

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

**COMPLAINANT’S PROPOSED DISCOVERY SCHEDULE**

Complainant JOHNS MANVILLE (“JM”) hereby submits, pursuant to the Hearing Officer’s March 7, 2016 Order, its Proposed Discovery Schedule as follows:

1. JM believes that all discovery proceedings, both written and oral, on the new, limited issues raised in JM’s Second Amended Complaint can be completed by **April 21, 2016**. JM anticipates propounding limited, expedited written discovery, addressing IDOT’s ownership, interest in and/or control over portions of Sites 3 and 6, including a right of way on the southern side of Greenwood Avenue (the “Right of Way”), the exact location of the Right of Way, and IDOT’s knowledge of its interest in the Right of Way. JM hereby requests leave to propound five additional interrogatories upon IDOT to address these limited issues, which were not contemplated when the parties’ originally engaged in written and oral discovery. JM can propound this discovery by **March 15, 2016** and believes IDOT should be able to respond by **March 29, 2016**. JM also anticipates taking the depositions of a Rule 206(a)(1) corporate representative of IDOT and, to the extent they are not the designated corporate representative, Keith W. Stoddard and Steven G. Warren, who were disclosed on IDOT’s witness list as IDOT

fact witnesses to address these same issues. JM believes it could conclude this oral discovery by **April 21, 2016** and proceed to hearing the first or second week of May.

2. Expert discovery is neither needed nor appropriate on the issues raised in JM's Second Amended Complaint. First, whether IDOT holds or has held an ownership interest in, a possessory interest in and/or exercised control over the Right of Way is an issue of fact, not opinion, which does not require scientific, technical, or other specialized knowledge to assist the trier of fact. The key factual issues are whether IDOT conveyed or officially abandoned its interest in the Right of Way after 1984 and what actions IDOT has taken with respect to the Right of Way since that time.

3. The second set of issues raised by the Second Amended Complaint is whether IDOT held or exercised sufficient ownership/possessory interest/control over the areas in the Right of Way to be liable under Section 21(d) of the Illinois Environmental Protection Act, 415 ILCS 5/21(d), a legal issue plainly within the Board's purview and expertise. IDOT should not be permitted to extend what is meant to be limited discovery in this case by disclosing a new expert witness to further delay these proceedings. While JM named V. Gina Gianelli, VP Illinois State Counsel for Chicago Title Insurance Company as a potential *fact* witness, Ms. Gianelli's anticipated testimony was limited to the genuineness/admissibility of a title search commissioned by JM, only if a stipulation between JM and IDOT could not be reached regarding the same. Should the Hearing Officer permit IDOT to disclose an additional expert witness at this late juncture, JM will also need to retain and disclose an expert witness.

WHEREFORE, Complainant JOHNS MANVILLE respectfully requests that the Hearing Officer Board enter an Order adopting proposed discovery dates as set forth above.

March 10, 2016

Respectfully submitted,

BRYAN CAVE LLP

Attorneys for Complainant Johns Manville

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**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on March 10, 2016, I caused to be served a true and correct copy of *Complainant's Proposed Discovery Schedule* 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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