

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 25, 2019, Respondent, Illinois Department of Transportation, filed and served IDOT'S PRE-HEARING REPORT with the Clerk of the Pollution Control Board, a copy of which is hereby served upon you.

Respectfully Submitted,

By: s/Evan J. McGinley
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, October 25, 2019, I caused to be served on the individuals listed below, by electronic mail, a true and correct copy of IDOT's Pre-Hearing Report on each of the parties 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
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Susan Brice
Lauren Caisman
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s/Evan J. McGinley _____
Evan J. McGinley

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ILLINOIS DEPARTMENT OF TRANSPORTATION'S PRE-HEARING REPORT

Respondent, DEPARTMENT OF TRANSPORTATION (“IDOT”), through its counsel, KWAME RAOUL, Attorney General for the State of Illinois, herewith submits its Pre-Hearing Report.

I. Contested Issues

In its December 15, 2016 Interim Opinion and Order (“Interim Opinion”), “[t]he Board direct[ed] the hearing office to conduct a hearing for evidence on the following issues:

- 1) The cleanup work performed by JM in the portions of Site 3 and Site 6 where the Board found IDOT responsible for ACM waste present in soil.
- 2) The amount and reasonableness of JM’s costs for this work.
- 3) The share of the (sic) JM’s attributable to IDOT.

The parties are in agreement as to the extent of the cleanup work which Johns Manville performed at Sites 3 and 6, including portions of the Sites 3 and 6 where the Board found IDOT liable, thus resolving the first issue identified for future hearing by the Board in the Interim Opinion.

The parties are also in agreement as to the amount and reasonableness of the costs which Johns Manville has incurred in the course of undertaking cleanup work at Sites 3 and 6. Johns

Manville claims that it has incurred \$5,579,794 in total implementation costs in the course of conducting the cleanup work at Site 3 and 6. IDOT does not dispute the amount of costs incurred by Johns Manville nor does it challenge the reasonableness of this amount, thus effectively resolving the second issue identified by the Board for future hearing.

The parties disagree with respect to the amount of Johns Manville's \$5,579,794 in implementation costs that are attributable to IDOT. Johns Manville's expert, Douglas G. Dorgan, Jr., has opined that IDOT is responsible for \$3,274,917 of Johns Manville's total implementation costs. By comparison, Steven Gobleman, IDOT's expert witness, provided a revised opinion on November 7, 2018, that determined that IDOT is only liable for \$600,050 of Johns Manville's implementation costs of \$5,579,794.¹ Accordingly, the sole question that the Board must hear testimony and receive evidence on concerns the portion of Johns Manville's total implementation costs of \$5,579,794 that should be attributed to IDOT.

II. Stipulations

On August 13, 2019, the parties jointly filed four stipulations of fact with the Board. IDOT incorporates by reference herein all four of the August 13th stipulations and attaches a copy of the parties' joint stipulations hereto as Exhibit A.

III. Exhibit List

Simultaneously with the filing of IDOT's Pre-Hearing Report, IDOT is also filing its joint Exhibit List. IDOT incorporates by reference herein the contents of the Exhibit List and attaches a copy of the parties' Exhibit List hereto as Exhibit B.

While the parties have generally been able to agree on a list of exhibits for use by the parties

¹ On August 22, 2018, Mr. Gobelman issued his initial rebuttal report in which he attributed only \$489,891 of Johns Manville's \$5,579,794 in implantation costs to IDOT. However, subsequent to the issuance of his August 22nd rebuttal report, Mr. Gobelman determined that he had miscalculated his attribution amount, after realizing that a base map he had created as an aid for his attribution of Johns Manville's costs was incorrect.

at the upcoming hearing, IDOT objects to the inclusion of Exhibit 214, which is a group exhibit and which, as of the date of the filing of this report, consists of over 15,000 photographs of Sites 3, 4/5 and 6, taken by consultants working for Johns Manville.

Exhibit 214 is unlike any other exhibit which the parties have agreed to include in the joint exhibit. While the content of every other exhibit on the joint list is readily identifiable - and thus IDOT can determine how, if at all, it might need to respond to the potential admission or use of that exhibit at hearing – IDOT cannot determine which of these 15,000 plus photographs Johns Manville might decide to use at hearing (nor can Johns Manville advise IDOT which of these 15,000 plus photographs it might end up using). Any attempt by IDOT to review the photographs in Exhibit 214, to determine which portions of the exhibit Johns Manville might use is futile, as the majority of these photographs are unlabeled and do not identify when or where they were taken. As a result, IDOT cannot adequately prepare to defend itself against the possible use of this exhibit at hearing. IDOT therefore believes that Johns Manville should be barred from using Exhibit 214 at hearing or otherwise making reference to its contents.

IDOT also specifically reserves the right to introduce any additional exhibits which it may deem necessary to use, in order to rebut any testimony or evidence presented by Johns Manville at hearing.

IV. Potential Witnesses

IDOT may call some or all of the following individuals as witnesses in its defense of this matter:

- Steven Gobelman
- Douglas G. Dorgan, Jr.

- Dr. Tatsuji Ebihara, Ph.D.
- David M. Peterson
- Riah Dunton

IDOT also specifically reserves the right to call any additional witnesses which it may need to call, in order to rebut any testimony or evidence presented by Johns Manville at hearing.

Respectfully Submitted,

ILLINOIS DEPARTMENT
OF TRANSPORTATION

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

ILLINOIS DEPARTMENT OF TRANSPORTATION'S PRE-HEARING REPORT

EXHIBIT A

STIPULATIONS

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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v.)	
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ILLINOIS DEPARTMENT OF)	
TRANSPORTATION,)	
)	
Respondent.)	

NOTICE OF FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on August 13, 2019, I caused to be filed with the Clerk of the Pollution Control Board of the State of Illinois, *Stipulations*, 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: August 13, 2019

Respectfully submitted,

BRYAN CAVE LLP

Attorneys for Johns Manville

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Lauren J. Caisman, ARDC No. 6312465
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STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED, by and between all parties, that:

1. JM performed tasks with respect to Sites 3 and 6 that fall into the following “Task Bucket” categories, as identified in Section 3.2 and Exhibit F of the Expert Report of Douglas G. Dorgan Jr. on Damages Attributable to IDOT dated June 13, 2018 (“Dorgan Report”) and Section 3 of the Expert Rebuttal Report of Steven Gobelman on Damages Attributable to IDOT Based on IPCB Order of December 15, 2016 (“Gobelman Report”): (a) Nicor Gas Line; (b) City of Waukegan Water Line; (c) AT&T; (d) Utility/ACM Soils Excavation; (e) Northeast Excavation; (f) Northshore Gas; (g) Dewatering; (h) Filling and Capping; (i) Ramp Work; (j) General Site and Preparation Work; (k) Health and Safety; (l) USEPA Oversight; and (m) Costs for Legal/Legal Support Services (Manikas/Walker, -Wilcox & Matousek).

2. The parties do not dispute the overall amount of costs JM has incurred with respect to Sites 3 and 6 (\$5,579,794).

3. The parties do not dispute the amount of costs JM has incurred under each Task Bucket as set forth in Section 3.2 and Exhibit F of the Dorgan Report, Section 6 of the Gobelman Report and the Table below:

Electronic Filing: Received, Clerk's Office 10/25/2019

Task Bucket	Site 3	Site 6	Site 3 and 6	Total
Nicor Gas	\$218,090		\$360	\$218,450
City of Waukegan Water Line	\$61,037	\$86,674	0	\$147,711
AT&T	\$108,651	\$284,266	\$98,898	\$491,815
Utilities/ACM Soils Excavation	0	\$155,318	0	\$155,318
Northshore Gas	\$332,524	\$234,861	\$58,157	\$625,542
Northeast Excavation	\$49,934	0	0	\$49,934
Dewatering	\$259,084	\$160,587	\$39,175	\$458,846
Filling & Capping	\$426,254	\$310,353	\$352,012	\$1,088,619
Ramp	\$20,880	0	0	\$20,880
General Site/Site Preparation	\$932,730	\$807,329	\$74,300	\$1,814,359
Health & Safety				\$77,000
EPA Oversight	\$233,805	\$125,675	0	\$359,480
Legal Support Services			\$71,840	\$71,840

4. The parties do not dispute the reasonableness of costs set forth in the Table above in Paragraph #3.

Dated: August 13, 2019

Respectfully submitted,

**OFFICE OF THE ATTORNEY GENERAL
AND THE ILLINOIS DEPARTMENT OF
TRANSPORTATION**
Attorneys for Respondent

**BRYAN CAVE LEIGHTON PAISNER
LLP**
Attorneys for Complainant

/s/ Evan J. McGinley (with permission)

/s/ Lauren J. Caisman

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Matthew D. Dougherty
Assistant Chief Counsel
Illinois Department of Transportation
Office of the Chief Counsel, Room 313
2300 South Dirksen Parkway
Springfield, IL 62764
E-mail: Matthew.Dougherty@illinois.gov

CERTIFICATE OF SERVICE

I, the undersigned, certify that on August 13, 2019, I caused to be served a true and correct copy of *Stipulations* 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.

/s/ Lauren J. Caisman
Lauren J. Caisman

SERVICE LIST

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ILLINOIS DEPARTMENT OF TRANSPORTATION'S PRE-HEARING REPORT

EXHIBIT B

JOINT WITNESS AND EXHIBIT LIST

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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JOINT EXHIBIT AND WITNESS LISTS

Complainant JOHNS MANVILLE (“JM”) and Respondent ILLINOIS DEPARTMENT OF TRANSPORTATION (“IDOT”) hereby submit the following Joint Exhibit and Witness Lists for the hearing scheduled for November 19-22, 2019.

STIPULATIONS

The parties have also agreed to stipulate to the genuineness, foundation, and admissibility of certain Exhibits below. The parties still need to discuss some of the Exhibits listed below. The following exceptions are identified:

(a) IDOT does not agree to the admissibility of Exhibit 214.¹

(b) JM does not agree to the genuineness, foundation, or admissibility of any figures or maps (draft or final) prepared by or for Steven Gobelman or to Exhibit 57, ELM Figure 15 (which is contained within various documents/exhibits in the record), and was attached to Mr. Gobelman’s August 22, 2018 Expert Report, or any portion of Steven Gobelman’s expert reports

¹ JM is identifying whether it can reduce the number of photographs included in Exhibit 214 and if so, the parties plan to revisit a stipulation with respect to the genuineness and admissibility of that exhibit.

that discuss or rely on said figures or maps. These issues are the subject of JM's pending Motion to Exclude.

JOINT EXHIBIT LIST

- 6.² Douglas Dorgan, Jr. Expert Report, including figures and exhibits, dated March 16, 2015
7. Affidavit of Douglas G. Dorgan dated February 15, 2016 attached to JM's Responses to IDOT's Motions *in Limine*
8. Steven Gobelman Expert Rebuttal Report, including figures and exhibits, dated May 29, 2016
15. Right of Way Plat
16. Douglas Dorgan, Jr. Expert Report, including figures and exhibits, dated July 27, 2015
- 21A. As-Built IDPW Plans for Proposed Federal Aid Highway F. A. Route 437 – Section 8
41. Grant for Public Highway dated August 3, 1971
57. ELM Subsurface Characterization Report December 1999
62. Administrative Order on Consent dated June 11, 2007
63. EE/CA Revision IV dated April 4, 2011 and all attachments
64. USEPA Correspondence dated February 1, 2012 (JM 002372-JM002399)³
65. Enforcement Action Memorandum dated November 30, 2012
66. Cover Letter and Removal Action Work Plan Revision II dated March 31, 2014
67. Cover Letter and Removal Action Work Plan Revisions IV dated February 2016
74. Letter to John Van Vranken from LFR dated July 8, 2008, with attachments
79. Correspondence dated December 20, 2012 from Bryan Cave to USEPA Re: Notice of Dispute Concerning Enforcement Action Memorandum (JM002550-JM002566)⁴
84. Soil Boring Cross Sections Figures (JM0007191-JM007192)
90. Figures

² The exhibit numbering herein utilizes the same numbering for the exhibits that were introduced at the first hearing in this case and continues the numbering of new exhibits with Exhibit 203.

³ This exhibit was not admitted at the first hearing but was marked as Exhibit 64 on JM's exhibit list.

⁴ This exhibit was not admitted at the first hearing but was marked as Exhibit 79 on JM's exhibit list.

120. USEPA Comments on EE/CA Report Revision dated February 3, 2010
202. IDOT Demonstrative Exhibit prepared by S. Gobelman
203. Illinois Pollution Control Board December 15, 2016 Interim Opinion and Order
204. Douglas Dorgan, Jr. Expert Report on Damages Attributable to IDOT, including figures and exhibits, dated June 13, 2018
205. Steven Gobelman Expert Rebuttal Report On Damages Attributable to IDOT Based on IPCB Order of December 15, 2016, including figures and exhibits dated August 22, 2018
206. Douglas Dorgan, Jr. Expert Rebuttal Report, including figures and exhibits, dated June October 25, 2018
207. Steven Gobelman Expert Rebuttal Supplemental Report, including figures and exhibits dated November 7, 2018
208. Douglas Dorgan, Jr. Expert Rebuttal Report on Gobelman Supplemental Report, including figures and exhibits, dated April 30, 2019.
209. Affidavit of Douglas G. Dorgan, Jr. dated August 29, 2019 attached to JM's Motion to Exclude Base Maps and Related Figures and Testimony at Hearing (filed September 13, 2019)
210. Affidavit of Dr. Tatsuji Ebihara dated August 27, 2019 attached to JM's Motion to Exclude Base Maps and Related Figures and Testimony at Hearing (filed September 13, 2019)
211. Correspondence dated May 16, 2013 from Bryan Cave to USEPA (JM002567-JM002576)
212. Correspondence dated September 18, 2013 from USEPA to Johns Manville and Bryan Cave (JM002584-JM002588)
213. Final Report: Southwestern Sites Area dated March 20, 2018, including all figures, exhibits, appendices, and attachments (JM0039069-0042159)
214. All Photos related to remedial work (including JM 0022096-0037498)
215. S. Gobelman Figures (SG3750-SG3823)
216. Affidavit of S. Gobelman (SG004003-004)
217. S. Gobelman Figures (SG004201-4219)
218. S. Gobelman Notes (SG004250-4254)
219. S. Gobelman Notes (SG003839-3841)

Electronic Filing: Received, Clerk's Office 10/25/2019

- 220. Email from E. McGinley to S. Gobelman dated January 18, 2017 (SG00815)
- 221. April 2018 Gobelman Figure 1 (SG003644)
- 222. Andrews Engineering Contract (SG00001-15)
- 223. Affidavit of Steven Gobelman dated December 12, 2018 attached to IDOT's Response to Complainant's Motion for Sanctions (filed December 12, 2018)
- 224. AutoCad DWG and PDF of DWG from AECOM (sent without Bates numbers because electronic)
- 225. Campanella Contract with Exhibits (Campanella-0000131-0000154, JM 0014497-0014854 (Exhibit A), JM 0014481 (Exhibit B), JM 0014482-0014485 (Exhibit C), JM 0014488-14489 (Exhibit D), JM 0014491 (Exhibit D-1), JM 0014496 (Exhibit D-2), JM 0014856 (Exhibit E), JM 0014866 (Exhibit G))
- 226. Final Contractor Receipt, Release and Hold Harmless Agreement (JM 039008-039009)
- 227. Campanella Combination Lump Sum and Unit Cost Bid Form (JM 0037952-0037961, JM 0038030-0038036)
- 228. Stipulations dated August 13, 2019
- 229A. Deposition of Douglas Dorgan, Jr. taken on July 31, 2018 along with exhibits
- 229B. Deposition of Steven Gobelman taken on October 2, 2018 along with exhibits
- 229C. Deposition of Douglas Dorgan, Jr. taken on June 12, 2019 along with exhibits
- 229D. Deposition of Steven Gobelman taken on February 7, 2019 along with exhibits
- 229E. Deposition of Michael Nguyen taken on March 20, 2019 along with exhibits
- 229F. Deposition of Riah Dunton taken on July 24, 2019 along with exhibits and errata sheet
- 229G. Deposition of Dr. Tatsuji Ebihara taken on May 4, 2018 along with exhibits and errata sheet
- 229H. Deposition of David Peterson taken on May 16, 2018 along with exhibits and errata sheet
- 229I. Deposition of Brent Tracy taken on July 10, 2017 along with exhibits
- 229J. Deposition of Kevin and Suzanne Zupec taken on April 30, 2018 along with exhibits and errata sheets
- 229K. Deposition of Scott Myers taken on June 29, 2017 along with exhibits
- 229L. Deposition of Donald Manikas taken on July 7, 2017 along with exhibits

230. IDOT's Responses to JM's 4th Set of Interrogatories dated March 30, 2017
231. IDOT's Supplemental Responses to JM's 4th Set of Interrogatories dated June 15, 2017
232. IDOT's Responses to JM's 3rd Set of Requests for Production dated March 30, 2017
233. IDOT's Supplemental Responses to JM's 3rd Set of Requests for Production dated June 15, 2017
234. The Illinois Environmental Protection Act and Board regulations
235. Demonstrative Exhibits
236. Transcripts of May 23-25 and June 23-24, 2016 Hearing
237. JM's Responses to IDOT's 4th Set of Interrogatories dated April 3, 2017
238. JM's Responses to IDOT's 1st Set of Requests for Admission dated April 3, 2017
239. JM's Responses to IDOT's 4th Set of Requests for Production dated April 3, 2017
240. JM's Second Supplemental Responses to IDOT's 4th Set of Interrogatories dated May 12, 2017
241. EE/CA Modification Letter dated February 1, 2012 (JM 002372-002399)

The parties reserve their rights to introduce additional exhibits into evidence as necessary for impeachment and JM reserves its right to introduce additional exhibits into evidence as necessary for rebuttal and/or to respond to issues that may be raised by IDOT. IDOT similarly reserves its right to introduce such other, additional exhibits as may be necessary to rebut or respond to issues raised by JM at hearing.

JOINT WITNESS LIST

1. Douglas G. Dorgan, Jr. – JM's Expert
2. Dr. Tatsuji Ebihara – AECOM
3. David Peterson – David M. Peterson, PE, PC
4. Michael Nguyen – Andrews Engineering

5. Riah Dunton – Weaver Consultants Group
6. Steven Gobelman – IDOT expert

Potential Witnesses

1. Any witnesses for the admissibility/genuineness of certain records if a stipulation cannot be reached between the parties

The parties reserve their rights to call additional witnesses as necessary for impeachment and JM reserves its right to call additional witnesses as necessary for rebuttal and/or to respond to issues that may be raised by IDOT.

Dated: October 25, 2019

Respectfully submitted,

<p>BRYAN CAVE LEIGHTON PAISNER LLP</p> <p>By: <u>/s/ Lauren J. Caisman</u></p> <p>Susan Brice, ARDC No. 6228903 Lauren J. Caisman, ARDC No. 6312465 161 North Clark Street, Suite 4300 Chicago, Illinois 60601 Tel: (312) 602-5000 Email: lauren.caisman@bcplaw.com Susan.brice@bcplaw.com</p> <p><i>Attorneys for Complainant Johns Manville</i></p>	<p>OFFICE OF ILLINOIS ATTORNEY GENERAL</p> <p>By: <u>/s/ Evan J. McGinley (with permission)</u></p> <p>Evan J. McGinley Ellen O’Laughlin 69 West Washington, 18th Floor Chicago, Illinois 60602 Tel: (312) 814-3153 Email: emcginley@atg.state.il.us eolaughlin@atg.state.il.us</p> <p><i>Attorneys for Respondent Illinois Department of Transportation</i></p>
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CERTIFICATE OF SERVICE

I, the undersigned, certify that on October 25, 2019, I caused to be served a true and correct copy of *Joint Exhibit and Witness Lists* 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.

/s/ Lauren J. Caisman

Lauren J. Caisman

SERVICE LIST

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