

**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, September 2, 2020, 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/Ellen F. O'Laughlin  
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**CERTIFICATE OF SERVICE**

***Johns Manville v. Illinois Department of Transportation, PCB 14-3 (Citizens)***

I, ELLEN F. O'LAUGHLIN, do hereby certify that, today, September 2, 2020, 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  
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Chicago, Illinois 60601  
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Don Brown  
Clerk of the Pollution Control Board  
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s/Ellen F. O'Laughlin \_\_\_\_\_  
Ellen F. O'Laughlin

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	)	
Respondent.	)	

**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 was required to perform 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 as a result of the USEPA's direction and requirements for remediation to Johns Manville (as well as other Sites near the Johns Manville facility.) 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.

Following five days of hearing and briefing by the parties, the Board found that IDOT was responsible for ACM waste deposited on specific locations along the south of Greenwood Avenue, Site 6, (Interim Opinion p. 9) and north portion of Site 3, (Interim Order, pgs. 9-10). The Board also found that IDOT's interest in a right of way or easement on Parcel 0393 gave it control over it and was responsible for ACM found in specific locations in Parcel 0393 (Interim Order, pgs. 11-12). The Board also rejected many areas of liability for which Johns Manville sought to hold IDOT liable, (Interim Order pgs. 6-11). The Board specifically identified areas and borings and directed further hearings on costs for those specific areas (Interim Order, pg. 22).

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. Mr. Dorgan came to these figures by expanding areas of liability beyond what the Board had found in its Interim Order, and rehashing arguments already made in the original hearings. Mr. Dorgan also applied some creative proportions and made broad suspect assumptions on costs he says could be assessed to IDOT.

By comparison, Steven Gobleman, IDOT's expert witness, followed the Board's direction in the Interim Order. He 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.<sup>1</sup> 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 13<sup>th</sup> stipulations and attaches a copy of the parties' joint stipulations hereto as Exhibit A.

**III. Exhibit List**

On September 1, 2020, Johns Manville filed its Amended Joint Exhibit and Witness Lists. A copy of the parties' Exhibit List hereto as Exhibit B.

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

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<sup>1</sup> 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 22<sup>nd</sup> 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.

- 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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Respondent.	)	

**ILLINOIS DEPARTMENT OF TRANSPORTATION'S PRE-HEARING REPORT**

EXHIBIT A

JOINT STIPULATIONS

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

**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

By:           /s/ Lauren J. Caisman            
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Lauren J. Caisman, ARDC No. 6312465  
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Illinois Pollution Control Board  
Don Brown, Clerk of the Board  
James R. Thompson Center  
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TRANSPORTATION,	)	
	)	
Respondent.	)	

**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 09/03/2020

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

*/s/ Evan J. McGinley (with permission)*

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**BRYAN CAVE LEIGHTON PAISNER  
LLP**

Attorneys for Complainant

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Lauren.caisman@bclplaw.com

**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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TRANSPORTATION,	)	
	)	
Respondent.	)	

**ILLINOIS DEPARTMENT OF TRANSPORTATION'S PRE-HEARING REPORT**

EXHIBIT B

AMENDED JOINT EXHIBIT AND WITNESS LISTS

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 September 1, 2020, I caused to be filed with the Clerk of the Pollution Control Board of the State of Illinois, Amended 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: September 1, 2020

Susan E. Brice  
Kristen L. Gale  
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<b>v.</b>	)	
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<b>ILLINOIS DEPARTMENT OF TRANSPORTATION,</b>	)	
	)	
<b>Respondent.</b>	)	

**AMENDED JOINT EXHIBIT AND WITNESS LISTS**

Complainant JOHNS MANVILLE (“JM”) and Respondent ILLINOIS DEPARTMENT OF TRANSPORTATION (“IDOT”) hereby submit the following Amended Joint Exhibit and Witness Lists for the hearing scheduled for September 21, 2020.

**STIPULATIONS**

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

- (a) JM does not agree to the genuineness, foundation, or admissibility of the following:
  - (1) any and all figures or maps (draft or final) prepared by or for Steven Gobelman, including but not limited to, those attached to his Expert Reports (Exhibits 205 and 207); (2) Exhibit 57; (3) ELM Figure 15 (which is contained within various documents/exhibits in the record); and (4) any portions of Mr. Steven Gobelman’s Expert Reports that discuss or rely on any of the figures, maps or documents listed above.

**JOINT EXHIBIT LIST**

- 6.<sup>1</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>2</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>3</sup>
84. Soil Boring Cross Sections Figures (JM0007191-JM0007192)
90. Figures
120. USEPA Comments on EE/CA Report Revision dated February 3, 2010

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<sup>1</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>2</sup> This exhibit was not admitted at the first hearing but was marked as Exhibit 64 on JM's exhibit list.

<sup>3</sup> This exhibit was not admitted at the first hearing but was marked as Exhibit 79 on JM's exhibit list.

Electronic Filing: Received, Clerk's Office 09/02/2020

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. Certain photos related to remedial work: JM 0026664; JM 0026691; JM 0026781; JM 0027029; JM 0027172; JM 0027194; JM 0027231; JM 0027838; JM 0028078; JM 0028104; JM 0028194; JM 0028810; JM 0029203; JM 0029319; JM 0029651; JM 0029693; JM 0029792; JM 0030297; JM 0032612 and JM 0035953215. 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 09/02/2020

- 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: September 1, 2020

Respectfully submitted,

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