

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

**COMPLAINANT’S MOTION *IN LIMINE* TO BAR RESPONDENT ILLINOIS DEPARTMENT OF TRANSPORTATION FROM CALLING STEVEN GOBELMAN AS A LAY WITNESS AT HEARING**

Complainant JOHNS MANVILLE (“JM”) hereby submits its Motion *in Limine* to Bar Respondent ILLINOIS DEPARTMENT OF TRANSPORTATION (“IDOT”) from Calling Steven Gobelman as a Lay Witness at Hearing (“Motion *in Limine*”). In support of this Motion *in Limine*, JM states as follows:

1. JM has alleged that IDOT violated Section 21 of the Illinois Environmental Protection Act in connection with asbestos containing material (“ACM”) found buried on two properties in Waukegan, one owned predominantly by ComEd and the other owned by IDOT. Among other things, JM alleges that IDOT caused and allowed the disposal of ACM on the properties during its construction work on the Amtstutz Expressway in the 1970s and thereafter (the “Project”).
2. IDOT’s resident engineer for the Project admitted in a Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”) Section 104(e)

Response to “dealing with asbestos pipe during the project and burying some of it” during construction of the Project.

3. On April 30, 2015, IDOT served JM with IDOT’s Supplemental Response to Claimant’s First Set of Interrogatories. In its supplemental response, IDOT, for the first time, identified Steven Gobelman as a person who was contacted in responding to the USEPA’s Section 104(e) Request. Mr. Gobelman was not identified in response to any other interrogatories or as having knowledge of any other facts or issues in this case. *See* IDOT’s Supplemental Response, attached hereto as **Exh. 1**.

4. Shortly thereafter, counsel for JM reached out to IDOT’s counsel inquiring about the nature and scope of Mr. Gobelman’s knowledge with respect to the factual issues in this case. *See* Email Correspondence, attached hereto as **Exh. 2**. JM would “likely want to depose him [Mr. Gobelman] if he will be testifying or if you [IDOT] are planning to rely on him for anything.” *Id.*

5. Counsel for IDOT responded that “[a]t this point, we have no plans to call Mr. Gobelman as witness.” *Id.*

6. Nevertheless, after the initial close of fact discovery, Mr. Gobelman was subsequently disclosed by IDOT as a controlled expert witness. As such, he was deposed, solely in that capacity, on July 10, 2015.

7. To date, IDOT has never disclosed Mr. Gobelman as a lay witness or amended its representation that Mr. Gobelman would not be called as a fact witness at a hearing of this matter. Consequently, Mr. Gobelman was not deposed as a lay witness, though JM had expressed that it would want to do so if Mr. Gobelman was to be testifying at trial.

8. Because Mr. Gobelman was not fully disclosed as a fact witness in discovery, IDOT should not be allowed to call him as a fact witness at the hearing scheduled for March 15, 2016. *See e.g., Joseph & Victoria Morrissey v. Geoff Pahios & Alpine Auto.*, PCB 09-10, 2010 WL 2018866, \*1 (May 5, 2010).

9. In the alternative, should the Board decide to permit Mr. Gobelman to testify as a lay witness, the scope of Mr. Gobelman's lay testimony should be limited to the topics on which his name was limitedly referenced in discovery — specifically (and solely), IDOT's Section 104(e) Response.

10. To hold otherwise, would be prejudicial to JM where, had Mr. Gobelman been properly disclosed as a witness who IDOT intended to call as a fact witness at trial, JM would have sought to depose Mr. Gobelman so as not to be unfairly surprised by his testimony.

WHEREFORE, Complainant JOHNS MANVILLE respectfully requests that the Board enter an Order barring IDOT from calling or eliciting lay testimony from Steven Gobelman, or, in the alternative, to limit the lay testimony of Steven Gobelman to the issue of IDOT's Section 104(e) response.

Respectfully submitted,

BRYAN CAVE LLP

Attorneys for Complainant Johns Manville

By:           /s/ Susan Brice            
Susan Brice, ARDC No. 6228903  
Lauren J. Caisman, ARDC No. 6312465  
161 North Clark Street, Suite 4300  
Chicago, Illinois 60601  
(312) 602-5124  
Email: susan.brice@bryancave.com

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on February 8, 2016, I caused to be served a true and correct copy of *Complainant's Motion in Limine to Bar Respondent Illinois Department of Transportation From Calling Steven Gobelman as a Lay Witness at Hearing* 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/ Susan Brice*

Susan Brice

**SERVICE LIST**

Evan J. McGinley  
Office of the Illinois Attorney General  
69 West Washington Street, Suite 1800  
Chicago, IL 60602  
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James R. Thompson Center  
100 W. Randolph, Suite 11-500  
Chicago, IL 60601  
E-mail: Brad.Halloran@illinois.gov

Illinois Pollution Control Board  
John Therriault, Clerk of the Board  
James R. Thompson Center  
100 W. Randolph, Suite 11-500  
Chicago, IL 60601  
E-mail: John.Therriault@illinois.gov

**EXHIBIT 1**

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

**ILLINOIS DEPARTMENT OF TRANSPORTATION'S SUPPLEMENTAL RESPONSE TO COMPLAINANT'S FIRST SET OF INTERROGATORIES**

Respondent, the ILLINOIS DEPARTMENT OF TRANSPORTATION, through its attorney, LISA MADIGAN, Attorney General of the State of Illinois, herewith provides its supplemental response to Complainant's First Set of Interrogatories.

**GENERAL OBJECTIONS**

To the extent applicable, IDOT states these general objections and hereby incorporates them by reference as objections into each and every one of its responses to Johns Manville's interrogatories.

1. IDOT has not completed its investigation and discovery in this action nor its preparation for trial. Accordingly, all responses below are based only upon such information and documents that are presently available and specifically known to IDOT. As discovery progresses, IDOT reserves the right to supplement its responses to the discovery requests.

2. IDOT objects to the interrogatories insofar as they purport to seek information that is protected from discovery by the attorney-client privilege, the work product doctrine, the

deliberative due process privilege, or any other doctrine or privilege protecting information from discovery.

3. IDOT objects to these interrogatories to the extent they seek information pertaining to issues unrelated to the issues identified in the Amended Complaint, the response to which, to the extent any response is otherwise possible, would require extensive and costly investigation and compilation of information not presently available.

4. IDOT objects to these interrogatories to the extent that they are oppressive, unduly broad and burdensome, or seek information not in its possession, custody or control.

5. IDOT objects to these interrogatories to the extent that they are vague or ambiguous and that any response to the same would be based on speculation as to the meaning or scope of a given interrogatory.

6. IDOT objects to these Interrogatories to the extent that they seek information previously available to Johns Manville or in Johns Manville's possession. The burden of obtaining the information necessary to respond to these interrogatories is the same for Johns Manville as it is for the IDOT.

7. IDOT objects to these Interrogatories to the extent they assume, imply or require any legal conclusions.

8. IDOT does not concede the relevancy of any information sought or discovered in responding to these interrogatories and requests for production.

9. IDOT objects to the instructions and definitions to these interrogatories insofar as they require IDOT to undertake or investigate or produce information in excess of what is required of it under the Board regulations and the Illinois Code of Civil Procedure.



10. IDOT further objects to the definition for "Identify," insofar as it seeks the social security numbers of any individual who IDOT identifies in response to Johns Manville's interrogatories. The inclusion of such information is not reasonably related to Johns Manville's right to obtain discovery from IDOT and therefore IDOT declines to provide any information related to the social security numbers of any individuals it may identify in responding to these discovery requests, owing to the personal and sensitive nature of this information.

11. IDOT specifically objects to Johns Manville's inclusion of an undefined term (e.g., "any and all Bypasses") in the definition of the term "Amstuz Project."

12. IDOT does not concede the relevancy of any information sought or discovered in responding to these interrogatories.

### **RESPONSES TO INTERROGATORIES**

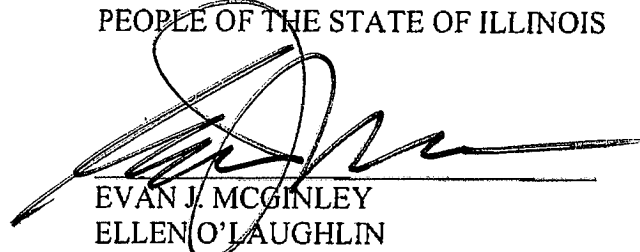
3. Describe any and all persons contacted in responding to the 104(e) Request.

#### **RESPONSE**

Pursuant to the provisions of Illinois Supreme Court Rule 213(e), IDOT refers Johns Manville to the copy of IDOT's entire November 27, 2000 response to USEPA's 104(e) Request ("104(e) Response") which it previously produced to Johns Manville in response to its document production request. IDOT's 104(e) Response constitutes the sole record known to IDOT at this time of any communications that are responsive to this interrogatory, owing to the death of J. Randle Schick, the former IDOT attorney who prepared 104(e) Response. In addition to those individuals previously identified by IDOT in its response to this interrogatory, IDOT states as follows: Steven Gobelman. Mr. Gobelman is employed by IDOT and may be contacted through IDOT's counsel.

RESPECTFULLY SUBMITTED,

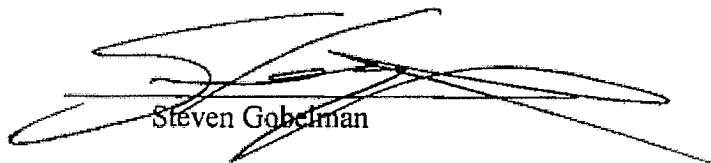
PEOPLE OF THE STATE OF ILLINOIS

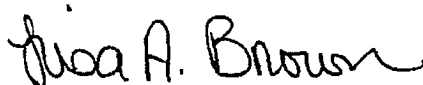
A handwritten signature in black ink, appearing to read 'Evan J. McGinley', is written over a horizontal line. The signature is stylized and somewhat cursive.

EVAN J. MCGINLEY  
ELLEN O'LAUGHLIN  
Illinois Attorney General  
Environmental Bureau  
69 West Washington Street  
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312/814-3153  
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[emcginley@atg.state.il.us](mailto:emcginley@atg.state.il.us)  
[eolaughlin@atg.state.il.us](mailto:eolaughlin@atg.state.il.us)

**VERIFICATION**

I, Steven Gobelman, do hereby certify under oath that I have reviewed Respondent Illinois Department of Transportation's Supplemental Responses to Johns Manville's Revised First Set of Interrogatories, and that to the best of my knowledge and belief, these supplemental responses are true, accurate and complete.

  
Steven Gobelman



Signed and subscribed to before  
me this 30<sup>th</sup> day of April, 2015,  
in Springfield, Sangamon County, Illinois.

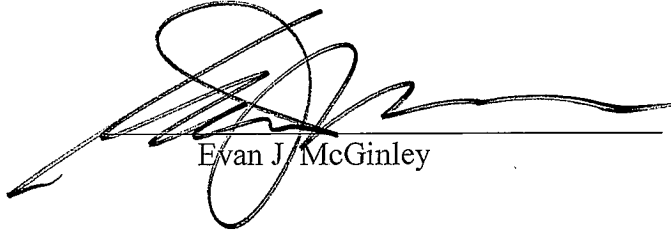


**CERTIFICATE OF SERVICE**

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

I, EVAN J. MCGINLEY, do hereby certify that, today, April 30, 2015, I caused to be served a copy of IDOT's Supplemental Response to Complainant's First Set of Interrogatories on the persons identified below by electronic mail and first class mail.

Susan Brice  
Kathrine Hanna  
Bryan Cave LLP  
161 North Clark Street  
Suite 4300  
Chicago, Illinois 60601  
[Susan.Brice@bryancave.com](mailto:Susan.Brice@bryancave.com)  
[Kathrine.Hanna@bryancave.com](mailto:Kathrine.Hanna@bryancave.com)



Evan J. McGinley

**EXHIBIT 2**

**From:** McGinley, Evan <emcginley@atg.state.il.us>  
**Sent:** Monday, May 04, 2015 11:04 AM  
**To:** Dixon, Kathrine Brooke  
**Subject:** RE: Johns Manville v. IDOT, PCB 14-3: IDOT's Supplemental Response to JM's 1st Set of Interrogatories

Kathrine:

At this point, we have no plans to call Mr. Gobelman as witness. His knowledge of events related to this matter simply involves his having assisted former IDOT attorney Randy Schick in his efforts to gather information relative to IDOT's response to USEPA's 2000 104(e) request.

Regards,

Evan J. McGinley  
Assistant Attorney General  
Environmental Bureau  
69 West Washington Street, Suite 1800  
Chicago, IL 60602  
312.814.3153 (phone)  
312.814.2347 (fax)  
[emcginley@atg.state.il.us](mailto:emcginley@atg.state.il.us)

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**From:** Hanna, Kathrine [<mailto:Kathrine.Hanna@bryancave.com>]  
**Sent:** Monday, May 04, 2015 10:13 AM  
**To:** McGinley, Evan  
**Subject:** RE: Johns Manville v. IDOT, PCB 14-3: IDOT's Supplemental Response to JM's 1st Set of Interrogatories

Received. Thank you, Evan.

Are you planning to use Mr. Gobelman as a witness and can you please provide the scope of his knowledge (for example, did he actually work on the Amstutz project)? We'd likely want to depose him if he will be testifying or if you are planning to rely on him for anything. Thank you.

Best,  
Kathrine



**Kathrine Dixon Hanna**

Associate

[kathrine.hanna@bryancave.com](mailto:kathrine.hanna@bryancave.com) T: +1 312 602 5161 M: +1 773 953 4867

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**From:** McGinley, Evan [<mailto:emcginley@atg.state.il.us>]  
**Sent:** Thursday, April 30, 2015 10:19 AM

## Electronic Filing - Received, Clerk's Office : 02/08/2016

**To:** Hanna, Kathrine; Brice, Susan

**Subject:** Johns Manville v. IDOT, PCB 14-3: IDOT's Supplemental Response to JM's 1st Set of Interrogatories

Dear Counsel:

We are serving you with a copy of IDOT's Supplemental Response to Johns Manville's 1<sup>st</sup> Set of Interrogatories. A hard copy is also being mailed out to you today.

Regards,

Evan J. McGinley  
Assistant Attorney General  
Environmental Bureau  
69 West Washington Street, Suite 1800  
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312.814.3153 (phone)  
312.814.2347 (fax)  
[emcginley@atg.state.il.us](mailto:emcginley@atg.state.il.us)

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