

ILLINOIS POLLUTION CONTROL BOARD
February 28, 2017

JOHNS MANVILLE, a Delaware corporation,)
)
 Complainant,)
)
 v.) PCB 14-3
) (Citizens Enforcement)
 ILLINOIS DEPARTMENT OF)
 TRANSPORTATION,)
)
 Respondent.)

HEARING OFFICER ORDER

On January 20, 2017, the respondent, Illinois Department of Transportation (IDOT) filed its proposed discovery schedule regarding the Board’s directive to conduct a hearing on cleanup costs. *See Johns Manville, v. Illinois Department of Transportation*, PCB 14-3, slip op. at 22 (December 15, 2017). On February 2, 2017, the complainant, Johns Manville (JM) filed its response and its proposed discovery schedule. On February 9, 2017, IDOT filed its response to JM’s proposed discovery schedule.

PARTIES PROPOSED DISCOVERY SCHEDULES

In IDOT’s proposed discovery schedule, it proposes dates for serving and completing written discovery, completing depositions of any fact and expert witnesses, filing expert reports and a hearing being held the first week of October. In JM’s response and proposed discovery schedule, JM first argues that “all discovery proceedings on the limited issues raised in the Board’s December 15, 2016 Interim Order and Opinion can be completed by May 30, 2017.” (Compl. Resp. at 1). JM argues that any discovery must be limited to the fact and expert discovery already identified and disclosed while preparing for the hearing held in May and June, 2016. *Id.* at 2-3. JM appears to base its argument on the following:

In late January 2016, the parties agreed and informed the Hearing Officer of their agreement that the hearing in this matter would not be bifurcated and that remedy issues would be adjudicated at hearing. As a result, JM presented its case on liability and remedy together during the five days of hearing...and IDOT chose not offer any evidence rebutting the testimony of [JM’s] witnesses on the issue of remedy. *Id.* at 1-2.

Finally, JM states that in the event that additional discovery is allowed, it suggests a proposed discovery schedule that is comparable to IDOT’s, with a hearing scheduled for the week of October 30, 2017. *Id.* at 3.

IDOT’s RESPONSE

IDOT argues that JM's status report filed November 30, 2016, "fundamentally changed the nature of relief" and sought for the first time "to have the Board enter an order requiring IDOT to pay JM \$2,897,000.00 as compensation for the cost of conducting the remedial action on Sites 3 and the western portion of Site 6." Response at 1. IDOT continues its argument and states that the parties have never conducted discovery on the issues put forth by the Board's December 15, 2017, interim order and that "JM always claimed that IDOT was responsible for all of the costs which it incurred in investigating and remediating the entirety of Site 3 and a significant western portion of Site 6." *Id.* at 2. Finally, IDOT argues that the Board's interim order specifically rejected this claim by JM, instead finding IDOT liable for only a very limited and discrete portion of the two sites." *Id.*

DISCUSSION AND RULING

The Board noted in its order that JM filed a status report subsequent the hearing in which it sought \$3,582,000 in reimbursement from IDOT for cleanup costs. Johns Manville, v. Illinois Department of Transportation, PCB 14-3 slip op. at 22 (December 15, 2017). The Board further found that JM provided only estimated costs and leaves the Board "unable to determine the reasonable costs that may be attributable to IDOT." *Id.* The Board therefore ordered a hearing addressing 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 share of the JM's costs attributable to IDOT.
3. The amount and reasonableness of JM's costs for this work. *Id.*

Based on the Board's order, I find that further discovery is required, including expert discovery. After a review of IDOT's and JM's proposed discovery schedules, the discovery schedule for the hearing on cleanup costs is as follows:

Deadline for serving all written discovery- March 15, 2017;

Deadline for completing all written discovery- April 21, 2017;

Deadline for completing the depositions of any fact witnesses- May 26, 2017;

Deadline for JM to file any expert report(s)-June 26, 2017;

Deadline for completion of deposition(s) of JM's expert(s)-July 24, 2017;

Deadline for IDOT to file its expert report(s)-August 18, 2017;

Deadline for completion of deposition(s) of IDOT's expert(s)-September 15, 2017;

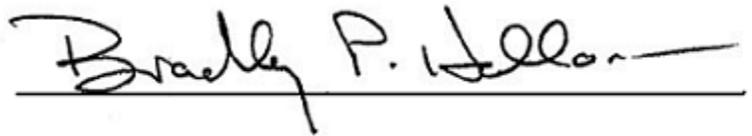
Deadline for filing prehearing motions, including motions *in limine*-October 2, 2017;

Deadline for filing responses to prehearing motions, including motions *in limine*-October 6, 2017;

Hearing will be scheduled for the week of October 23, 2017.

The parties or their legal representatives are directed to participate in a telephonic status conference with the hearing officer on February 28, 2017, at 11:00 a.m. The telephonic status conference must be initiated by the complainant, but each party is nonetheless responsible for its own appearance.

IT IS SO ORDERED.

A handwritten signature in black ink that reads "Bradley P. Halloran" with a horizontal line underneath it.

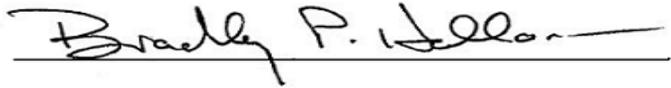
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CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were e-mailed on February 28, 2017, 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 February 28, 2017:

Don Brown
Illinois Pollution Control Board
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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