

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

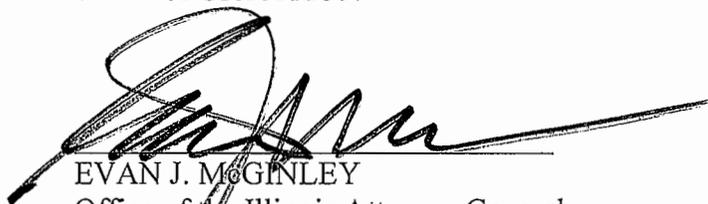
NOTICE OF FILING

To: ALL PERSONS ON THE ATTACHED SERVICE LIST

Please take note that today, October 6, 2014, I have filed Respondent's Answer to Amended Complaint in the above-referenced matter with the Clerk of the Illinois Pollution Control Board, copies of which are attached hereto and are hereby served upon you.

Respectfully Submitted,

ILLINOIS DEPARTMENT OF
TRANSPORTATION



EVAN J. MCGINLEY
Office of the Illinois Attorney General
Environmental Bureau
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CERTIFICATE OF SERVICE

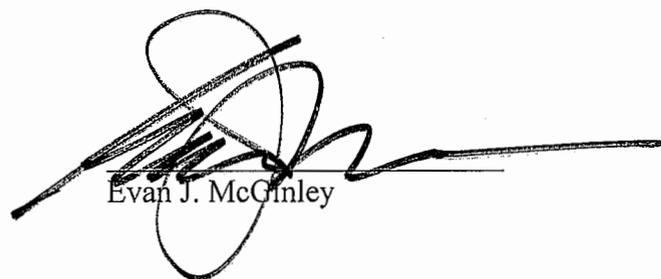
Johns Manville v. Illinois Department of Transportation, PCB 14-3 (Citizens)

I, EVAN J. MCGINLEY, do hereby certify that, today, October 6, 2014, I caused to be served on the individuals listed below, by first class mail, a true and correct copy of the attached Notice of Filing and Respondent's Answer to Amended Complaint:

John Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601

Bradley Halloran
Hearing Officer
Illinois Pollution Control Board
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Evan J. McGinley

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

RESPONDENT'S ANSWER TO AMENDED COMPLAINT

Respondent, DEPARTMENT OF TRANSPORTATION ("IDOT"), through its counsel, Assistant Attorney General Evan J. McGinley and Special Assistant Attorney General Matthew Dougherty, submits its answer to Complainant John Mansville's Amended Complaint as follows:

GENERAL ALLEGATIONS

Jurisdiction and Parties

1. This Complaint is brought before the Illinois Pollution Control Board (the "Board") by Complainant JM on its own motion, pursuant to Section 31(d) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(d).

ANSWER:

Respondent admits that JM has stated in its "Amended Complaint that it has brought its Complaint pursuant to Section 31(d) of the Act, but denies that Section 31(d) of the Act is applicable to this matter.

2. Section 31(d) of the Act provides that "[a]ny person may file with the Board a complaint . . . against any person allegedly violating this Act, any rule or regulation adopted

under this Act, any permit or term or condition of a permit, or any Board order.” 415 ILCS 5/31(d).

ANSWER:

Respondent admits that Paragraph 2 accurately states a portion of Section 31(d) of Act.

3. “Person” is defined under the Act as “any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.” 415 ILCS 5/3.315.

ANSWER:

Respondent admits that Paragraph 3 accurately states a portion of Section 3.315 of Act.

4. Complainant JM is a Delaware corporation authorized to do business in Illinois.

ANSWER:

Respondent admits the allegations in Paragraph 4.

5. Respondent IDOT is an agency of the State of Illinois and was formerly known as the Division of Highways (a division of the Department of Public Works and Buildings).

ANSWER:

Respondent admits the allegations in Paragraph 5.

Factual Background

6. Complainant JM owned and operated a manufacturing facility on property consisting of approximately 300 acres in Waukegan, Illinois, which manufactured construction and other materials, some of which contained asbestos (the “JM Site”).

ANSWER:

Respondent admits the allegations in Paragraph 6.

7. On September 8, 1983, the United States Environmental Protection Agency (“EPA”) added a portion of the JM Site to the National Priorities List (“NPL”) under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), due to asbestos materials.

ANSWER:

Respondent admits USEPA listed a 120 acre portion of the JM site on the NPL, in the Federal Register published on September 8, 1983, 48 Fed. Reg. 50658, although the EPA Superfund Record of Decision states that the site was listed on the NPL in December of 1982.

8. JM has conducted and completed certain remediation activities at the JM Site under the direction and oversight of the EPA.

ANSWER:

IDOT lacks sufficient information to either admit or deny the allegations in Paragraph 8.

9. JM ceased operations onsite in approximately 1998. Thereafter, asbestos-containing material (“ACM”) was discovered beyond the boundaries of the JM Site, on adjacent property owned by Commonwealth Edison (“ComEd”) and by the City of Waukegan.

ANSWER:

IDOT lacks sufficient information to either admit or deny the allegations relating to the date that “JM ceased operations onsite”. IDOT admits that the Administrative Order on Consent notes that ACM was discovered on the former parking lot in 1998.

10. On June 11, 2007, Complainant JM entered into an Administrative Order on Consent (“AOC”) with EPA whereby JM agreed to conduct a “removal” action at four specific off-site areas. These sites are individually designated as Site 3, Sites 4 and 5 (combined under

the AOC as "Site 4/5") and Site 6 and are collectively referred to as the "Southwestern Site Areas."

ANSWER:

IDOT acknowledges that JM entered into an AOC with the USEPA on or about the time alleged in Paragraph 10. Further responding, IDOT states that the AOC speaks for itself and thus no further response on IDOT's part is required.

11. ComEd is also a party to the AOC, as the current owner of Site 3 and Site 4/5, and pursuant to the terms of the AOC has agreed to undertake certain response activities at these sites.

ANSWER:

IDOT acknowledges that ComEd entered into an AOC with the USEPA, but lacks sufficient information to either admit or deny the remaining allegations in Paragraph 10. Further responding, IDOT states that the AOC speaks for itself and thus no further response on IDOT's part is required.

12. Site 6 is currently owned by the City of Waukegan, which is not a party to the AOC.

ANSWER:

IDOT lacks sufficient information to either admit or deny the allegations in Paragraph 12.

13. Site 3 is located south of the Greenwood Avenue right-of-way and east of North Pershing Road in Waukegan, Illinois.

ANSWER:

IDOT admits the allegations in Paragraph 13.

14. Site 6 is located on the north and south edges of Greenwood Avenue east of North Pershing Road and north of Site 3 in Waukegan, Illinois.

ANSWER:

IDOT admits the allegations of Paragraph 14.

15. In December 1998, ACM was discovered at the surface of the area currently designated as Site 3.

ANSWER:

IDOT denies the allegations in Paragraph 15, in as much as JM has always had knowledge that ACM was located at Site 3, and, further, because JM is the party that placed ACM at Site 3.

16. Subsequent sub-surface investigations of Site 3 have revealed ACM at the surface and at a depth of one to three feet below ground surface (bgs), primarily at the north end of the site, and at a depth of up to four feet bgs in at least two areas of the site.

ANSWER:

IDOT lacks sufficient information to either admit or deny the allegations in Paragraph 16.

17. Investigations of Site 6 have similarly revealed ACM at the surface and at a depth of one to three feet below ground surface. Pieces of Transite® pipe, a non-friable form of ACM, are the predominant ACM found at Site 3 and Site 6.

ANSWER:

IDOT lacks sufficient information to either admit or deny the allegations in Paragraph 17.

18. The northwest portion of Site 3 and the west portion of Site 6 also contain miscellaneous fill material, some of which has been found to contain asbestos.

ANSWER:

IDOT admits that the AOC states that "miscellaneous fill material" has been found at Site 3, but otherwise lacks sufficient information to either admit or deny the allegations in Paragraph 19.

19. Many utility lines run through Site 3 and Site 6.

ANSWER:

Because the allegations contained in Paragraph 19 are both vague and ambiguous, IDOT is unable to either admit or deny any part of Paragraph 19.

20. In approximately the 1950s and 1960s, JM used Site 3 as a parking lot for its employees and invitees, pursuant to a license agreement with ComEd.

ANSWER:

IDOT admits that the AOC states that Site 3 was previously the site of a parking lot, but otherwise lacks sufficient information to either admit or deny the allegations in Paragraph 20.

21. Asbestos-containing Transite® pipes were used for curb bumpers on the parking lot surface. Aerial photographs show that these bumpers were in place in the 1950s.

ANSWER:

IDOT lacks sufficient information to either admit or deny the allegations of Paragraph 21.

22. Records show that in approximately 1971 Respondent IDOT began construction of a ramp to the Amstutz Expressway as part of its reconstruction of the Pershing Road/Greenwood Avenue intersection.

ANSWER:

IDOT admits that it began construction of the project described in Paragraph 22 approximately during the alleged year.

23. During this construction, IDOT built embankments on the north and south side of Greenwood Avenue. These embankments involved the removal of “unsuitable material” and the placement of fill up to and above the original grade.

ANSWER:

IDOT lacks sufficient information to either admit or deny any of the allegations in Paragraph 23.

24. Also during construction, IDOT built three detour roads (the “Detour Roadways”).

ANSWER:

IDOT admits that it constructed three temporary detour roads as part of the construction of a ramp to the Amstutz Expressway, but denies any allegations that are otherwise inconsistent with its answer to Paragraph 24.

25. Two of these detour roads, Bypasses A and B, cut through Sites 3 and 6.

ANSWER:

IDOT lacks sufficient information to either admit or deny the allegations of Paragraph 25.

26. Bypass A begins on Site 6 and cuts a large, curved swath through the former parking lot of Site 3, which was destroyed by IDOT during this construction.

ANSWER:

IDOT admits that it constructed Bypass A as a temporary detour road during the Amstutz construction project, but lacks sufficient information to either admit or deny the balance of the allegations in Paragraph 26.

27. Bypass B cuts through the western portion of Sites 3 and 6.

ANSWER:

IDOT admits that it constructed Bypass B during the Amstutz construction project, but lacks sufficient information to either admit or deny the balance of the allegations in Paragraph 27.

28. Bypasses A and B were used until the ramp construction was completed in approximately 1976.

ANSWER:

IDOT lacks sufficient information to either admit or deny the allegations of Paragraph 28.

29. Records show that a contractor was paid a "special excavation" fee to "remove and obliterate the Detour Roadways" after construction was complete. Neither Bypasses A or B nor the former parking lot are intact at Sites 3 and 6.

ANSWER:

Because Johns Manville has failed to allege in Paragraph 29 just what "records" it is making reference to, or what contractor it is referring to, IDOT is unable to respond to Paragraph 29, because it lacks sufficient information to either admit or deny the allegations therein.

30. 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. 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."

ANSWER:

IDOT denies that it “has admitted to EPA that it dealt with asbestos pipe during the construction project.” Further responding, IDOT denies that a retired engineer had any authority to make any admissions against the Department’s interests. IDOT further denies that it did anything with “asbestos pipe” at Site 3, including, but not limited to “burying some of it.” IDOT lacks sufficient information to either admit or deny the remainder of the allegations in Paragraph 30.

31. IDOT was not ultimately made a party to the 2007 AOC with EPA. At the time the AOC was signed, EPA took the position that there was insufficient evidence to name IDOT because IDOT did not admit to burying any ACM on or near Site 3 or 6.

ANSWER:

IDOT admits that it was not made a party to the 2007 AOC. IDOT lacks sufficient information to either admit or deny the balance of the allegations in Paragraph 31.

32. Subsequent investigations have revealed buried Transite® pipe in the area. Portions of Transite® pipe have been found in the south side shoulder of Greenwood Avenue on parts of Site 3 and 6 at various depths, including at a depth of approximately 2.5 feet below the ground surface. The elevation of this Transite® pipe is roughly one foot higher than the adjacent surface.

ANSWER:

IDOT lacks sufficient information to either admit or deny the allegations of Paragraph 32.

33. Review of IDOT engineering drawings indicates that IDOT, among other things, used ACM as fill when building the embankments to Greenwood Avenue on Sites 3 and 6.

ANSWER:

Because JM has neither identified who conducted the review of the "IDOT engineering drawings" referred to in Paragraph 33, or what documents it is making reference to in Paragraph 33, IDOT is unable to either admit or deny the allegations in this paragraph.

34. Review of IDOT engineering drawings indicates that IDOT, among other things, used, spread and/or buried ACM during its construction and/or obliteration of Bypasses A and B.

ANSWER:

Because JM has neither identified who conducted the review of the "IDOT engineering drawings" referred to in Paragraph 34, or what documents it is making reference to in Paragraph 34, IDOT is unable to either admit or deny the allegations in this paragraph.

35. Pursuant to the terms of the AOC, on June 13, 2008, JM and ComEd submitted to EPA for its review and approval an initial "Engineering Evaluation and Cost Analysis" ("EE/CA") for a proposed response action at the Southwestern Sites.

ANSWER:

IDOT lacks sufficient information to either admit or deny the allegations of Paragraph 35.

36. After several rounds of revisions in consultation with EPA, JM and ComEd submitted their final EE/CA to EPA on April 4, 2011 ("EE/CA Revision 4"). EE/CA Revision 4 evaluated four potential response action options for Sites 3 and 6, based on discussions with EPA.

ANSWER:

IDOT lacks sufficient information to either admit or deny the allegations of Paragraph 36.

37. EE/CA Revision 4 identified "Alternative 2" as the preferred remedy for Site 3. This alternative included limited soil excavation (approximately 660 cubic yards) in the northeast

corner of Site 3 to a depth of approximately three (3) feet below the ground surface and installation of a vegetated soil barrier over the entire site, at an estimated cost of between \$595,000 and \$630,000.

ANSWER:

IDOT lacks sufficient information to either admit or deny the allegations of Paragraph 37.

38. EE/CA Revision 4 identified “Alternative 3” as the preferred remedy for Site 6. This alternative was described as a “hybrid remedy” combining excavation and off-site disposal of approximately 2400 cubic yards of ACM-affected soil with a vegetated soil barrier running adjacent to Site 3 to avoid disrupting current stormwater drainage patterns. The total cost to implement Alternative 3 on Site 6 was estimated at between \$417,500 and \$500,000.

ANSWER:

IDOT lacks sufficient information to either admit or deny the allegations of Paragraph 38.

39. EE/CA Revision 4 was approved by EPA with modifications on February 1, 2012. In its EE/CA approval letter, EPA proposed a new alternative remedy, which it termed “Alternative 5.”

ANSWER:

IDOT lacks sufficient information to either admit or deny the allegations of Paragraph 39.

40. EPA’s Alternative 5 included a new proposed remedy for Site 3—termed “Modified Alternative 2”—which was a markedly different remedy from those previously proposed by JM and ComEd. This modified alternative not only included a requirement to remove all asbestos-impacted soils to a depth of four (4) feet below the ground surface in the northeast portion of Site 3, but also required JM and ComEd to create a clean corridor for all utilities running through Site 3 by excavating all soil to a depth of two (2) feet below each utility

line and a minimum width of twenty-five (25) feet centered on each utility line. EPA's estimated cost for construction of this Modified Alternative 2 was \$2,196,000.

ANSWER:

IDOT lacks sufficient information to either admit or deny the allegations of Paragraph 40.

41. EPA's Alternative 5 also included a new proposed remedy for Site 6. This alternative—which EPA termed “Modified Alternative 1”—required excavation of “all soil contaminated with ACM and/or asbestos fibers at Site 6 including, but not limited to the area identified as “Area of Excavation for ACM Affected Soil” and “Paving and Potential Subsurface ACM” in Figure 13 in EE/CA” and to make special arrangements necessary for utilities (e.g., additional support or removal and replacement) in areas where removal of ACM is required below three (3) feet below the ground surface. Further, because “Greenwood Avenue was not sampled during the EE/CA Study” and “[i]t is unknown if ACM is located under the Greenwood Avenue Paved Road Surface,” EPA required JM to obtain an environmental covenant signed by the owner of Site 6, the City of Waukegan. EPA's estimated cost for construction of this Modified Alternative 1 was \$1,869,000.

ANSWER:

IDOT lacks sufficient information to either admit or deny the allegations of Paragraph 41.

42. On November 30, 2012, EPA issued an Action Memorandum selecting a remedy for the Southwestern Sites, including the Modified Alternative 2 that it had proposed for Site 3 and the Modified Alternative 1 it had proposed for Site 6. However, the Action Memorandum included further modifications that were not previously included in the February 1, 2012 EE/CA approval letter.

ANSWER:

IDOT lacks sufficient information to either admit or deny the allegations of Paragraph 42.

43. Specifically, as to Site 3, the Modified Alternative 2 set forth in the Action Memorandum requires JM and ComEd to create a clean corridor for each utility line “extending to a depth requested by the owner of the utility line with placement of a continuous barrier at the base and sides of the excavation to inhibit further excavation and/or exposure beyond the clean fill.” It also includes a new “compliance alternative” of abandoning and relocating utility lines in lieu of creating clean utility corridors, pending written approval from EPA and provided that each utility owner signs a voluntary subrogation agreement to abandon its line(s). Any new utility lines would be required to bypass the ACM-contaminated areas of the site or to be fully enclosed within utility vaults so as to eliminate the need for excavation during repair or maintenance activities.

ANSWER:

IDOT lacks sufficient information to either admit or deny the allegations of Paragraph 43.

44. Similarly, as to Site 6, whereas the Modified Alternative 1 set forth in the EE/CA approval letter had merely required JM and ComEd to “make special arrangements necessary for utilities” in areas where ACM may extend below three (3) feet below the ground surface, the Modified Alternative 1 set forth in the Action Memorandum requires JM and ComEd to create a clean corridor for each utility line by excavating “all soil and sediment to a minimum width of 25 feet centered on any utility line (limited only by the edge of Greenwood Avenue to the extent it is demonstrated to provide a competent barrier to excavation) and to a minimum depth of two feet below the deepest utility line (and extending to a depth needed for protectiveness of utility workers at the deepest utility line) with placement of a continuous barrier at the base and sides of

the excavation to inhibit further excavation beyond the clean fill.” No “alternative compliance alternative” was proposed for Site 6.

ANSWER:

IDOT lacks sufficient information to either admit or deny the allegations of Paragraph 44.

45. The Action Memorandum states that a response action at the Southwestern Sites is necessary “to abate or mitigate releases of hazardous substances that may present an imminent and substantial endangerment to public health and the environment posed by the presence of soils that are contaminated with hazardous substances.” It further states that a response action is necessary to “reduce the actual and potential exposure to the nearby human population and the food chain to hazardous substances” and that the action is “expected to result in the removal and capping of contaminated materials at or near the surface which present a threat to trespassers or workers at the Site.”

ANSWER:

IDOT lacks sufficient information to either admit or deny the allegations of Paragraph 45.

46. According to the Action Memorandum, the potential health risks associated with ACM contamination at the Southwestern Sites include “exposure to asbestos fibers via inhalation [which] results in significant health effects including mesothelioma, lung cancer, asbestosis, thickening of pleural lining around the lungs and pulmonary deficits. Exposures to soils containing asbestos fibers have been associated with all of these health effects including cancer.” Due to the presence of asbestos in soils, the Action Memorandum indicates that “adverse health risks are reasonably anticipated in the event that exposure occurs.”

ANSWER:

IDOT lacks sufficient information to either admit or deny the allegations of Paragraph 46.

47. The Action Memorandum directs JM and ComEd to conduct the following response actions as the selected remedy for Site 3:

- a. Excavate soil in the northeast portion of the Site 3 (approximately 0.14 acres) identified as the "limited excavation area," to remove all ACM and asbestos fibers (estimated to a depth of 4 feet);
- b. Excavate soil and sediments contaminated with ACM and/or asbestos fibers to a minimum depth of 2 feet below each utility line and extending to a depth requested by the owner of each utility line with placement of a continuous barrier at the base and sides of the excavation to inhibit further excavation and/or exposure beyond the clean fill and a minimum width of 25 feet centered on each utility line and clean backfill to provide a clean corridor for utility maintenance on Site 3 or, alternatively, abandon and relocate utility lines, conditioned on signed voluntary subrogation agreements from the utility owners;
- c. Conduct post-excavation sampling and analysis to confirm there are no remaining ACM or asbestos fibers in soil or sediment within either the limited excavation area or within each utility corridor;
- d. Dispose of all excavated materials in an off-site landfill;
- e. Place and maintain a vegetated soil cover in any areas of Site 3 where ACM or asbestos fibers remain in place;
- f. Implement certain institutional controls in the form of an environmental covenant, pursuant to the Illinois Environmental Covenants Act, 765 ILCS Ch. 122;
- g. Reroute, pipe, or remove surface water as needed to perform the required excavation;

- h. Install and maintain security fencing with warning signs every 100 feet and at all gates completely surrounding all areas where ACM or asbestos fibers remain in place;
- i. Conduct long-term operation and maintenance (O&M) of the vegetated soil cover for a minimum of 30 years beginning when construction is completed.

ANSWER:

IDOT lacks sufficient information to either admit or deny the allegations of Paragraph 47 or any of its subparagraphs therein.

48. EPA has estimated the cost of construction of the selected remedy for Site 3 at between \$1,705,696 and \$2,107,622. JM disputed portions of EPA's remedy selected for the Southwestern Sites on December 20, 2012 and May 16, 2013, including certain of EPA's cost analyses.

ANSWER:

IDOT lacks sufficient information to either admit or deny the allegations of Paragraph 48.

49. The Action Memorandum directs JM and ComEd to conduct the following response actions as the selected remedy for Site 6:

- a. Excavate all soil contaminated with ACM and/or asbestos fibers without limitation to depth including at a minimum, but not limited to the area identified as "Area of Excavation for ACM Affected Soil" and "Paving and Potential Subsurface ACM" in Figure 13 of the EE/CA (which, in non-utility areas, is anticipated to extend to a minimum depth of three (3) feet below ground surface);
- b. Excavate soil and sediments contaminated with ACM and/or asbestos fibers to a minimum depth of 2 feet below each utility line and extending to a depth

requested by the owner of each utility line with placement of a continuous barrier at the base and sides of the excavation to inhibit further excavation and/or exposure beyond the clean fill and a minimum width of 25 feet centered on each utility line and clean backfill to provide a clean corridor for utility maintenance on Site 6;

- c. Conduct post-excavation sampling and analysis to confirm there are no remaining ACM or asbestos fibers in soil or sediment within either the limited excavation area or within each utility corridor;
- d. Dispose of all excavated materials in an off-site landfill or, with approval from EPA, in the JM industrial canal and/or pumping lagoon under a vegetated soil cover;
- e. Implement certain institutional controls in the form of an environmental covenant signed by the City of Waukegan, pursuant to the Illinois Environmental Covenants Act, 765 ILCS Ch. 122, or, if this environmental covenant is not feasible, provide for the investigation and full removal of any ACM or asbestos fibers that may remain under Greenwood Avenue to prevent its potential release during road or utility maintenance;
- f. If during or after soil excavation at Site 6, samples and/or visual observation indicate the presence of ACM or asbestos fibers under Greenwood Avenue, then install and maintain security fencing with warning signs every 100 feet and at all gates completely surrounding all areas where ACM or asbestos fibers remain in place.

ANSWER:

IDOT lacks sufficient information to either admit or deny the allegations of Paragraph 49 or any of its subparagraphs therein.

50. EPA has estimated the cost of construction of the selected remedy for Site 6 at \$1,868,790. JM disputed portions of EPA's remedy selected for the Southwestern Sites on December 20, 2012 and May 16, 2013, including certain of EPA's cost analyses.

ANSWER:

IDOT lacks sufficient information to either admit or deny the allegations of Paragraph 50.

51. EPA issued a Notice to Proceed with the selected remedy for all of the Southwestern Sites on May 6, 2013. Under the terms and conditions of the AOC, this Notice to Proceed triggers a 120-day period within which JM and ComEd must submit to EPA a Removal Action Work Plan ("RAWP") for performing the response actions at the Southwestern Site Area.¹

ANSWER:

IDOT lacks sufficient information to either admit or deny the allegations of Paragraph 51 or the footnote thereto.

52. JM submitted a draft RAWP for the Southwestern Site Area to EPA in November 2013 and the agency provided comments on December 11, 2013.

ANSWER:

IDOT lacks sufficient information to either admit or deny the allegations of Paragraph 52.

¹ JM and ComEd have disputed the selected remedy, pursuant to the dispute resolution provisions of the AOC, on grounds that the EPA substantially modified the selected remedy between its final approval of the EE/CA and the issuance of the Action Memorandum. However, despite this ongoing dispute, EPA did not agree to toll the 120-day period for preparing the Removal Action Work Plan.

53. JM submitted a final RAWP to EPA on January 24, 2014. The agency has not yet approved the final RAWP.

ANSWER:

IDOT lacks sufficient information to either admit or deny the allegations of Paragraph 53.

54. With the exception of removing surficial ACM, no response action has commenced at Site 3 or Site 6.

ANSWER:

IDOT lacks sufficient information to either admit or deny the allegations of Paragraph 54.

COUNT I

Violations of Section 21 of the Illinois Environmental Protection Act

55. Complainant realleges and incorporates herein the allegations contained in paragraphs 1-54 of this First Amended Complaint as if set forth herein in full.

ANSWER:

IDOT realleges and reincorporates by reference all of its responses to paragraphs 1-54 of JM's First Amended Complaint, as if fully set forth therein.

56. Respondent IDOT's actions in using, spreading, burying, placing, dumping, disposing of and abandoning ACM waste, including Transite® pipe, throughout Site 3 and portions of Site 6 and in using ACM waste as fill during construction of the Greenwood Avenue ramp and expressway bypass from 1971 to 1976 constitute violations of Section 21 of the Illinois Environmental Protection Act ("Act").

ANSWER:

IDOT denies all of the allegations set forth in Paragraph 56. Further responding, no response is required as to the allegation that "IDOT's actions in using, spreading,

burying, placing, dumping, disposing of and abandoning ACM waste, including Transite® pipe, throughout Site 3 and portions of Site 6 and in using ACM waste as fill during construction of the Greenwood Avenue ramp and expressway bypass from 1971 to 1976 constitute violations of Section 21 of the Illinois Environmental Protection Act (“Act”), as these allegations constitute conclusions of law for which no response is required.

57. Section 21 of the Act, 415 ILCS 5/21, provides, in pertinent part:

No person shall:

(a) Cause or allow the open dumping of any waste; [or]

(e) Dispose, treat, store, or abandon any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder.

ANSWER:

Paragraph 57 accurately states the provisions of Sections 21(a) and (e) of the Act, and no further answer is required.

58. Section 3.535 of the Act, 415 ILCS 5/3.535, defines “waste” as:

any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows, or coal-combustion products . . . or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as now or hereafter amended, or source, special nuclear, or by-product materials as defined by the Atomic Energy Act of 1954 . . . or any solid or dissolved material from any facility subject to the Federal Surface Mining Control and Reclamation Act of 1977 or the rules and regulations thereunder or any law or rule or regulation adopted by the State of Illinois pursuant thereto.

ANSWER:

Paragraph 58 accurately states the provisions of Section 3.535 of the Act, and no further answer is required.

59. Discarded ACM at Sites 3 and 6 are “waste” within the meaning of the Act.

ANSWER:

The allegations in Paragraph 59 constitute a legal conclusion and thus no answer is required.

60. Section 3.305 of the Act, 415 ILCS 5/3.305, defines “open dumping” as “the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.”

ANSWER:

Paragraph 60 accurately states the provisions of Section 3.305 of the Act, and no further answer is required.

61. Section 3.185 of the Act, 415 ILCS 5/3.185, defines “disposal” as “the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste or hazardous waste into or on any land or water or into any well so that such waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.”

ANSWER:

Paragraph 61 accurately states the provisions of Section 3.535 of the Act, and no further answer is required.

62. Section 3.445 of the Act, 415 ILCS 5/3.445, defines “sanitary landfill” as:

a facility permitted by the Agency for the disposal of waste on land meeting the requirements of the Resource Conservation and Recovery Act, P.L. 94-580, and

regulations thereunder, and without creating nuisances or hazards to public health or safety, by confining the refuse to the smallest practical volume and covering it with a layer of earth at the conclusion of each day's operation, or by such other methods and intervals as the Board may provide by regulation.

ANSWER:

Paragraph 62 accurately states the provisions of Section 3.535 of the Act, and no further answer is required.

63. Section 3.540 of the Act, 415 ILCS 5/3.540, defines "waste disposal site" as "a site on which solid waste is disposed."

ANSWER:

Paragraph 63 accurately states the provisions of Section 3.540 of the Act, and no further answer is required.

64. Site 3 and Site 6 are not disposal sites that fulfill the requirements of a sanitary landfill.

ANSWER:

The allegations in Paragraph 64 constitute conclusions of law and as such no response is required.

65. Site 3 and Site 6 are not permitted waste disposal sites or facilities which meets the requirements of the Act or its regulations as they relate to the disposal or abandonment of waste.

ANSWER:

The allegations in Paragraph 65 constitute conclusions of law and as such no response is required.

66. IDOT engaged in the open dumping of waste and disposed of ACM waste between 1971 and 1976 when it: (a) used as fill, spread, buried, dumped, placed, disposed of and

abandoned ACM waste on Sites 3 and 6 when it built an embankment on the north and south sides of Greenwood Avenue; (b) used as fill, spread, buried, dumped, placed, disposed of and abandoned ACM waste on Sites 3 and 6 when constructed and obliterated Bypasses A and B; and (c) generally used as fill, spread, buried, dumped, placed, disposed of and abandoned ACM waste on Sites 3 and 6 during construction of the Greenwood Avenue ramp and expressway bypass from 1971 to 1976.

ANSWER:

The allegations in Paragraph 66 constitute conclusions of law to which no response is required.

67. The ACM waste dumped and disposed of on and under Sites 3 and 6 was abandoned by IDOT around 1976 and currently remains in situ.

ANSWER:

IDOT denies that “the ACM waste dumped and disposed of on and under Sites 3 and 6 was abandoned by IDOT around 1976 . . .” IDOT lacks sufficient information to either admit or deny the remaining allegation in Paragraph 67.

68. IDOT caused the open dumping of ACM waste in violation of Section 21(a) of the Act, 415 ILCS 5/21(a).

ANSWER:

The allegations in Paragraph 68 constitute conclusions of law, as to which no answer is required.

69. IDOT disposed of and abandoned ACM waste in an area that does not meet the requirements of the Act or its regulations in violation of Section 21(e) of the Act, 415 ILCS 5/21(e).

ANSWER:

The allegations in Paragraph 69 constitute conclusions of law, as to which no answer is required.

70. IDOT's violations are continuing in nature.

ANSWER:

The allegations in Paragraph 70 constitute conclusions of law, as to which no answer is required.

71. By moving ACM materials both horizontally and vertically within and outside the boundaries of the areas currently designated as Sites 3 and 6, IDOT introduced contamination to Site 3 and 6; exacerbated any existing contamination at those Sites and directly contributed to the scope of the EPA's selected remedy for Site 3 and for Site 6, which requires Complainant JM and ComEd to conduct extensive sub-surface excavation, including by creating clean corridors for each of the utilities running through the site.

ANSWER:

The allegations in Paragraph 71 constitute conclusions of law, as to which no answer is required.

72. JM contends that because IDOT's violations of the Act have directly impacted the scope of the proposed remedy for Sites 3 and 6, including the need to excavate buried portions of Transite® pipe and to create clean corridors around the six utilities (portions of the remedy not proposed by JM and ComEd but ordered by EPA in 2012), IDOT should be required to participate in the response action for Sites 3 and 6.

ANSWER:

As the allegations set forth in Paragraph 72 consist solely of JM's contentions, no response to this Paragraph is required.

73. As JM submitted a final Remedial Action Work Plan to EPA on January 24, 2014 and must begin implementation of EPA's proposed remedy shortly after the RAWP is approved, it stands to suffer immediate and irreparable injuries for which there is no adequate remedy at law.

ANSWER:

IDOT lacks sufficient information to either admit or deny the allegations contained in Paragraph 73. Further responding, JM's assertion that "it stands to suffer immediate and irreparable injuries for which there is no adequate remedy at law[]" is a legal conclusion for which no answer is required.

74. Complainant JM is not aware of any identical or substantially similar action pending before the Board or in any other forum against Respondent IDOT based on the same conduct or alleging the same violations of the Act.

ANSWER:

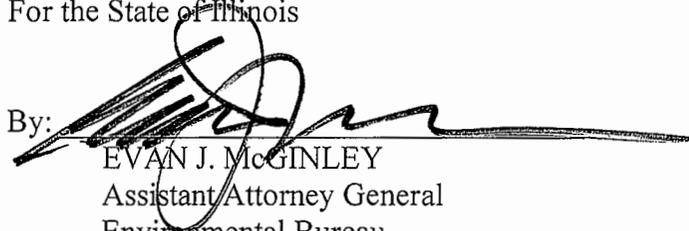
IDOT lacks sufficient information to either admit or deny the allegations in Paragraph 74.

Respectfully Submitted,

ILLINOIS DEPARTMENT
OF TRANSPORTATION

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