

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, March 30, 2016, Respondent, Illinois Department of Transportation, filed copies of all documents listed on the attached Certificate of Service with the Clerk of the Pollution Control Board, and upon each of the parties listed on the certificate of service.

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
colaughlin@atg.state.il.us
mccaccio@atg.state.il.us

THIS FILING IS SUBMITTED ON RECYCLED PAPER

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

CERTIFICATE OF SERVICE

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

I, EVAN J. MCGINLEY, do hereby certify that, today, March 30, 2016, I caused to be served on the individuals listed below, by first class mail and electronic mail, true and correct copies of each of the following documents:

- Respondent's Responses to Complainant's Third Set of Interrogatories
- Respondent's Responses to Complainant's Second Set of Document Production Requests
- Respondent's Responses to Complainant's First Set of Requests for Admission

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

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

s/Evan J. McGinley
Evan J. McGinley

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Complainant,)	
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)	(Citizen Suit)
ILLINOIS DEPARTMENT OF TRANSPORTATION,)	
)	
Respondent.)	

**RESPONDENT'S RESPONSES TO
COMPLAINANT'S THIRD SET OF INTERROGATORIES**

Respondent, the ILLINOIS DEPARTMENT OF TRANSPORTATION, through its attorney, LISA MADIGAN, Attorney General of the State of Illinois, herewith responds to Complainant's Third Set of Interrogatories.

GENERAL OBJECTIONS

To the extent applicable, IDOT states these general objections and hereby incorporates them by reference as objections into each and every one of its responses to Johns Manville's interrogatories.

1. IDOT has not completed its investigation and discovery in this action nor its preparation for trial. Accordingly, all responses below are based only upon such information and documents that are presently available and specifically known to IDOT. As discovery progresses, IDOT reserves the right to supplement its responses to the discovery requests.

2. IDOT objects to the interrogatories insofar as they purport to seek information that is protected from discovery by the attorney-client privilege, the work product doctrine, the

deliberative due process privilege, or any other doctrine or privilege protecting information from discovery.

3. IDOT objects to these interrogatories to the extent they seek information pertaining to issues unrelated to the issues asserted in the Second Amended Complaint, the response to which, to the extent any response is otherwise possible, would require extensive and costly investigation and compilation of information not presently available.

4. IDOT objects to these interrogatories to the extent that they are oppressive, unduly broad and burdensome, or seek information not in its possession, custody or control.

5. IDOT objects to these interrogatories to the extent that they are vague or ambiguous and that any response to the same would be based on speculation as to the meaning or scope of a given interrogatory.

6. IDOT objects to these Interrogatories to the extent that they are duplicative of interrogatories included in Johns Manville's first two sets of interrogatories and further objects that the propounding of previously-propounded interrogatories in Johns Manville's Third Set of Interrogatories is burdensome and oppressive.

7. IDOT objects to these Interrogatories to the extent that they seek information previously available to Johns Manville or in Johns Manville's possession. The burden of obtaining the information necessary to respond to these interrogatories is the same for Johns Manville as it is for the IDOT.

8. IDOT objects to these Interrogatories to the extent they assume, imply or require any legal conclusions.

9. IDOT does not concede the relevancy of any information sought or discovered in responding to these interrogatories and requests for production.

10. IDOT objects to the instructions and definitions to these interrogatories insofar as they require IDOT to undertake or investigate or produce information in excess of what is required of it under the Board Regulations and the Illinois Code of Civil Procedure.

11. IDOT specifically objects to the definition for "Identify," insofar as it seeks the social security numbers of any individual who IDOT identifies in response to Johns Manville's interrogatories. The inclusion of such information is not reasonably related to Johns Manville's right to obtain discovery from IDOT and therefore IDOT declines to provide any information related to the social security numbers of any individuals it may identify in responding to these discovery requests, owing to the personal and sensitive nature of this information.

12. IDOT specifically objects to Johns Manville's inclusion of an undefined term (e.g., "any and all Bypasses") in the definition of the term "Amstuz Project," on the grounds that this undefined term is vague and ambiguous.

13. IDOT specifically objects to Johns Manville's inclusion of the term "Right of Way" in these interrogatories. For purposes of responding to these interrogatories, IDOT interprets the term "Right of Way" as instead meaning a "Grant for Public Highway," which is the term used in the document cited to in Johns Manville's definition for the term "Right of Way."

14. IDOT does not concede the relevancy of any information sought or discovered in responding to these interrogatories.

RESPONSES TO INTERROGATORIES

1. Describe what, if any, interests or rights, You currently possess or hold with respect to the Right of Way. If none, describe how and to whom You transferred, conveyed, abandoned, vacated or divested Your interests or rights previously held with respect to the Right of Way.

RESPONSE

IDOT herewith incorporates by reference each and every objection set forth above under its General Objections. Further responding, IDOT objects to this interrogatory's use of the terms "interests," "rights," "possess," "hold," "transferred," "conveyed," "abandoned," "vacated," and "divested," as none of these terms are undefined within the "Instructions and Definitions" section of Johns Manville's Third Set of Interrogatories and accordingly, each of the objected to terms are vague, ambiguous and potentially contradictory.

Notwithstanding any of the foregoing objections, IDOT states that it held a "Grant of Public Highway" at one time, which was granted by Commonwealth Edison, the fee simple owner of the property, solely for "highway purposes." Such grants for public highways may not be transferred or reconveyed by IDOT to a third party. The Grant for Public Highway in question was only used in conjunction with the construction of an overpass across railroad tracks as part of the construction of the Amstutz Expressway. Once construction of the expressway and the Greenwood Avenue overpass was completed, IDOT had no further use for the Grant for Public Highway, as roads adjacent to the land on which the Grant for Public Highway was located (i.e., Greenwood Avenue and Sand Street), were and have always been, roads under the exclusive control of the City of Waukegan and were never state highways.

2. Describe any and all steps taken by You or anyone doing work for You (including, but not limited to, Steven Gobelman, Keith Stoddard and/or any third party consultant, contractor, or agent) to determine whether and to what extent You were holding or held an interest in or rights with respect to the Right of Way, including the outcome of each step taken, since You received the 104(e) Request from USEPA on or about September 29, 2000.

RESPONSE

IDOT herewith incorporates by reference each and every objection set forth above under its General Objections. Further responding, IDOT objects to this interrogatory's use of the terms "interest," or "rights," as neither of these terms are undefined within the "Instructions and

Definitions” section of Johns Manville’s Third Set of Interrogatories and accordingly, each of the objected to terms are vague and ambiguous. IDOT also objects to this interrogatory as being overbroad and beyond the scope of the limited discovery which has been authorized by the Board at this time. Further responding, IDOT staff have reviewed various documents related to the “Right of Way” and concluded that there would have been no need for maintaining the “Right of Way” following the construction of an overpass on Greenwood Avenue across railroad tracks as part of the construction of the Amstutz Expressway. Once construction of the expressway and the Greenwood Avenue overpass was completed, IDOT had no further use for the Grant for Public Highway, as roads adjacent to the land on which the Grant for Public Highway was located (i.e., Greenwood Avenue and Sand Street), were and have always been, roads under the exclusive control of the City of Waukegan and were never state highways.

3. Describe any and all instances in which You have performed or overseen any work (directly or under contract or other arrangement with any third party) including, but not limited to, upkeep, surveys, soil borings, maintenance and/or site inspection, at the property on which the Right of Way exists since January 1, 1965.

RESPONSE

IDOT herewith incorporates by reference each and every objection set forth above under its General Objections. Further responding, IDOT objects to the use of the terms “upkeep,” “surveys,” “soil borings,” maintenance and/or site inspection” neither of these terms are undefined within the “Instructions and Definitions” section of Johns Manville’s Third Set of Interrogatories and accordingly, each of the objected to terms are vague and ambiguous. IDOT further objects to this interrogatory on the grounds that it seeks the untimely disclosures on subjects that were properly within the scope of previously-permitted fact discovery in this case. Further responding, IDOT refers Johns Manville to the documents which it has previously produced in this case.

4. Describe IDOT's understanding of the meaning of the phrases "for highway purposes only" and "for highway purposes" as set forth in IDOT 002799, IDOT 002808, and IDOT 002816 and the nature and scope of the interest in real property that is conveyed by the use of the phrase.

RESPONSE

IDOT objects to this interrogatory as being, on the whole, vague and ambiguous. IDOT further objects to this interrogatory's use of the term "nature and scope of the interest in real property that is conveyed," as neither that term or any of its subparts, are defined in the "Instructions and Definitions" section of Johns Manville's Third Set of Interrogatories and accordingly, that term is both vague and ambiguous. Further responding, IDOT states that the cited term typically refers to a form of temporary easement through which IDOT is allowed to enter onto the property of a third party, in order to conduct work related to an IDOT construction project, solely for highway purposes.

5. Identify in the last 7 years occurrences in which You have performed remedial or removal actions relating to Contamination within, on, under, or above right of ways in which IDOT or its predecessor currently holds an interest and/or held an interest in the past.

RESPONSE

IDOT objects to the use of the term "remedial or removal actions" as that term is undefined, and therefore vague and ambiguous. Solely for purposes of responding to this interrogatory, IDOT assumes that the term "remedial or removal actions" refers to actions similar to those which Johns Manville and Commonwealth Edison are under an obligation to conduct at the Sites 3 and 6. Based strictly upon the foregoing assumption, IDOT responds that it has not conducted any such actions within the scope of this interrogatory.

6. Identify the "project" which "involve(d) acquisition of additional ROW or easement, and subsurface utility relocation or linear excavation" referred to in IDOT 003303, including, but not limited to, identifying the right of way that had previously been acquired that the document is referring to; the "additional" right of way to be acquired that the document is referring to; each task contemplated or performed regarding the project; how and to what extent

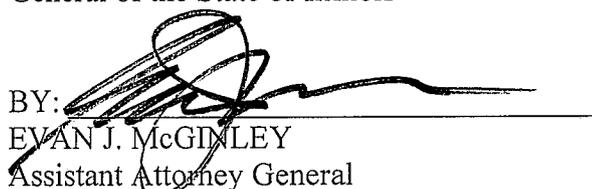
the project was contemplated to involve the Right of Way, Site 3, Site 6, and/or other areas at the intersection of Green and Sand Street.

RESPONSE

IDOT herewith incorporates by reference each and every objection set forth above under its General Objections. IDOT further specifically objects to the inclusion of references to Sites 3 and 6 within the scope of this interrogatory, as by doing so, the scope of this interrogatory goes beyond what was permitted in the limited discovery which the Board permitted in its March 3, 2016 opinion and order. Notwithstanding the foregoing objections, IDOT states that the “project” in question is not “contemplated to involve the Right of Way, Site 3, Site 6, and/or other areas at the intersection of Green and Sand Street.” Rather, the “project” in question, if constructed, will result in the removal of a currently existing overpass which is located west of the areas listed in the interrogatory, the infilling of the space beneath that currently-existing overpass and the paving over that section of highway. Further responding, IDOT does not anticipate that it will need to acquire any additional “ROW” as part of this project.

Respectfully submitted,

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

BY: 
EVAN J. MCGINLEY
Assistant Attorney General
Environmental Bureau North
69 West Washington St., 18th Floor
Chicago, Illinois 60602
312-814-3153
emcginley@atg.state.il.us
mcacaccio@atg.state.il.us

OF COUNSEL:

MATTHEW DOUGHERTY

Assistant Chief Counsel

Illinois Department of Transportation

Office of the Chief Counsel, Room 313

2300 South Dirksen Parkway

Springfield, Illinois 62764

Office Tel: 217-785-7524

Matthew.Dougherty@Illinois.gov

DATED: March 30, 2016

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Complainant,)	
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ILLINOIS DEPARTMENT OF)	
TRANSPORTATION,)	
)	
Respondent.)	

**RESPONDENT'S RESPONSES TO
COMPLAINANT'S SECOND SET OF DOCUMENT REQUESTS**

Respondent, the ILLINOIS DEPARTMENT OF TRANSPORTATION, through its attorney, LISA MADIGAN, Attorney General of the State of Illinois, herewith responds to Complainant's Second Set of Document Requests.

GENERAL OBJECTIONS

To the extent applicable, IDOT states these general objections and hereby incorporates them by reference as objections into each and every one of its responses to Johns Manville's interrogatories.

1. IDOT objects to having to respond to these Document Requests sooner than the 28 days allowed for under Illinois Supreme Court Rule 216(c), as Johns Manville never mentioned their intention to propound any Requests for Production of Documents on IDOT during recent discussions relative to a schedule for conducting limited discovery in the wake of Johns Manville's recently-filed Second Amended Complaint. As such, it is IDOT's position that it never agreed to any expedited timeframe for responding to Johns Manville's Second Set of Requests for Production of Documents, and, accordingly, the responses provided herein are provided under protest and solely to protect IDOT against any adverse or prejudicial impact that

it might suffer by failing to respond by the March 30, 2016 deadline set in the Hearing Officer's order of March 24, 2016. Accordingly, IDOT's Responses to Johns Manville's Second Set of Requests for Production of Documents are herewith filed under protest. By responding to Johns Manville's Second Set of Requests for Production of Documents, IDOT is not waiving any rights or remedies which it may have with respect to the truncated timeframe for responding to each and every one of these requests.

2. IDOT reserves the right to supplement its responses to Johns Manville's Second Set of Request for Production of Documents, based on its continuing investigation into this matter. Given the extensive scope of Johns Manville's requests, when combined with the expedited time frame in which this written discovery is to be completed, IDOT may not be able to locate any additional documents not previously produced by the March 30, 2016 deadline for completing written discovery.

3. IDOT has not completed its investigation and discovery in this action nor its preparation for trial. Accordingly, all responses below are based only upon such information and documents that are presently available and specifically known to IDOT. As discovery progresses, IDOT reserves the right to supplement its responses to the discovery requests.

4. IDOT objects to these requests for production insofar as they purport to seek information that is protected from discovery by the attorney-client privilege, the work product doctrine, the deliberative due process privilege, or any other doctrine or privilege protecting information from discovery.

5. IDOT objects to these requests for production to the extent they seek information pertaining to issues unrelated to the issues asserted in the Second Amended Complaint, the

response to which, to the extent any response is otherwise possible, would require extensive and costly investigation and compilation of information not presently available.

6. IDOT objects to these requests for production to the extent that they are oppressive, unduly broad and burdensome, or seek information not in its possession, custody or control.

7. IDOT objects to these Requests for Production of Documents to the extent that they are vague or ambiguous and that any response to the same would be based on speculation as to the meaning or scope of a given interrogatory.

8. IDOT objects to these requests for production to the extent that they are duplicative of Johns Manville's First Set of Request for Production of Documents or to any documents that were produced by IDOT prior to Johns Manville's deposition of IDOT's expert, Steven Gobelman, and further objects that the propounding of previously-propounded requests for production in Johns Manville's Second Set of Requests for Production of Documents is burdensome and oppressive.

9. IDOT objects to these requests for production to the extent that they seek information previously available to Johns Manville or in Johns Manville's possession. The burden of obtaining the information necessary to respond to these interrogatories is the same for Johns Manville as it is for the IDOT.

10. IDOT objects to these production requests to the extent they assume, imply or require any legal conclusions.

11. IDOT does not concede the relevancy of any information sought or discovered in responding to these requests for production.

12. IDOT objects to the instructions and definitions to these requests for production of documents insofar as they require IDOT to undertake or investigate or produce information in excess of what is required of it under the Board Regulations and the Illinois Code of Civil Procedure.

13. IDOT specifically objects to the definition for "Identify," insofar as it seeks the social security numbers of any individual who IDOT identifies in response to Johns Manville's interrogatories. The inclusion of such information is not reasonably related to Johns Manville's right to obtain discovery from IDOT and therefore IDOT declines to provide any information related to the social security numbers of any individuals it may identify in responding to these discovery requests, owing to the personal and sensitive nature of this information.

14. IDOT specifically objects to Johns Manville's inclusion of an undefined term (e.g., "any and all Bypasses") in the definition of the term "Amstuz Project," on the grounds that this undefined term is vague and ambiguous.

15. IDOT specifically objects to Johns Manville's inclusion of the term "Right of Way" in these interrogatories. For purposes of responding to these interrogatories, IDOT interprets the term "Right of Way" as instead meaning a "Grant for Public Highway," which is the term used in the document cited to in Johns Manville's definition for the term "Right of Way."

RESPONSES TO DOCUMENT REQUESTS

1. Any and all documents relating to the Right of Way from January 1, 1965 to present.

RESPONSE

IDOT herewith incorporates by reference each and every objection set forth above under its General Objections. Notwithstanding the foregoing objections, IDOT states that it believes

that it has previously produced all non-privileged documents responsive to this request, however, IDOT's investigation into this matter continues.

2. Any and all documents reviewed or consulted in responding to JM's Third Set of Interrogatories to Respondent, JM's First Set of Request for Admission to Respondent, and/or to these Requests.

RESPONSE

IDOT herewith incorporates by reference each and every objection set forth above under its General Objections. Notwithstanding the foregoing objections, non-privileged documents that are responsive to this request have previously produced during discovery. Further responding, additional documents that are responsive to this Request are being produced in conjunction with these responses.

3. Any and all Communications relating to the Right of Way from January 1, 1965 to the filing of JM's original Complaint in this cause, including, but not limited to, Communications internal to You and Communications with others (including the City of Waukegan, utilities, and/or Comed).

RESPONSE

IDOT herewith incorporates by reference each and every objection set forth above under its General Objections. Notwithstanding the foregoing objections, IDOT states that all non-privileged documents responsive to this request for production have been produced during prior discovery.

4. Any and all Communications relating to the Right of Way since the filing or [sic] JM's original Complaint in this cause, including, but not limited to, Communications internal to You and Communications with others (including the City of Waukegan, utilities and/or Comed).

RESPONSE

IDOT herewith incorporates by reference each and every objection set forth above under its General Objections. Notwithstanding the foregoing objections, IDOT states that all non-

privileged documents responsive to this request for production have been produced during prior discovery

5. Any and all documents relating to efforts by You or others doing work for You since the filing of JM's original Complaint in this cause to determine what, if any, interest You have ever held and/or what, if any, rights You have ever possessed relating to the Right of Way.

RESPONSE

IDOT herewith incorporates by reference each and every objection set forth above under its General Objections. Notwithstanding the foregoing objections, IDOT states that all non-privileged documents responsive to this request for production have produced during prior discovery.

6. Any and all documents relating to efforts by You or others doing work for You between the time IDOT received the 104(e) Request from USEPA on or about September 29, 2000 and the filing of JM's original Complaint in this cause to determine what, if any, interest You have ever held and/or what, if any, rights You have ever possessed relating to the Right of Way.

RESPONSE

IDOT herewith incorporates by reference each and every objection set forth above under its General Objections. IDOT further objects to the use of the term "interest" in this request for production, as it is not defined in the "Instructions and Definitions" section of Johns Manville's Section Set of Requests for Production of Documents, and as such, the term is vague and ambiguous. Notwithstanding the foregoing objections, IDOT states that all non-privileged documents responsive to this request for production have produced during prior discovery.

7. Any and all documents involving Steven Gobelman and/or Keith Stoddard and the Right of Way, including but not limited to Communications to or from either of them.

RESPONSE

IDOT herewith incorporates by reference each and every objection set forth above under its General Objections. IDOT further objects to the use of the term "involving" in this request

for production, as it is not defined in the "Instructions and Definitions" section of Johns Manville's Section Set of Requests for Production of Documents, and as such, the term is vague and ambiguous. Notwithstanding the foregoing objections, IDOT states that all non-privileged documents responsive to this request for production have produced during prior discovery.

8. Any and all documents relating to any work, construction, design, oversight, maintenance, use (including storage or disposal of materials or equipment), repair, clean up, surveying, soil borings, upkeep and/or inspections done by anyone, including You, regarding or within the Right of Way since January 1, 1965.

RESPONSE

IDOT herewith incorporates by reference each and every objection set forth above under its General Objections. IDOT further objects to the use of the terms "work," "construction," "design," "oversight," "maintenance," "use (including storage or disposal of materials or equipment)," "repair," "clean up," "surveying," "soil borings," "upkeep" and/or "inspections" in this request for production, as none of those terms are defined in the "Instructions and Definitions" section of Johns Manville's Section Set of Requests for Production of Documents, and as such, and as such, are vague and ambiguous. The extensive use of undefined terms within this request for production renders it vague and ambiguous. Notwithstanding the foregoing objections, IDOT states that all non-privileged documents responsive to this request for production have produced during prior discovery.

9. Any and all memoranda, manuals, policy documents, procedure documents, and/or documents containing an opinion or guidance relating to the scope of the interest, and any associated rights, responsibilities and/or obligations, that are conveyed when IDOT or its predecessor obtain(ed) a right of way for "highway purposes" or for "highway purposes only" from 1965 to present.

RESPONSE

IDOT herewith incorporates by reference each and every objection set forth above under its General Objections. IDOT further objects to the use of the terms "interest," "associated

rights,” “responsibilities” and/or “obligations” in this request for production, as none of those terms are defined in the “Instructions and Definitions” section of Johns Manville’s Section Set of Requests for Production of Documents, and as such, they are vague and ambiguous. The extensive use of undefined terms within this request for production renders it vague and ambiguous. Furthermore, IDOT objects to this request as being overbroad and burdensome. Notwithstanding the foregoing objections, IDOT states that non-privileged documents responsive to this request for production have produced during prior discovery. Further responding, IDOT states that additional documents that are responsive to this request are being produced in conjunction with these responses.

10. Any and all memoranda, manuals, policy documents, procedure documents, and/or documents containing an opinion or guidance relating to the ownership of and/or interest in structures built or improvements made by IDOT or its predecessor involving rights of way obtained by IDOT or its predecessor for “highway purposes” or “for highway purposes only” from 1965 to present.

RESPONSE

IDOT herewith incorporates by reference each and every objection set forth above under its General Objections. Furthermore, IDOT objects to this request as being overbroad and burdensome. Notwithstanding the foregoing objections, IDOT states that non-privileged documents responsive to this request for production have produced during prior discovery. Further responding, IDOT states that additional documents that are responsive to this request are being produced in conjunction with these responses.

11. Any and all memoranda, manuals, policy documents, procedure documents, and/or documents containing an opinion or guidance relating to the amount of control IDOT or its predecessor is or was allowed to exercise regarding a right of way obtained by IDOT or its predecessor for “highway purposes” or for “highway purposes only” from 1965 to present.

RESPONSE

IDOT herewith incorporates by reference each and every objection set forth above under its General Objections. IDOT further objects to the use of the phrase “the amount of control IDOT or its predecessor is or was allowed to exercise regarding a right of way obtain by IDOT . . .” as the phrase is vague and ambiguous and the terms “control” and “exercise” are not defined in the “Instructions and Definitions” section of Johns Manville’s Section Set of Requests for Production of Documents. Furthermore, IDOT objects to this request as being overbroad and burdensome. Notwithstanding the foregoing objections, IDOT states that non-privileged documents responsive to this request for production have produced during prior discovery. Further responding, IDOT states that additional documents that are responsive to this request are being produced in conjunction with these responses.

12. Any and all memoranda, manuals, policy documents, procedure documents and/or documents containing opinions or guidance relating to IDOT or its predecessor’s rights, responsibilities and/or obligations with respect to rights of way obtained by IDOT or its processor, including, but not limited to, those obtained for “highway purposes” or for “highway purposes only”.

RESPONSE

IDOT herewith incorporates by reference each and every objection set forth above under its General Objections. IDOT further objects to the use of the phrase “IDOT or its predecessor’s rights, responsibilities and/or obligations with respect to rights of way obtained by IDOT or its processor . . .” as the phrase is vague and ambiguous and the terms “control” and “exercise” are not defined in the “Instructions and Definitions” section of Johns Manville’s Section Set of Requests for Production of Documents Furthermore, IDOT objects to this request as being

overbroad and burdensome. Notwithstanding the foregoing objections, IDOT states that non-privileged documents responsive to this request for production have produced during prior discovery. Further responding, IDOT states that additional documents that are responsive to this request are being produced in conjunction with these responses.

13. Any and all memoranda, manuals, policy documents, procedure documents, and/or documents containing an opinion or guidance related to IDOT or its predecessor's potential Environmental Liability associated with a right of way obtained by IDOT or its predecessor for "highway purposes" or for "highway purposes only".

RESPONSE

IDOT herewith incorporates by reference each and every objection set forth above under its General Objections. Furthermore, IDOT objects to this request as being overbroad and burdensome. Notwithstanding the foregoing objections, IDOT states that non-privileged documents responsive to this request for production have produced during prior discovery. Further responding, IDOT states that additional documents that are responsive to this request are being produced in conjunction with these responses.

14. Any and all memoranda, manuals, policy documents, procedure documents or documents containing opinions or guidance relating to IDOT or its predecessor's potential Environmental Liability for Contamination it places or placed; abandons or abandoned, treats or treated; stores or stored and/or otherwise handles or handled within, under or above a right of way in which it holds or held an interest.

RESPONSE

IDOT herewith incorporates by reference each and every objection set forth above under its General Objections. IDOT further objects to the use of the terms "places or placed,"

“abandons or abandoned,” “treats or treated,” “stores or stored” and “handles or handled” in this request for production, as none of those terms are defined in the “Instructions and Definitions” section of Johns Manville’s Section Set of Requests for Production of Documents, and as such, they are vague and ambiguous. The extensive use of undefined terms within this request for production renders the request vague and ambiguous. Furthermore, IDOT objects to this request as being overbroad and burdensome. Notwithstanding the foregoing objections, IDOT refers Johns Manville to the IDOT Bureau of Design and Environment Manual that is being produced in conjunction with these responses.

15. Any and all documents relating to permits possessed by IDOT or its predecessor relating to the Right of Way.

RESPONSE

IDOT herewith incorporates by reference each and every objection set forth above under its General Objections. IDOT further objects to the use of the term “permits” in this request for production, as that term is not defined in the “Instructions and Definitions” section of Johns Manville’s Section Set of Requests for Production of Documents, and as such, is vague and ambiguous. Notwithstanding the foregoing objections, IDOT states that all non-privileged documents responsive to this request for production have produced during prior discovery.

16. Any and all documents relating to utilities within, on, under, or above the Right of Way.

RESPONSE

IDOT herewith incorporates by reference each and every objection set forth above under its General Objections. Notwithstanding the foregoing objections, IDOT states that all non-privileged documents responsive to this request for production have produced during prior discovery.

17. Any and all documents relating to rights of way obtained by IDOT or its predecessor from Johns Manville or others relating to work done on the Amstutz Project along Greenwood Avenue and east of the Chicago Northwestern railroad tracks in Waukegan, Illinois.

RESPONSE

IDOT herewith incorporates by reference each and every objection set forth above under its General Objections. Notwithstanding the foregoing objections, IDOT states that all non-privileged documents responsive to this request for production have previously produced.

18. Any and all documents transferring, conveying, abandoning, vacating, and/or divesting an interest in the Right of Way from January 1, 1965 to present.

RESPONSE

IDOT herewith incorporates by reference each and every objection set forth above under its General Objections. IDOT further objects to the use of the terms “transferring,” “conveying,” “abandoning,” “vacating,” and “divesting,” in this request for production, as none of those terms are defined in the “Instructions and Definitions” section of Johns Manville’s Section Set of Requests for Production of Documents, and as such, they are vague and ambiguous. The extensive use of undefined terms within this request for production renders the request as a whole vague and ambiguous. Notwithstanding the foregoing objections, IDOT states that all non-privileged documents responsive to this request for production have produced during prior discovery.

19. Any and all documents relating to the “project” identified in IDOT 003303.

RESPONSE

IDOT herewith incorporates by reference each and every objection set forth above under its General Objections. Notwithstanding the foregoing objections, IDOT states that all non-privileged documents responsive to this request for production have produced during prior discovery.

20. Any and all maps, plats, drawings, surveys, bids, and/or specifications associated with the Right of Way, including any construction, reconstruction, demolition, maintenance, and/or upkeep of the Right of Way that You have performed, managed, and/or overseen, at any time, including those that delineate the Right of Way after completion of the Amstutz Project.

RESPONSE

IDOT herewith incorporates by reference each and every objection set forth above under its General Objections. IDOT further objects to the use of the terms “construction,” “reconstruction,” “demolition,” “maintenance,” and “upkeep,” in this request for production, as none of those terms are defined in the “Instructions and Definitions” section of Johns Manville’s Section Set of Requests for Production of Documents, and as such, they are vague and ambiguous. The extensive use of undefined terms within this request for production renders the request as a whole vague and ambiguous. Notwithstanding the foregoing objections, IDOT states that all non-privileged documents responsive to this request for production have produced during prior discovery.

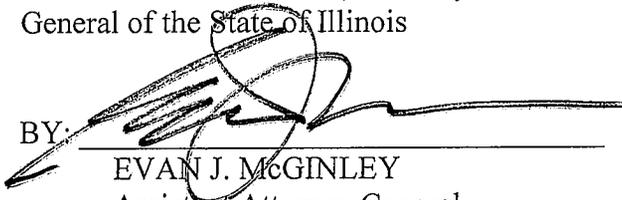
21. Any and all IDOT policies and/or procedures in effect from January 1, 1965 to present regarding right of ways.

RESPONSE

IDOT herewith incorporates by reference each and every objection set forth above under its General Objections. Notwithstanding the foregoing objections, IDOT states that all non-privileged documents responsive to this request for production have previously produced. Further responding, see the copy of IDOT’s “Land Acquisition Manual,” which is being produced in conjunction with these responses.

Respectfully submitted,

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

BY: 

EVAN J. MCGINLEY
Assistant Attorney General
Environmental Bureau North
69 West Washington St., 18th Floor
Chicago, Illinois 60602
312-814-3153
emcginley@atg.state.il.us
mccaccio@atg.state.il.us

OF COUNSEL:

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

DATED: March 30, 2016

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JOHNS MANVILLE, a Delaware corporation)
)
Complainant,)
)
v.)
)
ILLINOIS DEPARTMENT OF)
TRANSPORTATION,)
)
Respondent.)

PCB No. 14-3
(Citizen Suit)

VERIFICATION

I, Matthew D. Dougherty, certify under oath that I have reviewed IDOT's Responses to Complainant's Second Set of Requests for Production, and that to the best of my knowledge and belief, that they are true, accurate and complete.

FURTHER AFFIANT SAYETH NOT

Matthew Dougherty
Matthew D. Dougherty

Signed and Sworn to before me this
30th Day of March, 2016



Lisa A. Brown
NOTARY PUBLIC

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

**RESPONDENT'S RESPONSES TO
COMPLAINANT'S FIRST SET OF REQUESTS FOR ADMISSION**

Respondent, the ILLINOIS DEPARTMENT OF TRANSPORTATION ("IDOT"), through its attorney, LISA MADIGAN, Attorney General of the State of Illinois, herewith responds to Complainant's First Set of Requests for Admission.

GENERAL OBJECTIONS

To the extent applicable, IDOT states these general objections and hereby incorporates them by reference as objections into each and every one of its responses to Johns Manville's First Set of Requests for Admission.

1. IDOT objects to having to respond to these Requests to Admit sooner than the 28 days allowed for under Illinois Supreme Court Rule 216(c), as Johns Manville never mentioned their intention to propound any Requests for Admission on IDOT during recent discussions relative to a schedule for conducting limited discovery in the wake of Johns Manville's recently-filed Second Amended Complaint. As such, it is IDOT's position that it never agreed to any expedited timeframe for responding to Johns Manville's First Set of Requests for Admission and, accordingly, the responses provided herein are provided under protest and solely to protect IDOT against any adverse or prejudicial impact that it might suffer by failing to respond by the March

30, 2016 deadline set in the Hearing Officer's order of March 24, 2016. Accordingly, IDOT's Responses to all of these Johns Manville's First Set of Requests for Admission are filed under protest. By responding to these Requests for Admission, IDOT is not waiving any rights or remedies which it may have with respect to the truncated timeframe for responding to each and every one of these requests.

2. IDOT objects to the Requests for Admission, insofar as they purport to seek information that is protected from discovery by the attorney-client privilege, the work product doctrine, the deliberative due process privilege, or any other doctrine or privilege protecting information from discovery.

3. IDOT objects to these Requests for Admission to the extent that they are oppressive and burdensome, particularly to the extent that they go beyond the limited scope of discovery which was allowed pursuant to the Board's March 3, 2016 opinion and order.

4. IDOT objects to these Requests for Admission to the extent that they are vague or ambiguous and that any response thereto would be based on speculation as to the meaning or scope of a given request for admission.

5. IDOT objects to these Requests for Admission, to the extent they assume, imply or require any legal conclusions.

6. IDOT specifically objects to Johns Manville's inclusion of the term "Right of Way" in these interrogatories. For purposes of responding to these interrogatories, IDOT interprets the term "Right of Way" as instead meaning a "Grant for Public Highway," which is the term used in the document cited to in Johns Manville's definition for the term "Right of Way."

RESPONSES TO REQUESTS FOR ADMISSION

1. Admit that the Right of Way encompasses portions of Site 6.

RESPONSE

IDOT herewith incorporates by reference each and every objection set forth above under its General Objections. Johns Manville denies that a Right of Way encompasses portions of Site 6, but admits that a “Grant for Public Highway” encompasses portions of Site 6.

2. Admit that the Right of Way encompasses portions of Site 3.

RESPONSE

IDOT herewith incorporates by reference each and every objection set forth above under its General Objections. Johns Manville denies that a Right of Way encompasses portions of Site 3, but admits that a “Grant for Public Highway” encompasses portions of Site 3.

3. Admit that the IDOT currently has a right to use the Right of Way.

RESPONSE

IDOT herewith incorporates by reference each and every objection set forth above under its General Objections. IDOT also objects to this Request for Admission, because it calls for a legal conclusion. Further responding, IDOT objects to this Request for Admission’s use of the term “right,” as that term is undefined within the “Instructions and Definitions” section of Johns Manville’s First Set of Requests for Admission and that term is therefore vague and ambiguous. IDOT will not speculate as to the intended meaning of the term “right,” and accordingly denies this Request for Admission.

4. Admit that IDOT has had a right to use the Right of Way since 1971.

RESPONSE

IDOT herewith incorporates by reference each and every objection set forth above under its General Objections. IDOT also objects to this Request for Admission, because it calls for a legal conclusion. Further responding, IDOT objects to this Request for Admission's use of the term "right," as that term is undefined within the "Instructions and Definitions" section of Johns Manville's First Set of Requests for Admission and that term is therefore vague and ambiguous. IDOT will not speculate as to the intended meaning of the term "right," and accordingly denies this Request for Admission.

5. Admit that IDOT never transferred, conveyed, or divested itself of its interest in the Right of Way.

RESPONSE

IDOT herewith incorporates by reference each and every objection set forth above under its General Objections. IDOT also objects to this Request for Admission, because it calls for a legal conclusion. Further responding, IDOT objects to this Request for Admission's use of the terms "transferred," "conveyed," "divested," and "interest," as none of these terms are undefined within the "Instructions and Definitions" section of Johns Manville's First Set of Requests for Admission, and accordingly, each of the objected to terms are vague, ambiguous and potentially contradictory. IDOT will not speculate as to the intended meaning of these terms, and accordingly denies this Request for Admission.

6. Admit that IDOT has never vacated or abandoned the Right of Way.

RESPONSE

IDOT herewith incorporates by reference each and every objection set forth above under its General Objections. IDOT also objects to this Request for Admission, because it calls for a legal conclusion. Further responding, IDOT objects to this Request for Admission's use of the

terms “vacated” and “abandoned,” as neither of these terms is defined within the “Instructions and Definitions” section of Johns Manville’s First Set of Requests for Admission, and accordingly, each of the objected to terms are vague, ambiguous and potentially contradictory. IDOT will not speculate as to the intended meaning of these terms and accordingly denies this Request for Admission.

7. Admit that IDOT does not hold or maintain any permits to conduct waste-storage, waste-treatment, or waste-disposal operations on Site 3, Site 6 and/or the Right of Way.

RESPONSE

IDOT herewith incorporates by reference each and every objection set forth above under its General Objections. IDOT specifically objects to Johns Manville’s inclusion of Sites 3 and 6 as part of this Request for Admission, as any present discovery concerning Sites 3 and 6 goes beyond the scope of the limited discovery which the Board has allowed the parties to take at this time. Accordingly, nothing contained in this Response should be construed as pertaining in any way to either Site 3 or Site 6. IDOT further objects to this Request for Admission, because it calls for a legal conclusion. IDOT also objects to this Request for Admission’s use of the term or phrases “permits,” “conduct,” “waste-storage,” “waste-treatment,” or “waste-disposal operations,” as none of those terms are defined within the “Instructions and Definitions” section of Johns Manville’s First Set of Requests for Admission, and accordingly, each of the objected to terms or phrases are vague, ambiguous or potentially contradictory. IDOT will not speculate as to the intended meaning of these terms or phrases. Assuming that this Request for Admission is intended to refer to permits issued by Illinois EPA to IDOT, IDOT states that it has no knowledge of every having held any such permit for the Right of Way.

8. Admit that IDOT has never held or maintained any permits to conduct waste-storage, waste-treatment, or waste-disposal operations on Site 3, Site 6, and/or the Right of Way.

RESPONSE

IDOT herewith incorporates by reference each and every objection set forth above under its General Objections. IDOT specifically objects to Johns Manville's inclusion of Sites 3 and 6 as part of this Request for Admission, as any present discovery concerning Sites 3 and 6 goes beyond the scope of the limited discovery which the Board has allowed the parties to take at this time. Accordingly, nothing contained in this Response should be construed as pertaining in any way to either Site 3 or Site 6. IDOT also objects to this Request for Admission, because it calls for a legal conclusion. Further responding, IDOT objects to this Request for Admission's use of the term or phrases "permits," "conduct," "waste-storage," "waste-treatment," or "waste-disposal operations" as none of those terms are defined within the "Instructions and Definitions" section of Johns Manville's First Set of Requests for Admission, and accordingly, each of the objected to terms or phrases are vague, ambiguous or potentially contradictory IDOT will not speculate as to the intended meaning of these terms or phrases. Assuming that this Request for Admission is intended to refer to permits issued by Illinois EPA to IDOT, IDOT states that it has no knowledge of every having held any such permit for the Right of Way.

9. Admit that the Right of Way is part of a "State highway" (as defined in 605 ILCS 5/2-203).

RESPONSE

IDOT herewith incorporates by reference each and every objection set forth above under its General Objections. IDOT also objects to this Request for Admission, because it calls for a legal conclusion. IDOT denies that the Right of Way is part of a "State highway (as defined in 605 ILCS 5/2-203)." IDOT further denies that the "Grant for Public Highway" is part of a "State highway (as defined in 605 ILCS 5/2-203)," and further states that at all times relevant to this action, the roadways immediately adjacent to the Grant for Public Highway (i.e.,

Greenwood Avenue and Sand Street), have been under the exclusive control of the City of Waukegan.

10. Admit that IDOT has not surrendered jurisdiction of the Right of Way, or any portion thereof or any improvements thereon, as provided for in 605 ILCS 5/4-406.1 or 65 ILCS 5/11-91.2-1.

RESPONSE

IDOT herewith incorporates by reference each and every objection set forth above under its General Objections. IDOT further objects to this Request for Admission's use of the term "jurisdiction," as that term is not defined in the "Definitions and Instructions" Section of Johns Manville's First Set of Request for Admission, and as such, the term is vague and ambiguous. IDOT also objects to this Request for Admission, because it calls for a legal conclusion. Further responding, IDOT denies that it has ever had "jurisdiction" over the "Right of Way". Further responding, IDOT denies that it could have ever "surrendered jurisdiction" over the "Right of Way" within the meaning of 605 ILCS 5/4-406.1, as the "Right of Way" is not a "State highway" within the meaning of 605 ILCS 5/2-203.

11. Admit that IDOT has not entered into any written contract with any other highway authority for the jurisdiction, maintenance, engineering, or improvement of the Right of Way, or any portion thereof or any improvement thereon, as provided for in 605 ILCS 5/4-409.

RESPONSE

IDOT herewith incorporates by reference each and every objection set forth above under its General Objections. IDOT also objects to this Request for Admission, because it calls for a legal conclusion. IDOT further objects to the use of the terms "written contract," "highway authority for the jurisdiction," "maintenance," "engineering," or "improvement" in this request, as none of those terms are defined in the "Instructions and Definitions" section of Johns

Manville's First Set of Requests for Admission, and accordingly, each of those terms are vague and ambiguous. IDOT will not speculate as to the intended meaning of these terms in the context of this Request for Admission. Accordingly, IDOT is unable to either admit or deny this Request for Admission.

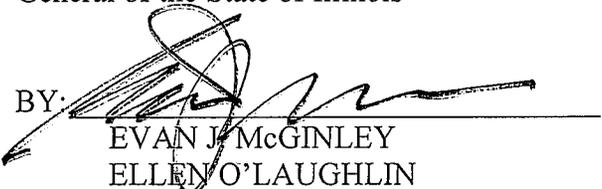
12. Admit that IDOT has not authorized any highway authority other than IDOT to enter into any written contract with another highway authority other than IDOT for the jurisdiction, maintenance, administration, engineering, or improvement of the Right of Way, or any portion thereof or any improvement thereon, as provided for in 605 ILCS 5/4-409.

RESPONSE

IDOT herewith incorporates by reference each and every objection set forth above under its General Objections. IDOT also objects to this Request for Admission, because it calls for a legal conclusion. IDOT further objects to the use of the terms "jurisdiction," "maintenance," "engineering," or "improvement" in this request, as none of those terms are defined in the "Instructions and Definitions" section of Johns Manville's First Set of Requests for Admission, and as such, each of those terms is vague and ambiguous. Additionally, the overall language and compound structure of this Request for Admission are such as to render it vague, ambiguous, and completely unintelligible. As such, IDOT is unable to either admit or deny this Request for Admission.

Respectfully submitted,

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

BY: 

EVAN J. MCGINLEY
ELLEN O'LAUGHLIN
Assistant Attorney General
Environmental Bureau North
69 West Washington St., 18th Floor
Chicago, Illinois 60602
312-814-3153
emcginley@atg.state.il.us
eolaughlin@atg.state.il.us
mccaccio@atg.state.il.us

OF COUNSEL:

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

DATED March 30, 2016

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JOHNS MANVILLE, a Delaware corporation)

Complainant,)

v.)

ILLINOIS DEPARTMENT OF)
TRANSPORTATION,)

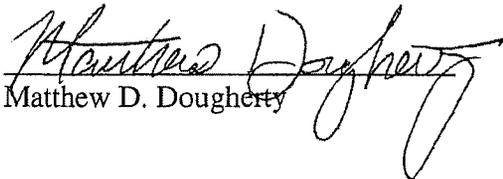
Respondent.)

PCB No. 14-3
(Citizen Suit)

VERIFICATION

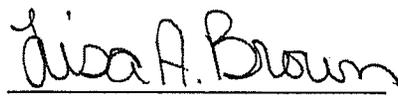
I, Matthew D. Dougherty, certify under oath that I have reviewed IDOT's Responses to Complainant's First Set of Requests for Admission, specifically Requests Numbers 1 and 2, and that to the best of my knowledge and belief, that they are true, accurate and complete.

FURTHER AFFIANT SAYETH NOT


Matthew D. Dougherty



Signed and Sworn to before me this
30th Day of March, 2016


NOTARY PUBLIC

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JOHNS MANVILLE, a Delaware corporation)

Complainant,)

v.)

ILLINOIS DEPARTMENT OF)
TRANSPORTATION,)

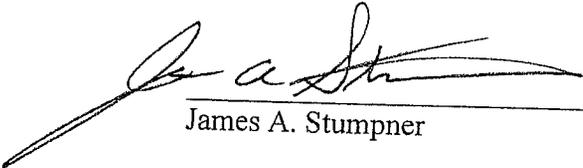
Respondent.)

PCB No. 14-3
(Citizen Suit)

VERIFICATION

I, James A. Stumpner, certify under oath that I have reviewed IDOT's Responses to Complainant's First Set of Requests for Admission, specifically Requests Numbers 3 through 10, and that to the best of my knowledge and belief, that they are true, accurate and complete.

FURTHER AFFIANT SAYETH NOT


James A. Stumpner

Signed and Sworn to before me this
30th Day of March, 2016




NOTARY PUBLIC