

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, October 4, 2019, I have filed with the Clerk of the Pollution Control Board the attached “IDOT’S Motion to Strike Affidavit of Douglas G. Dorgan, Jr. in Support of Complainant’s Motion to Exclude Base Maps and Related Figures and Testimony at Hearing” 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
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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, October 4, 2019, I caused to be served on the individuals listed below, by electronic mail, a true and correct copy of the attached “IDOT’S Motion to Strike Affidavit of Douglas G. Dorgan, Jr. in Support of Complainant’s Motion to Exclude Base Maps and Related Figures and Testimony at Hearing” on each of the parties listed below:

Bradley Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
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s/ Evan J. McGinley
Evan J. McGinley

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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IDOT’S MOTION TO STRIKE AFFIDAVIT OF DOUGLAS G. DORGAN JR. IN SUPPORT OF COMPLAINANT’S MOTION TO EXCLUDE BASE MAPS AND RELATED FIGURES AND TESTIMONY AT HEARING

NOW COMES RESPONDENT, the Illinois Department of Transportation (“IDOT”), through its attorney KWAME RAOUL, Attorney General of the State of Illinois, who, pursuant to Pollution Control Board Regulation 101.502(a), 35 Ill. Adm. Code 101.502(a), hereby moves the Hearing Officer to strike the affidavit of Douglas G. Dorgan, Jr. (“Dorgan 2019 Affidavit”) which complainant has filed as Exhibit J in support of “Complainant’s Motion to Exclude Base Maps and Related Figures and Testimony at Hearing” (“Motion to Exclude”). IDOT states as follows in support of this Motion to Strike:

STATEMENT OF FACTS

On February 15, 2016, Mr. Dorgan provided an affidavit to Johns Manville, which Johns Manville included as Exhibit 3 (“Dorgan 2016 Affidavit”) to its February 16, 2016 “Complainant’s Response to Respondent’s Motion *in Limine* to Bar Certain Opinion Testimony of Douglas G. Dorgan.”

The Dorgan 2016 Affidavit was subsequently admitted into evidence on May 23, 2016, during the first day of hearing in this matter, as Exhibit 7, during testimony by Mr. Dorgan on direct examination. (A copy of the Dorgan 2016 Affidavit is attached as Exhibit A to this Motion.)

During Johns Manville's counsel's examination, Mr. Dorgan was asked the following questions and gave the following answers:

BY MS. BRICE :

Q. Exhibit No. 7 is an affidavit [e.g., the Dorgan 2016 Affidavit] of 10 Douglas G. Dorgan that you prepared. Can you 11 please explain what this exhibit is?

12 A. This was generated in order to 13 emphasize my background and my experience 14 particularly with respect to some of the more 15 engineering-oriented aspects of this case in 16 particular that had not been something that was 17 emphasized in the short qualification section 18 in my original report. I believe this was 19 generated to supplement that.

20 Q. Okay. And is this your signature

21 on Exhibit 7-68? (sic.)

22 A. Yes, it is.

23 Q. And to your knowledge, is everything

24 in this affidavit accurate?

1 Yes.

(Transcript from May 23, 2016 hearing, pp. 118:8-119:1; relevant excerpts from the May 23rd hearing are attached hereto as Exhibit B.)
(Emphasis added.)

On June 13, 2018, Johns Manville issued the "Expert Report of Douglas G. Dorgan, Jr. on Damages Attributable to IDOT" (Dorgan Expert Report").

On July 31, 2018, IDOT took the deposition of Mr. Dorgan regarding his opinions contained in the Dorgan Expert Report. During the deposition, he was asked about his experience conducting the sort of cost attribution which was called for under the Board's Interim Opinion. IDOT's counsel questioned him about this and Mr. Dorgan gave the following answer:

On September 13, 2019, Johns Manville filed its Motion to Exclude. Mr. Dorgan provided the Dorgan 2019 Affidavit (i.e., "Exhibit J") in support of Johns Manville's Motion to Exclude. Paragraphs Four through Seven of the Dorgan 2019 Affidavit state, as follows:

4. It is customary for experts in the environmental consulting field to work with trustworthy technicians experienced in AutoCAD to prepare maps, drawings and figures for an expert's use, which are based upon information obtained from reliable sources, such as the environmental consultants or engineers that conducted or oversaw the work being depicted in the maps, drawings or figures.
5. Environmental experts do not typically rely on draft maps, maps that lack northings and eastings, or very difficult-to-read maps to create base maps, especially when more reliable maps are readily available.
6. When creating a base map for environmental or engineering purposes, it is well established that reliable sources of information originate with the entity that conducted the underlying environmental or engineering work, especially if that work has been accepted by a regulatory agency.
7. Experts in my field routinely rely on maps, drawings and figures that are approved by federal regulatory agencies, including the USEPA. During the first five-day hearing, I testified about Hearing Exhibits 06-26 and 16-18. These exhibits were based upon maps, figures and drawings created by AECOM.

(A copy of the Dorgan 2019 Affidavit is attached hereto as Exhibit C.)

ARGUMENT

A. Legal Standard for Affidavits

The Board's procedural rules do not contain any provisions that speak to the requirements for affidavits filed in conjunction with Board proceedings. *MDI Ltd. P'ship v. Re. Bd. of Trustees for Boone and Winnebago Counties, et al.*, PCB 00-181,*2 (May 2, 2002). As a result, the Board has looked to Illinois Supreme Court Rule 191(a) for guidance on determining the requirements for affidavits. *Id.* This Rule, in relevant part, provides as follows:

. . . [A]ffidavits . . . shall be made on the personal knowledge of the affiants; shall set forth with particularity the facts upon which the claim, counterclaim, or defense is based; shall have attached thereto sworn or certified copies of all papers upon which the affiant relies; **shall not consist of conclusions** but of facts admissible in evidence; and shall affirmatively show that the affiant, if sworn as a witness, can testify competently thereto.

(Emphasis added.)

As the Illinois Supreme Court has noted, “it is necessary that there be strict compliance with Rule 191(a) . . .” *Roubidoux v. Oliphant*, 201 Ill.2d 324, 336 (2002). Rule 191(a)’s requirements are to be construed in accordance with the rule’s plain language. *Id.* at 339. Rule 191(a)’s requirements “are not aspirational, they ‘have the force of law’ and must be obeyed and enforced as written.” *Bright v. Dicke*, 166 Ill.2d 204, 210 (1995). Therefore, it follows that affidavits which do not fully comply with Rule 191(a) must be stricken. *Roubidoux*, 201 Ill.2d at 339. Finally, as the court in *Geary v. Telular Corp.* noted, regarding Rule 191(a)’s “personal knowledge,” requirement “[u]nsupported assertions, opinions, and self-serving or conclusory statements do not comply with Supreme Court Rule 191(a). 341 Ill.App.3d 694, 699 (2003).

B. The Dorgan 2019 Affidavit Should be Struck in its Entirety Because There is no Indication That Mr. Dorgan Actually Signed the Affidavit

The signature on the Dorgan 2019 Affidavit is completely different form the signature on the Dorgan 2016 Affidavit. One need only compare the two signatures to see the difference. As noted above in the Statement of Facts, Mr. Dorgan testified about the Dorgan 2016 Affidavit on May 23, 2016, during the first day of hearings in this matter. During his examination under oath by Johns Manville’s counsel, Mr. Dorgan confirmed that it was his signature on the Dorgan 2016 Affidavit. (May 23 Transcript, pp. 118:20-22.)

One need only briefly compare Mr. Dorgan’s signature in his Dorgan 2016 Affidavit with his purported signature on the Dorgan 2019 Affidavit to realize that these signatures were not written by the same person. Given the obvious differences between Mr. Dorgan’s verified signature in his 2016 Affidavit and his purported signature in his 2019 affidavit, the Board should, find that the signature on the Dorgan 2019 Affidavit is not that of Mr. Dorgan’s and strike the Dorgan 2019 Affidavit in its entirety, because it is not apparent that this affidavit has been made based upon Mr. Dorgan’s personal knowledge. Rule 191(a). Thus, one cannot make a “reasonable

inference that [Mr. Dorgan] could competently testify to” the contents of the Dorgan 2019 Affidavit. *Enbridge Pipeline (Illinois), LLC v. Kiefer*, 2017 IL App (4th) 150342 (2017), ¶43 (internal citations omitted.) Accordingly, the Hearing Officer should strike the Dorgan 2019 Affidavit in its entirety.

C. Even if Mr. Dorgan Had Signed the Affidavit, the Hearing Officer Should Strike Paragraphs Four Through Seven Because They do not Satisfy the Requirements of Rule 191(a)

Paragraphs Four through Seven are best understood as a series of assertions that are unsupported by any facts which, therefore, do not comply with the requirements of Supreme Court Rule 191(a). Illinois trial court have rejected affidavits containing similar statements from experts in affidavits for failing to comply with Rule 191(a). A case in point is *Cain v. Joe Contarino, Inc.* 2014 IL App (2d) 130482 (2014). In *Cain*, the plaintiff submitted an affidavit from their expert, “who identified himself as a construction safety consultant.” *Id.* ¶10. As the *Cain* court noted, the expert “cited mostly ‘industry customs and practices’ . . . yet never specified their content.” *Id.* ¶¶10 and 62. The defendant then filed a motion to strike plaintiff’s expert’s affidavit, which was granted. On appeal, the appellate court affirmed the striking of the expert’s affidavit, finding that the affidavit was “insufficient under Rule 191(a) because [the expert did] not specify the facts underlying” his conclusions. *Id.* ¶62.

Based on the appellate court’s holding in *Cain* (as well as other cases such as *Kosten v. St. Anne’s Hosp.* 132 Ill.App.3d 1073, 1079 (1st Dist. 1985), Paragraphs Four through Seven of Mr. Dorgan’s current affidavit should be struck because they quite clearly do not comply with the requirements of Supreme Court Rule 191(a). His citation to what is “customary for experts in the environmental consulting field” (Dorgan Aff. ¶4) and what “is well-established” (Dorgan Aff. ¶6)

without citing any specific facts to support these statements are text book examples of conclusory statements that will not be allowed to stand by trial courts. *Cain*, ¶162; *Kosten*, at 1079.

In view of Mr. Dorgan's failure to adhere to the requirements of Rule 191(a), the Hearing Officer should strike Paragraph Four through Seven of his Affidavit for failing to comply with the those requirements "as written." *Bright*, 166 Ill.2d at 210.

WHEREFORE, Respondent, the Illinois Department of Transportation, requests that the Hearing Officer:

1. Grant IDOT's Motion and strike the Dorgan 2019 Affidavit in its entirety;
 2. Alternatively, strike Paragraphs Four through Seven of the Dorgan 2019 Affidavit;
- and,
3. Grant such other relief as this Board shall deem appropriate and just.

Respectfully Submitted,

By: s/ Evan J. McGinley
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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Complainant,)	
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ILLINOIS DEPARTMENT OF)	
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Respondent.)	

**IDOT'S MOTION TO STRIKE AFFIDAVIT OF DOUGLAS G. DORGAN JR. IN
SUPPORT OF COMPLAINANT'S MOTION TO EXCLUDE BASE MAPS AND
RELATED FIGURES AND TESTIMONY AT HEARING**

EXHIBIT A

DORGAN 2016 AFFIDAVIT

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter Of:)	
)	
JOHNS MANVILLE, a Delaware corporation,)	
)	
Complainant,)	PCB No. 14-3
)	
v.)	
)	
ILLINOIS DEPARTMENT OF TRANSPORTATION,)	
)	
Respondent.)	

AFFIDAVIT OF DOUGLAS G. DORGAN, JR.

I, Douglas G. Dorgan, Jr., hereby declare and state as follows:

1. I am over the age of twenty-one, of sound mind, and am capable of making this declaration.

2. I am currently a Principal with Weaver Consultants Group responsible for managing the Environmental Practice Group, and the Site Building and Infrastructure Consulting Practice Group. In these positions, I have personal knowledge about what types of records environmental consultants and experts typically and reasonably rely upon in assessing the cause of contamination on a particular site or in a particular area. If called as a witness, I can competently testify to the matters stated herein. The statements set forth in this affidavit are true and correct, to the best of my knowledge and belief based upon my experience as an environmental consultant and expert.

3. In working for engineering firms and as an environmental consultant, including for engineering firms since 1986, I have experience and knowledge in the fields of

environmental consulting; engineering; geology; remedial investigations; and the planning, design, and construction of industrial, commercial and institutional properties.

4. After graduating from Eastern Illinois University in 1986 with a Bachelor of Science in Earth Science, I began working for the engineering firm Eldredge Engineering and Associates, Inc., which was later acquired by Wehran Engineering Corporation. My work included engineering design assignments under the supervision of Professional Engineers. My project responsibilities included, but were not limited to, design of grading plans, stormwater conveyance systems (including plans and profiles), roadways, environmental control systems, and end use plans. In addition, I performed a wide variety of field services including construction quality assurance testing, surveying, environmental monitoring, soil borings and soil sample collection, groundwater, sediment and surface water sampling and physical soil testing.

5. Moreover, while working for Eldredge Engineering and Associates, Inc. and Wehran Engineering Corporation, I was responsible for drafting site plans, including land use plans, cross-sections, soil profiles, tables, and figures. I did this by reviewing design drawings, engineering documents, and grading plans, among other documents. I was also responsible for designing the site plans myself. This involved designing grading plans, laying contours and tying contours into existing site features, designing storm water drainage ditches, preparing final cover designs, and reviewing cross sections and soil profiles. I was also responsible for construction quality assurance on many of these projects.

6. In 1995, I began working for Weaver Boos Consultants, which later became Weaver Consultants Group. There, I have supervised the completion of numerous projects involving, by way of example, multi-phase environmental assessments, remediation planning,

design and implementation oversight, and a range of permitting and compliance tasks such as development of stormwater pollution prevention plans ("SWPPP") and spill control and counter measure plans ("SPCC").

7. Additionally, for the past five years, I have served as Principal for Weaver Consultants Group's Site Building and Infrastructure Consulting Practice Group. The Site Building and Infrastructure Consulting Practice Group focuses largely on site development engineering. In my role as Principal, I am responsible for the supervision of projects which involve engineering; surveying; site development; grading; creating utility layouts; site ingress and egress planning; infrastructure design; roadway and highway design; development of general and technical construction specifications; coordinating contractor bidding and bid selection; and coordinating and monitoring construction efforts. In supervising the design and construction of engineering projects, I often review partial and final engineering and design drawings, draft specifications, evaluate bid documents, and study historical documents (including site plans, cross-sections, soil profiles, land use plans, and aerial photographs). In more current role, for example, I frequently review site design plans for a major development on the east coast that is undergoing environmental cleanup and economic redevelopment. My work requires a careful review of site development planning documents, including site plans, grading plans, utility layout plans, stormwater conveyance plans, and construction specifications and details, particularly with respect to assessing possible concerns with existing site environmental conditions.

8. I also have substantial experience with construction projects involving environmental components. From 1986 to the present, my work has included developing general and technical specifications for construction projects; preparing bid documents for construction

projects; construction contractor selection; construction oversight; and construction monitoring. From 1986 to the early 1990s, I supported projects involving the design and construction of on-site roadways. In this work, I drafted technical specifications, cross sections, bid specifications, and other documents relating to the roadway project at hand. My ongoing project work still includes design and construction of on-site roadways, as well as working with state and local agencies and municipalities related to public roadways and right-of-ways. I supervise a team that designs and builds, among other things, roads and highways. Recently, a team I supervise completed a preliminary access road design that allows a site owner to limit impacts to the local public roadway system, mitigating hazards associated with the historic need to transverse the public roadway. Weaver Consultants provided the preliminary design for this project including layout plans and details; drainage feature plans and details; pavement subgrade preparation details; and pavement width and construction specifications. The next phase of the project will progress to signal design and county approval submittals, and ultimately we will be engaged to provide construction oversight.

9. During my tenure with Eldredge Engineering, and later Wehran Engineering, which was subsequently acquired by EMCON, I completed my Masters Degree in Geography, with a Concentration in Environmental Science. My Masters Degree was earned in 1994 from Northern Illinois University. Additionally, during this time, I became a Licensed Professional Geologist in both the State of Illinois and Indiana. As a Licensed Professional Geologist, I have extensive experience in reviewing, and have reviewed many soil cross sections. Many of the projects that I work on involve generating soil cross sections and evaluating soil materials, including fill material. I am very familiar with and have drafted and/or reviewed numerous documents similar to Sheets 4, 5, 71, 72 in the IDOT Engineering Drawings/Plans for the

Amstutz Highway construction project. At times, I have also compared soil boring tests to engineering drawings. It is very common for geologists to perform this type of work.

10. All of the documents that I reviewed in preparing my Expert Report and Expert Rebuttal Report in this case were the types of documents that I had seen or had experience analyzing previously. In fact, I have drafted and designed many of these types of documents myself, including soil profiles and construction specifications, as well as site and construction plans.

11. In trying to determine the cause of contamination, an environmental expert would reasonably rely upon a response to a Comprehensive Environmental, Response, Compensation, and Liability Act ("CERCLA") Section 104(e) request that asks questions about conduct that might have caused the contamination in question. An environmental expert would also reasonably and typically rely upon historical documents, including aerial photographs, engineering drawings, construction specifications, administrative records (including those of the USEPA), and soil investigation reports and boring logs, to the extent available, in making this determination.

12. I reviewed and relied upon IDOT's November 27, 2000 response to the USEPA's CERCLA Section 104(e) request while preparing my expert report dated March 16, 2015. The information contained therein was consistent with the other evidence reviewed and relied upon in my Expert Report indicating that IDOT caused the contamination. I also relied upon IDOT's 104(e) response in forming the opinions set forth in my Expert Rebuttal Report dated July 27, 2015.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and

correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Dated: February 15, 2016


Douglas G. Dorgan, Jr.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JOHNS MANVILLE, a Delaware corporation,)	
)	
Complainant,)	
)	
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ILLINOIS DEPARTMENT OF)	
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Respondent.)	

**IDOT'S MOTION TO STRIKE AFFIDAVIT OF DOUGLAS G. DORGAN JR. IN
SUPPORT OF COMPLAINANT'S MOTION TO EXCLUDE BASE MAPS AND
RELATED FIGURES AND TESTIMONY AT HEARING**

EXHIBIT B

HEARING TRANSCRIPT OF MAY 23, 2016

EXCERPTS

May 23, 2016

Page 1

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
 JOHNS MANVILLE, a Delaware)
 corporation,)
)
 Complainant,)
)
 vs)
)
 ILLINOIS DEPARTMENT OF)
 TRANSPORTATION,)
)
 Respondent.)

PCB 14-3

RECEIVED
CLERK'S OFFICE

MAY 21 2016

STATE OF ILLINOIS
Pollution Control Board

TRANSCRIPT FROM THE PROCEEDINGS

taken before HEARING OFFICER BRADLEY HALLORAN
 by LORI ANN ASAUSKAS, CSR, RPR, a notary public
 within and for the County of Cook and State of
 Illinois, in Room 9-031 at the James Thompson
 Center, 100 West Randolph Street, Illinois,
 on the 23rd day of May, 2016, A.D., at 9:00
 o'clock a.m.



ORIGINAL

L.A. Court Reporters, L.L.C.
312-419-9292

May 23, 2016

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1 designing and implementing the record and decision
2 in many instances.

3 Q. I'd like you to turn to Exhibit No. 7,
4 please.

5 MS. BRICE: This is stipulated to.

6 HEARING OFFICER HALLORAN: Thank
7 you.

8 BY MS. BRICE:

9 Q. Exhibit No. 7 is an affidavit of
10 Douglas G. Dorgan that you prepared. Can you
11 please explain what this exhibit is?

12 A. This was generated in order to
13 emphasize my background and my experience
14 particularly with respect to some of the more
15 engineering-oriented aspects of this case in
16 particular that had not been something that was
17 emphasized in the short qualification section
18 in my original report. I believe this was
19 generated to supplement that.

20 Q. Okay. And is this your signature
21 on Exhibit 7-68?

22 A. Yes, it is.

23 Q. And to your knowledge, is everything
24 in this affidavit accurate?

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312-419-9292

May 23, 2016

Page 119

1 A. Yes.

2 Q. You also provided a rebuttal report
3 in this matter, correct?

4 A. Yes, I did.

5 Q. Okay. Could you please turn to
6 Exhibit 17, which I believe helpfully should be
7 your rebuttal report.

8 MS. BRICE: And this exhibit
9 is admitted.

10 HEARING OFFICER HALLORAN: Thank
11 you.

12 BY MS. BRICE:

13 Q. Mr. Dorgan, can you please identify
14 this document for us?

15 A. They this is my expert rebuttal
16 report, which was prepared in July of 2015.

17 Q. Does Exhibit 6, which is the expert
18 report dated March 16, 2015, and Exhibit 16, dated
19 July 27, 2015, contain opinions that you have
20 reached in this case?

21 A. Yes, it does.

22 Q. Have you reached all of these
23 opinions to a reasonable degree of scientific
24 certainty?

L.A. Court Reporters, L.L.C.
312-419-9292

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**IDOT'S MOTION TO STRIKE AFFIDAVIT OF DOUGLAS G. DORGAN JR. IN
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EXHIBIT C

Dorgan Affidavit 2019

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter Of:)	
)	
JOHNS MANVILLE, a Delaware)	
corporation,)	
)	
Complainant,)	PCB No. 14-3
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v.)	
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ILLINOIS DEPARTMENT OF)	
TRANSPORTATION,)	
)	
Respondent.)	

AFFIDAVIT OF DOUGLAS G. DORGAN, JR.

I, Douglas G. Dorgan, Jr., hereby declare and state as follows:

1. I am over the age of twenty-one, of sound mind, and am capable of making this declaration.
2. I am currently a Principal with Weaver Consultants Group. I have been responsible for managing the Environmental Practice Group, and the Site Building and Infrastructure Consulting Practice Group. In these positions, I have personal knowledge about what types of records environmental consulting experts and engineering experts typically and reasonably rely upon in assessing the costs associated with clean-up of contamination on a particular site and in creating surveys and accurate maps, figures and drawings for environmental purposes, including but not limited to, creating maps documenting the location of investigation and remediation work. If called as a witness, I can competently testify to the matters stated herein. The statements set forth in this affidavit are true and correct, to the best of my knowledge and belief based upon my experience as an environmental consultant and expert.

3. In preparing my expert reports in this matter, I reviewed, among other things: (a) a number of environmental and engineering reports, figures and drawings from other environmental consultants and engineers, including AECOM and IDOT; (b) invoices, payment records and summary reports of costs prepared by those who conducted the environmental investigation and remediation work at Site 3 and Site 6; (c) communications involving United States Environmental Protection Agency (“USEPA”); and (d) draft and final drawings created in AutoCAD at my direction by technicians at Weaver Consultants Group, who are trustworthy and qualified to prepare such drawings and who used reliable sources to create such drawings. Each of these categories of documents are the types of documents reasonably relied upon by experts in the environmental consulting field.

4. It is customary for experts in the environmental consulting field to work with trustworthy technicians experienced in AutoCAD to prepare maps, drawings and figures for an expert’s use, which are based upon information obtained from reliable sources, such as the environmental consultants or engineers that conducted or oversaw the work being depicted in the maps, drawings or figures.

5. Environmental experts do not typically rely on draft maps, maps that lack northings and eastings, or very difficult-to-read maps to create base maps, especially when more reliable maps are readily available.

6. When creating a base map for environmental or engineering purposes, it is well-established that reliable sources of information originate with the entity that conducted the underlying environmental or engineering work, especially if that work has been accepted by a regulatory agency.

7. Experts in my field routinely rely on maps, drawings and figures that are approved by federal regulatory agencies, including the USEPA. During the first five-day hearing, I testified about Hearing Exhibits 06-26 and 16-18. These exhibits were based upon maps, figures and drawings created by AECOM.

8. The exhibits used by both myself and Mr. Steven Gobelman during the first Hearing relied upon the same AECOM maps, figures and drawings as source material.

9. Following the first five-day hearing, I created new figures for my three expert reports furnished in the damages phase of this matter. My base map is contained in my June 16, 2018 Expert Report ("Dorgan 1") and is founded upon maps, drawings and/or figures created by AECOM. Dorgan 1 was then used as a template for the other figures contained in my three reports.

10. The only material difference between Hearing Exhibits 06-26 and 16-18 and Dorgan 1 is the addition of the areas where work was done as depicted in AECOM's Remedial Work Plan and Final Report, including but not limited to, the location of the excavation utility work.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Dated: August 29, 2019



Douglas G. Dorgan, Jr.