

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.)	

NOTICE OF FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on August 15, 2014, I caused to be filed with the Clerk of the Pollution Control Board of the State of Illinois, Complainant's Response to Respondent's Motion for Leave to File Reply *Instante*, copies of which are attached hereto and herewith served upon you via e-mail. Paper hardcopies of this filing will be made available upon request.

Dated: August 15, 2014

Respectfully submitted,

BRYAN CAVE LLP

Attorneys for Complainant Johns Manville

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CERTIFICATE OF SERVICE

I, the undersigned, certify that on August 15, 2014, I caused to be served a true and correct copy of Complainant's Response to Respondent's Motion for Leave to File Reply *Instante* 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.



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**COMPLAINANT’S RESPONSE TO RESPONDENT’S MOTION FOR LEAVE TO FILE
REPLY INSTANTER**

Complainant JOHNS MANVILLE (“JM”) hereby responds to Respondent ILLINOIS DEPARTMENT OF TRANSPORTATION’S (“IDOT”) Motion for Leave to File Reply *Instanter* as follows:

1. On August 12, 2014, Respondent filed a Motion for Leave to File a Reply in Support of Motion to Dismiss *Instanter*, attaching a copy of its proposed reply brief. Respondent argues that it should be granted leave to file a reply in support of its Motion to Dismiss because JM’s Response to IDOT’s Motion to Dismiss contains “multiple factual and legal misrepresentations of IDOT’s position, which requires a reply from IDOT.” Resp. Mot. at 1.

2. Complainant objects to Respondent’s Motion for Leave. The Board’s procedural rules expressly provide that a movant “will not have the right to reply, except as permitted by the Board or the hearing officer to prevent material prejudice.” 35 Ill. Adm. Code 101.500(e). Respondent has failed to show that its interests will be materially prejudiced if it is not allowed to file a Reply in support of its Motion to Dismiss.

3. Respondent's proposed Reply identifies no factual or legal "misrepresentations of IDOT's position." Rather, it is evident from the proposed Reply that Respondent merely disagrees with JM's legal arguments and seeks an opportunity to rebut them. IDOT's does not get that opportunity as a matter of right, and IDOT has failed to show that its interests would be materially prejudiced if it is not granted that opportunity. *See People of the State of Illinois v. Atkinson Landfill Co.*, PCB 13-28, slip op. at 5 (Jan. 9, 2014) (denying motion for leave to file reply brief where Board found no material prejudice). Accordingly, IDOT should not be permitted to file a Reply in support of its Motion to Dismiss.

WHEREFORE, for the reasons set forth herein, Complainant respectfully requests that the Board deny Respondent's Motion to Leave to File Reply *Instante* and disregard Respondent's proposed Reply Brief in ruling on Respondent's Motion to Dismiss.

Dated: August 15, 2014

Respectfully submitted,

BRYAN CAVE LLP

Attorneys for Complainant Johns Manville

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