

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

**NOTICE OF FILING**

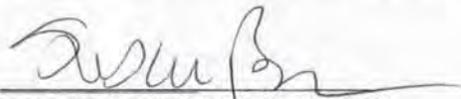
To: See Attached Service List

PLEASE TAKE NOTICE that on October 10, 2019, I caused to be filed with the Clerk of the Pollution Control Board of the State of Illinois, *Complainant's Response to Respondent's Motion to Strike Affidavit of Douglas G. Dorgan, Jr.*, a copy of which is attached hereto and herewith served upon you via e-mail. Paper hardcopies of this filing will be made available upon request.

Dated: October 10, 2019

Respectfully submitted,

BRYAN CAVE LEIGHTON PAISNER LLP

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<b>ILLINOIS DEPARTMENT OF TRANSPORTATION,</b>	)	
	)	
<b>Respondent.</b>	)	

**COMPLAINANT'S RESPONSE TO RESPONDENT'S MOTION TO STRIKE AFFIDAVIT OF DOUGLAS G. DORGAN, JR.**

Complainant JOHNS MANVILLE ("JM") hereby submits its response to Respondent ILLINOIS DEPARTMENT OF TRANSPORTATION ("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 (the "Motion") as follows:

**A. IDOT Has No Legitimate Basis To Contend Mr. Dorgan Did Not Sign The Affidavit.**

IDOT's Motion essentially accuses JM of perpetrating a fraud on the Hearing Officer and Board in arguing that JM submitted an affidavit purporting to come from JM's expert, Mr. Douglas Dorgan, that IDOT claims is not actually signed by Mr. Dorgan. Making such an argument, without a shred of factual support, borders on bad faith. IDOT's attorneys purport to transform themselves into experts in handwriting analysis, but offer nothing more than conclusory, self-serving allegations regarding the signature on Mr. Dorgan's affidavit. *But see People v. Stapleton*, 4 Ill. App. 3d 477, 480-81 (Ill. App. Ct. 1972) (bank employee witness, whose job responsibility was comparing signatures to determine genuineness and who had made thousands of comparisons over time, was not qualified to testify as expert witness on signature

comparison where comparison testimony was “scant”). They identify no relationship or course of business with Mr. Dorgan that would render them as reasonably familiarized with Mr. Dorgan’s signature. This is utterly insufficient to challenge the authenticity of Mr. Dorgan’s signature. *See e.g., CitiMortgage, Inc. v. Kondilis*, 2019 IL App (1st) 180976-U, ¶ 13 (holding, “[w]hile defendant blithely questioned the authenticity of the note and the signature thereon in his response . . . his mere denial was not sufficient to preclude the entry of summary judgment” or challenge the signature); *Deutsche Bank Nat’l Trust Co. v. Campbell*, 2018 IL App (1st) 170817-U, ¶ 29 (conclusory allegations of forgery, even when those allegations were made in a signed affidavit, were insufficient to create genuine issue whether signature on another document was authentic); *U.S. v. Binzel*, 907 F.2d 746, 749 (7th Cir. 1990) (same). It is telling that IDOT must stoop so low as to claim JM’s attorneys forged a document in order to combat JM’s Motion. Obviously, they plainly realize the feebleness of their position and their inability to mount any credible challenge to JM’s Motion.

While IDOT generally claims that there are “obvious differences” between an affidavit Mr. Dorgan signed three years ago and the 2019 affidavit at issue (*see* Motion, p. 4), IDOT fails to identify a single difference with any specificity. Indeed, the signatures actually are very similar (albeit one may be in slightly cleaner penmanship)—unsurprising given they are both Mr. Dorgan’s signatures. Mr. Dorgan would unequivocally testify that that the signatures on both affidavits are his. Attached as Exhibit A is the email he sent to JM’s attorneys, Ms. Caisman and Ms. Brice, attaching the signed Affidavit. Thus, the affidavit establishes Mr. Dorgan’s personal knowledge of the matters set forth therein. IDOT’s Motion presents no basis for holding otherwise. It should be categorically denied.

**B. The Dorgan Affidavit Is Not Conclusive.**

IDOT argues that “Paragraphs Four through Seven [of Mr. Dorgan’s 2019 affidavit] are best understood as a series of assertions that are unsupported by any facts” because IDOT misunderstands both the nature of the assertions in Mr. Dorgan’s affidavit and the lone case IDOT meaningfully cites, *Cain v. Joe Contarino, Incorporated*, 2014 IL App (2d) 130482. (Motion, p. 5.) Unlike the affidavit in *Cain*, which only referred to “industry customs and practices” and nothing more, Mr. Dorgan’s 2019 affidavit expressly and factually identifies the industry customs and practices Mr. Gobelman failed to meet in creating the Base Maps subject to JM’s Motion to Exclude. (*Compare Cain*, 2014 IL App (2d) 130482, ¶¶ 10, 62<sup>1</sup> with Dorgan Affidavit, ¶ 4 (environmental consulting custom is to work with trustworthy technicians experienced in AutoCAD who base maps, drawings, and figures on information obtained from reliable sources, including environmental consultants and engineers who conducted or oversaw work depicted on maps, drawings, or figures), ¶ 5 (environmental experts do not typically rely on: draft maps; maps that lack northings or eastings; or difficult-to-read maps), ¶ 6 (when creating a base map for environmental or engineering purposes, it is well-established that reliable sources of information originate with entity conducting underlying work), ¶ 7 (experts in environmental consulting field routinely rely on maps, drawings, and figures approved by regulatory agencies).)<sup>2</sup> It is nonsensical for IDOT to suggest that Mr. Dorgan should have to provide more factual specificity than is already included in his affidavit.

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<sup>1</sup> Mr. Dorgan’s affidavit is also easily distinguishable from that in *Kosten v. St. Anne’s Hospital*, 132 Ill. App. 3d 1073 (Ill. App. Ct. 1985), which IDOT cites merely in passing (*see* Motion, p. 5). In *Kosten*, the affiant stated that the defendants had departed from the acceptable standard of care by “failing to attend and properly treat the decedent” and “failing to fully utilize appropriate diagnostic measures.” 132 Ill. App. 3d at 1079. The *Kosten* affiant did not identify what diagnostic measures would have been appropriate or how the decedent should have been treated. *Id.* In stark contrast, Mr. Dorgan *does* identify these things—the specific types of documents that Mr. Gobelman should have (or should not have) relied upon in creating the flawed Base Maps.

<sup>2</sup> Notably, in response to JM’s Motion to Exclude, IDOT submitted no corresponding affidavit from Mr. Gobelman disputing any of these contentions.

This is particularly so where it has been firmly established that, given his extensive, decades-long experience and expertise in the environmental consulting field, Mr. Dorgan has a more than sufficient foundation to testify as to environmental consulting norms, customs, and practices. (*See e.g.*, April 26, 2016 Hearing Officer Order, p. 3.) This is all Mr. Dorgan has—factually—done in his affidavit. IDOT's Motion should be denied.

**CONCLUSION**

For the reasons set forth above, JM requests that the Hearing Officer deny Respondent IDOT's Motion to Strike Affidavit of Douglas G. Dorgan, Jr.

Dated: October 10, 2019

Respectfully submitted,

BRYAN CAVE LEIGHTON PAISNER LLP

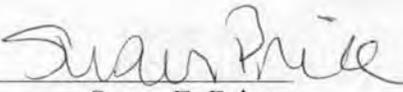
Attorneys for Complainant Johns Manville

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**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on October 10, 2019, I caused to be served a true and correct copy of *Complainant's Response to Respondent's Motion to Strike Affidavit of Douglas G. Dorgan, Jr.* upon all parties listed on the Service List by sending the documents via e-mail to all persons listed on the Service List, addressed to each person's e-mail address.

  
\_\_\_\_\_  
Susan E. Brice

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# **EXHIBIT A**

**Brice, Susan**

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**From:** Dorgan, Doug <ddorgan@wcgrp.com>  
**Sent:** Wednesday, September 04, 2019 10:28 AM  
**To:** Caisman, Lauren; Brice, Susan  
**Subject:** RE: JM v. IDOT  
**Attachments:** JM\_ Dorgan Aff (USE) (600888203v1 USA).pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Please see attached per your request.

Doug

**Douglas G. Dorgan, Jr., LPG**

Principal

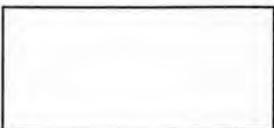
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O: 312-922-1030 | F: 312-922-0201 | M: 630-675-1519  
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**From:** Caisman, Lauren <[lauren.caisman@bclplaw.com](mailto:lauren.caisman@bclplaw.com)>  
**Sent:** Thursday, August 29, 2019 12:59 PM  
**To:** Dorgan, Doug <[ddorgan@wcgrp.com](mailto:ddorgan@wcgrp.com)>; Brice, Susan <[susan.brice@bclplaw.com](mailto:susan.brice@bclplaw.com)>  
**Subject:** [EXTERNAL] JM v. IDOT

Doug- see attached. Thanks.



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**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.

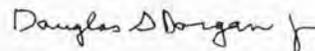
8. The exhibits used by both myself and Mr. Steven Gobelman during the first Hearing relied upon the same AECOM maps, figures and drawings as source material.

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



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Douglas G. Dorgan, Jr.