

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

**NOTICE OF FILING**

To: See Attached Service List

PLEASE TAKE NOTICE that on May 17, 2016, I caused to be filed with the Clerk of the Pollution Control Board of the State of Illinois, *Complainant's Pre-Hearing Statement, Exhibit List and Witness List*, a copy of which is attached hereto and herewith served upon you via e-mail. Paper hardcopies of this filing will be made available upon request.

Dated: May 17, 2016

Respectfully submitted,

BRYAN CAVE LLP

Attorneys for JM Johns Manville

By: /s/ Lauren J. Caisman  
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**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on May 17, 2016, I caused to be served a true and correct copy of the attached *Notice of Filing of Complainant's Pre-Hearing Statement, Exhibit List and Witness List* upon all parties listed on the Service List by sending the documents via e-mail to all persons listed on the Service List, addressed to each person's e-mail address. Paper hardcopies of this filing will be made available upon request.

/s/ Lauren J. Caisman

Lauren J. Caisman

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

**COMPLAINANT’S PRE-HEARING STATEMENT, EXHIBIT LIST AND WITNESS LIST**

Complainant JOHNS MANVILLE (“JM”) hereby submits the following Pre-Hearing Statement, Exhibit List and Witness List for the hearing scheduled for May 23-25, 2016.

**SUMMARY OF CONTESTED ISSUES**

This matter centers around two key factual questions necessary to determine whether IDOT has violated and continues to violate Sections 21(a), (d), and (e) of the Illinois Environmental Protection Act (the “Act”), 415 ILCS 5/21(a), (d), and (e) and related Illinois Pollution Control Board Regulations<sup>1</sup>: 1) did IDOT cause or allow the use, spreading, burial, placing, dumping, dispersion, storage or disposal of asbestos containing waste material (“ACM”), including Transite pipe, on certain property during or after its construction work on an expressway in Waukegan, Illinois in the early 1970s (the “Amstutz Project”) and 2) the extent to which IDOT has, since 1971, held an interest in land, controlled and/or operated a Right of Way that it obtained during the abovementioned Amstutz Project.

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<sup>1</sup> Depending upon the outcome of JM's Motion to Strike, JM might be alleging violations of prior versions of the Act and applicable regulations.

The part of the Amstutz Project at issue here is generally limited to work done on an area south of Greenwood Avenue and east of Sand Street and is comprised of two distinct parcels of land, known as Site 3 and Site 6 (together, the "Sites"). This land is just south of JM's former manufacturing facility in Waukegan. ACM, predominantly in the form of pieces of concrete Transite pipe, has been found buried on Site 3 and Site 6 and the USEPA has ordered that the Sites be remediated in conformance with a Remedial Action Work Plan. While it is undisputed that JM placed concrete Transite pipes, which contained asbestos, on top of the Site 3 Parking Lot to be used as curb bumpers for the cars, JM contends that IDOT is responsible for the subsequent burial of some of those concrete Transite pipes as well as other ACM during IDOT's work on the Amstutz Project.

JM contends that IDOT buried the ACM when IDOT built a temporary detour road through the former Site 3 Parking Lot and when it built an embankment to raise Greenwood Avenue. The embankment, which contains many pieces of concrete Transite pipe in the fill placed by IDOT, still exists.

JM contends that all of IDOT's violations are continuing.

Further, JM contends that IDOT currently controls and operates on a Right of Way located on the Sites. Both the embankment and the area where the detour road met Greenwood Avenue fall within this Right of Way. JM is being required to remove the buried ACM from these areas. Though the parties agree that IDOT has a permanent easement over that Right of Way, IDOT seemingly contends that it should be relieved from liability associated with the ACM that it buried within this Right of Way area that is still being used by IDOT as waste disposal and storage facilities without a permit and in violation of the applicable Pollution Control Board regulations. However, IDOT's contention is not supported by the facts or the law.

IDOT's violations of the Act have directly impacted the scope of the remedy being required by the USEPA for Sites 3 and 6, including the need to excavate buried portions of Transite pipe and to create clean corridors around the six utilities on the Sites. As such, IDOT should be required to cease and desist from violating the Act and to come into compliance. The Board should find in favor of JM and fashion a remedy. The remedy could include requiring IDOT to participate in JM's efforts to remove the ACM from IDOT's Right of Way and nearby areas and/or require IDOT to pay JM a sum of money to be allocated for future remedial costs. Lastly, IDOT's Affirmative Defenses are neither applicable nor meritorious.

**STIPULATIONS REACHED**

With respect to the Exhibits Listed below, the parties have agreed to stipulate to the genuineness and admissibility of certain Exhibits below. The parties still need to discuss some of the Exhibits listed below, which have been added since JM's Exhibit List filed was filed in February 2016.

The following exceptions are identified:

- 1) IDOT does not agree to the admissibility of the statement attributed to Duane Mapes referred to in Exhibit 60.
- 2) JM does not agree to the admissibility of statements made in the text of Exhibit 57 (but does not dispute the findings of the testing). This exhibit also appears as an exhibit to certain depositions.
- 3) No. 5, No. 37, No. 61, No. 68, and No. 69 (possibly).
- 4) IDOT has not had the opportunity to review the following Exhibit Numbers for stipulation purposes. We hope to be able to stipulate on these as well.  
No. 17, No. 18, No. 40, Nos. 44-51, No. 77 and Nos. 83-97.

5) JM has agreed to stipulate to many of the documents on IDOT's prior First Amended Exhibit List. Once we receive their Exhibit List today, we hope to be able to stipulate to more documents.

**EXHIBIT LIST**

1. Case Pleadings, including Complaints (Group Exhibit)
2. IDOT's Answers to JM's Complaint and Second Amended Complaint (Group Exhibit)
3. IDOT's responses to JM's written discovery requests (Group Exhibit).
4. Depositions taken in the case and Exhibits used in depositions.
5. Letter to Michael Forti from Susan Brice dated July 11, 2013 (JM 0006025-0006026)
6. Expert Report of Douglas G. Dorgan, including figures and appendices dated March 16, 2015
7. Affidavit of Douglas G. Dorgan dated February 15, 2016 attached to JM's Responses to IDOT's Motions *in Limine*
8. Expert Rebuttal Report of Steven L. Gobelman with appendices dated May 29, 2015
9. Email from M. Dougherty to S. Gobelman dated May 6, 2015 (IDOT 003178)
10. Email from S. Warren to K. Stoddard dated May 20, 2015 and attachments (Exhibit 3 to Deposition of K. Stoddard)
11. Email from S. Warren to K. Stoddard dated May 20, 2015 (IDOT 0012059)
12. Email from K. Stoddard to M. Dougherty dated February 25, 2016 (IDOT 008137-8138)
13. Email from K. Stoddard to S. Gobelman dated May 29, 2015 and attachments (IDOT 002797-002828)

14. Email from K. Stoddard to S. Gobelman dated May 29, 2015 and attachments (IDOT 002827-002856)
15. Right of Way Plat (IDOT 002845, IDOT 002854, IDOT 002855)
16. Expert Rebuttal Report of Douglas G. Dorgan with figures dated July 27, 2015
17. IDOT's Rule 213(f)(3) Disclosure Statement for Keith W. Stoddard dated March 31, 2016 and exhibits
18. Expert Report of Joseph R. Fortunato, Jr. dated May 3, 2016 and exhibits
19. Excerpts from IDOT Standard Specifications for Road and Bridge Construction dated January 2, 1971 (IDOT 001068-001103, IDOT 002654)
20. Notice to Bidders, Specifications, Proposal Contract and Contract Bond (JM 000604-000683)
21. As Built IDPW Plans for Proposed Federal Aid Highway F.A. Route 437-Section 8-HB& 8-VB Lake County (JM 001132-001235, IDOT 003355-003447)
22. Letter from S. Ziejewski to W.E. Baumann dated September 24, 1970 (IDOT 000261)
23. Letter from H. Bonham to S. Ziejewski dated August 19, and attachments (IDOT 00275-00284)
24. Letter from W. Cellini to E. Bollander dated September 30, 1971 (IDOT 000260)
25. Letter to R. Schmidt to S. Ziejewski dated November 15, 1971 (IDOT 000247-00249)
26. Schedule of Prices (IDOT 000041-000063)
27. Letter to R. Golterman to E. Rosenberg dated December 7, 1971 (IDOT 000217-000218)
28. Letter to G. Moberly to R. Schmidt dated May 25, 1972 (IDOT 000137-000139)
29. Supervisors Engineering Report dated October 17, 1972 (IDOT 000154)

30. Construction Audit [undated] (IDOT 000143-000144)
31. Memo and Authorization for Contract Changes dated October 19, 1972 (IDOT 000294-000300)
32. [Omitted]
33. Explanation for Deviations from Contract (IDOT 000327-000328)
34. Letter to R. Schmidt from S. Ziejewski dated September 30, 1974 (IDOT 000109)
35. Authorization for Contract Changes dated May 5, 1975 (IDOT 000329)
36. Job Completion Notice dated February 18, 1976 (IDOT 000075)
37. Letter to Johns Manville from G. Gianelli and Report from Property Insight dated December 30, 2015 (delivered January 14, 2016) (JM 0006016-0006018)
38. Letter and Resolution re Joint County State Improvement Route 137 dated October 20, 1965 (IDOT 00068-00074)
39. Letter and Resolution re Joint County State Improvement Route 137 dated April 7, 1966 (IDOT 000025-000032)
40. Letter and Resolution re Joint County State Improvement Route 137 dated April 7, 1966 (Exhibit 7 to Deposition of K. Stoddard)
41. Grant for Public Highway dated August 3, 1971 (IDOT 002808-002814)
42. Grant for Public Highway notarized January 16, 1974 (IDOT 002846-002853)
43. Letter to S. Ziejewski from ComEd dated July 24, 1984 with attachment of Grant for Public Highway (IDOT 001031-001040)
44. Highway Jurisdiction Guidelines for Highway and Street Systems dated March 2006 (IDOT 011385-011524)

45. Land Acquisition Policies and Procedures Manual prepared by IDOT dated November 2015 (IDOT 007736-008120)
46. Revision of Title Commitment prepared for IDOT dated March 30, 2016 (IDOT 008160-008171 and Exhibit F to IDOT's Rule 213(f)(3) Disclosure Statement for Keith W. Stoddard)
47. Email from K. Stoddard to E. McGinley dated March 31, 2016 with Draft Rule 213(f)(3) Disclosure Statement attachment (IDOT 008153-008157)
48. Plat of Topographic Survey (JM 0007092-0007093)
49. Access Agreement dated February 12, 2008 between JM and the City of Waukegan (JM 0006649-0006654)
50. License Agreements From Commonwealth Edison Company dated November 16, 1956 (JM 0007094-0007098) and dated November 1, 1961 (JM 0007099-007104), and Affidavit of Brent Tracy dated April 13, 2016
51. Grant for Public Highway notarized April 6, 1984 (IDOT 002799-002807)
52. Photograph of Aerial Photo late 1950s (JM 001296)
53. Aerial Photographs (JM 0005825-0005840)
54. Aerial Photos (IDOT 002632-002653)
55. Aerial Photos (JM 0005964, JM 0005966)
56. Emails between A. Erdmann and S. Gobelman and P. McQuillan dated December 16, 2013 and attached topographic maps (IDOT 003268-003277)
57. ELM Subsurface Characterization Report dated December 1999 (JM 000030-000580)
58. Letter from USEPA to K. Brown of IDOT and 104(e) Request Attachment (IDOT 000378-000391)

59. IDOT Memo from E. Gower to K. Brown dated November 16, 2000 regarding 104(e) Request (IDOT 00393-00398)
60. IDOT 104(e) Response dated November 2000 (JM 000581-000585)
61. IDOT Handwritten Notes (IDOT 00400)
62. Administrative Order on Consent (JM 001248-001282)
63. EE/CA Revision IV and all attachments (JM 001652-002370)
64. EE/CA Modification Letter dated February 1, 2012 (JM 002372-002399)
65. USEPA Enforcement Action Memorandum (JM 002423-002549)
66. Cover Letter and Removal Action Work Plan Revision II dated March 31, 2014 (JM 004655-005767)
67. Cover Letter and Removal Action Work Plan Revisions IV dated February 2016 and comparison with previous RAWP (JM 0006027-0006647)
68. Estimate of Cost and Authority to Work Special Construction Charge and Invoice (JM 0006013-0006015)
69. Email from Tat Ebihara to Doug Dorgan dated March 12, 2015 with attachments (JM 0005942-0005944)
70. Letter from Shannon Flanagan to Doug Dorgan dated March 11, 2015 (JM 0005863-0005873)
71. Letter from Tat Ebihara to B. Tracy, D. Clinton dated January 25, 2016 with attachments (JM 0006019-0006024)
72. Letter from AECOM to M. Ohl dated September 8, 2014 with attachments (JM 005778-005790)
73. Letter from USEPA to AECOM dated September 26, 2014 (JM 005791)

74. Letter to John Van Vranken from LFR with attachments dated July 8, 2008 (JM 001285-001293)
75. Preliminary Environmental Site Assessment (IDOT 003296-003343)
76. A Manual for Conducting Preliminary Environmental Site Assessments for IDOT Infrastructure Projects 2d ed. 2012 (IDOT 11525-11574)
77. IDOT Project Report Illinois Route 137 (Greenwood Avenue) Over Illinois Route 137 (Amstutz Expressway) dated June 2012 (IDOT 008186-008495)
78. JM Response to 104(e) Request (JM 000011-000029)
79. Letter to USEPA dated December 20, 2012 (JM 002550-002566)
80. Illinois Beach State Park Final Report of Findings January 20, 2006 (JM 0005884-0005939)
81. The Illinois Environmental Protection Act and applicable regulations (historical and current)
82. Figure JM 0006648
83. Respondent's Amended Response to Request for Admission No. 11 in Complainant's First Set of Requests for Admission
84. Soil Boring Cross Sections Figures (JM 0007191-0007192)
85. Grant for Public Highway dated April 6, 1984 with Exhibit "A" (JM 0007201-0007210)
86. Affidavit of Brent Tracy, notarized October 11, 2013 and attached to Complainant's Response to Respondent's Motion to Dismiss Complaint
87. Johns Manville's Motions in Limine filed in this case

88. Johns Manville's Motion for Leave to file Second Amended Complaint and attached Exhibits
89. Johns Manville Notice of Deposition for Person Most Knowledgeable Pursuant to Rule 206 filed on April 12, 2016
90. Sidwell Maps IDOT 012085-86
91. 201(K) Email and attachment from Susan Brice to Evan McGinley dated November 11, 2014 and Letter from E. McGinley to S. Brice re 201(k) dated December 2, 2014.
92. Email from Warren to Stoddard asking him to call him in May 2015 (Need a Bates Number)
93. Memo from Seijewski regarding utilities. Dated October 1971 (IDOT 000247-249)
94. Authorization for Contract Change dated 8/13/73 (IDOT 000315)
95. Request for Authorization dated 10/18/71; Document from W.E. Baumann relating to sewer; Approval dated 10/28/71 (IDOT 000287-89)
96. Shoo Fly Road proposal (IDOT 000223-226)
97. Engineer's Report dated 8/2/72 (IDOT 000171)
98. Demonstratives

JM reserves the right to introduce additional exhibits into evidence as necessary to respond to issues that may be raised by IDOT.

**WITNESS LIST**

**Witnesses**

1. Douglas G. Dorgan, Jr. – Expert
2. Tat Ebihara – AECOM, JM's environmental consultant
3. Denny Clinton – Johns Manville

4. John Baczek - IDOT employee
5. Joseph R. Fortunato, Jr. – Expert

**Potential Witnesses**

6. Steven Gobelman – IDOT Expert
7. Brent Tracy – Johns Manville
8. V. Gina Giannelli – Chicago Title Insurance Company (for the admissibility/genuineness of JM 0006016-0006018; IDOT has indicated it will not stipulate)
9. Keith W. Stoddard – IDOT Expert

JM reserves the right to call additional witnesses as necessary to respond to issues that may be raised by IDOT and to put on a rebuttal case.

Dated: May 17, 2016

Respectfully submitted,

BRYAN CAVE LLP

Attorneys for Complainant Johns Manville

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**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on May 16, 2016, I caused to be served a true and correct copy of *Complainant's Pre-Hearing Statement, Exhibit List and Witness List* upon all parties listed on the Service List by sending the documents via e-mail to all persons listed on the Service List, addressed to each person's e-mail address.

/s/ Lauren J. Caisman

Lauren J. Caisman

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