

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 17, 2016, Respondent, Illinois Department of Transportation, filed and served IDOT'S PRE-HEARING REPORT with the Clerk of the Pollution Control Board, a copy of which is hereby served upon you.

Respectfully Submitted,

By: s/Evan J. McGinley
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CERTIFICATE OF SERVICE

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

I, EVAN J. MCGINLEY, do hereby certify that, today, May 17, 2016, I caused to be served on the individuals listed below, by electronic mail, a true and correct copy of IDOT's Pre-Hearing Report on each of the parties listed below:

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s/Evan J. McGinley _____
Evan J. McGinley

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ILLINOIS DEPARTMENT OF TRANSPORTATION'S PRE-HEARING REPORT

Respondent, DEPARTMENT OF TRANSPORTATION (“IDOT”), through its counsel, LISA MADIGAN, Attorney General for the State of Illinois, herewith submits its Pre-Hearing Report.

I. Contested Issues

- a. That in the early 1970s, the Illinois Department of Public Works and Buildings (the predecessor agency to IDOT), constructed a bridge and embankment (“Embankment”) over a railroad crossing, immediately west of the intersection of Greenwood Avenue and Sand Street (now Pershing Road), in Waukegan, Illinois. The construction of Embankment occurred in conjunction with the construction of the the Lakefront or Amstutz Expressway. Johns Manville alleges that in the course of constructing the Embankment, IDOT “used, spread, buried, placed and disposed” of existing asbestos pipe and asbestos-containing materials (“ACM”) fill which may previously have been located on a parcel of property which Johns Manville leased from Commonwealth Edison, for use as a parking lot (“Parking Lot”), which was

- located on the south side of Greenwood Avenue, east of Sand Street, in Waukegan, Illinois.
- b. That prior to the construction of the Embankment, and continuing up to the present day, the City of Waukegan has always had jurisdiction and control over the relevant portions of Sand Street and Greenwood Avenue.
 - c. In 1971, 1974 and, finally, in 1984, IDOT executed a “Grant for Public Highway” (“Grant”) with Commonwealth Edison. The Grant gave IDOT the right to use a portion of the northwest corner of Commonwealth Edison’s property, which it turn corresponds to the northwest corner of Site 3 and the western edge of Site 6, “for highway purposes.” Johns Manville contends that this grant, in essence, a right of way, vests IDOT with the rights and duties to maintain the Grant (also known as Parcel 0393). IDOT disputes this contention, as it is IDOT’s position that the Grant or right of way is part of the existing adjacent roadway, which is under the control of the City of Waukegan.
 - d. From some point in late 2000/early 2001, up through June 2007, when the Administrative Order on Consent was entered between USEPA, Johns Manville and Commonwealth Edison, Johns Manville lobbied USEPA to name IDOT as a potentially responsible party for the investigation and remediation of initially Site 3 and, later, Site 6.
 - e. Johns Manville alleges that as the result of IDOT’s construction of the Embankment, it caused or allowed the open dumping of waste, in violation of Section 21(a) of the Environmental Protection Act (“Act”), 415 ILCS 5/21(a). IDOT denies this allegation in its entirety.

- f. Johns Manville also contends that as the result of IDOT's purported interest in the Grant, it is therefore the owner/operator of an unpermitted waste site and is therefore in violation of Section 21(d) of the Act, 415 ILCS 5/21(d). IDOT denies this allegation in its entirety.
- g. Johns Manville further alleges that as the result of IDOT's construction of the Embankment, and the manner in which it was constructed, it violated Section 21(e) of the Act, 415 ILCS 5/21(e). IDOT denies this allegation in its entirety.
- h. Johns Manville further contends that but for IDOT's alleged role in disturbing the existing asbestos pipe and ACM at the Parking Lot during IDOT's construction of the Embankment, USEPA would have allowed it to have undertaken a significantly less expensive cleanup of the Site.
- i. IDOT has filed eight affirmative defenses in conjunction with its answer to Johns Manville's Second Amended Complaint. IDOT understands that Johns Manville contests each and every one of its affirmative defenses.

II. Stipulations

Based on a May 16, 2016 discussion and other communications between the parties' respective counsel, the parties are prepared to enter the following stipulations with respect to IDOT's exhibits:

- a. Johns Manville stipulates to the authenticity and admissibility of all of IDOT's exhibits, with the exception of IDOT Exhibits 4, 25-27, 29-30, 26, 38, and 50-52.
- b. Johns Manville also agrees to stipulate to the authenticity of a 1999 environmental report written by ELM Consulting LLC for Johns Manville, as well as the

admissibility of the report with the exception of certain statements contained within that report. (Exhibit 2.c)

- c. Johns Manville states that it cannot tell whether IDOT's Exhibits 9 and 10 have previously been produced and IDOT is hopeful of being able to resolve this issue with Johns Manville prior to the start of the hearing on May 23, 2016.

III. Exhibit List

1. All Pleadings Filed in Case
2. Expert Report of Douglas G. Dorgan, Jr. and the following documents listed in the bibliography thereto (March 17, 2015):
 - a. Removal Action Work Plan, Revision 2; Southwestern Site Area – Sites 3, 4/5, and 6, Johns Manville Site, Waukegan, Illinois dated March 31, 2014, prepared for United States Environmental Protection Agency (USEPA) Region 5 and prepared by AECOM Technical Services, Inc.
 - b. Engineering Evaluation/Cost Analysis (EE/CA) Southwestern Site Area Sites 3, 4/5, and 6; Revision 4 and Addendum dated April 4, 2011 and October 31, 2011, prepared for Johns Manville and Commonwealth Edison Company and prepared by ARCADIS U.S., Inc.
 - c. Surface and Subsurface Characterization Site 2 and Site 3 Former Johns Manville Manufacturing Facility: Waukegan, Illinois dated December 10, 1999, prepared for Johns Manville and prepared by ELM Consulting, LLC
 - d. Johns Manville Southwestern Site Area, Waukegan, Lake County, Illinois, Administrative Order on Consent V-W-07-C-870 dated February 1, 2012 (initial version dated June 11, 2007)
 - e. Fourth Five-Year Review Report for Johns-Manville Site dated April 30, 2013, prepared for USEPA Region 5 and prepared by ESEPA Region 5
 - f. Enforcement Action Memorandum dated November 30, 2012, prepared for Johns Manville and Commonwealth Edison Company and prepared by USEPA Region 5
 - g. Results of Power Line Excavation; Greenwood Avenue Ramp adjacent to Southwestern Site Area, Waukegan Illinois dated July 8, 2008, prepared for Commonwealth Edison Company and Exelon Corporation and prepared by LFR Inc.

- h. Brad Bradley (USEPA) to Denny Clinton (Johns Manville) dated July 10, 1998, Exhibit C
 - i. Second Five-Year Review Report for Johns-Manville Site dated May 2, 2003, prepared for USEPA Region 5 and prepared by USEPA Region 5
 - j. Bruce D. Ray (Johns Manville) to Margaret Herring (USEPA Region 5) dated July 1, 1999, Response to CERCLA Section 104(e) Request
 - k. Barnhardt, M.L., 2010, Surficial Geology of Waukegan Quadrangle, Lake County, Illinois; Illinois State Geological Society, USGS-STATEMAP contract report, 2 sheets, 1:24,000
 - l. Respondents' Response Document to Engineering Evaluation/Cost Analysis (EE/CA), Revision 4, as Modified and Approved by USEPA; Southwestern Site Area, Waukegan, Illinois dated March 12, 2012, prepared for USEPA Region 5 and prepared by AECOM Technical Services, Inc.
 - m. Cali, S., Scheff, P., and Sokas, R., 2006 Illinois Beach State Park (IBSP); Determination of Asbestos Contamination in Beach Nourishment Sand Final Report of Findings, Great Lakes Centers for Occupational and Environmental Safety and Health
 - n. AECOM Johns Manville Site 3 and Site 6 Draft Cost Estimate_11Mar15 dated March 12, 2015, prepared for Weaver Consultants Group and prepared by AECOM Technical Services, Inc.
 - o. Modifications to the Engineering Evaluation/Cost Analysis dated February 2012, prepared for Johns Manville and prepared by USEPA Region 5
3. Transcript of May 16, 2016 Deposition of Douglas G. Dorgan, including all exhibits (May 16, 2015)
4. Expert Rebuttal Report of Steven L. Gobelman and the following documents listed in the bibliography thereto (May 29, 2015):
- a. Notice to Bidders, Specifications, Proposal, Contract and Contract Bond (IDOT 000721-781)
 - b. State of Illinois Department of Public Works and Buildings, Division of Highways, Plans for Proposed Federal Aid Highway, F.A. Route 42 – Section 8-HB & 8-VB, Lake County, Contract #28266 (JM 000586-1235)
 - c. Memo from Ziejewski, Sigmund C., regarding utility conflicts. October 13, 1971 (IDOT 000247-249)

- d. Standard Specifications for Road and Bridge Construction, adopted January 2, 1971
- e. Riddle, Paul F. Authorization of Contract Changes not Involving Section Length, document Authorization #14. November 14, 1973 (IDOT 000318-19)
- f. Authorization of Contract Changes not Involving Section Length, Authorization #18 (Final). May 5, 1975 (IDOT 000329)
- g. Resolution with the City of Waukegan. April 7, 1966 (IDOT 00024-32)
- h. Resolution with Lake County. October 20, 1965 (IDOT 00068-74)
- i. Illinois Department of Transportation's response to U.S. Environmental Protection Agency's Request for Information Regarding the Johns Manville Superfund Site in Waukegan, Illinois. November 27, 2000. (IDOT 000373-77)
- j. Hagerman, T.E. Supervising Engineer's Report. October 23, 1972 (IDOT 000134)
5. Transcript of July 10, 2015 Deposition of Steven L. Gobelman, including all exhibits
6. Rebuttal Report of Douglas G. Dorgan (07/27/15)
7. Transcript of October 28, 2015 Deposition of Denny Clinton, including all exhibits
8. Transcript of October 29, 2015 Deposition Transcript of Douglas G. Dorgan, including all exhibits
9. IDOT Historical Aerial Photos of Vicinity of Site (Group Exhibit):
 - a. BW Photo 07/20/39
 - b. BW Photo 07/20/39
 - c. BW Photo 07/01/54
 - d. BW Photo 07/01/54
 - e. BW Photo 10/20/67
 - f. BW Photo 10/20/67
 - g. BW Photo 06/11/70
 - h. BW Photo 06/11/70
 - i. BW Photo 10/26/72
 - j. BW Photo 10/26/72
 - k. BW Photo 10/30/78
 - l. BW Photo 10/30/78
 - m. BW Photo 08/17/88
 - n. BW Photo 08/17/88

- o. BW Photo 03/31/00
 - p. BW Photo 03/31/00
 - q. Color Photo 03/31/00
 - r. Color Photo 03/31/00
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- 10. Historical Topographical Maps of Vicinity of Site (IDOT 003259-3266)
 - a. 1914 Topo Map
 - b. 1929 Topo Map
 - c. 1939 Topo Map
 - d. 1960 Topo Map
 - e. 1972 Topo Map
 - f. 1980 Topo Map
 - g. 1993 Topo Map
 - h. 2012 Topo Map
 - 11. Aerial Photograph of Johns Manville Facility, c. 1960 (JM 001296)
 - 12. Text of Environmental Protection Act (1970)
 - 13. Pollution Control Board Solid Waste Regulations (July 19, 1973)
 - 14. IDOT 1971 "Standard Specifications"
 - 15. Johns Manville's Responses to IDOT's First Set of Interrogatories (12/12/14).
 - 16. Johns Manville's Responses to IDOT's First Set of Requests for Production (12/12/14)
 - 17. Johns Manville's Responses to IDOT's Second Set of Interrogatories (01/02/15).
 - 18. Johns Manville's Responses to IDOT's Second Set of Requests for Production (01/02/15)
 - 19. Johns Manville' 1999 104(e) response (JM000011-29)
 - 20. USEPA Comments on EE/CA, Rev. 1 (February 3, 2010) (JM 001446-1451)
 - 21. Comments on EE/CA, Rev. 2 (June 2, 2010 USEPA)(JM 001547-1549)
 - 22. USEPA Comments on EE/CA, Rev. 3 (October 6, 2010)(JM 001646-1651)
 - 23. EE/CA, Rev. 4 (April 4, 2011) (JM 001652-1549)
 - 24. Response to February 1, 2012 USEPA comments (March 12, 2012) (JM 002400-2414)

25. Email from Bruce Ray to Ann Coyle (July 6, 2000) (JM 002415)
26. Email thread between Brent Tracy and Janet Carlson (February 15, 2007) (JM 002419)
27. Email from Brent Tracy to Janet Carlson (May 7, 2007) (JM 002420)
28. USEPA, Enforcement Action Memorandum (November 30, 2012) (JM 002423-2549)
29. Letter from Susan Brice to Janet Carlson (December 20, 2012) (JM 002550-2566)
30. Letter from Susan Brice to USEPA Region V (May 16, 2013) (JM 002567-2576)
31. USEPA, Notice re: Dispute Resolution (June 5, 2013) (JM 002582-2583)
32. USEPA, Response to Notices of Dispute (September 19, 2013)(JM -002584-2589)
33. Remedial Action Work Plan (November 2013) (JM 002593-3724)
34. USEPA comments on RAWP (February 16, 2014) (JM 0043648-4654)
35. USEPA, Approval of RAWP (April 30, 2014) (JM 005774)
36. Letter from USEPA to Denny Clinton (July 10, 1998) (JM 005796-98)
37. Date Unknown – RAWP Scope of Work and Implementation Issues (JM 005814-5821)
38. April 30, 1998 Letter to Denny Clinton (JM 005841-5842)
39. Complainant's Revised Responses to [IDOT's] Interrogatories 1 and 2 (05/13/15)
40. IDOT's Subpoena to Johns Manville for Deposition of Douglas G. Dorgan, Jr
41. IDOT's Subpoena to Johns Manville for Deposition of William D. Clinton
42. Johns Manville's Response to IDOT's Subpoena of Deposition of Douglas G. Dorgan, Jr. (10/27/15)
43. Johns Manville's Response to IDOT's Subpoena of Deposition of William Dennis Clinton (10/27/15)
44. Photos taken of vicinity of Sites 3 and 6 by Steven Gobelman in May 2015 (IDOT 002664-002697)

45. Memo from S. Ziejewski (September 21, 1971) (IDOT 000962)
46. Undated Scope of Audit Report (IDOT 000143-144)
47. November 10, 1971 - Change Order for Special Excavation (IDOT 000221)
48. September 30, 1971 – Award letter (IDOT 000260)
49. 1971 Standard Specifications
50. IDOT’s Production of Documents to Johns Manville (Bates # IDOT001064-001067).
51. IDOT’s Third Production of Documents to Johns Manville (Bates # IDOT002664-0003354).
52. September 2015 - Contract for Legal Services between Illinois Department of Transportation and Andrews Engineering, Inc.
53. Chicago Title Insurance Company, Commitment for Title Insurance (JM 0006689-0006702)
54. Access Agreement between Johns Manville and City of Waukegan, February 12, 2008 (JM 0006649-0006654)
55. Email from Brent Tracy to various individuals February 18, 2008 (JM 0007085)
56. Quitclaim Deed (April 18, 1895)
57. Quitclaim Deed (January 20, 1915)
58. Demonstrative Exhibit Created by Steven Gobelman
59. IDOT Lake County Jurisdictional Map
60. April 20, 1966 Memo from B.M. Borrud to Stahl Renwick and Mason Nicholson re: agreement executed between City of Waukegan and State of Illinois.

IV. Potential Witnesses

IDOT may call some or all of the following individuals as witnesses in its defense of this matter:

- Steven Gobelman

- James Stumpner
- Keith Stoddard
- Denny Clinton
- Tat Ebihara
- Brent Tracy

Respectfully Submitted,

ILLINOIS DEPARTMENT
OF TRANSPORTATION

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