

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

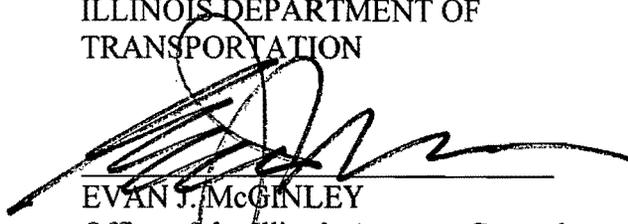
To: ALL PERSONS ON SERVICE LIST

Please take note that today, February 8, 2016, I have filed the following document in the above-referenced matter with the Clerk of the Illinois Pollution Control Board, the following documents, copies of which are hereby served upon you:

- Motion *in Limine* to Bar Certain Opinion Testimony of Douglas G. Dorgan
- Motion *in Limine* to Bar Introduction of Certain Statements made by Former IDOT Employee Duane Mapes

Respectfully Submitted,

ILLINOIS DEPARTMENT OF
TRANSPORTATION



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THIS FILING IS SUBMITTED ON RECYCLED PAPER

CERTIFICATE OF SERVICE

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

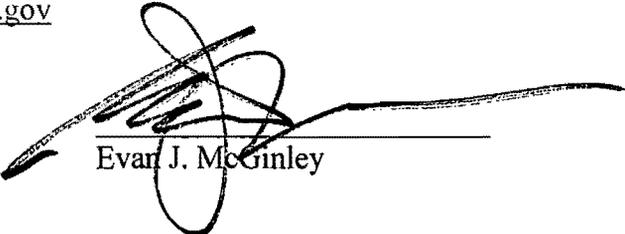
I, EVAN J. MCGINLEY, do hereby certify that, today, February 8, 2016, I caused to be served on the individuals listed below, by first class mail and electronic mail, a true and correct copy of the attached Notice of Filing, as well as Respondent's Motion *in Limine* To Bar Certain Opinion Testimony of Douglas G. Dorgan and Motion *in Limine* to Bar Introduction of Certain Statements Made By Former IDOT Employee Duane Mapes:

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Evan J. McGinley

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)	
Respondent.)	

**MOTION IN LIMINE TO BAR CERTAIN OPINION
TESTIMONY OF DOUGLAS G. DORGAN**

Respondent, Illinois Department of Transportation (“IDOT”), hereby moves the Hearing Officer, pursuant to Illinois Pollution Control Board Rules 101.500, 101.502 and 101.610, for an Order barring Petitioner’s disclosed expert witness, Douglas G. Dorgan, from providing certain opinion testimony at trial. In support of this Motion *in Limine*, Respondent states as follows:

I. Introduction

The underlying facts of this case concern a construction project that was undertaken by IDOT over 40 years ago (“Project”). The relevant parts of the Project at issue in the underlying case involved the construction of railroad overpass along Greenwood Avenue, in Waukegan, Illinois, in the vicinity of and adjacent to Johns Manville’s former Waukegan plant. (First Am. Compl. ¶ 22.)

II. Mr. Dorgan Should Be Barred From Presenting any Opinion at Hearing on the Ultimate Legal Issues in This Matter

Expert testimony is admissible only if the expert has specialized knowledge that will “assist the trier of fact in understanding the evidence.” *Grant v. Petroff*, 291 Ill. App. 3d 795, 801 (5th Dist. 1997). When determining whether proffered expert testimony assists the trier of fact, it is settled that “expert testimony as to legal conclusions that will determine the outcome of the

case is inadmissible.” *Good Shepherd Manor Foundation, Inc. v. City of Momence*, 323 F.3d 557, 564 (7th Cir. 2003) (finding that expert’s opinions were legal conclusions where expert opined that city’s actions violated a statute); *see also Northern Moraine Wastewater Reclamation Dist. v. Illinois Commerce Com’n*, 392 Ill. App. 3d 542, 573 (2d Dist. 2009) (a witness may not give testimony regarding statutory interpretation or legal conclusions). The Board also adheres to this understanding of the law. *People v. Consolidated Freightways Corp. of Delaware et al.*, PCB No. 76-107, 1978 WL 9011 at * 5 (Oct. 4, 1978) (“[w]hile it is proper for Mr. Cutler [a proposed expert witness] to describe the conduct of Respondent pursuant to specified rules and regulations, legal conclusions and determinations of fact are matters which rest with this Board”); *People v. Panhandle Eastern Pipe Line Co.*, PCB No. 99-191, 2001 WL 1286284 at *2 (Oct. 18, 2001) (citing *Coyne v. Robert H. Anderson & Assocs., Inc.*, 215 Ill. App. 3d 104, 112 (2d Dist. 1991) (“an expert witness cannot testify regarding legal conclusions”)).

As set forth in his March 16, 2015 expert report, among the many opinions which Mr. Dorgan offers therein, he concludes that “IDOT’s Conduct was a Violation (sic) Section 21 of the Act.” (Expert Report of Douglas G. Dorgan Jr. [“Dorgan Rept.”], at 18.)¹ Specifically, Dorgan opines that IDOT violated Sections 21(a) and (e) of the Environmental Protection Act, (“Act”), 415 ILCS 5/21(a) and (e) (2014), and goes on to express his opinion that the Illinois EPA “likely would view IDOT’s conduct to be “open dumping” under Section 3.305 of the Act, 415 ILCS 5.330.” (Dorgan Rept. at 19.) Dorgan further opines that “IEPA would treat crushed and buried ACM as both “solid waste” and “hazardous waste.” (Id.)

Mr. Dorgan’s opinions regarding questions related to IDOT’s alleged violations of Sections 21(a) and (e) of the Act in this matter constitute impermissible legal conclusions that go to the ultimate issue before the Board in the upcoming hearing in this matter, namely, whether

¹ A true and correct copy of relevant portions of Mr. Dorgan’s Report are attached hereto as Exhibit A.

IDOT's conduct some forty plus years ago in the construction of the Project constitutes a violation of the Sections 21(a) and (e) of the Act. Because Mr. Dorgan's opinions in this regard go to the ultimate issues raised by Johns Manville in their First Amended Complaint, and which in turn are properly decided by the Board alone, Johns Manville should be barred from presenting any testimony from Mr. Dorgan regarding his opinions that IDOT violated Sections 21(a) and (e) of the Act or to enter that portion of his Report into evidence in this matter.

III. Mr. Dorgan Is Not Qualified By Virtue of Either His Training or Experience to Render Any Expert Opinions About How the Project was Designed or Constructed

In Section 3.2 of his Report, Mr. Dorgan states that it is his opinion that "IDOT Construction Activities Responsible for ACM Waste." (Report, §3.2, at 11.) In his Report, Dorgan opines about how IDOT went about constructing the Amstutz Project (e.g., "The plan cross sections for Greenwood Ave (sic) within Site 6 (Sta 7+00 to 9+22) shown on sheets 71 and 72 of the plans indicated excavation was performed in these areas and fill material was needed.") (Report, §3.2, at 12.) Elsewhere, Dorgan states that:

IDOT was responsible for the fill it brought to the Site. On Sheet 4 of the Lochner Plans, the first note of the General Notes states 'The 'Standard Specifications for Road and Bridge Construction' adopted January 2, 1971, shall govern construction.'" (Id.)

Ultimately, it is Dorgan's opinion that the way in which IDOT constructed the Amstutz Project led to the environmental issues and violations that Johns Manville alleges IDOT caused. (Id., §3.2, at 12-14.)

Yet, for all of his opinions regarding the manner in which IDOT designed and then constructed the Amstutz Project, there is absolutely no indication that he possesses the requisite training or experience that would allow him to render any admissible opinions about these issues. His curriculum vitae ("CV"), which is included as Appendix A to his Report, clearly demonstrates that Mr. Dorgan does not have any relevant education or training that would allow

him to render an opinion about how the project was either designed or constructed. His education consists of a B.S. in Earth Sciences, some graduate coursework in environmental sciences, and a M.S. in Geography/Environmental Science. He does not hold any sort of degree in engineering. Nor does Mr. Dorgan's experience provide him with a basis for rendering opinions about the design and construction of highways, particularly the one at issue in this case. His work experience is in the field of environmental assessments, permitting, and remediation. A review of the "Select Project Experience" portion of his CV does not contain any mention of his having worked on any sort of highway design or construction project.

Mr. Dorgan attempts to cover over his lack of relevant experience and training by stating "I have been qualified as an expert witness and supported litigation associated with projects involving environmental assessment, design, permitting, and constructed related issues." (Report §1.2, at 2.) Notably absent from the foregoing statement is any reference to Mr. Dorgan having previously been qualified as an expert in a case where the construction of a highway project was at issue. (See, Report, §1.2, at 2-3.) Presumably, had he ever been so qualified, he would have made reference to it in his Report or his CV.

Mr. Dorgan attempts to gloss over his lack of relevant education or background in highway construction by noting that "[o]f particular relevance to this case, I have worked on numerous commercial and industrial properties exhibiting legacy environmental impacts." (Report, §1.1, at 3.) But he fails to demonstrate why this experience provides him with the foundation to render opinions about the construction of a highway or the possibility of environmental impacts flowing therefrom.

As Illinois courts have recognized, for an expert's testimony to be admissible, "it must be on questions coming within the field of his training or experience." *Broussard v. Huffman Mfg.*

Co., 108 Ill.App.3d 356, 362 (3rd Dist. 1982.) The *Broussard* case is instructive about just what sorts of training and/or experience is required to be accepted as an expert witness. In *Broussard*, plaintiff's expert was asked to provide an opinion in a products liability case about whether a gasoline can had been defectively designed. *Broussard*, at 362. The appellate court found that the trial court had erred in allowing the testimony of plaintiff's expert, who was a civil engineer and "was knowledgeable about the transport of hazardous substances in highway or railway cars, yet had no special knowledge of hazardous substances in gasoline cans." *Id.*

Mr. Dorgan has no specialized knowledge that is relevant to the question that is fundamental to this case: How did IDOT go about designing and actually constructing the highway project at issue in this case and which allegedly gives rise to its liability?

In light of Mr. Dorgan's lack of training and experience regarding highway design and construction, Johns Manville should be barred from: 1) presenting any testimony from Mr. Dorgan regarding the manner in which the Project was designed or constructed; and 2) introducing into evidence or otherwise making reference to Section 3.2 of Dorgan's Report.

IV. Mr. Dorgan's Opinions About IDOT's Construction Activities Are Impermissibly Based At Least In Part on Another Expert's Opinions and Must Be Barred

As discussed above in Section III of this Motion, Mr. Dorgan does not have any training or experience in the construction of highways. During his initial deposition in this case on May 6, 2015, Mr. Dorgan testified about having worked with other individuals who were experienced in construction-related matters, most particularly, his colleague, John Talbot,² in developing a portion of the opinions which he presented in his Report and which Johns Manville apparently will seek to offer at hearing in this matter. Specifically, counsel for IDOT asked a series of questions, to which Mr. Dorgan responded as follows:

² Mr. Dorgan and Mr. Talbot are both employed by Weaver Consultants Group, LLC.

Q. Okay. So the terms of this agreement involve both you (sic) providing services as well as John Talbot.

Can you tell us who Mr. Talbot is?

A. He's a project director managing our site building and infrastructure practice group in our Chicago office.

Q. Okay. And as the site building and infrastructure group, what does that -- what types of assignments, what types of work does that group typically perform?

A. They can provide a wide range of services primarily related to engineering associated with site development and related survey, construction, geotechnical engineering services that often are provided as a part of that effort.

Q. Okay. And when you say "construction," what sorts of construction would we be talking about?

A. Commercial construction, industrial construction, roads and highways, office buildings, institutional properties --

Q. When you --

A. -- airports.

Q. Sorry. I didn't mean to interrupt.

When you say "roads and highways," I mean, does Weaver actually do work for Illinois Department of Transportation?

A. We do not.

* * *

Q. Thank you. So in the process of developing the opinions that you have offered in this case by way of your expert report, to what extent did you work

with Mr. Talbot in the development of those opinions?

A. I consulted Mr. Talbot in the engineering issues related to the past construction efforts that took place at the site.

Q. Okay. And how extensively did you consult with Mr. Talbot about those particular issues, about the construction-related aspects of work that was done at the site?

A. Generally, I interfaced with John and members of his team in seeking support in the preparation of some of the figures that were produced in the expert report.

Q. And when you say "figures," what figures are you referencing?

A. The figures primarily with respect to the cross-sections that overlay the historic site conditions with the changed conditions as a result of the Amstutz construction project.

Q. And we are talking about his having reviewed documentation related to the Amstutz construction project; correct?

A. That's correct.

(Deposition of Douglas G. Dorgan, Jr., pp.10:22 – 13:15.)³ (Emphasis added.)

The opinions in Mr. Dorgan's Report fail to properly attribute the instrumental role played by his colleague in the development of those opinions. Mr. Dorgan's reliance upon his colleague's opinions and insights about how IDOT conducted the Project is inadmissible because, in relying on Mr. Talbot's opinions in the formulation of the opinions he is offering in

³ A true and correct excerpt of the transcript of Mr. Dorgan's May 6, 2015 deposition is attached as Exhibit B to this motion.

this case, he is simply being a mouthpiece for of a[n expert] in a different specialty.” *Citibank, N.A. v. McGladrey and Pullen, LLP*, 2011 IL App (1st) 102427, ¶ 18 (barring an auditor from opining about the findings of healthcare specialists employed by the same consulting firm, as these were not the expert witness’s own opinions, based on his own expertise). Accordingly, Johns Manville should be barred from presenting any portion of Mr. Dorgan’s Report that discusses any aspect of IDOT’s construction work or any opinion related thereto. Likewise, Johns Manville should be barred from eliciting any testimony from Mr. Dorgan regarding any aspect of the design or construction of the Project.

V. Mr. Dorgan’s Opinions Regarding IDOT’s Work on the Construction Project Are Based on Impermissible Conjecture and Speculation and Should Therefore Be Barred

Mr. Dorgan opinion that IDOT’s construction of the Project allegedly caused or contributed to the contamination at the Site (Report, §§3.2 and 3.3, at 11-18), can only be viewed as speculative in nature. In particular, his opinions that “IDOT Construction Activities Were Responsible for ACM Waste” and that “IDOT’s Handling of Transite Pipe[®] Resulted in a Substantial Increase in Scope of Remedy for Site 3 and Site 6” rest, in large part, upon his review of the IDOT’s construction documents for the project. (Id.) As already discussed above in Section IV of this Motion, though, by his own admission, Mr. Dorgan relied upon the work of his colleague John Talbot to formulate an understanding of how IDOT purportedly went about constructing the Project.

Mr. Dorgan also opines that “IDOT used, spread, buried, placed and disposed of ACM waste, including Transite[®] pipe, throughout Site 3 and portions of Site 6 during the construction of the Greenwood Avenue ramp and expressway bypass from 1971 to 1976.” (Report, §3.2, p.11.) However, Mr. Dorgan fails to support this opinion with any contemporaneous evidence

whatsoever, regarding how IDOT, in fact, actually conducted the construction work at issue in this case. Most especially, he cites to no evidence or facts about how the Project was actually constructed. His opinions about the Project's construction are based on nothing more than information provided to him by his colleague, speculation and unfounded assumptions.

As the Appellate Court of Illinois noted “[t]he opinion of an expert witness should constitute a definite and reasonably certain opinion of the witness and not mere conjecture, probability or speculation.” *Marshall v. First Am. Nat. Bank of Nashville*, 91 Ill.App.2d 47, 53 (5th Dist. 1968). As another Illinois court noted, conjecture is “a conclusion based on assumption not in evidence or contracted by the evidence.” *Davis v. Kraff*, 405 Ill.App.3d 20, 35 (1st Dist. 2010). Mr. Dorgan's opinion regarding how IDOT conducted a construction project undertaken some 40 years ago should be barred because it does not “constitute a definite and reasonably certain opinion,” and essentially amounts to his groundless conjectures about what took place during the construction of the Project.

V. Prayer for Relief

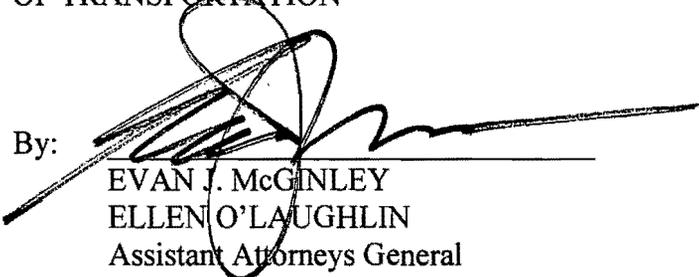
Based on the foregoing and in the interests of judicial economy, Respondent respectfully requests that the Hearing Officer enter an order:

1. Barring Johns Manville from eliciting any testimony from Mr. Dorgan regarding his opinion that IDOT violated Sections 21(a) and (e) of the Act, or introducing any portion of Mr. Dorgan's Report, wherein he opines that IDOT violated the aforementioned provisions of the Act.
2. Barring Johns Manville from seeking to elicit any testimony at trial from its expert, Douglas Dorgan, regarding the design and construction of the Project;

3. Barring Johns Manville from seeking to introduce into evidence any portion of Douglas Dorgan's Report which discussed the design or construction of the Project;
and,
4. Granting such other relief as the Hearing Officer deems proper.

Respectfully Submitted,

ILLINOIS DEPARTMENT
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By: 

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March 16, 2015

EXPERT REPORT OF DOUGLAS G. DORGAN JR.

**JOHNS MANVILLE VS
ILLINOIS DEPARTMENT OF TRANSPORTATION**

Former Johns Manville Facility
Site 3 and Site 6
Waukegan, Illinois

PREPARED BY



**Weaver
Consultants
Group**



1 INTRODUCTION

1.1 Executive Summary and Scope of Work

I have been requested by Bryan Cave, LLP (Client) to provide expert opinions on behalf of Johns Manville concerning Site 3 and Site 6 of the Johns Manville Southwestern Site Area located in Waukegan, Lake County, Illinois (respectively Site 3 and Site 6). The focus of my review has been on impacts to the scope of planned remediation activities resulting from past IDOT construction activities at Site 3, and the western limits of Site 6. I will refer to both Sites herein collectively as the "Site."

Historic investigation and remediation planning at the Site has been completed pursuant to an Administrative Order on Consent No. V-W-07-C-870 (AOC) executed by and between Johns Manville and Commonwealth Edison Company and the United States Environmental Protection Agency (USEPA). Weaver Consultants Group North Central, LLC (WCG) was retained to consider and provide opinions relating to whether the Illinois Department of Transportation (IDOT) is responsible for asbestos containing material ("ACM") found at Sites 3 and portions of Site 6; and, if so: 1) whether, how and when IDOT handled ACM at Sites 3 and 6; 2) whether and the extent to which IDOT's historic handling of the ACM caused or is causing Johns Manville to do additional work associated with its ongoing cleanup; and 3) based upon my experience, whether the IEPA would consider IDOT's handling of the ACM to be a violation of the Illinois Environmental Protection Act ("Act").

To prepare this report, I have reviewed various documents associated with the environmental conditions and remedial action at the Site, including IDOT's standard specifications and engineering drawings relating to its work at the Site in the 1970s, aerial photographs of the Site, environmental investigations at the Site, correspondence with USEPA regarding the Site, evolving plans to remediate the Site, draft cost estimates provided by AECOM, the current contractor, and the documents produced by both JM and IDOT in this case. I also relied upon information gathered from a Site reconnaissance performed on Monday, February 23, 2015. Lastly, I considered my experience with similar sites and projects and public domain documents. Based upon these factors, I have developed the following opinions:

1. The first developed use of the Site 3 occurred in the 1950s when Johns Manville leased Site 3 from ComEd to construct a parking lot for use by employees at the manufacturing facility located north of East Greenwood Drive. The parking lot was removed by IDOT in the late 1960s or early 1970s as part of its work on the Amstutz Expressway Project (the Amstutz Project). Site 3 is now vacant land. Site 6 has historically been used as a road. The road was modified as part of the Amstutz Project by IDOT. The road still exists.

2. IDOT is responsible for the placement and dispersion of ACM waste currently found at the Site. IDOT, at a minimum used, spread, buried, placed and disposed of ACM waste, including Transite® pipe, throughout Site 3 and portions of Site 6 during its work on the Amstutz Project from 1971 to 1976. IDOT's activities associated with the Amstutz Project resulted in crushed Transite® pipe and asbestos material being spread across and buried at Site 3 and the western end of Site 6. IDOT left and never removed the Transite® pipe and asbestos material they spread across and buried at the Site.
3. As a result of IDOT using, spreading, burying, placing, and disposing of ACM waste in and around Site 3 and Site 6 as part of the Amstutz Project, the scope of the expected remedial activities are significantly more extensive than would have otherwise been required by USEPA.

Based on my experience, IEPA would more likely than not consider IDOT's actions in using, spreading, burying, placing, disposing of and leaving ACM waste on Site 3 and Site 6 to be a violation of Section 21 of the Act. Additional and more specific opinions are presented in the text to the following report, together with a discussion of the basis for each major opinion. I reserve the right to modify my opinions should my review of additional information warrant it. In particular, I understand that IDOT is planning to produce certain emails that relate to this case. I also understand that the scope of planned remedial activities, and the cost estimates for implementing the work, continue to evolve. Review of emails to be produced by IDOT, as well as changes to the scope of planned remedial measures and corresponding updates to the associated cost estimates, may influence the opinions presented herein.

1.2 Qualifications

My resume, together with the list of my publications is presented in **Appendix A**.

I have over 25 years of experience working as an environmental consultant. I received my Bachelors of Science in Earth Science, with a Minor in Geology, from Eastern Illinois University in 1986. I received my Masters of Science in Geography with a Concentration in Environmental Science from Northern Illinois University in 1994. I am a Licensed Professional Geologist in the states of Illinois and Indiana.

Since 1986 my practice has focused principally on providing consulting services and performing remedial investigation, planning, design and construction for a wide range of industrial, commercial and institutional properties. I have been qualified as an expert witness and supported litigation associated with projects involving environmental assessment, design, permitting, and construction related issues. I have implemented various projects involving compliance with the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Additionally, I am familiar with and have completed projects under various Illinois regulatory programs including, but not limited to, the Resource Recovery and Conservation Act (RCRA), Leaking Underground Storage

Tank (LUST) Program, and Site Remediation Program (SRP). I have regularly interfaced with both the USEPA and IEPA in many contexts, including CERCLA and violations of the Act.

Of particular relevance to this case, I have worked on numerous commercial and industrial properties exhibiting legacy environmental impacts. Such properties have included steel mills, foundries, landfills, glass manufacturing facilities, rail yards, and commercial shopping centers. I have experience assessing and remediating soils and fill material impacted by a wide range of materials including, but not necessarily limited to, petroleum, chlorinated solvents, metals, polychlorinated biphenyl's (PCBs), and asbestos. I am experienced in the design, permitting, construction and environmental monitoring of both solid and hazardous waste disposal facilities. I have experience supporting environmental investigation and restoration associated with Brownfield's redevelopment, with specific emphasis on evaluating and mitigating risks to future users associated with site environmental conditions. Furthermore, I have significant experience working on projects throughout the Chicago metropolitan area, having spent most of my professional career based in Chicago. Locally, Weaver Consultants Group has offices in Chicago and Naperville, Illinois.

1.3 Information Considered

WCG was provided access to and has reviewed the full document record, including documents produced by IDOT and JM, available for this matter. WCG also reviewed IDOT standard specifications, aerial photographs and recent changes to the scope of work and associated cost estimates provided by AECOM. A bibliography of documents cited in this Expert Report is presented in **Appendix B**. Citations to these references are shown in superscripts in the following text.

1.4 Report Organization

This Expert Report is organized into the following sections:

- Section 2 presents Site background information, factual and historical information related to the Site;
- Section 3 presents my expert opinions, along with discussion supporting my opinions.

2 SITE BACKGROUND

2.1 Site Location

Site 3 and Site 6 are shown on the attached **Figure 1**. Site 3 is located southwest of the former Johns Manville (JM) facility at 1871 North Pershing Road, Waukegan Illinois, at the southeast corner of the intersection of East Greenwood Avenue and North Pershing Road. The Site lies within Lake County, and is within the northwest portion of Section 15, Township 45 North, Range 12 East of the Third Principal Meridian. Site 3 consists of approximately 3.115 acres with approximately 641 feet of frontage along East Greenwood Avenue. The Site is bounded to the north by East Greenwood Avenue, to the west by North Pershing Road, to the east by a railroad spur accessing the adjacent Midwest Generation facility, and the south is currently an empty lot.¹

Site 6 is a linear feature adjacent to the former JM facility primarily comprising the shoulders of East Greenwood Road, in Waukegan, Illinois. The Site is owned by the City of Waukegan.

The surrounding area is a mix of industrial and residential properties, with industrial properties to the east of North Pershing Road and residential properties to the west. A coal-fueled power plant operated by Midwest Generation is located immediately to the east of Site 3, and to the south of Site 6. Illinois Beach State Park lies to the east of the Site on the shoreline of Lake.

2.2 Site History

2.2.1 Facility Operations

Site 3 is owned by ComEd and is located south of the Greenwood Avenue right-of-way near the southern property line of the former JM manufacturing facility. According to Nicor Gas Company, a 20-inch natural gas line was installed six to eight feet below ground surface (bgs) beneath Site 3 in 1948¹. Pursuant to a lease agreement with ComEd, JM used Site 3 as a parking lot for JM employees and invitees from the late 1950s through approximately the early 1970s¹³. It is our understanding that JM constructed a parking lot on Site 3 circa late 1950s in order to provide additional parking for the administration building at the plant¹¹. Based upon the record, asbestos-containing pipes were split in half lengthwise and used for curb bumpers within the parking lot on Site 3.

The parking lot was taken out of service in approximately 1972 by IDOT during the Amstutz Project, which included the construction of an embankment on the northwestern portion of the Site as well as IDOT Detour Road A as shown on **Figures 2 and 3**.

IDOT engineering drawings for the Amstutz Project show that IDOT needed to excavate and fill areas on the Site because the underlying material was unsuitable. Prior to IDOT's work on Sites 3 and 6, the elevation of Site 3 was approximately 587.5 to 588.5 feet above mean sea level and Site 6 was approximately 588 feet above mean sea level. Part of IDOT's work involved raising the grade of Site 3 slightly in some areas, lowering the grade in other areas, and raising the grade of Greenwood Avenue substantially in some areas. For example, following construction, the elevation near the intersection of Greenwood and Pershing Road was approximately 600 feet above mean sea level. After construction, the record indicates that the contractor hired by IDOT was paid a "special excavation" fee to "remove and obliterate the Detour Roadways".¹⁸

Site 3 is currently vacant with the exception of one transmission tower located on the eastern portion of the Site. Site 6 generally comprises the shoulders of East Greenwood Avenue.

2.2.2 Environmental Aspects of Historical Operations

Documents indicate that asbestos-reinforced cement (Transite®) pipes were placed on the Site 3 parking lot and used for tire stops (i.e., to keep the cars from going too far and off the parking lot¹¹) in approximately the 1950s. Beginning in approximately 1971, IDOT constructed Detour Road A on Site 3 for use during construction of the Amstutz Project. In their response to USEPA's request for information regarding Site 3, IDOT disclosed that their resident engineer on the project "recalled dealing with asbestos pipe during the project and burying some of it¹³". During the construction of the Amstutz Project approximately 262,000 cubic yards of structural borrow material¹⁴ was required for construction of the bridge approach embankments. The source of this borrow material is unknown at this time. This material would have been brought on the Site and compacted by mechanical means. Some quantity of this 262,000 cubic yards was placed within the western limits of Site 6, and on the northwest portions of Site 3.

2.3 Site Environmental Conditions

In 1998, JM discovered asbestos containing materials (ACM) at the surface on Site 3. In accordance with a sampling protocol agreed upon with USEPA, JM catalogued and removed surficial ACM and conducted sampling of the area.

2.3.1 ELM Sampling

ELM Consulting LLC (ELM) conducted sampling for ACM at Site 3 and issued a report dated December 1999. The northwest and northeast portions of Site 3 were not sampled during the ELM grid-sampling event due to the presence of standing water. Results of the ELM sampling have been visually represented on the attached Figures 2, 3, 4 and 5. In general, the ELM sampling identified visual ACM (see Figure 2) across generally the north central and northeast portions of Site 3, generally aligned with the location of former Detour

3 OPINIONS

The following provides my expert opinions, followed by information in support of the various opinions:

3.1 Site Usage

The first developed use of the Site 3 occurred in the late 1950s when Johns Manville constructed a parking lot for use by employees at the manufacturing facility located north of East Greenwood Drive. Site 6 was historically used as a road. The road was elevated by IDOT in the 1970s.

The above opinion is supported by the following multiple lines of evidence.

Based upon review of the facility record, and review of certain available historical use sources, prior to the mid 1950s, Site 3 was a vacant, undeveloped property. In the late 1950s, under lease to Commonwealth Edison (ComEd), Johns Manville constructed an approximate 48,000 square foot parking lot that serviced the adjacent main facility complex located across East Greenwood Avenue. Prior to construction of the parking lot, there had been no previous structures present on the Site 3. The property had not been utilized by ComEd as part of its adjacent power generating facility, nor had it been utilized by the adjacent Johns Manville facility. The parking lot operated from its date of construction in the late 1950, through to approximately 1970 when the parking lot was destroyed under contract to the IDOT to accommodate construction of the Amstutz Project¹⁷.

As of 1939, Site 6 was paved with a road, now known as Greenwood Avenue. The road was modified in the 1970s by IDOT as part of the Amstutz Project. Fill was used by IDOT to create the embankment and to raise Greenwood Avenue.

3.2 IDOT Construction Activities Responsible for ACM Waste

It is my opinion that IDOT is responsible for the placement and dispersion of ACM waste currently found at the Site. IDOT used, spread, buried, placed and disposed of ACM waste, including Transite® pipe, throughout Site 3 and portions of Site 6 during construction of the Greenwood Avenue ramp and expressway bypass from 1971 to 1976. These construction activities associated with the Amstutz Project resulted in crushed Transite® pipe and asbestos material being spread across and buried at Site 3 and the western end of Site 6. IDOT never removed the Transite® pipe and asbestos materials it spread across and buried at the Site.

The above opinion is supported by the following multiple lines of evidence.

Within the project record, there are multiple references to the use of Transite® Pipe within the JM parking lot serving as vehicle parking bumpers. Transite® Pipe, also known as Asbestos Cement Pipe, began being used in the 1940s for potable water, sanitary sewer, and storm drain pipelines (Williams, G. Eric and Aspern, Kent Von, date unknown). The Engineering Evaluation/Cost Analysis prepared by LFR references that "Transite® pipe was utilized as parking space "bumpers" on the ground surface". The USEPA subsequently confirmed this finding indicating in their Enforcement Action Memorandum that "Asbestos-containing pipes were split in half lengthwise and used for curb bumpers on Site 3." It would appear that there is little argument that Transite® pipe had been present on Site 3 associated with their use for parking bumpers in the Johns Manville parking lot. Transite® pipe was constructed primarily of Portland cement, however, asbestos was used to increase the pipe strength. Various reports suggest the asbestos content of Transite® pipe could range from 15 percent up to 20 percent, although in later years of production the content was lowered to less than 0.2% (2009, Aspern, Kent Von).

Aerial photos show the parking lot and apparent Transite pipe parking bumpers in aerial photographs from 1961 and 1967. In 1972, the parking lot is no longer evident in an available aerial photo.

In approximately 1970, IDOT began work on the Amstutz Project. The project involved portions of Site 3, and the western end of Site 6. Specifically, as indicated in IDOT Construction Drawings for the Project, a bypass road for the East Greenwood interchange (Detour Road A), was constructed across the center portion of Site 3 as shown on the attached Figure 3. Additionally, the Amstutz Project included the construction of the Greenwood Road Overpass, which involved raising the elevation of Greenwood Road and building an embankment near where Greenwood intersects with Pershing. The embankment is on portions of Site 6 and 3 (see Figure 2).

IDOT plans prepared by H.W. Lochner, Inc. for Amstutz Project (F.A. Route 437 – Section 8-HB & 8-VB) provide information documenting the importation of fill material (Borrow Excavation). On sheet 5, Schedule of Quantities, the Summary of Quantities lists total "Borrow Excavation" for the project as 262,540 cu yds. The plan cross sections for Greenwood Ave within Site 6 (Sta 7+00 to 9+22) shown on sheets 71 and 72 of the plans indicate excavation was performed in these areas and fill material was needed.

IDOT was responsible for the fill it brought to the Site. On Sheet 4 of the Lochner plans, the first note of the General Notes states "The "Standard Specifications for Road and Bridge Construction" adopted January 2, 1971, shall govern construction." The IDOT "Standard Specifications for Road and Bridge Construction" Section 204.42 state "Borrow Excavation shall not be placed in the embankment until the site location, excavation plan and material have been approved by the Engineer in writing." Thus, all Borrow Excavation material was to be approved by the IDOT Engineer prior to its use on the Site and IDOT was responsible for its contents.

In AECOMs Respondent Response Document to Engineering Evaluation/Cost Analysis², they indicate “[i]n their response to USEPAs request for information regarding Site 3, IDOT disclosed that their resident engineer on the project “recalled dealing with asbestos pipe during the project and burying some of it.””

As noted in the Background Section, several investigations for the presence of asbestos materials on Site 3 and Site 6 have been completed. The first of these investigations was completed in 1998 and included the visual observation and removal of asbestos fragments and fragment clusters from the surface of Site 3. Of the seventy-four (74) locations where ACM fragments or fragment clusters were encountered on Site 3, Transite[®] Pipe was observed at sixty-five (65) locations (Appendix F of referenced report). Additionally, Transite[®] was identified in several of the borings that were completed as part of this investigation (Appendix G).

Thereafter LFR undertook an investigation of Site 3 and Site 6. Results of this investigation were presented in the report “Engineering Evaluation/Cost Analysis, Southwestern Site Area Sites 3, 4/5, and 6, Revision 4” dated April 4, 2011². Visual ACM was observed in test pits advanced as part of the investigation on Site 3.

In 2008, LFR was retained by ComEd to complete a soil excavation along the south side of the Greenwood Avenue shoulder. The work performed was documented in a letter report addressed to Exelon dated July 8, 2008. The excavation was noted to be located “within the southern shoulder of Greenwood Avenue and, based upon the elevation data, was also within the built-up ramp to the Amstutz Expressway. “ The center of the excavation was reported to be at an elevation of approximately 591 to 591.5 feet above mean sea level (AMSL). The letter report documents that “[d]uring the excavation, several pieces of Transite[®] pipe, which is an asbestos containing material, were encountered within the clay fill material.” ACM was observed within the excavation at approximately 588.5 feet AMSL. The nominal surface elevation of the adjacent Site 3 was reported to be at an approximate elevation of 587.5 feet AMSL. The letter report indicates that the excavation “falls clearly within the Greenwood Avenue ramp construction for the Amstutz Expressway.” The letter report concludes by stating “[f]rom this it may be concluded that the Transite[®] pipe was found within the soil placed as part of the Greenwood Avenue ramp construction.”

Finally, additional investigation of Site 3 was undertaken in 2013 and documented in the report entitled “Southwestern Site Area, Site 3, 4/5, and 6 Removal Action Workplan, Revision 2” prepared by AECOM dated March 31, 2014¹. In planning for the removal action, additional characterization of the presence of ACM was undertaken using hydraulic and hand excavations, test pits, and soil borings. Consistent with the results of previous investigations, Transite[®] pipe was specifically noted to be present at three of the sample locations on Site 3 (HYD-05 0-1’, HYD-06 0 – 1’, TP-10 0-1’). As with previous

findings, the physical presence of identifiable Transite® pipe was generally located within the shallow subsurface at the Site.

The locations of Transite® pipe containing ACM discovered on Site s3 and 6, coupled with the Site history, demonstrate that IDOT used, spread, buried, placed, and disposed of ACM waste, including Transite® pipe, throughout Site 3 and portions of Site 6 during its work on the Amstutz Project from approximately 1971 to 1976. The distribution of visual ACM, mostly comprised of Transite® pipe, generally is consistent with the areas where IDOT performed work; the JM former parking lot, Bypass Road A and the embankment and south side of Greenwood Avenue. The occurrence of visual ACM is represented on Figure 3, which shows ACM generally being found within the central and northeastern areas of Site 3. This generally overlays with the location of the former parking lot area, which IDOT removed to build Detour Road A. Furthermore, the detection of asbestos in soil samples collected at Site 3 follows a similar pattern, with asbestos generally being detected within the central and northeastern areas of Site 3. Soil samples collected from across Site 3, and the western limits of Site 6, submitted for laboratory analysis exhibited concentrations of asbestos fibers in soil exceeding 0.1%. Asbestos fibers within the soil are believed to have originated at least in part from crushing of the Transite® pipe parking bumpers during the IDOT construction activities. Transite® pipe by nature is inert and non-friable. It is converted from a solid to a friable form during the crushing process. As evidenced by fragments of Transite® pipe being identified during various previous investigations, it is apparent that the condition of the original Transite® pipe bumpers had been changed by the disturbance associated with the construction activities performed by IDOT. The act of crushing Transite® pipe as a result of being tracked with heavy equipment, and being buried as occurred during the IDOT construction activities would result in asbestos fibers being released into the surrounding soils.

Further, when you compare the engineering drawings used by IDOT for Bypass Road A and Greenwood Avenue with the location of Transite® and ACM, it is clear that the Transite® and ACM is located in areas that were excavated and filled by IDOT as part of the construction. The Transite® pipe is located within three to four feet of the ground surface. This is demonstrated most clearly on Figures 4 and 5, which demonstrates the occurrence of asbestos within soil samples collected from fill materials placed by IDOT. The Transite® and ACM were found on Site 3 and Site 6 within fill materials placed by IDOT, above the predominant Site 3 and Site 6 elevation prior to IDOT construction, or in areas where IDOT excavated and removed "unsuitable materials". The July 8, 2008 LFR states "...it may be concluded that the Transite® pipe was found within the soil placed as part of the Greenwood Avenue ramp construction."

This evidence shows that when IDOT demolished the former JM parking lot to build Bypass Road A, it crushed and buried portions of the Transite® pipe that had been located on the parking lot. IDOT also spread the Transite® pipe around portions of Site 3 and 6 close to the former parking lot area as part of its work.

In summary, it is my opinion that the source of the Transite® pipe found at Sites 3 and the western limits of Site 6 immediately adjacent to the northern boundary of Site 3 was the Transite® pipe that had been used as parking bumpers in the former JM parking lot. The Transite® pipe bumpers were not removed but were crushed, buried, and mixed into the subsurface as part of Bypass Road A construction and the construction of the East Greenwood Road overpass embankment for the Amstutz Expressway.

3.3 IDOT's Handling of Transite® Pipe Resulted in a Substantial Increase in Scope of Remedy for Site 3 and Site 6

It is my opinion, that in the absence of the buried and dispersed Transite® pipe on the Site, it is unlikely that any response action would have been necessary at the site other than the surface ACM removal efforts.

As a result of IDOT's use, spreading, burying, placing and disposing of ACM in and around Site 3 and 6 as part of the Amstutz Project, the scope of the expected remedial activities are more extensive than would have otherwise been required by USEPA.

It is apparent that USEPA was concerned with the prospect of ACM moving up to the surface and becoming airborne. In the USEPA Modification to the EECA dated February 1, 2012, they specifically highlight concerns that "in frost susceptible areas, such as Waukegan, stones, and other large particles, such as broken scraps of asbestos, tend to move differentially upward through the soil with each freeze/thaw cycle. Thus, asbestos-containing wastes that are covered with soil can, over time, reach the soil surface and become readily releasable to the air".

USEPA also notes, "the shoulders of Greenwood Avenue in Site 6 are not vegetated and are subject to physical disturbance from the general public as well as potential damage from vehicles, snow plows, salt trucks, etc. Sites 3, 4/5, and 6 also contain utilities and these areas will be disturbed during maintenance and repair activities. Such damages or disturbance may result in the release of asbestos containing materials and asbestos fibers."

These concerns were used as the justification for requiring a more substantial cover design. The Transite® pipe observed on Site 3 and Site 6 is most comparable to "stones, and other large particles, such as broken scraps of asbestos". In the absence of this buried Transite® pipe, it is unlikely if any form of response activity would be needed.

On November 12, 2012, USEPA issued an Enforcement Action Memorandum (EAM). The purpose of the EAM was to communicate USEPA's position with respect to environmental conditions at Site 3 and Site 6. Specifically, the EAM documents USEPA's determination "...of an imminent and substantial threat to public health, welfare or the environment posed by contaminated soils at the Southwestern Site Area (Site) including Sites 3, 4/5,

contaminated soils. It is my opinion that IDOT's activities have caused the remedy on the western portion of Site 6.

USEPA is not requiring any work on the south side of Greenwood Road other than the area that was impacted by IDOT's work on the Amstutz Project.

As discussed in Section 2.4.2.2, the remedy selected for Site 6 involves abandonment or relocation of select utilities, and removal of soil. The following utilities present on Site 6 will be relocated or abandoned: 1) AT&T telecommunication lines present on the south side of Site 6 will be relocated, 2) an existing North Shore Gas line will be permanently abandoned, and 3) a City of Waukegan water main will be relocated. Approximately 6,420 cubic yards of soil will be removed to an estimated depth of 3 feet. For the southern portion of Site 6, the Scope of Work to be implemented pursuant to the approved RAWP includes:

1. Abandonment of a North Shore 12" gas line that transects Site 3, then intersects Site 6 and runs in an east/west orientation to the eastern limits of the Site 6 area located south of Greenwood Road.
2. Removal and relocation of an AT&T Fiber Optic Cable that transects Site 3 then intersects Site 6 and runs in an east/west orientation to the western limits of the Site 6 area located south of Greenwood Road.
3. Removal of asbestos contaminated fill material and replacement with clean fill.

Weaver Consultants has evaluated the Cost Estimate prepared by AECOM for the entire Site 6 (included as Appendix B). We have segregated those costs to be incurred for only the portion of Site 6 located on the south side of Greenwood Road, immediately adjacent to Site 3. Based upon our tabulation of these expenses, we believe that the work to be performed within the subject area will total between \$700,000 and \$1,000,000 (this is approximately 25% of the total estimated cost for the entire Site 6). However, a number of additional required tasks have not been included in this estimate, and some uncertainty exists regarding the actual costs for removal and/or replacement of select utilities. Consequently, it is my opinion that the actual costs for implementing the USEPA required remedy may potentially expand by a factor of 20% or more, raising the total cost of construction for the area of Site 6 immediately north of Site 3 to approximately \$840,000 to \$1.2M. It is my opinion based on review of the estimate prepared by AECOM that this estimate is reasonable for the tasks that have been quantified.

3.4 IDOT'S Conduct was a Violation Section 21 of the Act

Based upon my significant experience with IEPA, the IEPA regulations, the Act, CERCLA, RCRA and USEPA, it is my opinion that IDOT used, spread, buried, placed, disposed of and left pieces of asbestos containing Transite® pipe and ACM contaminated fill at Sites 3 and 6 as part of its work on the Amstutz Project. IDOT never removed the ACM and thus it remains largely in situ.

Based on my experience, the Transite® pipe and ACM contaminated fill attributable to IDOT would be treated by the regulators as "discarded material" under Section 3.535 of the Act and thus would qualify as a "waste" per the definition. The material resulted from IDOT's work on the Amstutz Project.

Similarly, IDOT's actions were the result of the consolidation of refuse (crushed Transite® pipe and/or contaminated fill) at Site 3 and 6, neither of which would be viewed by IEPA as a sanitary landfill under Illinois law. Thus, it is my opinion based on past experiences with similar sites, that IEPA likely would view IDOT's conduct to be "open dumping" under Section 3.305 of the Act, 415 ILCS 5/3.30.

Both USEPA and IEPA treat crushed and buried ACM as both "solid waste" and "hazardous waste." Further, these agencies would likely view the dumping and placing of said ACM at Sites 3 and 6 as "disposal" under Section 3.185 of the Act, 415 ILCS 5/3.185.

Neither Site 3 nor Site 6 are permitted waste disposal sites or facilities, which meet the requirements of the Act or its regulations as they relate to the disposal or abandonment of waste.

Based upon my experience and the foregoing, it is my opinion that IEPA would more likely than not view IDOT's conduct during the Amstutz Project involving asbestos as violating Section 21 of the Act. We believe that a client engaged in similar activities would be subject to potential enforcement action.

DOUGLAS G. DORGAN, JR., LPG

Principal

Fields of Expertise

Environmental Site Assessments, Environmental Permitting, Brownfield's Redevelopment, Groundwater Impact Assessments, Environmental Remedial Projects, Risk Based Corrective Action

Certification

Licensed Professional Geologist, State of Indiana
Licensed Professional Geologist, State of Illinois
OSHA Supervisor's Health & Safety Training
Chemical-terrorism Vulnerability Information (CVI)
Authorized User

Education

B.S. Earth Science, Eastern Illinois University, 1986
Graduate Course Work in Environmental Studies,
Sangamon State University, 1986
M.S. Geography/Environmental Science,
Northern Illinois University, 1993

Professional Summary

Mr. Dorgan serves as Principal and Senior Project Manager with Weaver Consultants Group. He has over twenty years of environmental and solid waste control project experience. He currently leads the firm's Environmental Practice professional staff. He has supervised completion of numerous projects including multi-phase environmental site assessments, risk based corrective action, Brownfield's redevelopment, hydrogeological investigations, groundwater impact assessments, remediation planning and implementation, multi media compliance audits, UST closures, and solid waste management facility permitting.

Prior to joining Weaver Consultants Group, Mr. Dorgan was an Office Director for a national environmental consulting firm.

Select Project Experience

He has been involved in over 50 state voluntary remediation program projects at sites located in states throughout the Midwest and Southwest. These projects have utilized a range of closure strategies involving site-specific fate and transport

modeling, risk assessment, remediation, land use controls, and engineered barriers. Many of these projects were completed in support of property acquisition and consequently completed in accordance with aggressive schedule and risk mitigation requirements.

Mr. Dorgan has provided services to both private and public sector clients redeveloping Brownfield's. Plans have included residential, retail, commercial, industrial, and mixed use developments. Work has been performed pursuant to various state and federal grant and revolving loan programs. He also consults on the unique construction related aspects of developing distressed properties.

He manages activities performed in compliance with a RCRA Hazardous Waste Management Permit for a major steel company located in Northwest Indiana. Responsibilities include supervision of preparation of permit renewal and amendment applications, permit negotiations with IDEM and USEPA, and ongoing groundwater sampling and reporting for a hazardous waste landfill network comprised of 64 monitoring points. Mr. Dorgan also manages RCRA Corrective Action activities for the site, including preparation of required plans and deliverables and investigation and corrective measures implementation pursuant to approved workplans.

Mr. Dorgan managed acquisition of a comprehensive "No Further Remediation" letter pursuant to the Illinois Site Remediation Program for a 14-acre parcel located in the northern suburbs of Chicago. A soil and groundwater investigation was performed to assess site impacts. Tier 2 modeling and development of site specific background following the Illinois Tiered Approach to Corrective Action Objectives (TACO) methods were used to support appropriate soil and groundwater remediation objectives. Remediation activities included removal of 45,000 tons of debris and fill material, and excavation and disposal of LUST contaminated soils.

As Principal in Charge, Mr. Dorgan is responsible for overseeing design, permitting and compliance

DOUGLAS G. DORGAN, JR., LPG

Principal

activities for a Type II and III Solid Waste Disposal facility in Pines, Indiana. He is also responsible for oversight of ongoing RI/FS activities for the Town of Pines Superfund Site in Pines, Indiana. On behalf of a major PRP, Mr. Dorgan is collaborating with other technical consultants on the implementation of the RI/FS and ongoing remedial measures development and construction.

He managed the site investigation and Indiana Voluntary Remediation Program activities for a large glass manufacturing facility in Central Indiana. Site investigation activities resulted in remediation of select facility areas to control for impacts attributable to semi-volatile organic compounds, polychlorinated biphenyl's (PCB's), and inorganic constituents. Additional site measures included removal of contaminated creek sediments and implementation of a comprehensive groundwater investigation.

Mr. Dorgan is currently managing an Illinois SRP application for a former die casting facility with PCB impacts to facility structures, soils, and shallow groundwater. Extensive site investigation has been undertaken and TACO Tier 2 and 3 modeling performed. A Site Investigation and Remediation Objectives Report has been submitted to support remediation objectives negotiation. He is coordinating planning for remedial activities including the acquisition of a Pollution Legal Liability and Environmental Cost Cap insurance policy.

He was Project Manager for a comprehensive Phase I Environmental Site Assessment of the General Motors Danville, IL gray iron foundry whose operations date to the early 1940s. Project required a detailed records review and site inspection to identify potential areas of concern. Subsequent responsibilities included developing a scope of work for site investigation.

Mr. Dorgan managed implementation of a facility-wide investigation for PCB-related impacts at a die casting facility in Chicago, Illinois. The investigation scope included sampling of soil, concrete, structural

surfaces, and process equipment. Based on investigation results, alternative risk-based opinions were evaluated for site remediation. In support of on-going litigation, an engineering remediation cost estimate was generated.

Mr. Dorgan managed RCRA Corrective Action activities for a specialty steel manufacturing facility in Niles, Michigan. Activities include operation and monitoring of an Interim Measures groundwater remediation system, implementation of preliminary subsurface investigations, development of RCRA RFI Workplans, and negotiations with Michigan Department of Environmental Quality personnel.

Mr. Dorgan managed a Phase I, II, and III Environmental Site Assessment of a 45-acre business park in Indianapolis. Project activities were performed on an accelerated basis to facilitate an aggressive land transfer negotiation. A detailed hydrogeologic assessment and a risk assessment was performed, quantifying required remedial measures.

He conducted comprehensive and media-specific environmental compliance audits of facilities located in four states for a major medical diagnostic imaging equipment manufacturer. Comprehensive audits were performed for select waste and scrap material management facilities. Audits included recommendations for corrective measures in addition to development of a division-wide program for management of recoverable waste streams.

Mr. Dorgan was the Project Manager for a Phase I and II Environmental Site Assessment of a 1.1 million square foot former can manufacturing facility in Chicago. Assessment activities were designed to evaluate long term liabilities and environmental considerations associated with facility reuse and/or demolition planning.

He has secured a focused NFR letter pursuant to Illinois SRP requirements for a fleet maintenance facility in the Chicago area. Project activities were implemented on an expedited basis to accommodate a property transaction. Direct

DOUGLAS G. DORGAN, JR., LPG

Principal

negotiations and communications with the IEPA allowed the NFR letter to be issued within 10 weeks of submission of the Site Investigation and Remediation Objectives Report.

Mr. Dorgan was responsible for managing environmental compliance aspects of a comprehensive underground storage tank management program implemented by a major electric utility company in Northern Illinois. The project required UST removal oversight/closure certification, site investigation, regulatory reporting, corrective action design/supervision, and regulatory negotiation. Project activities were concurrently undertaken at over 30 sites.

Publications/Presentations

Contributing author "*Municipal Solid Waste Landfills - Volume I General Issues*," University of Illinois at Chicago, November, 1989

"*Conducting Phase I Environmental Site Assessments*," presented to the DeKalb County Economic Development Corporation, Industry Roundtable, DeKalb, IL, November, 1990

"*Environmental Audits for Selection of Solid Waste Disposal Sites*," presented at Waubonsee Community College, Sugar Grove, IL, November, 1992

"*Distribution of Cadmium, Copper, Lead and Silver in Surface Soils of the Chicago Metropolitan Area*," Northern Illinois University, August, 1993

"*Conducting Effective Environmental Site Assessments*," presented to the Institute of Business Law Conference 'Environmental Regulation in Illinois', September, 1993

"*Minimizing Liability in Real Estate Transactions by Conducting Effective Environmental Site Assessments*," New Mexico Conference on the Environment, Journal of Conference Proceedings, April, 1994

"*General Geologic/Hydrogeologic and Contaminant Transport Principles*," presented to ITT/Hartford Insurance Co., January, 1996

"*Environmental Site Assessments and the Due Diligence Process*," presented to the AIG

Environmental seminar 'Legal Actions Against Facilities', March, 1998

"*Brownfields Development, TACO and the SRP Process*," presented to the Calumet Area Industrial Commission Executive Council, May, 1998

"*Property Acquisition and the Due Diligence Process*," presented to Cushman and Wakefield Corporate Services Department, August, 1998

"*Brownfields Development, TACO and the SRP Process*," presented to the Calumet Area Industrial Commission, March, 1999

"*Risk Management Tools for Contaminated Site Development*," presented to a construction industry seminar 'A View From the Top', February, 2000

"*Voluntary Remediation of Brownfields/Risk Based Remediation*" presented to Illinois Association of Realtors, October, 2002

"*Blue Skies for Brownfields*", Illinois Association of Realtors Magazine, May 2003

"*Environmental Considerations Associated with Site Development*", presented to Power Construction Operations Meeting, March 2006

"*Weaver Consultants Group Environmental Manager AAI Roundtable*", facilitator and presenter, June 2006

"*Overview of AAI and ASTM E1527-05: The Changing Due Diligence Landscape*", presented to Grand Rapids Chamber of Commerce Environmental Committee, January, 2007

"*Weaver Consultants Group Environmental Manager Vapor Intrusion Roundtable*", facilitator and presenter, July/November, 2007

"*Brownfields Redevelopment: A Catalyst for Change*", presented to Indian University Northwest, July, 2011

Professional Affiliations

National Brownfield Association
Air and Waste Management Association

Transcript of the Testimony of
DOUGLAS G. DORGAN

Date: May 6, 2015

Case: JOHNS MANVILLE VS. IDOT

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DOUGLAS G. DORGAN

May 6, 2015

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JOHNS MANVILLE, a)	
Delaware corporation,)	
)	
Complainant,)	
)	
v.)	PCB No. 14-3
)	(Citizen Suit)
)	
ILLINOIS DEPARTMENT OF)	
TRANSPORTATION,)	
)	
Respondent.)	

The deposition of DOUGLAS G. DORGAN, JR., LPG, called by the Respondent for examination, taken pursuant to the Illinois Pollution Control Board's procedural rules and the Illinois Rules of Civil Procedure pertaining to the taking of depositions for the purpose of discovery, taken before KATHLEEN M. DUFFEE, a Notary Public within and for the County of Cook, State of Illinois, and a Certified Shorthand Reporter of said state, at Suite 1800, 69 West Washington Street, Chicago, Illinois, on the 6th day of May, A.D. 2015 at 10:06 a.m.

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1 PRESENT:

2 BRYAN CAVE LLP,
3 161 North Clark Street, Suite 4300
4 Chicago, Illinois 60601-3315
5 (312) 602-5124, by:
6 SUSAN E. BRICE, ESQUIRE,
7 susan.brice@bryancave.com

8 appeared on behalf of the Complainant;

9 OFFICE OF THE ATTORNEY GENERAL, STATE OF
10 ILLINOIS, ATTORNEY GENERAL LISA MADIGAN,
11 ENVIRONMENTAL BUREAU,
12 69 West Washington Street, Suite 1800
13 Chicago, Illinois 60602
14 (312) 814-3153, by:
15 EVAN J. MCGINLEY, ESQUIRE, and
16 ELLEN F. O'LAUGHLIN, ESQUIRE,
17 emcginley@atg.state.il.us

18 appeared on behalf of the Respondent.

19 PRESENT VIA TELEPHONE:

20 Mr. Matt Dougherty
21 Mr. Steven Gobelman

22
23
24 REPORTED BY: KATHLEEN M. DUFFEE, CSR
 TOOMEY REPORTING (312) 853-0648

DOUGLAS G. DORGAN

May 6, 2015

Page 10

1 **reviewing the records.**

2 Q. If you were trying to figure out when you first
3 began reviewing these records, what kinds of documents
4 would you look at to attempt to pin that down in time?

5 I mean, you're billing for your work;
6 correct?

7 **A. Correct.**

8 Q. So you probably have to list work items and
9 descriptions of tasks that have been performed under
10 the terms of this engagement; correct?

11 **A. That's correct.**

12 Q. Okay. So would it be fair to therefore assume
13 that your records of the work that you've performed
14 would list the dates that you've done various tasks
15 with respect to reviewing the project record?

16 **A. That's correct.**

17 Q. Okay. So although you can't recall right now,
18 if we were, let's say, in your office, you'd be able
19 to probably pull those records up and see when exactly
20 you were doing that work; correct?

21 **A. More than likely.**

22 Q. Okay. So the terms of this agreement involve
23 both you providing services as well as John Talbot.

24 Can you tell us who Mr. Talbot is?

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1 **A. He's a project director managing our site**
2 **building and infrastructure practice group in our**
3 **Chicago office.**

4 Q. Okay. And as the site building and
5 infrastructure group, what does that -- what types of
6 assignments, what types of work does that group
7 typically perform?

8 **A. They can provide a wide range of services**
9 **primarily related to engineering associated with**
10 **site development and related survey, construction,**
11 **geotechnical engineering services that often are**
12 **provided as a part of that effort.**

13 Q. Okay. And when you say "construction," what
14 sorts of construction would we be talking about?

15 **A. Commercial construction, industrial**
16 **construction, roads and highways, office buildings,**
17 **institutional properties --**

18 Q. When you --

19 **A. -- airports.**

20 Q. Sorry. I didn't mean to interrupt.

21 When you say "roads and highways," I
22 mean, does Weaver actually do work for Illinois
23 Department of Transportation?

24 **A. We do not.**

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1 Q. Okay. Who would those consulting services
2 actually be provided to for roads and things of that
3 nature?

4 A. Generally, the services are provided to
5 property owners that are developing properties.

6 We do work on projects in Indiana that
7 involve the Indiana Department of Transportation where
8 we're working directly for communities that are doing
9 projects with the Indiana Department of Transportation,
10 but in Illinois most of our work relates to working
11 with private property owners that are developing
12 properties and managing access issues and easements
13 and issues of curb cuts, roadway realignments that are
14 needed to support the commercial development.

15 Q. Thank you. So in the process of developing
16 the opinions that you have offered in this case by way
17 of your expert report, to what extent did you work
18 with Mr. Talbot in the development of those opinions?

19 A. I consulted Mr. Talbot in the engineering
20 issues related to the past construction efforts that
21 took place at the site.

22 Q. Okay. And how extensively did you consult with
23 Mr. Talbot about those particular issues, about the
24 construction-related aspects of work that was done at

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1 the site?

2 **A. Generally, I interfaced with John and members**
3 **of his team in seeking support in the preparation of**
4 **some of the figures that were produced in the expert**
5 **report.**

6 Q. And when you say "figures," what figures are
7 you referencing?

8 **A. The figures primarily with respect to the**
9 **cross-sections that overlay the historic site**
10 **conditions with the changed conditions as a result of**
11 **the Amstutz construction project.**

12 Q. And we are talking about his having reviewed
13 documentation related to the Amstutz construction
14 project; correct?

15 **A. That's correct.**

16 Q. In the course of --

17 MR. MCGINLEY: Let's actually, if we could,
18 mark this as Exhibit No. 2, please.

19 (WHEREUPON, Dorgan Deposition
20 Exhibit No. 2 was marked for
21 identification as of 05/06/2015.)

22 BY MR. MCGINLEY:

23 Q. Mr. Dorgan, what I'm handing you and what the
24 court reporter is marking as Exhibit 2 is entitled
TOOMEY REPORTING (312) 853-0648

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JOHNS MANVILLE, a Delaware corporation,)
 Complainant,)
))
 v.) PCB No. 14-3
) (Citizen Suit)
ILLINOIS DEPARTMENT OF)
TRANSPORTATION,)
))
 Respondent.)

MOTION IN LIMINE TO BAR INTRODUCTION OF CERTAIN STATEMENTS MADE BY FORMER IDOT EMPLOYEE DUANE MAPES

Respondent, Illinois Department of Transportation ("IDOT"), hereby moves the Hearing Officer, pursuant to Illinois Pollution Control Board Rules 101.500, 101.502 and 101.610, for an Order barring Petitioner from seeking to enter into evidence at hearing certain statements purportedly made by former IDOT employee Duane Mapes (now deceased) to former IDOT counsel J. Randall Schick (also deceased), and which are contained in IDOT's November 27, 2000 letter ("November 27th Letter") to the United States Environmental Protection Agency ("USEPA"), in response to "USEPA's Request for Information Regarding the Johns Manville Superfund Site in Waukegan." In support of this Motion, IDOT states as follows:

I. Johns Manville Should Be Barred from Making Reference at Hearing to Certain Statements Made By a Former IDOT Employee Duane Mapes

In the Fall of 2000, USEPA sent an information request letter to IDOT, pursuant to its authority under Section 104(e) of the Comprehensive Environmental, Response, Cleanup and Liability Act ("CERCLA") ("104(e) Request"), seeking information in IDOT's possession that was potentially "relevant to the investigation of contamination at the Site and surrounding areas." (A copy of the 104(e) Request from IDOT's files is attached hereto as Exhibit A to this Motion.)

Item 10 on the 104(e) Request stated:

Describe all arrangements for the transportation, movement, or placement of ACM that was *in situ* at Area of Concern # 3 (i.e., Site 3) that the Illinois Department of Transportation carried out in the construction of the [project] and the post construction phase of this project.”

In its November 27th Letter in response to Item 10, IDOT, in relevant part, stated the following:

The retired resident engineer, Duane Mapes, for this construction project during a telephone call with J. Randle Schick, Assistant Chief Counsel, in October 2000, recalled dealing with asbestos pipe during the project and burying some of it.” (November 27th Letter, pp. 4-5. A copy of the November 27th Letter is attached to this Motion as Exhibit B.)

Mapes’ apparent recollection, in turn, forms the basis for the allegations in Johns Manville’s First Amended Complaint (“FAC”), wherein it alleges that:

IDOT has admitted to EPA that it dealt with asbestos pipe during the construction project. IDOT stated in a CERCLA Section 104(e) Response that a retired engineer, Mr. Duane Mapes, recalled “dealing with asbestos pipe during the project and burying some of it.” (FAC, p. 4, ¶30.)

Johns Manville should be barred from seeking to enter any reference to Mapes’ purported statement the November 27th Letter into evidence, as it is an inadmissible hearsay statements to which no exception applies.

IDOT expects Johns Manville to attempt to elicit testimony at trial regarding Mr. Mapes’s purported statement, arguing that it should be admitted as the statement of a party opponent. The statement is, however, inadmissible, as it fails to satisfy all of the criteria required for the admission of such statements under Illinois Rule of Evidence (“IRE”) 801(d)(2)(D). IRE 801(d)(2)(D) provides:

(d) Statements Which Are Not Hearsay. A statement is not hearsay if:

* * *

(2) Statement by Party-Opponent. The statement is offered against a party and is:

* * *

(D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, **made during the existence of the relationship**[.]

(Emphasis added.)

While assuming for the sake of argument that Mr. Mapes' alleged statement concerned a matter that was within the scope of his employment duties, it fails the second requirement for admissibility under IRE 801(d)(2)(D), in that it was not "made during the existence of the relationship."

Johns Manville's own allegations in Paragraph 30 of its First Amended Complaint undercut its ability to claim that Mr. Mapes' purported statement was the admission of a party opponent, as it alleges that Mr. Mapes was no longer employed by IDOT at the time that her purportedly made the statement contained in the November 27th Letter. Indeed, at the time that Mapes purportedly made this statement to former IDOT Assistant Chief Counsel Schick, it had been nine years since Mapes had retired from IDOT. (Exhibit C, Karin H. Smith, ¶ 5, p. 2.) As such, the statement attributed to Mr. Mapes in IDOT's November 27th Letter fails to satisfy the evidentiary requirements for the admission of such statements under IRE 801(d)(2)(D) and Johns Manville should therefore be barred from seeking to admit it into evidence or otherwise seeking to elicit testimony regarding that statement at hearing.

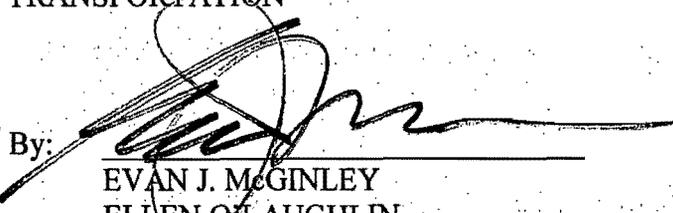
II. Prayer for Relief

Based on the foregoing and in the interests of judicial economy, Respondent respectfully requests that the Hearing Officer enter an Order:

1. Precluding Johns Manville from introducing Duane Mapes' statement into evidence or otherwise making reference to it at hearing in this matter; and,
2. Granting such other relief as the Hearing Officer deems proper.

Respectfully Submitted,

ILLINOIS DEPARTMENT OF
TRANSPORTATION

By: 

EVAN J. MCGINLEY
ELLEN O'LAUGHLIN
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(312) 814-3153
(312) 814-3094
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Illinois Department of Transportation
Office of the Chief Counsel, Room 313
2300 South Dirksen Parkway
Springfield, Illinois 62764
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Matthew.Dougherty@Illinois.gov



Electronic Filing - Received Clerk's Office: 02/08/2016
 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION 5
 77 WEST JACKSON BOULEVARD
 CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

SEP 29 2000

SR-6J

OFFICE OF THE ATTORNEY GENERAL
 SEP 29 10 56 AM '00
 RECEIVED

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Hon. Kirk Brown
 Secretary, Illinois Department of Transportation
 DOT Administration Building
 Room 300
 Springfield, Illinois 62674

Re: Request for Information Pursuant to Section 104 of CERCLA
 for Johns Manville Superfund Site in Waukegan, Illinois

Dear Secretary Brown:

The U.S. Environmental Protection Agency (U.S. EPA or Agency) is investigating the Johns Manville Superfund Site in Waukegan, Illinois (Site) and surrounding locations. U.S. EPA believes that the Illinois Department of Transportation may have information that is relevant to the investigation of contamination at the Site and surrounding areas. There are three parcels on or adjacent to the Site on which hazardous substances, specifically asbestos containing materials (ACM), have been identified. Attachment 6 is a map in which these parcels are identified as Parcels 1, 2, and 3. These three parcels, as well as the location and source of ACM now washing up on the beach of Illinois Beach State Park and conditions at the former Commonwealth Edison facility in Waukegan, Illinois, are the subject of this investigation.

Near the northwest corner of the Site is a narrow roadbed surfaced with ACM that extends in a northeasterly direction for approximately 300 yards. This area is identified at Attachment 6 as Parcel 1. Partially on and southeast of the Site is an ACM-contaminated municipal fishing pier property where a firing range was constructed in 1959. This area is identified in Attachment 6 as Parcel 2. Southwest of the Site, on Commonwealth Edison property is an ACM-contaminated parking lot constructed in 1957. This area is identified in Attachment 6 as Parcel 3.

Johns Manville has alleged that, during the construction of the Amstutz Highway during the late 1960s, the Illinois Department of Transportation constructed a bypass that was located, in part, on the area that is identified as Parcel 3. During the Highway construction period the Department of Transportation stored equipment in the same area. It is alleged that this construction activity may have affected the conditions of Parcel 3.



The U.S. EPA has the authority to use the information requested in an administrative, civil, or criminal action.

This information request is not subject to the approval requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. §3501, *et seq.*

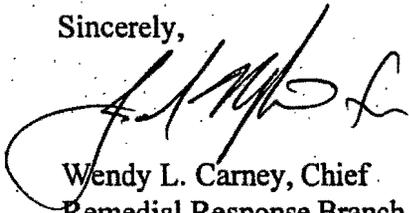
Return the response to this Information request to U.S. EPA within thirty (30) days of receipt of this Information Request. Mail the response to:

ATTN: Mike Rafati
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Mail Code SR-6J
Chicago, Illinois 60604

If you have questions about a legal matter, please call Ann Coyle, Assistant Regional Counsel, at 312 886-2248. Address technical questions to Brad Bradley, Remedial Project Manager, at 312 886-4742. Address all other questions to Mike Rafati, Enforcement Specialist, at 312 886-0390.

We appreciate your effort to respond fully and promptly to this information request.

Sincerely,



Wendy L. Carney, Chief
Remedial Response Branch # 1

- Attachment:
1. Questions
 2. Instructions
 3. Definitions
 4. Confidential Business Information
 5. Legal Authority
 6. Map
 7. Construction Drawings and Aerial Photograph

cc: Edward Gower, Chief Legal Counsel, Illinois Department of Transportation
Elizabeth A. Wallace, Assistant Attorney General, Environmental Bureau
Office of the Illinois Attorney General

The U.S. EPA asks that the Illinois Department of Transportation provide information and documents relating to the contamination of the Site; the above referenced three parcels, particularly Parcel 3; Lake Michigan; Illinois State Beach Park; and the Waukegan, Illinois generating facility formerly owned by Commonwealth Edison. Please respond completely and truthfully to this Information Request and its questions in Attachment 1 within 30 days of receipt of this letter. Instructions for completion of this response are in Attachment 2; definitions of terms used in this Information Request and its questions are in Attachment 3.

The Department of Transportation may consider some information that we request as confidential. If the Department wishes to assert a privilege of business confidentiality, it must respond to the question and advise U.S. EPA that it requests that the Agency treat the response as confidential business information. Directions to assert a claim of business confidentiality are in Attachment 5.

The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.*, commonly referred to as CERCLA or Superfund) gives the U.S. EPA the authority to: 1) assess contaminated sites, 2) determine the threats to human health and the environment posed by a site, and 3) clean up those sites.

Under Section 104(e)(2) of CERCLA, U.S. EPA has authority to gather information and to require persons to furnish information or documents relating to:

- A. The identification, nature, and quantity of materials which have been or are generated, treated, stored or disposed of at a vessel or facility or transported to a vessel or facility;
- B. The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at/or from a vessel or facility;
- C. The ability to pay the costs of the clean up.

Compliance with this Information Request is mandatory. Failure to respond fully and truthfully to each question within this Information Request and within the prescribed time frame can result in an enforcement action by U.S. EPA pursuant to Section 104(e)(5) of CERCLA, as amended. Failure to respond and failure to justify the non-response can result in similar penalties under this Section. Further, Section 104(e)(5) and 40 C.F.R. Part 19 authorize the United States to seek penalties from a federal court of up to \$27,500 for each day of non-compliance. The U.S. EPA considers non-compliance to be not only failure to respond to the Information Request, but also failure to respond completely and truthfully to each question in the Information Request.

The provision of false, fictitious or fraudulent statements or misrepresentations may subject you to criminal penalties or jail.

Attachment 2: Instructions

2

Site: Johns Manville

Waukegan, Illinois

11. Your response must be accompanied by the following statement, or one that is substantially equivalent:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

The individual who prepared the response or the responsible corporate official acting on behalf of the corporation must sign and date the statement, affidavit, or certification. Include the corporate official's full title.

12. If any of the requested documents have been transferred to others, or have otherwise been disposed of, identify each document, the person to whom it was transferred, describe the circumstances surrounding the transfer or disposition, and state the date of the transfer or disposition.
13. All requested information must be provided notwithstanding its possible characterization as confidential information or trade secrets. If desired, you may assert a business confidentiality claim by means of the procedures described in Attachment 4.

Attachment One**QUESTIONS**

These questions relate to a project located in Lake County, Illinois that is identified as F. A. Route 42, Section 8. Copies in the possession of U.S. Environmental Protection Agency of construction drawings prepared by H. W. Lochner, Inc., Engineers include a *Plan and Profile of Detour Road A* that shows information as follows:

Federal-Aid Route No.	Section	County	Total Sheets	Sheet No.
42	8-HB, 8-VB	LAKE		
FED. ROAD DIV. NO. 4		ILLINOIS	PROJECT U-UG-67 (9)	

1. Identify all persons consulted in the preparation of the answers to these questions.
2. Identify all documents consulted, examined, or referred to in the preparation of the answers to these questions, and provide copies of all such documents.
3. If you have reason to believe that there may be persons able to provide a more detailed or more complete response to any question in this Information Request or who may be able to provide additional responsive documents, identify such persons.
4. List your EPA Identification Numbers.
5. Identify the acts or omissions of any person, other than your employees, contractors, or agents, that may have caused the release or threat of release of hazardous substances, pollutants, or contaminants, including Asbestos Containing Materials ("ACM"), as defined as item 10 of Attachment 3 (Definitions), and damages resulting therefrom at the Area of Concern # 3, as defined at item 3 of Attachment 3 (Definitions).
6. Identify all persons, including current and former employees of the State of Illinois and its contractors and subcontractors, having knowledge or information about the generation, transportation, treatment, placement, disposal, or other handling of hazardous substances, including ACM, at the Area of Concern # 3.
7. Provide copies of all maps, surveys conducted, construction permits, contracts, and other documents relating to the construction of F. A. Route 42, Section 8-HB and 8-VB, particularly By-Pass A.

Attachment 1: Questions

2

Site: Johns Manville

Waukegan, Illinois

8. Provide copies of all deeds, rights-of-way, and agreements with the City of Waukegan, Lake County, Commonwealth Edison, and Johns Manville, Inc., and any other government agency in regard to the construction of F. A. Route 42, Section 8-HB and 8-VB, particularly By-Pass A.
9. Provide copies of all documents showing who had responsibility for the maintenance, traffic enforcement, and control over the roadway identified as F. A. Route 42, Section 8-HB and 8-VB, particularly By-Pass A during the construction of this roadway. Specify the periods (inclusive) of responsibility of each party.
10. Describe all arrangements for the transportation, movement, or placement of ACM that was *in situ* at Area of Concern # 3 that the Illinois Department of Transportation carried out in the construction of F. A. Route 42, Section 8-HB and 8-VB, particularly By-Pass A and the post construction phase of this project.
11. Provide a summary of information about the existence, quantity, and placement of ACM on Area of Concern # 3 that was in the possession of the Illinois Department of Transportation during the planning phase and the construction phase of F. A. Route 42, Section 8-HB and 8-VB, particularly By-Pass A. Provide copies of any contemporary records of this information that the Illinois Department of Transportation developed or maintained.
12. Did the Illinois Department of Transportation take or receive hazardous substances, including ACM, from other parties or locations and arrange for the placement or disposal of these hazardous substances at Area of Concern # 3? If the answer to this question is anything other than an unequivocal no, respond to question 13, below.
13. Identify all persons, including yourself, who may have arranged for disposal or treatment, or arranged for transportation for disposal or treatment, of waste materials, including hazardous substances and ACM, from the Site. In addition, identify the following:
 - a) The persons with whom you or such other persons made such arrangements;
 - b) Every date on which such arrangements took place;
 - c) For each transaction, the nature of the hazardous substances, including ACM, including the chemical content, characteristics, physical state (e.g., solid, liquid), and the process for which the substance was used or the process which generated the substance;
 - d) The owner of the hazardous substances, including ACM, so accepted or transported;

Attachment 1: Questions

3

Site: Johns Manville

Waukegan, Illinois

- e) The quantity of the hazardous substances, including ACM, involved (weight or volume) in each transaction and the total quantity for all transactions;
- f) All tests, analyses, and analytical results concerning the hazardous substances, including ACM;
- g) The persons(s) who selected the locations to which the hazardous substances, including ACM, were to be transported;
- h) The amount paid in connection with each transaction, the method of payment, and the identity of the person from whom payment was received;
- i) Where the person identified in g, above, intended to have such hazardous substances, including ACM, transported and all evidence of this intent;
- j) Whether the hazardous substances, including ACM, involved in each transaction were transshipped through, or were stored or held at, any intermediate site prior to final treatment or disposal;
- k) What was actually done to the hazardous substances, including ACM, once they were brought to the Site;
- l) The final disposition of each of the hazardous substances, including ACM, involved in such transactions;
- m) The measures taken by the Respondent to determine the actual methods, means, and site of treatment or disposal of the hazardous substances, including ACM, involved in each transaction;
- n) The type and number of containers in which the hazardous substances, including ACM, were contained when they were accepted for transport, where the containers were disposed, and all markings on such containers;
- o) The price paid for (i) transport, (ii) disposal, or (iii) both of each hazardous substance, including ACM;
- p) All documents containing information responsive to a - o above, or in lieu of identification of all relevant documents, provide copies of all such documents;
- q) All persons with knowledge, information, or documents responsive to a - p above.

Attachment Two

INSTRUCTIONS

1. Answer each of the questions in this Information Request separately.
2. Precede each answer with the number of the question to which it corresponds.
3. In answering each question, identify all persons and contributing sources of information.
4. Although the U.S. Environmental Protection Agency (U.S. EPA) seeks your cooperation in this investigation, CERCLA requires that you respond fully and truthfully to this Information Request. False, fictitious, or fraudulent statements or representations may subject you to civil or criminal penalties under federal law. Section 104 of CERCLA, 42 U.S.C. § 9604, authorizes the U.S. EPA to pursue penalties for failure to comply with that Section, or for failure to respond adequately to requests for submissions of required information.
5. In answering each question, identify all persons and contributing sources of information.
6. **Answer all questions for the period 1960 to the present.** Where the answer to a question varies over time, provide the exact date of any changes.
7. The Site has been divided into different areas of concern. See item 3 in Attachment 3 for the list of these different areas of concern. **Answer each question separately for each area of concern**, as appropriate, including separate answers for each of the three areas referenced in item 3(d) of Attachment 3.
8. You must supplement your response to U.S. EPA if, after submission of your response, additional information should later become known or available. Should you find at any time after the submission of your response that any portion of the submitted information is false or misrepresents the truth, you must notify U.S. EPA as soon as possible.
9. For any document submitted in response to a question, indicate the number of the question to which it responds.
10. You must respond to each question based upon all information and documents in your possession or control, or in the possession or control of your current or former employees, agents, contractors, or attorneys. Information must be furnished regardless of whether or not it is based on your personal knowledge, and regardless of source.

Attachment Three

DEFINITIONS

1. As used in this letter, words in the singular also include the plural and words in the masculine gender also include the feminine and vice versa.
2. The term *person* as used herein includes, in the plural as well as the singular, any natural person, firm, contractor, unincorporated association, partnership, corporation, trust or governmental entity, unless the context indicates otherwise.
3. *The Areas of Concern (AOC)* referenced in these documents shall mean:
 - (a) Illinois Beach State Park;
 - (b) the Commonwealth Edison facility and property located in Waukegan, Illinois, south of the Johns Manville Superfund Site;
 - (c) the Johns Manville Superfund Site, facility and property located in Waukegan, Illinois;
 - (d) three areas identified in the map at Attachment 6, located on or near the Johns Manville Superfund Site. These areas are: a former roadway northwest of the Site in Illinois Beach State Park; a municipal fishing pier southeast of the Site and partially on the Site; and a former parking lot southwest of the Site on Commonwealth Edison property; and
 - (e) Lake Michigan and adjacent beach areas.

Answer each question in Attachment 1 separately for each AOC area, as appropriate, including separate answers for each of the three areas referenced in item 3(d).

4. The term *hazardous substance* shall have the same definition as that contained in Section 101(14) of CERCLA, and includes but is not limited to asbestos and asbestos containing materials (ACM), and any mixtures of such hazardous substances with any other substances, including petroleum products. ACM is defined at item 10 in this Attachment.
5. The term, *pollutant* or *contaminant*, shall have the same definition as that contained in in Section 101(33) of CERCLA, and includes any mixtures of such pollutants and contaminants with any other substances.
6. The term *release* shall have the same definition as that contained in Section 101(22) of CERCLA, and means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant.

Attachment 3: Definitions

2

Site: Johns Manville

Waukegan, Illinois

7. The term *identify* means, with respect to a natural person, to set forth the person's full name, present or last known business address and business telephone number, present or last known home address and home telephone number, and present or last known job title, position or business.
8. The term *identify* means, with respect to a corporation, partnership, business trust or other association or business entity (including a sole proprietorship), to set forth its full name, address, legal form (e.g., corporation, partnership, etc.), organization, if any, and a brief description of its business.
9. The term *identify* means, with respect to a document, to provide its customary business description, its date, its number, if any (invoice or purchase order number), the identity of the author, addressor, addressee and/or recipient, and the substance or the subject matter.
10. The term *ACM* (asbestos containing materials) means any material containing asbestos, including, but not limited to, materials that have been contaminated by asbestos (i.e., soil, sand, water, etc.).
11. All terms not defined herein shall have their ordinary meaning, unless such terms are defined in CERCLA, RCRA, 40 C.F.R. Part 300, or 40 C.F.R. Part 260-280, in which case, the statutory or regulatory definitions shall apply.

Attachment Four

CONFIDENTIAL BUSINESS INFORMATION

You may consider some of the information confidential that the U.S. Environmental Protection Agency (U.S. EPA or Agency) is requesting. You can not withhold information or records upon that basis. The Regulations at 40 C.F.R. Part 2, Section 2.100 *et seq.*, require that the U.S. EPA afford you the opportunity to substantiate your claim of confidentiality before the Agency makes a final determination on the confidentiality of the information.

You may assert a business confidentiality claim covering part or all of the information requested, in the manner described by 40 C.F.R. 2.203(b). Information covered by such a claim will be disclosed by the U.S. EPA only to the extent and only by means of the procedures set forth in 40 C.F.R. Part 2, Subpart B. [See 41 Federal Register 36902 *et seq.* (September 1, 1976); 43 Federal Register 4000 *et seq.* (December 18, 1985).] If no such claim accompanies the information when the U.S. EPA receives it, the information may be made available to the public by the Agency without further notice to you. Please read carefully these cited regulations, together with the standards set forth in Section 104(e)(7) of Comprehensive Environmental Response Compensation Liability Act (CERCLA), because, as stated in Section 104(e)(7) (ii), certain categories of information are not properly the subject of a claim of confidential business information.

If you wish U.S. EPA to treat the information or record as *confidential*, you must advise U.S. EPA of that fact by following the procedures described below, including the requirement for supporting your claim of confidentiality. To assert a claim of confidentiality, you must specify which portions of the information or documents you consider confidential. Please identify the information or document that you consider confidential by page, paragraph, and sentence. You must make a **separate** assertion of confidentiality for **each response** and **each document** that you consider confidential. Submit the portion of the response that you consider confidential in a separate, sealed envelope. Mark the envelope *confidential*, and identify the number of the question to which the envelope's contents are the response.

For each assertion of confidentiality, identify:

1. The period of time for which you request that the Agency consider the information confidential, e.g., until a specific date or until the occurrence of a specific event;
2. The measures that you have taken to guard against disclosure of the information to others;
3. The extent to which the information has already been disclosed to others and the precautions that you have taken to ensure that no further disclosure occurs;

Attachment 4: Confidential Business Information

Site: Johns Manville, Waukegan, Illinois

4. Whether U.S. EPA or other federal agency has made a pertinent determination on the confidentiality of the information or document. If an agency has made such a determination, enclose a copy of that determination.
5. Whether disclosure of the information or document would be likely to result in substantial harmful effects to your competitive position. If you believe such harm would result from any disclosure, explain the nature of the harmful effects, why the harm should be viewed as substantial, and the causal relationship between disclosure and the harmful effect. Include a description of how a competitor would use the information.
6. Whether you assert that the information is voluntarily submitted as defined by 40 C.F.R. 2.201(i). If you make this assertion, explain how the disclosure would tend to lessen the ability of U.S. EPA to obtain similar information in the future.
7. Any other information that you deem relevant to a determination of confidentiality.

Please note that, pursuant to 40 C.F.R. 2.208(e), **the burden of substantiating confidentiality rests with you.** The U.S. EPA will give little or no weight to conclusory allegations. If you believe that facts and documents necessary to substantiate confidentiality are themselves confidential, please identify them as such so that U.S. EPA may maintain their confidentiality pursuant to 40 C.F.R. 2.205(c). If you do not identify this information and documents as *confidential*, your comments will be available to the public without further notice to you.

Attachment Five

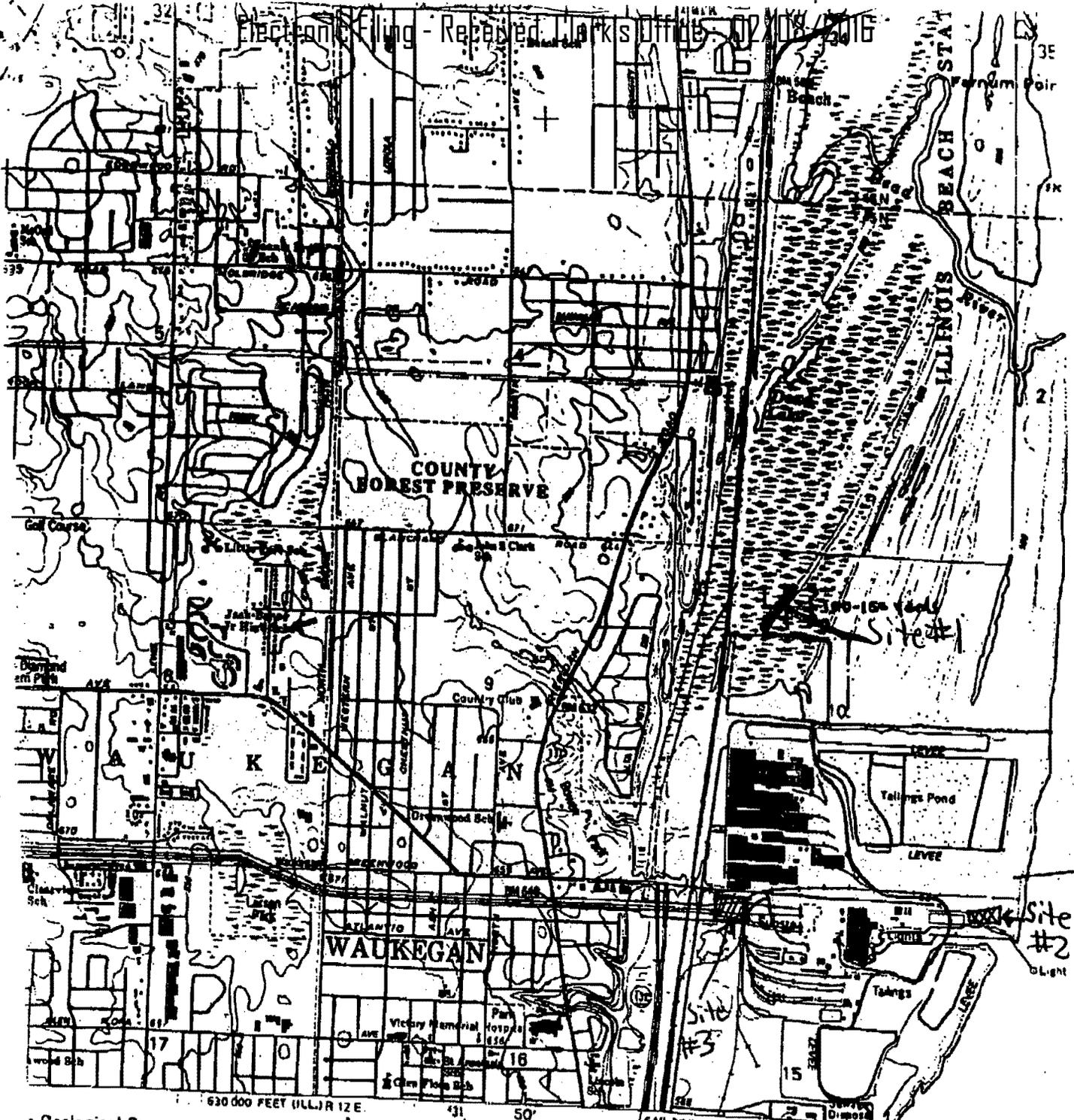
DESCRIPTION of LEGAL AUTHORITY

The federal **Superfund** law (the Comprehensive Environmental Response, Compensation and Liability Act), 42 U.S.C. Section 9601, *et seq.*, (commonly referred to as **CERCLA** or **Superfund**), gives the U.S. EPA the authority to, among other things: 1) assess contaminated sites; 2) determine the threats to human health and the environment posed by each site; and 3) clean up those sites in the order of the relative threats posed by each.

Under Section 104(e)(2) of CERCLA, 42 U.S.C. § 9604 (e)(2), U.S. EPA has broad information gathering authority which allows U.S. EPA to require persons to furnish information or documents relating to:

- A. The identification, nature, and quantity of materials which have been or are generated, treated, stored, or disposed of at a vessel or facility or transported to a vessel or facility;
- B. The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at/or from a vessel or facility;
- C. The ability to pay the costs of the clean-up.

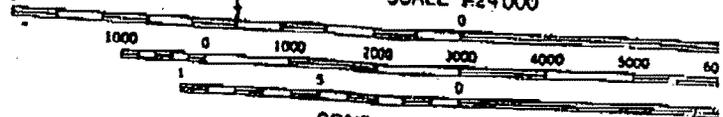
Compliance with this Information Request is mandatory. Failure to respond fully and truthfully to each question within this Information Request and within the prescribed time frame can result in an enforcement action by U.S. EPA pursuant to Section 104(e)(5) of CERCLA. This section also authorizes an enforcement action with similar penalties if the recipient of the Request does not respond and does not justify the failure to respond. Other statutory provisions (18 U.S.C. Section 1001) authorize separate penalties if the responses contain false, fictitious, or fraudulent statements. The U.S. EPA has the authority to use the information requested in this Information Request in an administrative, civil, or criminal action.



Geological Survey
Illinois agencies

Contours from aerial photographs
Contours revised from aerial photographs
Contours last edited 1993
Datum: National Geodetic Vertical Datum of 1929
Projection: UTM
Zone: 16E
Grid ticks, zone 16, shown in blue

Approximate location of ACM containing PCBs



CONTOUR INTERVAL 10 FEET
NATIONAL GEODETIC VERTICAL DATUM OF 1929

Grid ticks shown by dashed corner ticks

Site #1 = Roadway
Site #2 = Fishing Pier
Site #3 = Com Ed/Old
Parking Lot

Key:
[Solid black box] = approximate location of site #1
[Cross-hatched box] = approximate location of site #2
[Diagonal hatched box] = approximate location of site #3



Illinois Department of Transportation

Office of the Secretary
2300 South Dirksen Parkway / Springfield, Illinois / 62764
Telephone 217/782-5597

November 27, 2000

Mr. Mike Rafati
U. S. Environmental Protection Agency
77 West Jackson Boulevard
Mail Code SR-6J
Chicago, Illinois 60604

Re: Request for Information Regarding the Johns Manville Superfund Site in
Waukegan, Illinois Department of Transportation

Dear Mr. Rafati:

With the assistance of the Office of Chief Counsel, particularly the assistance of J. Randle Schick, Assistant Chief Counsel, the department has compiled the information enclosed as Attachment A, which you have requested with respect to the area that you have identified as Parcel 3 at this Site.

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Sincerely,

A handwritten signature in black ink, appearing to read "Kirk Brown".

Kirk Brown
Secretary

Enclosures



Attachment A

1. a. Ron Levine
Highway Systems Technician
Bureau of Local Roads
Division of Highways
Illinois Department of Transportation
2300 South Dirksen Parkway
Springfield, Illinois 62764
(217) 782-3401

- b. Michael Fitzgerald
Bureau Chief
District One
Bureau of Claims
Office of Chief Counsel
Illinois Department of Transportation
201 West Center Court
Schamburg, Illinois 60196-1096
(847) 705-4064

- c. Michael Hine
Bureau Chief
Bureau of Design & Environment
Division of Highways
Illinois Department of Transportation
2300 South Dirksen Parkway
Springfield, Illinois 62764
(217) 782-7526

- d. Andrew Bryk
Bureau Chief
District One
Bureau of Land Acquisition
District One
Illinois Department of Transportation
201 West Center Court
Schamburg, Illinois 60196-1096
(847) 705-4321

- e. Judy Williamson
Office Administrator
Bureau of Construction
Division of Highways
Illinois Department of Transportation
2300 South Dirksen Parkway
Springfield, Illinois 62764
(217) 785-4605

f. Patricia Broers
Prequalification Analyst
Bureau of Construction
Division of Highways
Illinois Department of Transportation
2300 South Dirksen Parkway
Springfield, Illinois 62764
(217) 782-3413

g. Duane Mapes
retired resident engineer
Nioga, Illinois
(217) 895-3877

h. In our search for other information about the project, inquiries were made of other employees of the Department, but they had no information about Parcel 3.

2. a. A copy of our correspondence file for Section 8-HB and 8-VB is attached as Exhibit A. The file is too voluminous to identify each document. Exhibits G, H and J had been part of this file. Judy Williamson made a copy of the microfilmed file.

b. A copy of our title documents for parcel By-Pass A, F.A. Route 42, Section 8-HB and 8-VB are attached as Exhibit B. Andrew Bryk provided this information.

c. A copy of our contract documents for Section 8-HB and 8-VB is attached as Exhibit C. The contract is with Eric Bolander Construction Company, Inc. Judy Williamson provided this information.

d. Our highway jurisdiction map is attached as Exhibit D. The map shows that highways adjacent to Parcel 3 are under the jurisdiction of the City of Waukegan. Ron Levine provided this information.

e. Our billing and payment documents for Section 8-HB and 8-VB are attached as Exhibit E. Judy Williamson copied this information from the microfilm file.

f. The last prequalification rating work sheet for Eric Bolander Construction Company, Inc. is attached as Exhibit F. The Department believes that this company went out of business on or about 1997. Patricia Broers provided this information.

g. A copy of a resolution between the Department of Public Works and Buildings (the predecessor agency to the Illinois Department of Transportation) and City of Waukegan governing the construction and maintenance of Section 8-HB and 8-VB is attached as Exhibit G.

- h. A copy of a similar resolution with Lake County is attached as Exhibit H.
- i. A copy of our plans for Section 8-HB and 8-VB is attached as Exhibit I. Michael Fitzgerald provided this information.
- j. A copy of the Department's final acceptance of the improvement to Section 8-HB and 8-VB, dated March 4, 1976 is attached as Exhibit J.

3. Duane Mapes may be able to provide a more complete response.

4. The Department has no EPA Identification Numbers relating to F.A. Route 42, Section 8.

5. The Department has no knowledge of such acts or omissions.

6. Duane Mapes. There do not appear to be other former or current employees who have information responsive to this question. The Department's contractor has been out of business for about three years.

7. Copies of all documents known to be in the possession of the Department with respect to F.A. Route 42, Section 8-HB and 8-VB are attached as Exhibits A through I.

8. a. Copies of agreements with Lake County and City of Waukegan with respect to the construction and maintenance of Section 8-HB and 8-VB are attached as Exhibits G and H.

b. Deeds are attached as Exhibit B. The deeds show that By-Pass A was a temporary easement.

c. Page 24 of the contract for construction of 8-HB and 8-VB, attached as Exhibit C, refers to an agreement with Commonwealth Edison Company for entry and to a liability insurance policy required of the contractor covering damage to Commonwealth Edison's property. However, neither that agreement nor the insurance policy were copied into the microfilm record and cannot be found.

The contract on page 24 or elsewhere in the document says nothing about ACM on Commonwealth Edison's property.

9. Exhibits G and H show that the Department of Public Works and Buildings had responsibility for maintenance, traffic enforcement and control for By-Pass A during the period of its construction.

That responsibility would have begun on the date of acquisition of a temporary easement for By-Pass A on August 3, 1971, (Exhibit B), and ended when the project was "finaled," about March, 1976, as shown in Exhibit J.

10. J. Randle Schick reviewed the documents in the possession of the Department and attached hereto, and none of them appear to discuss any arrangements for ACM that was in situ at area of concern #3. The retired resident engineer, Duane Mapes, for this construction project during a telephone call with J. Randle Schick, Assistant Chief Counsel, in October

2000 recalled dealing with asbestos pipe during the project and burying some of it. As the Department does not have information about where ACM was located at the start of the project and where it is alleged to have been disposed, he was unable to ask Mr. Mapes to provide more information. The Department has no other information responsive to this question.

11. None of the documents in the possession of the Department and that are furnished with this response appear to mention ACM, its existence, quantity or placement. The Department does not have a copy of the resident engineer's diary for the project. Duane Mapes may be able to provide additional information in response to this question, but the Department is not aware of any other employees that can.

12. The Department has no knowledge that this occurred. Duane Mapes may have some knowledge with respect to this question, but the Department does not have enough information to pose this question to him.

13. The Department does not appear to have documents containing information responsive to these questions. The retired resident engineer, Duane Mapes, for the project at Section 8-HB and 8-VB may have some information responsive to these questions.

No current employees could be found, after an inquiry, who have knowledge of ACM or other hazardous substances on this project. The Department does not believe any retired employees, other than Mr. Mapes, would have any knowledge responsive to these questions. The Department's contractor, Eric Bolander Construction Company, for this project went out of business about three years ago, and the Department does not know the whereabouts of its documents or employees who may have knowledge.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

AFFIDAVIT OF KARIN H SMITH

I, KARIN H SMITH, being duly sworn upon oath, state that I have personal knowledge of the facts set forth herein, that I am competent to testify, and if called to testify would state as follows:

1. I have been an employee of the Illinois Department of Transportation ("IDOT") since January 1985.
2. I am employed in the Bureau of Personnel Services as Section Manager of Organizational Analysis and Workforce Planning.
3. As part of my work duties, I have access to the HRI which is a system used by IDOT Bureau of Personnel Services to track employee information, including date of hire, salary, and personnel transactions including retirement date, if retired.
4. I am familiar with the system and have used the system for the past 31 years. To my knowledge, all information in the system is accurately entered and maintained in the ordinary course of business at IDOT.



5. On January 25, 2016, I used the database to determine that former IDOT employee Mr. Duane Mapes retired on October 23, 1991. A copy of the screen from the database evidencing such information is attached hereto as Exhibit "A".

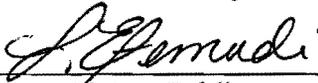
FURTHER THE AFFIANTH SAYETH NOT

The undersigned certified that the statements set forth in this instrument are true and correct based upon his personal knowledge.



KARIN H SMITH

SUBSCRIBED and SWORN to
before me this 27 day of January, 2016.



Notary Public



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

15:48:05 Monday, January 25, 2016

DTGHRI27

HUMAN RESOURCE INFORMATION SYSTEM
SEPARATION APPROVAL

01/25/16
15:47:59

APPROVAL CODE: A - APPROVED
HOLD/VOID REASON: _____

PAYROLL GROUP - RUN DATE: 02 - 11/07/91

SOC SEC NUMBER: 350-30-4960

ACTION EFFECTIVE DATE: 10/23/91

TYPE ACTION : 07 - SEPARATION

ANNIV DATE: _____

SEPAR. REASON: 68 - RETIREMENT (ERI)

EMPLOYEE NAME: MAPES, DUANE LEWIS

RESIDENT COUNTY: 049

ADDRESS STREET: 652 PICKUS COURT

ADDRESS STREET2: _____

CITY/ST/ZIP: WAUKEGAN, IL 60085

POS. CNTL NO. : PW113 - 23-51-201-00-01 CIVIL ENGINEER III

WORK COUNTY : 016

SALARY : 3668.00

SALARY PLAN: PA113

PAYROLL NO. : 23007

APPROP. NO. : 011-49421-1120-00-00

COST RESP CODE: 9140

EMPL. CODE : 40

WK. BAS. CODE: 71

PF3 : EXIT SCREEN

PENDING APPROVAL COUNT: _____

VIEW ONLY FROM STATUS DETAIL SCREEN... DEPRESS ENTER TO RETURN...