

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.	)	

**NOTICE OF FILING**

To: See Attached Service List

PLEASE TAKE NOTICE that on August 31, 2020, I caused to be filed with the Clerk of the Pollution Control Board of the State of Illinois, Joint Exhibit and Witness Lists, a copy of which is attached hereto and herewith served upon you via e-mail.

JOHNS MANVILLE

By:     /s/ Susan E. Brice    

Dated: August 31, 2020

Susan E. Brice  
Kristen L. Gale  
NIJMAN FRANZETTI LLP  
10 South LaSalle Street, Suite 3600  
Chicago, IL 60603  
(312) 761-3224

**SERVICE LIST**

Evan J. McGinley  
Special Assistant Attorney General  
Illinois Department of Public Health  
Division of Administrative Hearings  
122 South Michigan Avenue, 7th Floor  
Chicago, IL 60602  
E-mail: [evan.mcginley@illinois.gov](mailto:evan.mcginley@illinois.gov)

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](mailto:Matthew.Dougherty@illinois.gov)

Ellen O'Laughlin  
Office of Illinois Attorney General  
69 West Washington Street, Suite 1800  
Chicago, IL 60602  
E-mail: [colaughlin@atg.state.il.us](mailto:colaughlin@atg.state.il.us)

Illinois Pollution Control Board  
Brad Halloran, Hearing Officer  
James R. Thompson Center  
100 W. Randolph, Suite 11-500  
Chicago, IL 60601  
E-mail: [Brad.Halloran@illinois.gov](mailto:Brad.Halloran@illinois.gov)

Illinois Pollution Control Board  
Don Brown, Clerk of the Board  
James R. Thompson Center  
100 W. Randolph, Suite 11-500  
Chicago, IL 60601  
E-mail: [Don.Brown@illinois.gov](mailto:Don.Brown@illinois.gov)

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

**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.<sup>1</sup>

(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

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<sup>1</sup> 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.<sup>2</sup> 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)<sup>3</sup>
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)<sup>4</sup>
84. Soil Boring Cross Sections Figures (JM0007191-JM007192)

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<sup>2</sup> 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.

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

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

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90. Figures
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)

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- 219. S. Gobelman Notes (SG003839-3841)
- 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 4<sup>th</sup> Set of Interrogatories dated March 30, 2017
- 231. IDOT's Supplemental Responses to JM's 4<sup>th</sup> Set of Interrogatories dated June 15, 2017
- 232. IDOT's Responses to JM's 3<sup>rd</sup> Set of Requests for Production dated March 30, 2017
- 233. IDOT's Supplemental Responses to JM's 3<sup>rd</sup> 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 4<sup>th</sup> Set of Interrogatories dated April 3, 2017
- 238. JM's Responses to IDOT's 1<sup>st</sup> Set of Requests for Admission dated April 3, 2017
- 239. JM's Responses to IDOT's 4<sup>th</sup> Set of Requests for Production dated April 3, 2017
- 240. JM's Second Supplemental Responses to IDOT's 4<sup>th</sup> Set of Interrogatories dated May 12, 2017
- 241. EE/CA Modification Letter dated February 1, 2012 (JM 002372-002399)
- 242. EE/CA Revision 1 dated February 6, 2009 (JM 001367-001445)
- 243. EE/CA Revision 2 dated April 2, 2010 (JM 001452-001546)
- 244. EE/CA Revision 3 dated July 23, 2010 (JM 001550-1645)

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: August 31, 2020

Respectfully submitted,

<p>Nijman Franzetti, LLP</p> <p>By: <u>/s/ Susan E. Brice</u></p> <p>Susan Brice, ARDC No. 6228903 10 S. LaSalle Street, Suite 3600 Chicago, IL 60603 (312) 761-3224 <a href="mailto:sb@nijmanfranzetti.com">sb@nijmanfranzetti.com</a></p> <p><i>Attorneys for Complainant Johns Manville</i></p>	<p>OFFICE OF ILLINOIS ATTORNEY GENERAL</p> <p>By: <u>/s/ Ellen O'Laughlin (with permission)</u></p> <p>Ellen O'Laughlin 69 West Washington, 18<sup>th</sup> Floor Chicago, Illinois 60602 (312) 814-3153 <a href="mailto:EOLaughlin@atg.state.il.us">EOLaughlin@atg.state.il.us</a></p> <p><i>Attorneys for Respondent Illinois Department of Transportation</i></p>
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