

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 AND SERVICE

To: ALL PERSONS ON THE ATTACHED CERTIFICATE OF SERVICE

Please take note that today, May 5, 2016, Respondent, Illinois Department of Transportation, filed and served its Supplemental Notice of Expert Deposition with the Clerk of the Pollution Control Board, and upon each of the persons identified on the attached Certificate of Service, a copy of which are hereby served upon you.

Respectfully Submitted,

By: s/Evan J. McGinley
EVAN J. MCGINLEY
ELLEN O'LAUGHLIN
Assistant Attorneys General
Environmental Bureau
69 W. Washington, 18th Floor
Chicago, Illinois 60602
(312) 814-3153
emcginley@atg.state.il.us
eolaughlin@atg.state.il.us
mccaccio@atg.state.il.us

MATTHEW J. DOUGHERTY
Assistant Chief Counsel
Illinois Department of Transportation
Office of the Chief Counsel, Room 313
2300 South Dirksen Parkway
Springfield, Illinois 62764
Matthew.Dougherty@Illinois.gov

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

SUPPLEMENTAL NOTICE OF EXPERT DEPOSITION

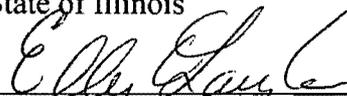
TO: Susan Brice
Lauren Caisman
Bryan Cave LLP
161 North Clark Street
Suite 4300
Chicago, Illinois 60601

YOU ARE HEREBY NOTIFIED that May 9, 2016, commencing at 1:00 p.m., we will take the deposition of Complainant's expert witness, Joseph R. Fortunato, Jr., before a notary public or any other duly authorized officer to administer oaths, at the Office of the Attorney General, 69 West Washington Street, 18th Floor, Chicago, Illinois

You are hereby further notified that pursuant to this notice, in addition to the documents which Respondent previously directed to be produced in its May 2, 2016 deposition notice, deponent shall also produce to the undersigned counsel, at the time of deposition, the documents set forth in the attached Exhibit A.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN, Attorney General
of the State of Illinois

BY: 
Respectfully Submitted,
EVAN J. MCGINLEY
ELLEN O'LAUGHLIN
Assistant Attorneys General

Environmental Bureau
69 W. Washington, 18th Floor
Chicago, Illinois 60602
(312) 814-3153
emcginley@atg.state.il.us
eolaughlin@atg.state.il.us
mccaccio@atg.state.il.us

MATTHEW J. DOUGHERTY
Assistant Chief Counsel
Illinois Department of Transportation
Office of the Chief Counsel, Room 313
2300 South Dirksen Parkway
Springfield, Illinois 62764
(217) 785-7524
Matthew.Dougherty@Illinois.gov

EXHIBIT A

I. DEFINITIONS AND INSTRUCTIONS

1. "Deponent" or "You" shall mean and refer to Joseph R. Fortunato, Jr.
2. "Johns Manville" means Johns Manville and any of its officers, directors, managers, members, agents, representatives, consultants, attorneys, employees or any person or agency acting on behalf of Johns Manville or under the direction or control of Johns Manville or its attorneys or agents.
3. "Commonwealth Edison" shall mean Commonwealth Edison and any of its officers, directors, managers, members, agents, representatives, consultants, attorneys, employees or any person or agency acting on behalf of Commonwealth Edison or under the direction or control of Commonwealth Edison or its attorneys or agents. Additionally, where used to refer to a geographic location, "Commonwealth Edison" shall refer to and mean the former Commonwealth Edison power plant that was located in Waukegan, Lake County, Illinois.
4. "Site" shall mean the Areas 3 and 6 of the Johns Manville Superfund Site, in Waukegan, Lake County, Illinois
5. "Document" shall have a broad meaning and shall include, but is not limited to, the original and any non-identical copy, whether different from the original because of notes made on said copy or otherwise, of any agreement; bank record or statement; bill of lading; book of account, including any ledger, sub-ledger, journal, or sub-journal; brochure; calendar; chart; check; circular; Communication; contract; copy; correspondence; delivery record or receipt; diary; draft; document; electronic communication, including e-mail; electronic data; facsimile; graph; index; instruction; instruction manual or sheet; invoice; job requisition; letter; license; manifest; manual; memorandum; minutes; newspaper or other clipping; note; notebook; opinion;

pamphlet; paper; periodical or other publication; permit; photograph; print; purchase order; receipt; record; recording; report; result; routing slip; social media information (including from Facebook, Twitter or otherwise); spreadsheet; statement; study; summary, including any memorandum, minute or note record, summary of any (a) telephone, videophone or intercom conversation or message, (b) personal conversation or interview, or (c) meeting or conference; survey; telegram; telephone log; ticket; travel or expense record; videotape; voucher; worksheet or working paper; writing; and any other handwritten, printed, reproduced, recorded, typewritten, or otherwise produced graphic material from which the information inquired of may be obtained, or any other documentary material of any nature, in the possession, custody or control of 300 West.

6. “The 1971 Grant for Public Highway” shall mean the Grant for Public Highway executed by Commonwealth Edison Company as Grantor, and for which the State of Illinois, Department of Public Works and Buildings was the Grantee, which was recorded as Document Number 1517501 with the Lake County Recorder of Deeds on August 12, 1971.

7. The 1974 Grant for Public Highway” shall mean the Grant for Public Highway executed by Commonwealth Edison Company as Grantor, and for which the State of Illinois, Department of Public Works and Buildings was the Grantee, which was recorded as Document Number 1649408 with the Lake County Recorder of Deeds on January 16, 1974.

8. The 1984 Grant for Public Highway” shall mean the Grant for Public Highway executed by Commonwealth Edison Company as Grantor, and for which the State of Illinois, Department of Public Works and Buildings was the Grantee, which was recorded as Document Number 2288725 with the Lake County Recorder of Deeds on June 8, 1984.

9. "Right of Way" shall refer to Parcel 0393, as referenced within the 1971, 1974, or 1984 Grant for Public Highway.

10. "Property Insight Report" shall refer to the report produced Property Insight for Johns Manville with an effective date of December 30, 2015, which is attached hereto as Exhibit A.

11. "Opinions" shall mean any opinions that Deponent has either prepared or intend to prepare regarding any interest which IDOT may hold in relative to Parcel 0393, as the result of the 1971, 1974, or 1984 Grant for Public Highway, the use of the term "for highway purposes" contained in the 1971, 1974, or 1984 Grant for Public Highway, or any other opinions that you have prepared or intend to prepare with regard to this Matter.

12. "Chicago Title" shall refer to Chicago Title Insurance Company, its officers, directors, employees and any other related entity thereto.

13. "IDOT" shall mean the Illinois Department of Transportation, and any of its officers, directors, managers, members, agents, representatives, consultants, attorneys, employees or any person or agency acting on behalf of Weaver or under the direction or control of Weaver or its attorneys or agents.

14. "Related to" or "relating to" shall mean anything which, directly or indirectly, concerns, consists of, pertains to, reflects, evidences, describes, sets forth, constitutes, contains, shows, underlies, supports, refers to in any way, is or was used in the preparation of, is appended to, is legally, logically or factually connected with, proves, disproves or tends to prove or disprove.

15. "Report" shall mean the Expert Report of Johns Manville's as yet to be named expert witness.

16. "Matter" shall mean the action currently pending before the Pollution Control Board, entitled *Johns Manville v. Illinois Department of Transportation*, PCB 14-3.

17. "Public Entity" shall mean any unit of local, county, state or federal government.

18. "Highway" shall have the same meaning as is used for that term in Section 2-202 of the Illinois Highway Code, 605 ILCS 5/2-202.

19. "Title Insurance" shall mean as commonly understood in real estate law and/or real estate practice.

20. "Jurisdiction" shall mean legal responsibility which a Public Entity may have over a given parcel of real property, including but not limited to a Highway.

21. To the extent a term used herein is not defined above, it shall be deemed to have its commonly recognized meaning.

22. Wherever appropriate herein, the singular form of a word should be interpreted to include the plural, and vice versa.

23. If You object to the production of any of the documents requested herein, please state the nature and basis for the objection, privilege and/or protection asserted.

II. DOCUMENTS TO BE PRODUCED

You are hereby directed to produce the following documents to IDOT's attorneys on or before the close of business on May 6, 2016, only to the extent not previously produced by Johns Manville:

1. All articles you have written or presentations you have given pertaining to the acquisition of real property by Public Entities.

2. All articles you have written or presentations you have given pertaining to the acquisition or management of rights of way, as that term is generally understood in real estate law, by Public Entities.

3. All articles you have written or presentations you have given pertaining to the acquisition or management of rights of way, as that term is generally understood in real estate law, generally.

4. All articles you have written or presentations you have given pertaining to the acquisition or management of permanent easements, as that term is generally understood in real estate law, by Public Entities.

5. All articles you have written or presentations you have given pertaining to the acquisition or management of permanent easements, as that term is generally understood in real estate law, generally.

6. All articles you have written or presentations you have given pertaining to Highways.

7. All articles you have written or presentations you have given pertaining to issues associated with the management of Highways by Public Entities.

8. Copies of all documents related to your work as a Special Assistant States Attorney for the County of DuPage.

9. Copies of all documents pertaining to your work in matters in which you have either testified or been deposed as an expert witnesses, including, but not limited, to copies of all transcripts of any testimony you may have given, any expert reports you submitted, declarations, or affidavits.

10. Copies of all presentations you have given or articles you have written pertaining to any aspect of residential real estate law.

11. Copies of all presentations you have given or articles you have written pertaining to any aspect of Title Insurance.

CERTIFICATE OF SERVICE

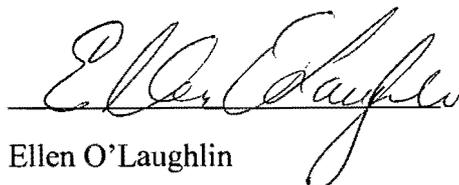
Johns Manville v. Illinois Department of Transportation, PCB 14-3 (Citizens)

I, ELLEN O'LAUGHLIN, do hereby certify that, today, May 5, 2016, I caused to be served on the individuals listed below, by electronic mail, a true and correct copy of IDOT's Supplemental Notice of Deposition on each of the parties listed below:

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

John Therriault
Clerk of the Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
john.therriault@illinois.gov

Susan Brice
Lauren Caisman
Bryan Cave LLP
161 North Clark Street, Suite 4300
Chicago, Illinois 60601
Susan.Brice@bryancave.com
Lauren.Caisman@bryancave.com


Ellen O'Laughlin