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STATE OF ILLINOIS  
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD

April 28, 2016

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

)  
)  
) PCB 14-3  
) (Citizens Enforcement)  
)  
)  
)  
)  
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)

 ORIGINAL

**HEARING OFFICER ORDER**

On April 8, 2016, Johns Manville (JM) filed a motion to compel, regarding JM's First Set or Requests for Admission, Second Set of Document Requests, and Third Set of Interrogatories (Mot.). On April 14, 2016, the Illinois Department of Transportation (IDOT) filed its response (Resp.). Specifically, JM seeks an order to compel IDOT to produce materials regarding IDOT's interest in Parcel 0393 ("Right of Way").

IDOT objects to all parts of JM's motion, excluding the motion to compel pertaining to Request for Admission Number 11. IDOT has agreed to revise its response to this Request.

**Discussion**

In matters involving discovery, the Board's hearing officers have wide discretion. Olive Streit v. Oberweis Dairy, Inc., PCB 95-122, slip op. at 3 (Feb. 1, 1996). All relevant information and information calculated to lead to relevant information is discoverable, excluding those materials that would be protected from disclosure in the courts of this State pursuant to statute. 35 Ill. Code 101.616(a). In a request to admit setting, "a denial shall fairly meet the substance of the requested admission [and] [i]f good faith requires that a party deny only in part, or requires qualification of a matter of which an admission is requested, the party shall specify so much of it is true and deny only the remainder." Ill. Sup. Ct. R. 216 (c). Regarding written interrogatories, "Rule 213 has been interpreted 'to require a party to answer fully and in good faith to the extent of his actual knowledge and the information available to him or to his attorney.'" Szczeblewski v. Gossett, 342 Ill. App. 3d 344, 349 (5<sup>th</sup> Dist. 2003). Unless privileged, irrelevant or not calculated to lead to relevant information, or the request lacks specificity, the documents requested must be produced. Ill. Sup. Ct. R. 214.

### **Request for Admission**

#### **Number 1 and 2:**

##### **JM**

JM argues that the use of the phrase “Grant for Public Highway” in response to these discovery requests is “non-responsive to the question posed.” Mot. at 15.

##### **IDOT**

IDOT stands on its responses to Requests for Admission Numbers 1 and 2. IDOT argues that the use of the term “Grant for Public Highway” in its qualified admission is appropriate because it is this Grant that gave rise to the Right of Way at issue. Resp. at 4. IDOT also argues that its use of the term is appropriate because JM used different terms in its second amended complaint and written discovery requests to describe the same parcel of property. *Id.* For clarity, IDOT notes that the portion of the Grant for Public Highway at issue is parcel 393. *Id.*

#### **Conclusion and Ruling**

I find that IDOT’s responses to requests for admission 1 and 2 comply with Ill. Sup. Ct. R. 216(c). They specify as much of the requests as is true, according to IDOT, and denies the remainder. Moreover, the land areas in question are well defined by the parties, and IDOT’s discussion of these areas in its response is not objectionable simply because it does not use JM’s preferred terminology. JM’s motion to compel as to Requests for Admission 1 and 2 is denied.

#### **Number 3 through 6:**

##### **JM**

JM alleges that the language of the requests reflects the Illinois Highway Code (605 ILCS 5/4-409) and therefore should have been familiar to IDOT. Mot. at 8. JM further argues that the questioned terms have commonsense meanings and were defined for IDOT in the Rule 201(k) letter, but that IDOT maintained its “vague and ambiguous” objection. *Id.*

##### **IDOT**

IDOT responds that it denied each of these four Requests in accordance with Ill. Sup. Ct. R. 216(c). IDOT further represents that when JM offered definitions of terms IDOT objected to, IDOT responded that even with those clarifications, it would still deny each of the Requests. Resp. at 6. IDOT therefore stands by its response and denies each of the four requests. *Id.*

## **Conclusion and Ruling**

Given that IDOT would deny each Request even as clarified by JM, I am satisfied that IDOT's responses are proper under Ill. Sup. Ct. R. 216(c). JM's motion to compel regarding Requests for Admission 3, 4, 5, and 6 is denied.

### Number 9:

#### **JM**

JM argues that IDOT did not respond to the question posed because it uses the phrase "Grant for Public Highway." Mot. at 15. JM claims that this phrase encompasses many different parcels, not merely Parcel 393, and is therefore misleading. *Id.*

#### **IDOT**

IDOT argues that its response contains two "unqualified denials to the Request." Resp. at 6. IDOT believes its response to Request for Admission Number 9 is clear and unambiguous and stands on it as drafted. *Id.*

## **Conclusion and Ruling**

I agree with IDOT that its response to Request for Admission Number 9 clearly and unambiguously denies the Request. As such, it is proper under Ill. Sup. Ct. R. 216(c). JM's motion to compel regarding this Request is denied.

### Number 11:

IDOT has agreed to revise its response to Request for Admission Number 11. Resp. at 7. This representation may resolve the dispute. To date, however, I have not received a revised response to this Request. IDOT is ordered to serve on JM and me the revised response on or before Wednesday, May 4, 2016.

### Number 12:

#### **JM**

JM argues that the language of this Requests reflects the language of the Illinois Highway Code (605 ILCS 5/4-409) and therefore should have been familiar to IDOT. Mot. at 8. JM therefore concludes that IDOT should be required to unequivocally admit or deny Request for Admission 12.

#### **IDOT**

IDOT disputes JM's claim that Request for Admission "Number 12 'tracks the language of and references the Illinois Highway Code.'" Resp. at 7. IDOT claims the Request includes

“extraneous language” that renders the Request “completely unintelligible” and “bordering on the nonsensical. *Id.* IDOT therefore stands on its response to this Request. *Id.*

### **Conclusion and Ruling**

I find that IDOT’s response adheres to Ill. Sup. Ct. R. 216(c) by specifying the reasons why. As posed, the Request is unclear, uses undefined terms, and appears to call for a legal conclusion. Consistent with Rule 216, the Response sets forth in sufficient detail why IDOT claims it cannot admit or deny the Request. Accordingly, I deny JM’s motion to compel a different response to this Request.

### **Requests for Production**

#### **Number 3 and 5:**

#### **JM**

JM argues that Requests for Production Numbers 3 and 5 have commonsense, “plain meanings.” Mot. at 8 and 10. JM claims that IDOT is refusing to respond, even after terms have been defined in JM’s Rule 201(k) letter. Mot. at 10. JM further argues that “IDOT maintains an electronic system or database, possibly known as IRIS and/or GIS, for tracking right of ways that it controls and maintains, yet IDOT has not produced any information or documents relating to this system or this system’s records regarding the Right of Way.” *Id.* at 10.

#### **IDOT**

IDOT claims that it did not make the asserted objections to these Requests as JM maintains. Resp. at 9. IDOT therefore stands on its original response. *Id.*

### **Conclusions and Ruling**

I find IDOT’s responses to these Requests proper under Ill. Sup. Ct. R. 214. In neither instance did IDOT refuse to respond to the Request. JM’s motion to compel is denied as to these Requests.

#### **Number 4:**

#### **JM**

JM argues that IDOT’s response to Request for Production Number 4 is “so incomplete that [it is] inaccurate.” Mot. at 12. JM argues that IDOT’s communications with expert witness Keith Stoddard produced in response to this Request reveal substantial gaps in IDOT’s document production and discovery responses. *Id.*

## **IDOT**

IDOT denies that its response to Request for Production Number 4 is incomplete or inaccurate. IDOT argues that it produced documents “responsive to this RFP” on three separate occasions. Resp. at 9. IDOT claims that all other communications which are responsive to the Request have “arisen in the context of attorney-client privilege and are obviously not subject to disclosure.” *Id* at 9-10.

### **Conclusion and Ruling**

Given IDOT’s assertion of privilege, and representation that all non-privileged responsive communications have been produced, I find no basis to compel production of additional unspecified documents. Thus, JM’s motion to compel is denied as to this Request.

#### Number 6:

### **JM**

JM argues that Request for Production Number 6 has a commonsense, “plain meaning.” Mot. at 8 and 10. JM further argues that “IDOT maintains an electronic system or database, possibly known as IRIS and/or GIS, for tracking right of ways that it controls and maintains, yet IDOT has not produced any information or documents relating to this system or this system’s records regarding the Right of Way.” *Id.* at 10.

## **IDOT**

IDOT argues that JM’s claim is without merit. Resp. at 10. IDOT claims that its previously produced 104(e) Response “constitutes the entire universe of documents that are responsive to Request for Production Number 6.” *Id.*

### **Conclusions and Ruling**

I accept IDOT’s representation that it has already produced all documents responsive to this Request. I further find JM’s suggestion that IDOT’s response to this Request must be lacking unfounded. JM’s motion to compel is denied as to this Request.

#### Number 7:

### **JM**

JM argues that IDOT’s response to Request for Production Number 7 is “so incomplete that [it is] inaccurate.” Mot. at 13. JM argues that IDOT’s produced communications with expert witness Keith Stoddard reveal substantial gaps in IDOT’s document production and discovery responses. *Id.*

## **IDOT**

IDOT asserts that with the exception of IDOT manuals, JM provides no specific examples of what documents it believes are missing from IDOT's production. Resp. at 11. IDOT claims that it produced the title commitment, as well as e-mails between IDOT counsel and expert witness Keith Stoddard regarding the title commitment. *Id.* at 11-12. IDOT states that the requested manuals are stored at its library and could not be tracked down and produced, if responsive, until the IDOT librarian returned from vacation the week of April 11. Resp. at 12.

### **Conclusions and Ruling**

I accept IDOT's representation that it has already produced all documents responsive to this Request other than the manuals. I further find JM's suggestion that IDOT's production is incomplete unfounded. IDOT should, however, make available to JM the responsive manuals for inspection or copying no later than May 6, 2016. In all other respects JM's motion to compel is denied as to this Request.

#### Number 19:

### **JM**

JM argues that IDOT "failed to provide documents or information regarding the "project" pertaining to the right of way identified in IDOT's preliminary environmental site assessment." Mot. at 10. IDOT allegedly claims that the "project" (IDOT 003303) referenced in the Interrogatory and Document request is not relevant to Site 3, Site 6, or the Right of Way. *Id.* at 11. JM disputes this and claims that any documents relating to the project, how it evolved over time, or how it was "altered in order to avoid Parcel 0393," are relevant. *Id.*

### **IDOT**

IDOT argues that the "project" referenced in Request for Production Number 19 is not related to the issues in this case, specifically Site 3, Site 6, or the "Right of Way." Resp. at 13. IDOT stands by its response in light of the "limited discovery" the Hearing Officer permitted at this stage of the case.

### **Conclusions and Ruling**

I find persuasive IDOT's position that the "project," which involves a site well outside the boundaries of Sites 3 and 6, has no bearing on the issues in this case. Even assuming the Request could lead to relevant evidence, I find it too far afield from the limited discovery the parties agreed to regarding the second amended complaint. Accordingly, JM's motion to compel is denied as to this Request.

## Interrogatories

### Number 1:

#### **JM**

JM argues that IDOT's response to interrogatory 1 is nonresponsive, evasive and irrelevant. Mot. at 15. JM argues that IDOT should be required to address whether IDOT possesses any interests or rights in the Right of Way/Parcel 393.

#### **IDOT**

IDOT stands by its response and argues that there is no merit to JM's claim that it failed to adequately respond. Resp. at 13.

### **Conclusion and Ruling**

I find that IDOT adequately responded to interrogatory Number 1. That the response does not use the terminology of the Request does not make the response incomplete or otherwise inadequate. Accordingly, JM's motion to compel is denied as to this Request.

### Number 5:

#### **JM**

JM states that IDOT's counsel stated that there would be "too many actions to list" once JM defined the terms "remedial or removal actions." Mot. at 12. This response, according to JM, makes clear that IDOT's initial response to this interrogatory "cannot be correct." *Id.*

#### **IDOT**

IDOT claims it properly limited its response to Sites 3 and 6 only. Resp. at 15. It would exceed the limited scope of written discovery to require IDOT to identify any remedial or removal actions within the entire State during the past seven years. *Id.*

### **Conclusion and Ruling**

I agree with IDOT that to the extent this interrogatory seeks information on remedial or removal actions other than those involving Sites 3 and 6, it is overbroad—particularly in the context of limited discovery regarding the portions of Sites 3 and 6 put in issue by the second amended complaint. Accordingly, the response to this interrogatory is proper under Ill. Sup. Ct. R. 213. JM's motion to compel is denied as to this Request.

Numbers 2 and 6:**JM**

JM argues that IDOT's response to interrogatory Number 2 "omits explanation or production of a single document related to the Title Commitment obtained by IDOT from the Wheatland Title Guaranty Company on or around February 19, 2016, and a revised Title Commitment dated March 30, 2016. The earlier commitment has not been produced." Mot. at 14.

Regarding interrogatory Number 6, JM argues that IDOT "failed to provide documents or information regarding the "project" pertaining to the right of way identified in IDOT's preliminary environmental site assessment. Mot. at 10. IDOT allegedly claims that the "project" (IDOT 003303) referenced in the Interrogatory and Document request is not relevant to Site 3, Site 6, or the Right of Way. *Id.* at 11. JM disputes this and claims that any documents relating to the project, how it evolved over time, or how it was "altered in order to avoid Parcel 0393," are relevant. *Id.*

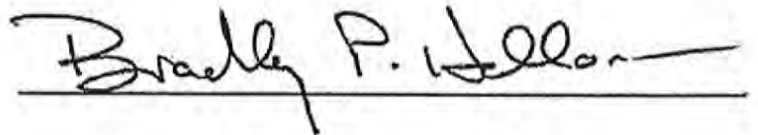
**IDOT**

IDOT responds that on April 13, 2016, it filed revised responses to these two interrogatories. Resp. at 15. IDOT believes the revised responses resolve any issues" JM had with the original responses. Resp. at 15.

**Conclusion and Ruling**

Given IDOT's representation that its revised responses resolve the disputes as to its original interrogatory responses, the motion to compel responses to these interrogatories is denied as moot.

IT IS SO ORDERED.



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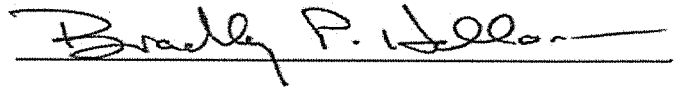


## CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were e-mailed and mailed, first class, on April 28, 2016, to each of the persons on the attached service list.

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on April 28, 2016:

John T. Therriault  
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James R. Thompson Center  
100 W. Randolph St., Ste. 11-500  
Chicago, Illinois 60601

A handwritten signature in black ink, reading "Bradley P. Halloran", is written over a horizontal line.

Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
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@ Consents to electronic service

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