attention to this matter.

Evan J. McGinley
Senior Assistant Attorney General
Environmental Bureau
69 West Washington Street, Suite 1800
Chicago, IL 60602
312.814.3153 (phone)
312.814.2347 (fax)
emcginley@atg.state.il.us

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EXHIBIT F – JUNE 25, 2019 EMAIL FROM LAUREN CAISMAN TO EVAN
McGINLEY

McGinley, Evan

From: Caisman, Lauren <lauren.caisman@bclplaw.com>
Sent: Tuesday, June 25, 2019 4:31 PM
To: Brice, Susan; McGinley, Evan
Cc: O'Laughlin, Ellen; Dougherty, Matthew D. (Matthew.Dougherty@Illinois.gov)
Subject: RE: Johns Manville v. IDOT - 201(k) Communication

Evan-

This email responds to your 201(k) correspondence. It's unclear what you mean by "CAD file." Mr. Dorgan has not been able to locate the DWG file discussed in his deposition. Nor has Ms. Dunton. In response to the deposition notice to Ms. Dunton, we will be producing any CAD drawings (and the source materials for those drawings) that she worked on related to this matter. We trust this resolves the outstanding issues you have raised.

Thanks,
Lauren



LAUREN J. CAISMAN
Attorney
BRYAN CAVE LEIGHTON PAISNER LLP - Chicago, IL USA
lauren.caisman@bclplaw.com
T: +1 312 602 5079

From: Brice, Susan
Sent: Wednesday, June 12, 2019 4:59 PM
To: McGinley, Evan
Cc: Caisman, Lauren; O'Laughlin, Ellen; Dougherty, Matthew D. (Matthew.Dougherty@Illinois.gov)
Subject: RE: Johns Manville v. IDOT - 201(k) Communication

Evan: As stated in the deposition, I believe that a printout the DWG file that you asked for today (not a CAD file) was produced. You have never asked for any electronic DWG files before and you did not produce any to us until we specifically asked for it after Mr. Dorgan was having a hard time figuring out Mr. Gobelman's map and we were told what exactly to ask for. I think it is fair to say that neither of us understood what a DWG file was until recently.

As you requested earlier today, we will produce the DWG electronic file once Mr. Dorgan locates it. I am not sure what you mean by produce all "Weaver CAD files that have been created to date." This is not something that was discussed in the deposition or previously requested as far as I know and I need to look into this further before I more fully respond.

Finally, Mr. Dorgan will review his subdirectory that is mentioned in Exhibit 10 (Dorgan 1064-1071).



SUSAN BRICE
Partner
susan.brice@bclplaw.com
T: +1 312 602 5124

Electronic Filing: Received, Clerk's Office 07/09/2019

From: McGinley, Evan [mailto:emcginley@atg.state.il.us]

Sent: Wednesday, June 12, 2019 4:45 PM

To: Brice, Susan

Cc: Caisman, Lauren; O'Laughlin, Ellen; Dougherty, Matthew D. (Matthew.Dougherty@Illinois.gov)

Subject: Johns Manville v. IDOT - 201(k) Communication

Susan:

This email will serve to memorialize our discussions during Douglas Dorgan's deposition in our offices earlier today and is also being sent pursuant to Rule 201(k). As you know, during today's deposition, Mr. Dorgan testified that the AECOM map which he has referenced in his expert reports is based on a CAD file created by AECOM ("AECOM CAD File").

As we discussed during today's deposition, the AECOM CAD File has not yet been produced to us (nor, to date, has Johns Manville produced any CAD files for any of the figures used in Mr. Dorgan's reports). As further discussed during the deposition, you agreed to produce the AECOM CAD File to us. We are also requesting that you produce all Weaver CAD files that have been created to date for this matter.

Finally, we would ask that you remind Mr. Dorgan to review the subdirectory that is mentioned in Exhibit 10 (Dorgan 1064-1071)

This is a link to the documents I collected that I used for review.

<J:\Projects\2500-2999\2570\312\07\01\Review of Rebuttal Reports>

As requested during today's deposition, we would like Mr. Dorgan to review this subdirectory ("Review of Rebuttal Reports") and to make sure that all of the files in this subdirectory have been produced to IDOT.

Thank you for your attention to this matter.

Evan J. McGinley

Senior Assistant Attorney General

Environmental Bureau

69 West Washington Street, Suite 1800

Chicago, IL 60602

312.814.3153 (phone)

312.814.2347 (fax)

emcginley@atg.state.il.us

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EXHIBIT G –NOTICE OF DEPOSITION (RIAH DUNTON)

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, June 20, 2019, I have filed with the Clerk of the Pollution Control Board the attached Notice of Deposition of Riah Dunton 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
Assistant Attorneys General
Environmental Bureau
69 W. Washington, 18th Floor
Chicago, Illinois 60602
(312) 814-3153
emcginley@atg.state.il.us
eolaughlin@atg.state.il.us
mccaccio@atg.state.il.us

MATTHEW J. DOUGHERTY
Assistant Chief Counsel
Illinois Department of Transportation
Office of the Chief Counsel, Room 313
2300 South Dirksen Parkway
Springfield, Illinois 62764
(217) 785-7524
Matthew.Dougherty@Illinois.gov

CERTIFICATE OF SERVICE

Johns Manville v. Illinois Department of Transportation, PCB 14-3 (Citizens)

I, EVAN J. MCGINLEY, do hereby certify that, today, June 20, 2019, I caused to be filed with the Pollution Control Board the attached Notice of Filing and Service on each of the individuals listed below:

Bradley Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
Brad.Halloran@illinois.gov

Don Brown
Clerk of the Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
Don.Brown@illinois.gov

Susan Brice
Lauren Caisman
Bryan Cave LLP
161 North Clark Street, Suite 4300
Chicago, Illinois 60601
susan.brice@bclplaw.com
lauren.caisman@bclplaw.com

s/ Evan J. McGinley
Evan J. McGinley

You are hereby further notified that pursuant to this notice, deponent shall produce to the undersigned counsel, by the close of business on July 2, 2019, all of the documents specified in the attached Exhibit A, to the extent that such documents have not already been produced.

Respectfully Submitted,

By: /s/ Evan J. McGinley
EVAN J. MCGINLEY
ELLEN O'LAUGHLIN
Assistant Attorneys General
Environmental Bureau
69 W. Washington, 18th Floor
Chicago, Illinois 60602
(312) 814-3153
emcginley@atg.state.il.us
eolaughlin@atg.state.il.us
mccaccio@atg.state.il.us

MATTHEW J. DOUGHERTY
Assistant Chief Counsel
Illinois Department of Transportation
Office of the Chief Counsel, Room 313
2300 South Dirksen Parkway
Springfield, Illinois 62764
(217) 785-7524
Matthew.Dougherty@Illinois.gov

EXHIBIT A

DOCUMENTS TO BE PRODUCED AT DEPOSITION

DEFINITIONS

1. "Communication" shall mean, without limitation, any and all forms of transferring information, including discussions, conversations, meetings, conferences, interviews, negotiations, agreements, understandings, inquiries, correspondence, documents, or other transfers of information whether written or oral or by any other means, including electronic and includes any document which abstracts, digests, transcribes or records any communication.

2. "Complainant" shall mean Johns Manville and any of Complainant's employees, agents, representatives, successors or assigns, or any other person acting or believed by Complainant to have acted on its behalf.

3. "Computer-Assisted Design" or "CAD" shall refer to any form of computer system, software or combination of computer system and software that has been used to create, among other things, maps, schematics, sort of visual representation of Site 3 or Site 6.

4. "Consultant" shall mean any type of environmental professional, including, but not limited to, any type of engineer, geologist, hydrologist, chemist, retained for the purpose of conducting environmental studies of the Site or Facility.

5. "Current" or "Present" shall mean the date on which Complainant serves its Response to these Interrogatories on IDOT's attorneys.

6. "Describe" shall mean to depict in written words or give an account of.

7. "Document" or "documents" shall be construed in its customary broad sense and shall include, but is not limited to, the original and any non-identical copy, whether different from the original because of notes made on said copy or otherwise, or any agreement, bank record or statement; book of account, including any ledger, sub-ledger, journal, or sub-journal; brochure; CAD files or CAD-related files, calendar; chart; check; circular; communication (intra- or inter-company or governmental entity or agency or agencies); contract; copy; correspondence; diary; draft of any document; electronic mail (e-mail); facsimile (fax); graph; index; instruction; instruction manual or sheet; invoice; job requisition; letter; log; license; manifest; manual; memorandum; minutes; newspaper or other clipping; note; note book; opinion; pamphlet; paper; periodical or other publication; photograph; print; receipt; record; recording; report; statement; study; summary including any memorandum, minutes, note record, or summary of any (a) telephone, videophone or intercom conversation or message, (b) personal conversation or interview, or (c) meeting or conference; telegram; telephone log; text message or any other form of instant message; ticket; travel or expense record; trip ticket; voucher; worksheet or working paper; writing; any other handwritten, printed, reproduced, recorded, typewritten, or otherwise produced graphic material from which the information inquired of may be obtained, or any other documentary material of any nature, in the possession, custody or control of the Respondent.

8. "Governmental agency" means any government agency, including federal, municipal, county, or state, or any subdivisions thereof.

9. "IDOT" means the Respondent, Illinois Department of Transportation.

10. "Knowledge" means first-hand information and/or information derived from any other source, including hearsay.

11. "Johns Manville" shall mean Johns Manville and any of its officers, directors, employees, agents, representatives, successors or assigns, or any other person acting on behalf of Johns Manville.

12. "Matter" shall mean the case entitled *Johns Manville v. Illinois Department of Transportation*, PCB 14-3 (Enforcement).

13. "Operate" or "operation" shall mean use, exercise control over, supervise or having responsibility for the daily performance of.

14. "Or" shall mean and/or wherever appropriate.

15. "Person" shall include, but is not limited to, any natural person; business or corporation, whether for profit or not, whether currently dissolved, or not; firm, partnership, or other non-corporate business organization; charitable, religious, education, governmental, or other non-profit institution, foundation, body, or other organization; or employee, agent, or representative of any of the foregoing.

16. "Related to" or "relating to" or "in relation to" shall mean anything which, directly or indirectly, concerns, consists of, pertains to, reflects, evidences, describes, sets forth, constitutes, contains, shows, underlies, supports, refers to in any way, is or was used in the preparation of, is appended to, is legally, logically or factually connected with, proves, disproves, or tends to prove or disprove.

17. "Relied upon" shall mean being or having been depended upon or referred to or being or having been arguably appropriate for such reliance.

18. "You" and "your" shall refer to the deponent, Riah M. Dunton.

19. "Weaver" shall refer to Weaver Consultants Group, its employees, officers, or contractors.

20. "June 13th Dorgan Report" shall refer to the "Expert Report of Douglas G. Dorgan Jr. On Damages Attributable to IDOT," dated June 13, 2018.

21. "October 25th Dorgan Report" shall refer to the "Expert Rebuttal Report of Douglas G. Dorgan Jr. On Damages Attributable to IDOT," dated October 25, 2018.

22. "April 30th Dorgan Report" shall refer to the "Expert Rebuttal Supplemental Report of Douglas G. Dorgan Jr. On Damages Attributable to IDOT," dated April 30, 2019.

23. "August 21st Gobelman Report" shall refer to the "Expert Rebuttal Report of Steven Gobelman on Damages Attributable to IDOT Based on IPCB Order of December 16, 2016," dated August 22, 2018.

24. "November 7th Gobelman Report" shall refer to the "Expert Rebuttal Report of Steven Gobelman on Damages Attributable to IDOT Based on IPCB Order of December 16, 2016," dated November 7, 2018.

25. All terms not specifically defined herein shall have their logical ordinary meaning, unless such terms are defined in the Act or the regulations promulgated under the Act, in which case the appropriate or regulatory definitions shall apply.

DOCUMENTS TO BE PRODUCED AT YOUR DEPOSITION

1) Copies of all documents related to any work you performed on the June 13th, October 25th, or the April 30th Dorgan Reports.

2) Copies of all documents you created or caused to be created which are related to either the August 21st or November 7th Gobelman Reports.

3) Copies of all documents you reviewed or otherwise consulted in the course of any work you performed on June 13th, October 25th, or the April 30th Dorgan Reports.

4) Copies of all documents you reviewed in the course of any work performed or analyses you conducted on the August 21st or November 7th Gobelman Reports.

5) Copies of all billing statements or invoices for all work performed by either you or Weaver on the matter from August 21, 2018 to the current day.

CERTIFICATE OF SERVICE

Johns Manville v. Illinois Department of Transportation, PCB 14-3 (Citizens)

I, EVAN J. MCGINLEY, do hereby certify that, today, June 20, 2019, I caused to be served on the individuals listed below, by electronic mail, a true and correct copy of IDOT's Notice of Deposition on Riah Dunton to on each of the parties listed below, prior to the hour of 5:00 p.m.:

Susan Brice
Lauren Caisman
Bryan Cave LLP
161 North Clark Street, Suite 4300
Chicago, Illinois 60601
Susan.Brice@bryancave.com
Lauren.Caisman@bryancave.com

/s/ Evan J. McGinley
Evan J. McGinley