

JUL 12 2016

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD
July 12, 2016

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

HEARING REPORT

On May 10, 2016, a hearing was commenced in Room 11-512 of the James R. Thompson Center, 100 West Randolph Street, Chicago, Illinois (JRTC) in the above-captioned matter and continued on record to May 23, 2016, Room 9-31 of the JRTC. The hearing was again continued on record to May 24, 2016, Room 9-34; May 25, 2016, Room 9-31; June 23, 2016, Room 9-31; and June 24, 2016, Room 2-25. All of the hearings were held at the JRTC. Attorneys Susan Brice and Lauren Caisman appeared on behalf of the complainant Johns Manville (JM). Attorneys Evan McGinley and Ellen O’Laughlin appeared on behalf of the respondent, Illinois Department of Transportation (IDOT).

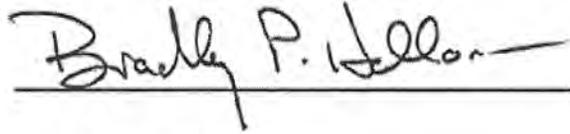
Exhibits

A list itemizing the parties’ exhibits and status is attached to this order.

Briefing Schedule

A post-hearing briefing schedule was addressed at the conclusion of the hearing on June 24, 2016 and is as follows: JM’s post-hearing brief is due to be filed on or before August 12, 2016; IDOT’s post-hearing brief is due to be filed on or before September 16, 2016; JM’s reply is due to be filed on or before October 7, 2016. Public Comment must be filed on or before July 25, 2016.

IT IS SO ORDERED.

A handwritten signature in black ink that reads "Bradley P. Halloran". The signature is written in a cursive style and is positioned above a solid horizontal line.

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 W. Randolph Street
Chicago, Illinois 60601
312.814.8917
Brad.halloran@illinois.gov

Exhibit	Description (*enlarged version available)	Status
2B	IDOT's Answer to Complaint 10/6/14	Admitted
2C	IDOT's Answer to Second Amended Complaint 4/12/16	Admitted
3A	IDOT's Responses to JM's First Set of Document Requests	Admitted
3F	IDOT's Responses to JM's Third Set of Interrogatories	Admitted
3G	IDOT's Revised Responses to Third Set of Interrogatories	Admitted
3H	IDOT's Verifications to Responses to JM's Third Set of Interrogatories	Admitted
3I	IDOT's Responses to JM's First Set of Requests for Admission	Admitted
4A	Deposition of Douglas Dorgan with Exhibits 5/6/15	Admitted
4B	Deposition of Douglas Dorgan with Exhibit 9/29/15	Admitted
4C	Deposition of Steven Gobelman with Exhibit 7/10/2015	Admitted
4d	Deposition of William Clinton with Exhibits 10/28/15	Admitted
4E	Deposition of John Baczek with Exhibits 4/25/16	Admitted
4G	Deposition of James Stumpner with Exhibits 4/26/16	Admitted
4H	Deposition of Keith Stoddard April 28, 2016	Admitted
4I	Deposition of Joseph Fortunato Jr. 5/9/16	Admitted
5	Letter to Michael Forti from Susan Brice 7/11/13	Admitted
6	Expert Report of Douglas Dorgan 3/16/15	Admitted
7	Affidavit of Douglas Dorgan 2/15/16; JM's Responses to IDOT's Motions <i>in Limine</i>	Admitted
8	Expert Rebuttal Report of Steven Gobelman 5/29/15	Admitted
12	Emails between Keith Stoddard and Mathew Dougherty 2/25/16; Steven Warren and Keith Stoddard 5/20/15	Admitted
13	Email between Keith Stoddard and Steven Warren with Grant For Public Highway 1/16/74	Admitted
15	Right of Way Plat	Admitted
16	*Expert Rebuttal Report of Douglas Dorgan 7/27/2015 (*16-17)	Admitted
18	Expert Report of Joseph Fortunato Jr. with Exhibits 5/3/16	Admitted
19	Excerpts from IDOT Standard Specification for Road and Bridge Construction 9/3/71	Admitted
20	Notice to Bidders, Specifications, Proposed Contract and Contract Bond 9/3/71	Admitted
21A	*As Built IDPW Plans for Proposed Federal Aid Highway F.A. Route 437 – Section 8 – HB&i-VB Lake County (*21A-1, 8, 23, 24, 26, 71)	Admitted
21B	As Built IDPW Plans for Proposed Federal Aid Highway F.A. Route 437 – Section 8 – HB&i-VB Lake County (IDOT 003355-003447)	Admitted
25	Letter to R. Schmidt to S. Ziejewski 11/15/71	Admitted
26	Schedule of Prices	Admitted
28	Letter to G. Moberly to R. Schmidt 5/25/72	Admitted
29	Supervision Engineering Report 10/17/72	Admitted
31	Memo and Authorization for Contract Changes 10/19/72	Admitted
32	Authorization for Contract Changes 11/14/73	Admitted

33	Explanation for Deviations from Contract	Admitted
34	Letter to R. Schmidt from S. Ziejewski 9/30/74	Admitted
35	Authorization for Contract Changes 5/5/75	Admitted
36	Job Completion Notice 2/18/76	Admitted
37	Letter to Johns Manville from G. Gianelli and Report from Property Insight 12/30/15	Admitted
38	Letter and Resolution re: Joint City State Improvement Route 137 10/20/65	Taken as Offer of Proof
40	Letter and Resolution re: Joint County State Improvement Route 137 4/7/66	Admitted
41	Grant for Public Highway 8/3/71	Admitted
42	Grant for Public Highway notarized 1/16/74	Admitted
43	Letter to S. Ziejewski from ComEd with attachment of Grant for Public Highway 7/24/84	Admitted
44	Highway Jurisdiction Guidelines for Highway and Street Systems 3/06	Admitted
46	Revision of Title Commitment prepared for IDOT 3/30/16	Admitted
47	March 31, 2016, e-mail from Keith Stoddard to Evan McGinley	Admitted
49	Access Agreement between JM and the City of Waukegan 2/12/08	Admitted
50	License Agreements From Commonwealth Edison Company 11/16/56, 11/1/61 and Affidavit of Brent Tracy 4/13/16	Admitted
52	*Photograph of Aerial Photo late 1950s	Admitted
53A	Aerial Photograph 1961	Admitted
53B	Aerial Photograph 1972	Admitted
53C	*Aerial Photograph 2014	Admitted
53K	*Aerial Photograph 1974	Admitted
53L	*Aerial Photograph 1967	Admitted
53N	Aerial Photograph 1954	Admitted
53P	Aerial Photograph 1939	Admitted
54A	Aerial Photograph 1939	Admitted
54E	Aerial Photograph 1972	Admitted
54Q	Aerial Photograph 10/26/72	Admitted
54R	Aerial Photograph 10/26/72	Admitted
54S	*Aerial Photograph 1970	Admitted
54T	Aerial Photograph 6/11/70	Admitted
56	Emails between S. Gobelman and P. McQuillan and attached topographic maps 12/16/13	Admitted
57	ELM Subsurface Characterization Report 12/99	Admitted
58	Letter from USEPA to K. Brown of IDOT and 104(e) Request Attachment 9/29/00	Admitted
59	IDOT Memo from E. Gower to K. Brown regarding 104e Request 11/16/00	Admitted
60	IDOT 104(e) Response 11/27/00	Admitted
62	Administrative Order on Consent 6/11/07	Admitted
63	EE/CA Revision IV and all attachments by Arcadis 4/11	Admitted

65	USEPA Enforcement Action Memorandum 11/30/12	Admitted
66	Cover Letter and Removal Action Work Plan Revision II 3/31/14	Admitted
67	Cover Letter and Removal Action Work Plan Revisions IV comparison with previous RAWP 2/16	Admitted
68	Estimate of Cost and Authority to Work Special Construction Charge and Invoice	Admitted
69	Email from Tat Ebihara to Doug Dorgan with attachments 3/12/15	Admitted
71	Letter from Tat Ebihara to B. Tracy, D. Clinton with attachments 1/25/16	Admitted
73	Letter from USEPA to AECOM 9/26/14	Admitted
74	Letter to John Van Vranken from LFR with attachments 7/8/08	Admitted
75	Preliminary Environmental Site Assessment 4/21/11	Admitted
76	IDOT Manual	Admitted
77	IDOT Project Report Illinois Route 137 (Greenwood Avenue) Over Illinois Route 137 (Amstutz Expressway) 6/12	Admitted
78	JM Response to 104(e) Request 7/1/99	Admitted
80	Illinois Beach State Park Final Report of Findings 1/20/06	Admitted
81	The Illinois Environmental Protection Act and Board Regulations (historical)	Admitted
84	Soil Boring Cross Sections Figures 5/5/16	Admitted
85	Grant for Public Highway dated April 6, 1984	Admitted
89	Johns Manville Notice of Deposition for Person Most Knowledgeable Pursuant to Rule 206 4/12/16	Admitted
90	*Sidwell Maps (*90-2)	Admitted
91	201(K) Email and attachment from Susan Brice to Evan McGinley 11/11/14; Letter from E. McGinley to S. Brice re 201(k) 12/2/14	Admitted
92	Authorization for Contract Change 8/13/73	Admitted
93	Request for Authorization 10/18/71; Document from W.E. Baumann relating to sewer Approval 10/28/71	Admitted
94	Shoo Fly Road Proposal 10/26/71	Admitted
95	Engineer's Report 8/2/72	Admitted
96	*Demonstrative: Remedial Scope and Cost Analysis Comparison	Admitted
102	Second Five-Year Review Report prepared by USEPA for Johns Manville 5/2/03	Admitted
107	Topographical Map, 1939	Admitted
120	USEPA Comments on Engineering Evaluation Cost Analysis Report Revision 2/3/10	Admitted
129	AECOM Removal Action Work Plan for Southwestern Site Area, Sites 3m 4/5, and 6, Waukegan, Illinois 11/13	Admitted
141	Change Order for Special Excavation 11/10/71	Admitted
162	Quitclaim Deed 4/18/1895	Admitted
163	Quitclaim Deed 1/20/1915	Admitted
164	*Cross Section A-A; Cross Section B-Band Greenwood Avenue 5/16 (*EX 202) Demonstrative	Admitted
167	Right of Way Notice Letter	Admitted

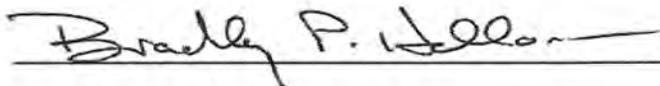
200	*Cover page of as built drawings, enlarged and with a modification by S. Gobelman	Admitted
202	Updated Demonstrative prepared by S. Gobelman	Admitted

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were e-mailed and mailed, first class, on July 12, 2016, to each of the persons on the attached service list.

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on July 12, 2016:

John T. Therriault
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Ste. 11-500
Chicago, Illinois 60601

A handwritten signature in black ink, reading "Bradley P. Halloran", is written over a horizontal line.

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
100 W. Randolph Street, Suite 11-500
Chicago, Illinois 60601

@ Consents to electronic service

SERVICE LIST

PCB 2014-003 @
Matthew D. Dougherty
Illinois Department of Transportation
2300 S. Dirksen Parkway
Springfield, IL 62764

PCB 2014-003
Office of Chief Counsel
Illinois Department of Transportation
2300 S. Dirksen Parkway
Springfield, IL 62764

PCB 2014-003 @
Lauren J. Caisman
Bryan Cave LLP
161 N. Clark Street
Suite 4300
Chicago, IL 60601-3715

PCB 2014-003 @
Susan Brice
Bryan Cave LLP
161 N. Clark Street
Suite 4300
Chicago, IL 60601-3715

PCB 2014-003 @
Evan J. McGinley
Office of the Attorney General
69 W. Washington Street, Suite 1800
Chicago, IL 60602

PCB 2014-003 @
Ellen F. O'Laughlin
Office of the Attorney General
69 W. Washington Street, Suite 1800
Chicago, IL 60602