

**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 RESPONSE TO RESPONDENT’S MOTION *IN LIMINE* TO BAR CERTAIN OPINION TESTIMONY OF DOUGLAS G. DORGAN**

Complainant JOHNS MANVILLE (“JM”) hereby submits its response to Respondent ILLINOIS DEPARTMENT OF TRANSPORTATION (“IDOT”)’s Motion *in Limine* to Bar Certain Opinion Testimony of Douglas G. Dorgan (the “Motion”) as follows:

**INTRODUCTION**

Unlike Mr. Dorgan’s expert opinions in this case, IDOT’s Motion can only be considered unsupported, misleading, and overreaching. Where IDOT claims that Mr. Dorgan opines on ultimate legal issues in this case, IDOT overstates the ultimate issue to be decided and misstates the opinions rendered by Mr. Dorgan. Where IDOT argues that Mr. Dorgan lacks qualifications to render an expert opinion about the design or construction of IDOT’s Amstutz Project (the “Project”), IDOT distorts Mr. Dorgan’s opinions and undervalues Mr. Dorgan’s significant and lengthy experience in the environmental field, which has encompassed extensive engineering work. Where IDOT asserts that Mr. Dorgan’s opinions are based upon the opinions of another expert, IDOT selectively cites to a portion of Mr. Dorgan’s deposition testimony, but ignores Mr. Dorgan’s testimony flatly denying such a claim. Lastly, where IDOT claims that Mr. Dorgan’s

opinions are based on conjecture, IDOT neglects to consider Mr. Dorgan's pervasive citation to the documentary evidence on which his conclusions are based. IDOT's Motion should be denied.

**ARGUMENT**

**1. While Mr. Dorgan's Report Does Not Opine On The Ultimate Issues In This Case, He Should Not Be Barred From Doing So At Trial.**

In its attempt to exclude Mr. Dorgan from testifying to certain conclusions in his Expert Report dated March 16, 2015 (the "Expert Report," attached hereto as **Exh. 1**), IDOT misidentifies the ultimate issues in this case and misreads Mr. Dorgan's Expert Report. Contrary to IDOT's assertion, the "ultimate question" in this case is not whether "IDOT's conduct some forty plus years ago in the construction of the Project constitutes a violation of the Section 21(a) and (e) of the Act." (Motion, p. 3.) Rather, while IDOT's conduct is relevant to the ultimate question, the only ultimate question is whether JM, as a matter of law, has met its burden of proof. *Compare KCBX Terminals Co. v. Illinois Environmental Protection Agency*, PCB 14-110, 2014 WL 1757982 (Apr. 28, 2014) (B. Halloran). In *KCBX Terminals*, the respondent moved to bar the opinion testimony of two of the complainant's proffered experts on the grounds that those opinions constituted improper legal conclusions. *See id.* at \*2. Those experts proposed to testify, in part, on whether certain of the petitioner's actions would violate the Illinois Environmental Protection Act ("IEPA") or Illinois Pollution Control Board Regulations. *See id.* at \*3. In allowing the experts to testify regarding their disclosed opinions, the Hearing Officer found that the proffered experts' disclosed opinions did "not constitute an opinion on whether, as a matter of law, [petitioner] has met its burden of proof — the ultimate question before the Board." *Id.*

Like in *KCBX Terminals*, here, Mr. Dorgan is not proposing to testify as to whether JM has met its burden in proving its claims against IDOT — the ultimate question before the Board. Instead, Mr. Dorgan seeks to offer testimony “concern[ing] how the information and documents contained in the administrative record relates to the regulations set forth.” *Compare id. with* Deposition of Douglas G. Dorgan, Jr. dated May 6, 2015 (“Dorgan Dep.”) at 151:8-153:6, excerpts attached as **Exh. 2**. IDOT makes no argument, and cannot argue, that Mr. Dorgan is not qualified to testify as an expert on the relationship of the materials exchanged in this case to the Board regulations or to the provisions of the IEPA. *Compare id.* at \*3. As such, IDOT’s argument that Mr. Dorgan’s opinions constitute “impermissible legal conclusions that go to the ultimate issue before the Board in the upcoming hearing in this matter” (Motion, p. 2), fails on this basis alone.

Assuming *arguendo* that IDOT’s alleged violations of Sections 21 of the IEPA were ultimate conclusions in this case — which they are not — nowhere in the body of Mr. Dorgan’s Expert Report does Mr. Dorgan ultimately conclude that IDOT violated the IEPA. Rather, the Report states that “[b]ased upon my significant experience with the IEPA, the IEPA regulations, the Act, CERCLA, RCRA and USEPA, . . . it is my opinion that IEPA would more likely than not view IDOT’s conduct during the Amstutz Project involving asbestos as violation Section 21 of the Act.” (*See* Expert Report, § 3.4.) Mr. Dorgan is not testifying to legal conclusions, as IDOT suggests, but he is describing the conduct of IDOT in reference to specified rules, regulations, and statutes. *See People v. Consolidated Freightways Corp. of Delaware et al.*, PCB 76-107, 1978 WL 9011, \*5 (Oct. 4, 1978).

Nevertheless, that Mr. Dorgan's testimony may "relate to ultimate issue in this case does not make it objectionable." *KCBX Terminals*, 2014 WL 1757982, at \*3. In fact, the Board has previously held:

Illinois Rule of Evidence 704 allows opinion testimony on an ultimate fact or issue to be decided by the trier of fact. Expert opinion testimony is admitted to assist the Board in understanding the ultimate issues to be decided. Accordingly, such testimony is not objectionable because it relates to an ultimate issue to be decided by the trier of fact.

*Id.* at \*2 (internal citations omitted); *see also James Glasgow v. Granite City Steel*, PCB 00-221, 2002 WL 392181, \*\*4-5 (Mar. 7, 2002) (overruling hearing officer's objections to expert testimony on unreasonableness of interference where Board was to make ultimate determination); *Townsend v. Fassbinder*, 372 Ill. App. 3d 890, 905 (2d Dist. 2007) ("An expert witness may generally express an opinion as to the ultimate issue in a case. The test for whether to admit an expert's opinion on the ultimate issue is whether that opinion will aid the trier of fact to understand the evidence or determine a fact in issue."); *Wiegman v. Hitch-Inn Post of Libertyville, Inc.*, 308 Ill. App. 3d 789, 799 (2d Dist. 1999) ("Because the jury is not required to accept an expert's opinion, allowing him to testify as to the ultimate issue in a case . . . does not usurp the jury's function."). Even if Mr. Dorgan were offering any opinion on the ultimate issues in this case, doing would not usurp the Board's function as the trier of fact. This is particularly so where the Board is given wide discretion in determining whether to permit expert testimony. *See Wiegman*, 308 Ill. App. 3d at 799; *Consolidated Freightways*, 1978 WL 9011, at \*5. The Board should permit Mr. Dorgan's testimony here in Section 3.4 of his Report.

2. **Mr. Dorgan Is Qualified To Provide The Opinions In Section 3.2 Of His Expert Report.**

IDOT attempts to exclude Mr. Dorgan's opinions in Section 3.2 of his Expert Report by arguing that Mr. Dorgan "is not qualified by virtue of either his training or experience to render

any expert opinions about how the Project was designed or constructed.” (Motion, p. 3). IDOT’s argument falls flat. Rather, it is IDOT, not Mr. Dorgan, that “gloss[es] over” Mr. Dorgan’s “relevant education or background.” (*See id.* at pp. 3, 4.)

It is well-settled in Illinois that:

A person will be allowed to testify as an expert if his experience and qualifications afford him knowledge that is not common to laypersons, and where his testimony will aid the trier of fact in reaching its conclusions. There is no predetermined formula for how an expert acquires specialized knowledge or experience and the expert can gain such through practical experience, scientific study, education, training or research. Thus, formal academic training or specific degrees are not required to qualify a person as an expert; practical experience in a field may serve just as well to qualify him. An expert need only have knowledge and experience beyond that of an average citizen.

*Thompson v. Gordon*, 221 Ill. 2d 414, 428 (2006) (affirming reversal of trial court’s decision to strike expert affidavit and holding that the expert was not required to be a licensed civil engineer in order to testify as a retained opinion witness) (internal citations omitted); *see also Pyskaty v. Oyama*, 266 Ill. App. 3d 801, 808 (1st Dist. 1994) (“An expert’s opinion is allowed on the basis of his knowledge or experience which may aid the trier of fact.”).

According to IDOT, Mr. Dorgan is not qualified to review the cross sections or engineering plans or to comprehend the documents in the record regarding fill material. (*See* Motion, p. 3.) This is simply preposterous. Not only is Mr. Dorgan an environmental consultant, but his curriculum vitae indicates that he is also a “Licensed Professional Geologist.” (*See* Expert Report, Appendix A; Affidavit of Douglas G. Dorgan, Jr. (“Dorgan Aff.”) at ¶ 9, attached hereto as **Exh. 3**.) It is axiomatic that geologists have experience reviewing soil cross sections and evaluating fill material. In fact, according to Mr. Dorgan, “[many of the projects that [he] work[s] on involve generating cross sections and evaluating soil materials, including fill material” and “[i]t is very common for geologists to perform this type of work.” (Dorgan Aff. at

¶ 9.) Moreover, while IDOT seemingly claims that Mr. Dorgan does not have the relevant training or experience to review certain IDOT construction or engineering plans and cross sections (*see* Motion, p. 3), Mr. Dorgan himself has drafted and designed these exact types of documents since very early on in his thirty year career. (Dorgan Aff. at ¶ 9.)

IDOT faults Mr. Dorgan for not being an engineer. (*See* Motion, p. 4.) But if IDOT had bothered to explore Mr. Dorgan's experience more fully in the deposition, it would have realized that Mr. Dorgan has quite a bit of engineering experience. Mr. Doran began his career working for the engineering firms Eldredge Engineering and Associates, Inc. and Wehran Engineering Corporation. (Dorgan Aff. at ¶ 4.) Initially, he was responsible for drafting engineering plans, including land use plans, cross-sections, soil profiles, tables, and figures. (Dorgan Aff. at ¶ 5.) He was also responsible for designing the site plans himself. (Dorgan Aff. at ¶ 5.) This work included designing grading plans, laying contours and tying contours into existing site features, designing stormwater drainage ditches, preparing final cover designs, and reviewing cross sections and soil profiles. (Dorgan Aff. at ¶ 5.) Mr. Dorgan is currently a Principal with Weaver Consultants Group, an engineering firm, responsible for managing the Site Building and Infrastructure Consulting Practice Group, as well the Environmental Practice Group. (*See* Expert Report, Appendix A; Dorgan Aff. at ¶¶ 2, 7.) In his current role, Mr. Dorgan is regularly involved in the design and construction of engineering projects. For example, he frequently reviews site design plans for a major development on the east coast of the United States that is undergoing environmental cleanup and economic redevelopment. (Dorgan Aff. at ¶ 7.) That work requires careful review of site development planning documents, including site plans, grading plans, utility layout plans, and construction specifications, particularly with respect to assessing possible concerns with existing environmental conditions. (Dorgan Aff. at ¶ 7.)

IDOT also claims that Mr. Dorgan cannot offer opinions from Section 3.2 of his Report because his curriculum vitae says nothing about having worked on any sort of highway design or construction project. (*See* Motion, p. 4.) But Mr. Dorgan does not need to be an expert in highway design or construction projects to offer these opinions. Mr. Dorgan is not opining on general highway construction practices, rather he is opining that the ACM buried on Site 3 and 6 originated with IDOT's construction activities based upon his review of the record and "multiple lines of evidence." (Expert Report, pp. 12-13.) Mr. Dorgan can offer this opinion because of his 25 years of experience working as an environmental consultant for engineering firms and because he possesses specialized knowledge in the fields of environmental consulting; engineering; geology; remedial investigations; and planning, design, and construction of industrial and commercial properties. (*See* Expert Report, Appendix A; Dorgan Aff. at ¶ 3.)

In his Expert Report, Mr. Dorgan cited to numerous historical sources he relied upon to reach his conclusions. These historical sources are of the type upon which environmental experts typically rely, including the USEPA's administrative record, aerial photographs, engineering drawings, IDOT's Specifications, environmental soil investigations and boring logs, and Mr. Dorgan's own work comparing the soil boring test results to the engineering drawings. (*Id.* at pp. 11-15; *see also* Dorgan Aff. at ¶¶ 2, 9, 11.) If IDOT disagrees with Mr. Dorgan's interpretation of these documents, including IDOT's engineering drawings, it could have offered competing expert testimony. But it did not. IDOT's expert, Mr. Gobelman, did not rebut Mr. Dorgan's interpretation of the engineering drawings in Mr. Dorgan's Expert Report or deposition and, in fact, Mr. Gobelman said that he thought the figures prepared by Mr. Dorgan, based in part on those plans, were accurate. (*See* Deposition of Steven L. Gobelman ("Gobelman Dep.") at 44:3-15; 216:7-19, excerpts attached hereto as **Exh. 4**.) If IDOT now disagrees with Mr.

Dorgan's review of those plans, it can cross examine him at trial, but Mr. Dorgan's testimony should not be excluded outright.

Nonetheless, if his opinions did in fact require an expertise on highway design and construction, Mr. Dorgan has experience in this area. Since 1986, Mr. Dorgan has worked for engineering firms as an environmental consultant and geologist. (*See* Expert Report, Appendix A; Dorgan Aff. at ¶¶ 3, 4, 6, 9.) From 1986 to the early 1990s, Mr. Dorgan was supported projects involving the design and construction of on-site roadways. (Dorgan Aff. at ¶ 8.) In this work, he drafted technical specifications, cross sections, bid specifications and other documents relating to the roadway project at hand. (Dorgan Aff. at ¶ 8.) In his current position, Mr. Dorgan supervises a team that designs and builds, among other things, roads and highways. (Dorgan Aff. at ¶ 8.) For example, a team that he is currently supervising recently completed an preliminary access road design that allows a site owner to limit impacts to the local public roadway system, mitigating hazards associated with the historic need to transverse the public roadway. (Dorgan Aff. at ¶ 8.) For that project, Mr. Dorgan and his team provided the preliminary design for the roadway project, including layout plans and details, drainage feature plans and details, pavement subgrade preparation details, and pavement width and construction specifications. (Dorgan Aff. at ¶ 8.) The next phase of the project will progress to signal design and county approval submittals, and Mr. Dorgan and has team will ultimately be engaged to provide construction oversight. (Dorgan Aff. at ¶ 8.) According to Mr. Dorgan, there is not a single type of document in this case that Mr. Dorgan reviewed and relied upon for his opinions, that Mr. Dorgan had not seen or had experience analyzing previously. (Dorgan Aff. at ¶¶ 5, 7-10.)

In short, Mr. Dorgan is plainly qualified to offer the opinions in Section 3.2 of his Expert Report regarding the origin of the asbestos containing material and, in doing so, may rely upon engineering documents and records that are contained in the historical file. IDOT's Motion should be denied.

3. **Mr. Dorgan Did Not Impermissibly Base His Opinions On Another Expert's Opinions.**

IDOT again misconstrues the record in this case in arguing that "Mr. Dorgan's opinions about IDOT's construction activities are impermissibly based at least in part on another expert's opinions." (Motion, p. 5.) In doing so, IDOT selectively cites to a portion of the deposition transcript of Mr. Dorgan, but fails to cite all relevant portions. Specifically, IDOT omits that Mr. Dorgan also testified as follows:

Q: And how extensively would you say that he provided that sort of editorial input into the report?

A: ***I wouldn't consider it to be extensive.*** I was asking him to look at and be sure that I was accurately representing and translating information that had been presented in the record into some of our figures, and that would have been about the extent of our interaction on that.

(Dorgan Dep. at 16:6-13 (emphasis added).)

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Q: Okay. Thank you. Let's resume then.

A: If we may before we resume your questioning, I'd like to offer a clarification on a previous line of questioning if I may.

Q: Sure. What would that be?

A: This has to do with the involvement of others that support the development of the work product.

Q: Uhm-hmm.

A: I wanted to clarify that ***the opinions that have been expressed in the report are my opinions.*** I believe I have the necessary qualifications to render the opinions. I have experience with each of the opinions that have been referenced,

and that *those that supported the project had been performing tasks at my discretion that were more of an administrative nature than certainly were not intended to be expert in nature.*

Q. Okay. And you're saying administrative, but certainly when you say or characterize the efforts of others that supported your work as being administrative, I mean, that doesn't really include actual drafting or writing of the report; correct? I mean, that's not administrative.

A. The work that was performed by others was being done at my direction, at my request, to produce the work product that I felt was necessary to support the report that was being generated.

Q. And would that also be true of Mr. Talbot? I mean, Mr. Talbot interfaced with you. You consulted with Mr. Talbot, but unlike, let's say, Mr. Cantor or Mr. Treece, Mr. Talbot is actually listed as one of the people who's also engaged with you in the effort to work on behalf of Bryan Cave; correct?

A. Yes. At the outset of our engagement there had been some notion that both my expertise and John Talbot's expertise may be needed. It became evident as we began evaluating the record and as the opinions, the preliminary opinions were formulated and as I continued to refine and flesh out those opinions, *that there really wasn't a need for John Talbot's expertise*; that because he had looked at some of the early documentation, he did help in the development of the graphics as I have stipulated earlier, but *he did not contribute opinions to the report.*

(Dorgan Dep. at 81:10-83:6 (emphasis added).)

IDOT also seemingly ignores Mr. Dorgan's testimony that his consultation with Mr. Talbot was not extensive.

Q: Okay. And how extensively did you consult with Mr. Talbot about those particular issues, about the construction-related aspects of work that was done at the site?

A: Generally, I interfaced with John and members of his team in seeking support *in the preparation of some of the figures* that were produced in the expert.

(Dorgan Dep. at 12:22-13:5 (cited at p. 7 of IDOT's Motion) (emphasis added).)

Noticeably absent from Mr. Dorgan's Expert Report and deposition testimony is any mention that Mr. Dorgan's opinions were based on the opinions of Mr. Talbot or that Mr.

Talbot's role was anything more than assisting Mr. Dorgan in reviewing a couple of figures.<sup>1</sup> That is because Mr. Dorgan's opinions were entirely his own and because Mr. Talbot's role was limited to reviewing the figures contained in Mr. Dorgan's Expert Report. As such, IDOT cannot and should not be permitted to construe Mr. Talbot's role in the development of Mr. Dorgan's opinions as "instrumental" (Motion, p. 7), where, in fact, Mr. Talbot's role was minimal and merely administrative. Unlike in *Citibank, N.A. v. McGladrey & Pullen, LLP*, 2011 IL App (1st) 102427, cited by IDOT (*see* Motion, p. 8), where the proffered expert admitted during his deposition that certain opinions were not his own, but were those of other specialists, and where he admitted he would not be qualified to interpret certain records (*see* 2011 IL App (1st) 102427, at ¶ 7), Mr. Dorgan has firmly stated that all of the opinions (which he was independently qualified to give) in his Expert Report are his own. IDOT's Motion should be denied.

**4. Sections 3.2 And 3.3 Of Mr. Dorgan's Expert Report Are Not Speculative.**

The opinions contained in Sections 3.2 and 3.3 of Mr. Dorgan's Expert Report do not consist of "speculation and unfounded assumptions" (Motion, p. 9), but rather, are opinions rooted firmly in the evidence and documentary record of this case. IDOT concedes that Mr. Dorgan's opinions "rest, in large part, upon his review of the IDOT construction documents for the project." (Motion, p. 8.) An expert's opinions, however, are not based on speculation, guess, or gross conjecture, when they are based upon documentary evidence, including but not limited to historical records, manuals, and reports. *See Davis v. Material Handling Associates, Inc.*, 401

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<sup>1</sup> Even if Mr. Talbot's role has been more significant, which it was not, environmental assessments require a team approach where individual members have expertise in various disciplines. In such a scenario, the leader of that team is not required to "be qualified as an expert in every individual discipline encompassed by the team in order to testify as to the team's conclusions." *See Walker v. Soo Line R. Co.*, 208 F.3d 581, 589 (7th Cir. 2000) (cited by *Citibank N.A. v. McGladrey & Pullen, LLP*, 2011 IL App (1st) 102427). Instead, a jury has a right to consider the professional opinion of a leader of a specialized team, who reasonably relies on the expert opinions of other specialists. *Walker*, 208 F.3d at 589.

Ill. App. 3d 1085, 1094-1095 (3d Dist. 2010) (finding that expert's opinions were not based on speculation, guess, or conjecture where they were based upon a number of documents); *In re Saline Branch Drainage Dist.*, 19 Ill. App. 3d 125, 132 (4th Dist. 1974) (holding that "[t]here was ample data presented at the proceedings which would permit of the opinion testimony" and that "[t]he rule is clear that one test of admissibility of an opinion of an expert witness is whether there is sufficient evidence in the record to act as a foundation of the expert's opinion.").

Here, there is ample evidence in the record to act as a foundation for Mr. Dorgan's opinions in Sections 3.2 and 3.3 of his Expert Report. In these Sections, Mr. Dorgan identifies no less than thirteen (13) categories of documents in the record that he relied upon in forming the opinions therein: (1) the Engineering Evaluation/Cost Analyses prepared by LFR Inc. (Expert Report, pp. 12, 13); (2) the USEPA's Enforcement Action Memorandum (*id.* at p. 12); (3) aerial photos (*id.*); (4) IDOT construction drawings (*id.* at pp. 12, 14); (5) IDOT plans prepared by H.W. Lochner, Inc. for the Project (*id.* at p. 12); (6) IDOT's "Standard Specifications for Road and Bridge Construction" (*id.*); (7) AECOM's Respondent Response Document to Engineering Evaluation/Cost Analysis (*id.* at p. 13); (8) the report of a 1998 investigation of Sites 3 and 6 (*id.*); (9) a soil excavation report addressed to Exelon dated July 8, 2008 (*id.*); (10) the "Southwestern Site Area, Site 3, 4/5, and 6 Removal Action Workplan Revision 2" prepared by AECOM dated March 31, 2014 (*id.*); (11) the USEPA Modification to the EECA dated February 1, 2012 (*id.* at p. 15); (12) the USEPA Enforcement Action Memorandum dated November 12, 2012 (*id.*); and (13) the Cost Estimate prepared by AECOM for Site 6 (*id.* at p. 18).

IDOT oddly claims that Mr. Dorgan fails to rely on any "contemporaneous evidence" regarding IDOT's construction of the Project and thus has no evidence of what actually occurred. (Motion, p. 8.) This is repeatedly contradicted by the record. Mr. Dorgan's opinion relies upon





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**EXHIBIT 1**

March 16, 2015

# **EXPERT REPORT OF DOUGLAS G. DORGAN JR.**

**JOHNS MANVILLE VS  
ILLINOIS DEPARTMENT OF TRANSPORTATION**

Former Johns Manville Facility  
Site 3 and Site 6  
Waukegan, Illinois

PREPARED BY



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## 1 INTRODUCTION

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### 1.1 Executive Summary and Scope of Work

I have been requested by Bryan Cave, LLP (Client) to provide expert opinions on behalf of Johns Manville concerning Site 3 and Site 6 of the Johns Manville Southwestern Site Area located in Waukegan, Lake County, Illinois (respectively Site 3 and Site 6). The focus of my review has been on impacts to the scope of planned remediation activities resulting from past IDOT construction activities at Site 3, and the western limits of Site 6. I will refer to both Sites herein collectively as the "Site."

Historic investigation and remediation planning at the Site has been completed pursuant to an Administrative Order on Consent No. V-W-07-C-870 (AOC) executed by and between Johns Manville and Commonwealth Edison Company and the United States Environmental Protection Agency (USEPA). Weaver Consultants Group North Central, LLC (WCG) was retained to consider and provide opinions relating to whether the Illinois Department of Transportation (IDOT) is responsible for asbestos containing material ("ACM") found at Sites 3 and portions of Site 6; and, if so: 1) whether, how and when IDOT handled ACM at Sites 3 and 6; 3) whether and the extent to which IDOT's historic handling of the ACM caused or is causing Johns Manville to do additional work associated with its ongoing cleanup; and 3) based upon my experience, whether the IEPA would consider IDOT's handling of the ACM to be a violation of the Illinois Environmental Protection Act ("Act").

To prepare this report, I have reviewed various documents associated with the environmental conditions and remedial action at the Site, including IDOT's standard specifications and engineering drawings relating to its work at the Site in the 1970s, aerial photographs of the Site, environmental investigations at the Site, correspondence with USEPA regarding the Site, evolving plans to remediate the Site, draft cost estimates provided by AECOM, the current contractor, and the documents produced by both JM and IDOT in this case. I also relied upon information gathered from a Site reconnaissance performed on Monday, February 23, 2015. Lastly, I considered my experience with similar sites and projects and public domain documents. Based upon these factors, I have developed the following opinions:

1. The first developed use of the Site 3 occurred in the 1950s when Johns Manville leased Site 3 from ComEd to construct a parking lot for use by employees at the manufacturing facility located north of East Greenwood Drive. The parking lot was removed by IDOT in the late 1960s or early 1970s as part of its work on the Amstutz Expressway Project (the Amstutz Project). Site 3 is now vacant land. Site 6 has historically been used as a road. The road was modified as part of the Amstutz Project by IDOT. The road still exists.

2. IDOT is responsible for the placement and dispersion of ACM waste currently found at the Site. IDOT, at a minimum used, spread, buried, placed and disposed of ACM waste, including Transite® pipe, throughout Site 3 and portions of Site 6 during its work on the Amstutz Project from 1971 to 1976. IDOT's activities associated with the Amstutz Project resulted in crushed Transite® pipe and asbestos material being spread across and buried at Site 3 and the western end of Site 6. IDOT left and never removed the Transite® pipe and asbestos material they spread across and buried at the Site.
3. As a result of IDOT using, spreading, burying, placing, and disposing of ACM waste in and around Site 3 and Site 6 as part of the Amstutz Project, the scope of the expected remedial activities are significantly more extensive than would have otherwise been required by USEPA.

Based on my experience, IEPA would more likely than not consider IDOT's actions in using, spreading, burying, placing, disposing of and leaving ACM waste on Site 3 and Site 6 to be a violation of Section 21 of the Act. Additional and more specific opinions are presented in the text to the following report, together with a discussion of the basis for each major opinion. I reserve the right to modify my opinions should my review of additional information warrant it. In particular, I understand that IDOT is planning to produce certain emails that relate to this case. I also understand that the scope of planned remedial activities, and the cost estimates for implementing the work, continue to evolve. Review of emails to be produced by IDOT, as well as changes to the scope of planned remedial measures and corresponding updates to the associated cost estimates, may influence the opinions presented herein.

## 1.2 Qualifications

My resume, together with the list of my publications is presented in **Appendix A**.

I have over 25 years of experience working as an environmental consultant. I received my Bachelors of Science in Earth Science, with a Minor in Geology, from Eastern Illinois University in 1986. I received my Masters of Science in Geography with a Concentration in Environmental Science from Northern Illinois University in 1994. I am a Licensed Professional Geologist in the states of Illinois and Indiana.

Since 1986 my practice has focused principally on providing consulting services and performing remedial investigation, planning, design and construction for a wide range of industrial, commercial and institutional properties. I have been qualified as an expert witness and supported litigation associated with projects involving environmental assessment, design, permitting, and construction related issues. I have implemented various projects involving compliance with the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Additionally, I am familiar with and have completed projects under various Illinois regulatory programs including, but not limited to, the Resource Recovery and Conservation Act (RCRA), Leaking Underground Storage

Tank (LUST) Program, and Site Remediation Program (SRP). I have regularly interfaced with both the USEPA and IEPA in many contexts, including CERCLA and violations of the Act.

Of particular relevance to this case, I have worked on numerous commercial and industrial properties exhibiting legacy environmental impacts. Such properties have included steel mills, foundries, landfills, glass manufacturing facilities, rail yards, and commercial shopping centers. I have experience assessing and remediating soils and fill material impacted by a wide range of materials including, but not necessarily limited to, petroleum, chlorinated solvents, metals, polychlorinated biphenyl's (PCBs), and asbestos. I am experienced in the design, permitting, construction and environmental monitoring of both solid and hazardous waste disposal facilities. I have experience supporting environmental investigation and restoration associated with Brownfield's redevelopment, with specific emphasis on evaluating and mitigating risks to future users associated with site environmental conditions. Furthermore, I have significant experience working on projects throughout the Chicago metropolitan area, having spent most of my professional career based in Chicago. Locally, Weaver Consultants Group has offices in Chicago and Naperville, Illinois.

### **1.3 Information Considered**

WCG was provided access to and has reviewed the full document record, including documents produced by IDOT and JM, available for this matter. WCG also reviewed IDOT standard specifications, aerial photographs and recent changes to the scope of work and associated cost estimates provided by AECOM. A bibliography of documents cited in this Expert Report is presented in **Appendix B**. Citations to these references are shown in superscripts in the following text.

### **1.4 Report Organization**

This Expert Report is organized into the following sections:

- Section 2 presents Site background information, factual and historical information related to the Site;
- Section 3 presents my expert opinions, along with discussion supporting my opinions.

## 2 SITE BACKGROUND

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### 2.1 Site Location

Site 3 and Site 6 are shown on the attached **Figure 1**. Site 3 is located southwest of the former Johns Manville (JM) facility at 1871 North Pershing Road, Waukegan Illinois, at the southeast corner of the intersection of East Greenwood Avenue and North Pershing Road. The Site lies within Lake County, and is within the northwest portion of Section 15, Township 45 North, Range 12 East of the Third Principal Meridian. Site 3 consists of approximately 3.115 acres with approximately 641 feet of frontage along East Greenwood Avenue. The Site is bounded to the north by East Greenwood Avenue, to the west by North Pershing Road, to the east by a railroad spur accessing the adjacent Midwest Generation facility, and the south is currently an empty lot.<sup>1</sup>

Site 6 is a linear feature adjacent to the former JM facility primarily comprising the shoulders of East Greenwood Road, in Waukegan, Illinois. The Site is owned by the City of Waukegan.

The surrounding area is a mix of industrial and residential properties, with industrial properties to the east of North Pershing Road and residential properties to the west. A coal-fueled power plant operated by Midwest Generation is located immediately to the east of Site 3, and to the south of Site 6. Illinois Beach State Park lies to the east of the Site on the shoreline of Lake.

### 2.2 Site History

#### 2.2.1 Facility Operations

Site 3 is owned by ComEd and is located south of the Greenwood Avenue right-of-way near the southern property line of the former JM manufacturing facility. According to Nicor Gas Company, a 20-inch natural gas line was installed six to eight feet below ground surface (bgs) beneath Site 3 in 1948<sup>1</sup>. Pursuant to a lease agreement with ComEd, JM used Site 3 as a parking lot for JM employees and invitees from the late 1950s through approximately the early 1970s<sup>13</sup>. It is our understanding that JM constructed a parking lot on Site 3 circa late 1950s in order to provide additional parking for the administration building at the plant<sup>11</sup>. Based upon the record, asbestos-containing pipes were split in half lengthwise and used for curb bumpers within the parking lot on Site 3.

The parking lot was taken out of service in approximately 1972 by IDOT during the Amstutz Project, which included the construction of an embankment on the northwestern portion of the Site as well as IDOT Detour Road A as shown on **Figures 2 and 3**.

IDOT engineering drawings for the Amstutz Project show that IDOT needed to excavate and fill areas on the Site because the underlying material was unsuitable. Prior to IDOT's work on Sites 3 and 6, the elevation of Site 3 was approximately 587.5 to 588.5 feet above mean sea level and Site 6 was approximately 588 feet above mean sea level. Part of IDOT's work involved raising the grade of Site 3 slightly in some areas, lowering the grade in other areas, and raising the grade of Greenwood Avenue substantially in some areas. For example, following construction, the elevation near the intersection of Greenwood and Pershing Road was approximately 600 feet above mean sea level. After construction, the record indicates that the contractor hired by IDOT was paid a "special excavation" fee to "remove and obliterate the Detour Roadways".<sup>18</sup>

Site 3 is currently vacant with the exception of one transmission tower located on the eastern portion of the Site. Site 6 generally comprises the shoulders of East Greenwood Avenue.

## 2.2.2 Environmental Aspects of Historical Operations

Documents indicate that asbestos-reinforced cement (Transite®) pipes were placed on the Site 3 parking lot and used for tire stops (i.e., to keep the cars from going too far and off the parking lot<sup>11</sup>) in approximately the 1950s. Beginning in approximately 1971, IDOT constructed Detour Road A on Site 3 for use during construction of the Amstutz Project. In their response to USEPA's request for information regarding Site 3, IDOT disclosed that their resident engineer on the project "recalled dealing with asbestos pipe during the project and burying some of it<sup>13</sup>". During the construction of the Amstutz Project approximately 262,000 cubic yards of structural borrow material<sup>14</sup> was required for construction of the bridge approach embankments. The source of this borrow material is unknown at this time. This material would have been brought on the Site and compacted by mechanical means. Some quantity of this 262,000 cubic yards was placed within the western limits of Site 6, and on the northwest portions of Site 3.

## 2.3 Site Environmental Conditions

In 1998, JM discovered asbestos containing materials (ACM) at the surface on Site 3. In accordance with a sampling protocol agreed upon with USEPA, JM catalogued and removed surficial ACM and conducted sampling of the area.

### 2.3.1 ELM Sampling

ELM Consulting LLC (ELM) conducted sampling for ACM at Site 3 and issued a report dated December 1999. The northwest and northeast portions of Site 3 were not sampled during the ELM grid-sampling event due to the presence of standing water. Results of the ELM sampling have been visually represented on the attached **Figures 2, 3, 4** and **5**. In general, the ELM sampling identified visual ACM (see **Figure 2**) across generally the north central and northeast portions of Site 3, generally aligned with the

location of former Detour Road A. As demonstrated on **Figures 2 and 3**, asbestos was detected in a number of boring locations, again, generally aligned with the location of former Detour Road A, and across the eastern portions of the northern boundary of Site 3.

Between 1999 and 2007, little activity occurred on the Southwestern Sites. On June 11, 2007, JM, Commonwealth Edison and USEPA signed an Administrative Settlement Agreement and Order on Consent for Removal Action (Agreement). The Agreement recognized that the proceedings under the Agreement were subject to various sections of CERCLA. USEPA declined to consider IDOT a Potentially Responsible Party (PRP) under CERCLA.

### **2.3.2 LFR Sampling**

Pursuant to the above referenced Agreement, LFR Inc. (LFR) conducted an investigation that included Site 3 and Site 6. Results of this investigation were documented in an initial Engineering Evaluation/Cost Analysis (EE/CA) report.

#### **2.3.2.1 Site 3**

The investigation of Site 3 involved the excavation of 14 test pits (see **Figures 2 and 3** for test pit locations). The locations of the test pits were generally placed near borings completed during the 1999 ELM investigation. Visual ACM was observed in two of the fourteen (14) test pits. Pursuant to USEPA approved plans, no soil samples were collected and analyzed for asbestos as a component of the Site 3 investigation.

#### **2.3.2.2 Site 6**

The investigation of Site 6 involved advancing both test pits and soil borings along the length of and within the shoulder of both sides of East Greenwood Avenue. The investigation resulted in 209 soil samples being submitted for PLM analyses, and 21 soils samples submitted for TEM analyses. Various areas of asbestos impacted soil was observed along Site 6. One of these areas includes the shoulder of East Greenwood Avenue immediately adjacent to the northern boundary of Site 3.

### **2.3.3 LFR Investigation**

LFR subsequently advanced an excavation within the southern shoulder of East Greenwood Avenue immediately adjacent to the northern boundary of Site 3 (see **Figure 2** for excavation location) for another entity, Exelon.<sup>8</sup> This excavation was performed to expose two direct-buried electric lines. In a July 8, 2008 letter report written to Exelon, LFR documented the excavation activities. The letter report documents that “[d]uring the excavation, several pieces of Transite® pipe, which is an asbestos containing material, were encountered within the clay fill material.” The letter

report concludes, “[f]rom this it may be concluded that the Transite® pipe was found within the soil placed as part of the Greenwood Avenue ramp construction.”

### **2.3.4 AECOM Investigation**

In May 2013, AECOM conducted additional ACM sampling on Site 3 to assess the vertical and lateral extents of ACM within a 25-foot wide corridor centered on a 20-inch natural gas line owned and operated by Nicor Gas Company. The Nicor Gas line was installed prior to IDOT’s construction work. Owing to the presence of the Nicor gas line, excavations were advanced by hand digging to a depth of one foot below ground surface, below one foot, hydraulic excavation was used. Excavations were advanced to the top of the gas line. Additionally, eighteen (18) test pits were advanced generally along the gas line corridor. The test pits were generally advanced to a depth of approximately eight to nine feet below ground surface. Finally, seventeen soil borings were advanced generally along the gas line corridor. Locations for each of the hydraulic excavations, test pits, and soil borings completed by AECOM are shown on the attached **Figures 2 and 3**.

Asbestos sample results from the excavations, test pits and soil borings are shown on **Figures 2 and 3**. In summary, asbestos via PLM analysis was detected in one soil sample above the analytical sensitivity. In two hydraulic excavations, and four test pits, asbestos was detected but below the analytical sensitivity. Samples submitted for TEM analysis were below analytical sensitivity. Certain additional samples from soil borings and test pits exhibited structures of asbestos. Sample analytical results were believed to warrant additional investigation, which was undertaken in August of 2013.

During the August 2013 Supplemental Investigation, seventeen (17) soil borings were advanced to a maximum depth of nine feet below ground surface. A total of 126 soil samples were submitted for analysis of asbestos. Asbestos via PLM analysis was detected in one of the soil samples. Samples analyzed via TEM were below analytical sensitivity. However, asbestos structures were noted in five of the samples collected from three boring locations.

### **2.3.5 Remedy Background**

Four revised versions of the EE/CA were submitted in response to comments made on behalf of the USEPA. The final EE/CA was submitted to USEPA on April 4, 2011 (“EE/CA Revision 4”). EE/CA Revision 4 evaluated four potential response action options for Sites 3 and 6, based on discussions with EPA. EE/CA Revision 4 identified “Alternative 2” as the preferred remedy for Site 3. This alternative included limited soil excavation (approximately 660 cubic yards) in the northeast corner of Site 3 to a depth of approximately three feet below the ground surface and installation of a vegetated soil barrier over the entire site, at an estimated cost of between \$595,000 and \$630,000.

EE/CA Revision 4 identified "Alternative 3" as the preferred remedy for Site 6. This alternative was described as a "hybrid remedy" combining excavation and off-site disposal of approximately 2400 cubic yards of ACM-affected soil with a vegetated soil barrier running adjacent to Site 3 to avoid disrupting current stormwater drainage patterns. The total cost to implement Alternative 3 on Site 6 was estimated at between \$417,500 and \$500,000. USEPA disagreed with the remedy selected for both Sites. Eventually, the USEPA issued an Enforcement Action Memorandum for the Southwestern Site Area (which includes Site 3 and 6) dated November 20, 2012. For both Sites 3 and 6, USEPA generally required the removal of all asbestos-impacted soils and the creation of clean corridors for all utilities running through the Sites.

Between December 20, 2012 and September 28, 2013, multiple dispute notices regarding the Enforcement Action Memorandum were filed on behalf of JM. The dispute notices were officially resolved in a letter from the Director of the Superfund Division of the USEPA dated September 28, 2013. In response to the Enforcement Action Memorandum, JM coordinated additional site investigation activities at Site 3 that were conducted between May and August 2013 (summarized in Section 1.4.3 above). Ultimately, USEPA agreed to modify some of the more stringent requirements in its Action Memorandum. Thereafter, AECOM prepared a Removal Action Work Plan (RAWP). The most recent RAWP was submitted to the USEPA and is dated March 31, 2014.

### **2.3.6 Summary of Remedy Scope**

The March 2014 version of the RAWP has been developed to address a non-time critical removal action relating to ACM in soil at Sites 3 and 6. The RAWP used as the basis for design of the plan the following:

1. Utility relocation and abandonment
2. Required soil removal
3. Vegetative cover
4. Institutional controls
5. Subrogation agreements

Additionally, two basis of design for construction support activities include:

1. Construction dewatering systems
2. Water quality basis for discharge for NSSD

The RAWP relating to Site 3 and 6 contains a description of the following primary work items:

1. Sites 3 and 6 utility relocation, abandonment, and replacement plans
2. Site 3 soil removal and vegetative soil cover

3. Site 6 soil removal
4. Sites 3 and 6 long-term operations and maintenance (O&M)

#### 2.3.6.1 Site 3

As noted above, the remedy for Site 3 involves relocation or abandonment of select utilities, excavation of ACM impacted soil, and construction of a vegetative soil cover. The following utilities present on Site 3 will be either abandoned, or a clean soil corridor will be created: 1) AT&T telecommunication lines will be relocated and reinstalled above ground, 2) confirmation will be provided documenting former decommissioning of a Commonwealth Edison electric power line, 3) a clean soil corridor will be constructed for a Nicor Gas line, 4) a North Shore gas line will be decommissioned, and 5) a City of Waukegan water main will be replaced and a clean soil corridor constructed (collectively, approximately 3,250 cubic yards of soil will be removed for utility clean soil corridor). Approximately 900 cubic yards of soil to a depth of approximately four feet will be removed from a 0.14-acre area on the northeast corner of Site 3. Finally, a vegetative soil cover will be constructed across approximately 3.14 acres of Site 3. In addition, an environmental covenant will be executed for Site 3 addressing soils remaining in-place under the vegetative cover and a fence will be constructed.

#### 2.3.6.2 Site 6

As noted above, the remedy for Site 6 involves abandonment or relocation of select utilities, and removal of soil. The following utilities present on Site 6 will be relocated or abandoned: 1) AT&T telecommunication lines present on the south side of Site 6 will be relocated, 2) an existing North Shore Gas line will be permanently abandoned, and 3) a City of Waukegan water main will be relocated. Approximately 6,420 cubic yards of soil will be removed to an estimated depth of 3 feet.

### 2.4.5 Summary of Remedy Cost

The cost estimates provided for the Site is reflective of the increased scope of work due to the presence of ACM buried by IDOT. AECOM has prepared draft cost projections for the work to be performed on Site 3 and Site 6 as documented in their March 12, 2015 Correspondence addressed to Douglas Dorgan of Weaver Consultants Group<sup>16</sup>. Tables entitled DRAFT Sub-Project Cost Detail (with Markups) for both Site 3 and Site 6 have been included as **Appendix C**.

AECOM has estimated the cost for RAWP implementation at the Site based upon the March 31, 2014 RAWP as subsequently modified based on communications with USEPA. The communications have resulted in significant changes to the work required. As of the writing of this report, AECOM continues to refine the remediation scope and corresponding estimate of probable cost. The estimate of probable cost prepared by AECOM is included in Appendix C. For Site 3, this estimate projects costs for

implementation of the currently approved RAWP totaling \$3.3M. For Site 6, this estimate projects costs for implementation of the currently approved RAWP totaling \$4M.

### 3 OPINIONS

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The following provides my expert opinions, followed by information in support of the various opinions:

#### 3.1 Site Usage

***The first developed use of the Site 3 occurred in the late 1950s when Johns Manville constructed a parking lot for use by employees at the manufacturing facility located north of East Greenwood Drive. Site 6 was historically used as a road. The road was elevated by IDOT in the 1970s.***

The above opinion is supported by the following multiple lines of evidence.

Based upon review of the facility record, and review of certain available historical use sources, prior to the mid 1950s, Site 3 was a vacant, undeveloped property. In the late 1950s, under lease to Commonwealth Edison (ComEd), Johns Manville constructed an approximate 48,000 square foot parking lot that serviced the adjacent main facility complex located across East Greenwood Avenue. Prior to construction of the parking lot, there had been no previous structures present on the Site 3. The property had not been utilized by ComEd as part of its adjacent power generating facility, nor had it been utilized by the adjacent Johns Manville facility. The parking lot operated from its date of construction in the late 1950, through to approximately 1970 when the parking lot was destroyed under contract to the IDOT to accommodate construction of the Amstutz Project<sup>17</sup>.

As of 1939, Site 6 was paved with a road, now known as Greenwood Avenue. The road was modified in the 1970s by IDOT as part of the Amstutz Project. Fill was used by IDOT to create the embankment and to raise Greenwood Avenue.

#### 3.2 IDOT Construction Activities Responsible for ACM Waste

***It is my opinion that IDOT is responsible for the placement and dispersion of ACM waste currently found at the Site. IDOT used, spread, buried, placed and disposed of ACM waste, including Transite® pipe, throughout Site 3 and portions of Site 6 during construction of the Greenwood Avenue ramp and expressway bypass from 1971 to 1976. These construction activities associated with the Amstutz Project resulted in crushed Transite® pipe and asbestos material being spread across and buried at Site 3 and the western end of Site 6. IDOT never removed the Transite® pipe and asbestos materials it spread across and buried at the Site.***

The above opinion is supported by the following multiple lines of evidence.

Within the project record, there are multiple references to the use of Transite® Pipe within the JM parking lot serving as vehicle parking bumpers. Transite® Pipe, also known as Asbestos Cement Pipe, began being used in the 1940s for potable water, sanitary sewer, and storm drain pipelines (Williams, G. Eric and Aspern, Kent Von, date unknown). The Engineering Evaluation/Cost Analysis prepared by LFR references that “Transite® pipe was utilized as parking space “bumpers” on the ground surface”. The USEPA subsequently confirmed this finding indicating in their Enforcement Action Memorandum that “Asbestos-containing pipes were split in half lengthwise and used for curb bumpers on Site 3.” It would appear that there is little argument that Transite® pipe had been present on Site 3 associated with their use for parking bumpers in the Johns Manville parking lot. Transite® pipe was constructed primarily of Portland cement, however, asbestos was used to increase the pipe strength. Various reports suggest the asbestos content of Transite® pipe could range from 15 percent up to 20 percent, although in later years of production the content was lowered to less than 0.2% (2009, Aspern, Kent Von).

Aerial photos show the parking lot and apparent Transite pipe parking bumpers in aerial photographs from 1961 and 1967. In 1972, the parking lot is no longer evident in an available aerial photo.

In approximately 1970, IDOT began work on the Amstutz Project. The project involved portions of Site 3, and the western end of Site 6. Specifically, as indicated in IDOT Construction Drawings for the Project, a bypass road for the East Greenwood interchange (Detour Road A), was constructed across the center portion of Site 3 as shown on the attached **Figure 3**. Additionally, the Amstutz Project included the construction of the Greenwood Road Overpass, which involved raising the elevation of Greenwood Road and building an embankment near where Greenwood intersects with Pershing. The embankment is on portions of Site 6 and 3 (see Figure 2).

IDOT plans prepared by H.W. Lochner, Inc. for Amstutz Project (F.A. Route 437 – Section 8-HB & 8-VB) provide information documenting the importation of fill material (Borrow Excavation). On sheet 5, Schedule of Quantities, the Summary of Quantities lists total “Borrow Excavation” for the project as 262,540 cu yds. The plan cross sections for Greenwood Ave within Site 6 (Sta 7+00 to 9+22) shown on sheets 71 and 72 of the plans indicate excavation was performed in these areas and fill material was needed.

IDOT was responsible for the fill it brought to the Site. On Sheet 4 of the Lochner plans, the first note of the General Notes states “The “Standard Specifications for Road and Bridge Construction” adopted January 2, 1971, shall govern construction.” The IDOT “Standard Specifications for Road and Bridge Construction” Section 204.42 state “Borrow Excavation shall not be placed in the embankment until the site location, excavation plan and material have been approved by the Engineer in writing.” Thus, all

Borrow Excavation material was to be approved by the IDOT Engineer prior to its use on the Site and IDOT was responsible for its contents.

In AECOMs Respondent Response Document to Engineering Evaluation/Cost Analysis<sup>2</sup>, they indicate “[i]n their response to USEPAs request for information regarding Site 3, IDOT disclosed that their resident engineer on the project “recalled dealing with asbestos pipe during the project and burying some of it.””

As noted in the Background Section, several investigations for the presence of asbestos materials on Site 3 and Site 6 have been completed. The first of these investigations was completed in 1998 and included the visual observation and removal of asbestos fragments and fragment clusters from the surface of Site 3. Of the seventy-four (74) locations where ACM fragments or fragment clusters were encountered on Site 3, Transite<sup>®</sup> Pipe was observed at sixty-five (65) locations (Appendix F of referenced report). Additionally, Transite<sup>®</sup> was identified in several of the borings that were completed as part of this investigation (Appendix G).

Thereafter LFR undertook an investigation of Site 3 and Site 6. Results of this investigation were presented in the report “Engineering Evaluation/Cost Analysis, Southwestern Site Area Sites 3, 4/5, and 6, Revision 4” dated April 4, 2011<sup>2</sup>. Visual ACM was observed in test pits advanced as part of the investigation on Site 3.

In 2008, LFR was retained by ComEd to complete a soil excavation along the south side of the Greenwood Avenue shoulder. The work performed was documented in a letter report addressed to Exelon dated July 8, 2008. The excavation was noted to be located “within the southern shoulder of Greenwood Avenue and, based upon the elevation data, was also within the built-up ramp to the Amstutz Expressway. “ The center of the excavation was reported to be at an elevation of approximately 591 to 591.5 feet above mean sea level (AMSL). The letter report documents that “[d]uring the excavation, several pieces of Transite<sup>®</sup> pipe, which is an asbestos containing material, were encountered within the clay fill material.” ACM was observed within the excavation at approximately 588.5 feet AMSL. The nominal surface elevation of the adjacent Site 3 was reported to be at an approximate elevation of 587.5 feet AMSL. The letter report indicates that the excavation “falls clearly within the Greenwood Avenue ramp construction for the Amstutz Expressway.” The letter report concludes by stating “[f]rom this it may be concluded that the Transite<sup>®</sup> pipe was found within the soil placed as part of the Greenwood Avenue ramp construction.”

Finally, additional investigation of Site 3 was undertaken in 2013 and documented in the report entitled “Southwestern Site Area, Site 3, 4/5, and 6 Removal Action Workplan, Revision 2” prepared by AECOM dated March 31, 2014<sup>1</sup>. In planning for the removal action, additional characterization of the presence of ACM was undertaken using hydraulic and hand excavations, test pits, and soil borings. Consistent with the results of previous investigations, Transite<sup>®</sup> pipe was specifically noted to be present at three of

the sample locations on Site 3 (HYD-05 0-1', HYD-06 0 – 1', TP-10 0-1'). As with previous findings, the physical presence of identifiable Transite® pipe was generally located within the shallow subsurface at the Site.

The locations of Transite® pipe containing ACM discovered on Site s3 and 6, coupled with the Site history, demonstrate that IDOT used, spread, buried, placed, and disposed of ACM waste, including Transite® pipe, throughout Site 3 and portions of Site 6 during its work on the Amstutz Project from approximately 1971 to 1976. The distribution of visual ACM, mostly comprised of Transite® pipe, generally is consistent with the areas where IDOT performed work; the JM former parking lot, Bypass Road A and the embankment and south side of Greenwood Avenue. The occurrence of visual ACM is represented on **Figure 3**, which shows ACM generally being found within the central and northeastern areas of Site 3. This generally overlays with the location of the former parking lot area, which IDOT removed to build Detour Road A. Furthermore, the detection of asbestos in soil samples collected at Site 3 follows a similar pattern, with asbestos generally being detected within the central and northeastern areas of Site 3. Soil samples collected from across Site 3, and the western limits of Site 6, submitted for laboratory analysis exhibited concentrations of asbestos fibers in soil exceeding 0.1%. Asbestos fibers within the soil are believed to have originated at least in part from crushing of the Transite® pipe parking bumpers during the IDOT construction activities. Transite® pipe by nature is inert and non-friable. It is converted from a solid to a friable form during the crushing process. As evidenced by fragments of Transite® pipe being identified during various previous investigations, it is apparent that the condition of the original Transite® pipe bumpers had been changed by the disturbance associated with the construction activities performed by IDOT. The act of crushing Transite® pipe as a result of being tracked with heavy equipment, and being buried as occurred during the IDOT construction activities would result in asbestos fibers being released into the surrounding soils.

Further, when you compare the engineering drawings used by IDOT for Bypass Road A and Greenwood Avenue with the location of Transite® and ACM, it is clear that the Transite® and ACM is located in areas that were excavated and filled by IDOT as part of the construction. The Transite® pipe is located within three to four feet of the ground surface. This is demonstrated most clearly on **Figures 4 and 5**, which demonstrates the occurrence of asbestos within soil samples collected from fill materials placed by IDOT. The Transite® and ACM were found on Site 3 and Site 6 within fill materials placed by IDOT, above the predominant Site 3 and Site 6 elevation prior to IDOT construction, or in areas where IDOT excavated and removed “unsuitable materials”. The July 8, 2008 LFR states “...it may be concluded that the Transite® pipe was found within the soil placed as part of the Greenwood Avenue ramp construction.”

This evidence shows that when IDOT demolished the former JM parking lot to build Bypass Road A, it crushed and buried portions of the Transite® pipe that had been

located on the parking lot. IDOT also spread the Transite® pipe around portions of Site 3 and 6 close to the former parking lot area as part of its work.

In summary, it is my opinion that the source of the Transite® pipe found at Sites 3 and the western limits of Site 6 immediately adjacent to the northern boundary of Site 3 was the Transite® pipe that had been used as parking bumpers in the former JM parking lot. The Transite® pipe bumpers were not removed but were crushed, buried, and mixed into the subsurface as part of Bypass Road A construction and the construction of the East Greenwood Road overpass embankment for the Amstutz Expressway.

### **3.3 IDOT's Handling of Transite® Pipe Resulted in a Substantial Increase in Scope of Remedy for Site 3 and Site 6**

*It is my opinion, that in the absence of the buried and dispersed Transite® pipe on the Site, it is unlikely that any response action would have been necessary at the site other than the surface ACM removal efforts.*

As a result of IDOT's use, spreading, burying, placing and disposing of ACM in and around Site 3 and 6 as part of the Amstutz Project, the scope of the expected remedial activities are more extensive than would have otherwise been required by USEPA.

It is apparent that USEPA was concerned with the prospect of ACM moving up to the surface and becoming airborne. In the USEPA Modification to the EECA dated February 1, 2012, they specifically highlight concerns that "in frost susceptible areas, such as Waukegan, stones, and other large particles, such as broken scraps of asbestos, tend to move differentially upward through the soil with each freeze/thaw cycle. Thus, asbestos-containing wastes that are covered with soil can, over time, reach the soil surface and become readily releasable to the air".

USEPA also notes, "the shoulders of Greenwood Avenue in Site 6 are not vegetated and are subject to physical disturbance from the general public as well as potential damage from vehicles, snow plows, salt trucks, etc. Sites 3, 4/5, and 6 also contain utilities and these areas will be disturbed during maintenance and repair activities. Such damages or disturbance may result in the release of asbestos containing materials and asbestos fibers."

These concerns were used as the justification for requiring a more substantial cover design. The Transite® pipe observed on Site 3 and Site 6 is most comparable to "stones, and other large particles, such as broken scraps of asbestos". In the absence of this buried Transite® pipe, it is unlikely if any form of response activity would be needed.

On November 12, 2012, USEPA issued an Enforcement Action Memorandum (EAM). The purpose of the EAM was to communicate USEPA's position with respect to environmental conditions at Site 3 and Site 6. Specifically, the EAM documents USEPA's

determination "...of an imminent and substantial threat to public health, welfare or the environment posed by contaminated soils at the Southwestern Site Area (Site) including Sites 3, 4/5, and 6, in Waukegan, Lake County, Illinois, and to document approval of the proposed non-time critical removal action for the Site."

The EAM marked a significant expansion of the scope of the remedy when compared to AECOM's EECA version 4. USEPA makes a number of statements in this document demonstrating that the new remedy was mandated because asbestos was buried on the Site. The EAM repeats many of the same points raised in the February 1, 2012 EECA Modification it imposed.

However, it even takes it a step further when justifying its decision for all soil removal and clean corridors. The EAM states "of particular concern are digging and soil moving related to road repair, utility repair and any other construction activities on the sites." It also stresses that utilities "such as natural gas, electric, communications, water and sewer in Sites 3, 4/5 and 6 require immediate access and repair to respond to leaks of damaged lines." USEPA indicates that excavation would be necessary to access the utilities in an emergency situation and that the excavation "would be likely to result in the potential release of ACM and asbestos fibers. USEPA continues: "In the event of a breach of other loss of integrity, pressurized underground utilities also have the potential to force overlying soils to the surface resulting in the potential release of ACM and asbestos fibers. Therefore, excavation of clean corridors for all such utilities must be provided as soon as possible to prevent the potential release of ACM and asbestos fibers."

In the EAM, USEPA states that Site 3 potential receptors include: 1) utility workers from either ComEd servicing their buried lines that cross the Site or from other utilities who maintain buried lines or easements for their lines, 2) construction workers installing additional utilities in the future and 3) anyone walking or biking across the field, i.e., trespassers. Potential receptors for Site 6 include: 1) utility workers, 2) road repair and maintenance, and, 3) construction workers installing additional utilities in the future and the general public, as users of the roadway. USEPA's Risk Evaluation concluded that as a result of asbestos being present at Site 3 and Site 6 "[a]dverse health risks are reasonably anticipated in the event that exposure occurs."

It is apparent that the primary concern expressed by USEPA was buried ACM that could either impact workers servicing utilities or could reach the surface as a result of the upward thrust of additional fragments or "broken scraps of asbestos". As stated within the EAM, conditions at the Site were deemed to meet the criteria for a removal action. In the absence of buried ACM and broken scraps of asbestos having the potential to reach the ground surface, it is believed likely that no removal action at Site 3 or within the western limits of Site 6 would have been needed.

The conclusion that the Transite® pipe buried and spread by IDOT is causing an expansive remedy is supported by the well-documented approach being applied to ACM removal at the nearby Illinois Beach State Park. This site is located approximately one mile from Site 3. Past investigations have concluded that surficial ACM that washes onto the beach is not expected to be harmful to human health.<sup>14</sup> The presence of limited quantities of generally non-friable ACM at the surface (assuming the absence of Transite® pipe) of Site 3 would be comparable to the conditions encountered at Illinois Beach State Park (IBSP). Therefore, it is reasonable to conclude that in the absence of Transite® pipe at Site 3 and within the western limits of Site 6, a strategy similar to that being employed at IBSP would be appropriate for managing Site conditions.

Alternatively, for purposes of assessing the broader scope resulting from IDOT's actions at Site 3 and the western limits of Site 6, I have considered a more conservative approach to managing the Site conditions assuming Transite® pipe had not been spread and buried. Under this alternative scenario, I have assumed that Transite® pipe had been left in its original location on the surface of Site 3 in 1970. Under this alternative scenario, I believe that the plan submitted in the EECA would have been more than adequate to manage the Site 3 conditions and that no remedy would have been required for the western portion of Site 6.

As noted above, the EECA Revision 4 had proposed Alternative 2 as the remedy for Site 3. This alternative included installation of a soil barrier over approximately 3.12 acres of Site 3. This alternative was projected to cost as much as \$620,000 to construct, with long term Operations and Maintenance (O&M) costs projected at \$142,000 (over a 30-year period). Based on the cost of construction, and long-term O&M, this alternative remedy would cost \$762,000.

It is my opinion that due to the presence of buried Transite® pipe, the USEPA has demanded a more expansive scope for managing Site 3 conditions.

This added scope is reflected in the cost differentials. The current required remedy on Site 3 is projected to cost \$3.3M. It is my opinion based on review of the estimate prepared by AECOM that this estimate is reasonable for the tasks that have been quantified. However, a number of additional required tasks have not been included in this estimate, and some uncertainty exists regarding the actual costs for removal and/or replacement of select utilities. Consequently, it is my opinion that the actual costs for implementing the USEPA required remedy may potentially expand by a factor of 20% or more, raising the total cost of construction to approximately \$4.0M. Additionally, the AECOM estimate does not include long-term O&M expenses. Long-term O&M expenses are not expected to deviate substantially from the estimate included in the original EECA, and therefore, I have assumed additional O&M expenses of \$140,000. This raises the total cost of remedy implementation being required by USEPA to \$4.14M, resulting in an incremental cost increase for the selected remedy of \$3.4M.

A similar analysis can be conducted for Site 6. However, the Transite pipe bumpers were not placed on Site 6. Thus, if you assume pre-IDOT construction conditions, there should have been no need for any remedy on the western portion of Site 6 and certainly no remedy that involves the creation of clean corridors or the excavation of ACM contaminated soils. It is my opinion that IDOT's activities have caused the remedy on the western portion of Site 6.

USEPA is not requiring any work on the south side of Greenwood Road other than the area that was impacted by IDOT's work on the Amstutz Project.

As discussed in Section 2.4.2.2, the remedy selected for Site 6 involves abandonment or relocation of select utilities, and removal of soil. The following utilities present on Site 6 will be relocated or abandoned: 1) AT&T telecommunication lines present on the south side of Site 6 will be relocated, 2) an existing North Shore Gas line will be permanently abandoned, and 3) a City of Waukegan water main will be relocated. Approximately 6,420 cubic yards of soil will be removed to an estimated depth of 3 feet. For the southern portion of Site 6, the Scope of Work to be implemented pursuant to the approved RAWP includes:

1. Abandonment of a North Shore 12" gas line that transects Site 3, then intersects Site 6 and runs in an east/west orientation to the eastern limits of the Site 6 area located south of Greenwood Road.
2. Removal and relocation of an AT&T Fiber Optic Cable that transects Site 3 then intersects Site 6 and runs in an east/west orientation to the western limits of the Site 6 area located south of Greenwood Road.
3. Removal of asbestos contaminated fill material and replacement with clean fill.

Weaver Consultants has evaluated the Cost Estimate prepared by AECOM for the entire Site 6 (included as Appendix B). We have segregated those costs to be incurred for only the portion of Site 6 located on the south side of Greenwood Road, immediately adjacent to Site 3. Based upon our tabulation of these expenses, we believe that the work to be performed within the subject area will total between \$700,000 and \$1,000,000 (this is approximately 25% of the total estimated cost for the entire Site 6). However, a number of additional required tasks have not been included in this estimate, and some uncertainty exists regarding the actual costs for removal and/or replacement of select utilities. Consequently, it is my opinion that the actual costs for implementing the USEPA required remedy may potentially expand by a factor of 20% or more, raising the total cost of construction for the area of Site 6 immediately north of Site 3 to approximately \$840,000 to \$1.2M. It is my opinion based on review of the estimate prepared by AECOM that this estimate is reasonable for the tasks that have been quantified.

### **3.4 IDOT'S Conduct was a Violation Section 21 of the Act**

Based upon my significant experience with IEPA, the IEPA regulations, the Act, CERCLA, RCRA and USEPA, it is my opinion that IDOT used, spread, buried, placed, disposed of and left pieces of asbestos containing Transite® pipe and ACM contaminated fill at Sites 3 and 6 as part of its work on the Amstutz Project. IDOT never removed the ACM and thus it remains largely in situ.

Based on my experience, the Transite® pipe and ACM contaminated fill attributable to IDOT would be treated by the regulators as “discarded material” under Section 3.535 of the Act and thus a would qualify as a “waste” per the definition. The material resulted from IDOT’s work on the Amstutz Project.

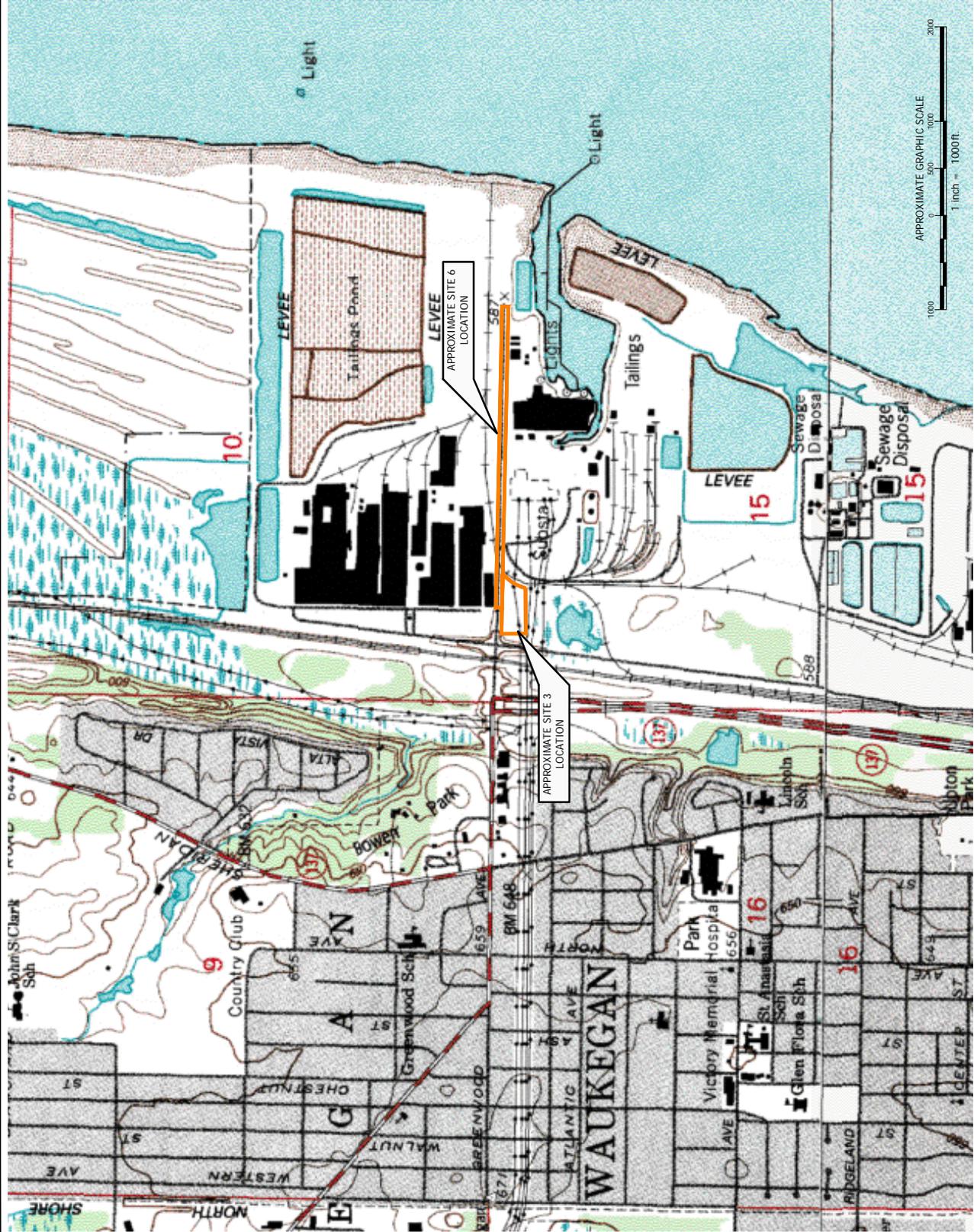
Similarly, IDOT’s actions were the result of the consolidation of refuse (crushed Transite® pipe and/or contaminated fill) at Site 3 and 6, neither of which would be viewed by IEPA as a sanitary landfill under Illinois law. Thus, it is my opinion based on past experiences with similar sites, that IEPA likely would view IDOT’s conduct to be “open dumping” under Section 3.305 of the Act, 415 ILCS 5/3.30.

Both USEPA and IEPA treat crushed and buried ACM as both “solid waste” and “hazardous waste.” Further, these agencies would likely view the dumping and placing of said ACM at Sites 3 and 6 as “disposal” under Section 3.185 of the Act, 415 ILCS 5/3.185.

Neither Site 3 nor Site 6 are permitted waste disposal sites or facilities, which meet the requirements of the Act or its regulations as they relate to the disposal or abandonment of waste.

Based upon my experience and the foregoing, it is my opinion that IEPA would more likely than not view IDOT’s conduct during the Amstutz Project involving asbestos as violating Section 21 of the Act. We believe that a client engaged in similar activities would be subject to potential enforcement action.

**FIGURES**



SOURCE: IMAGE ADAPTED FROM MAP CARD 210N, ILLINOIS DATED 1993.



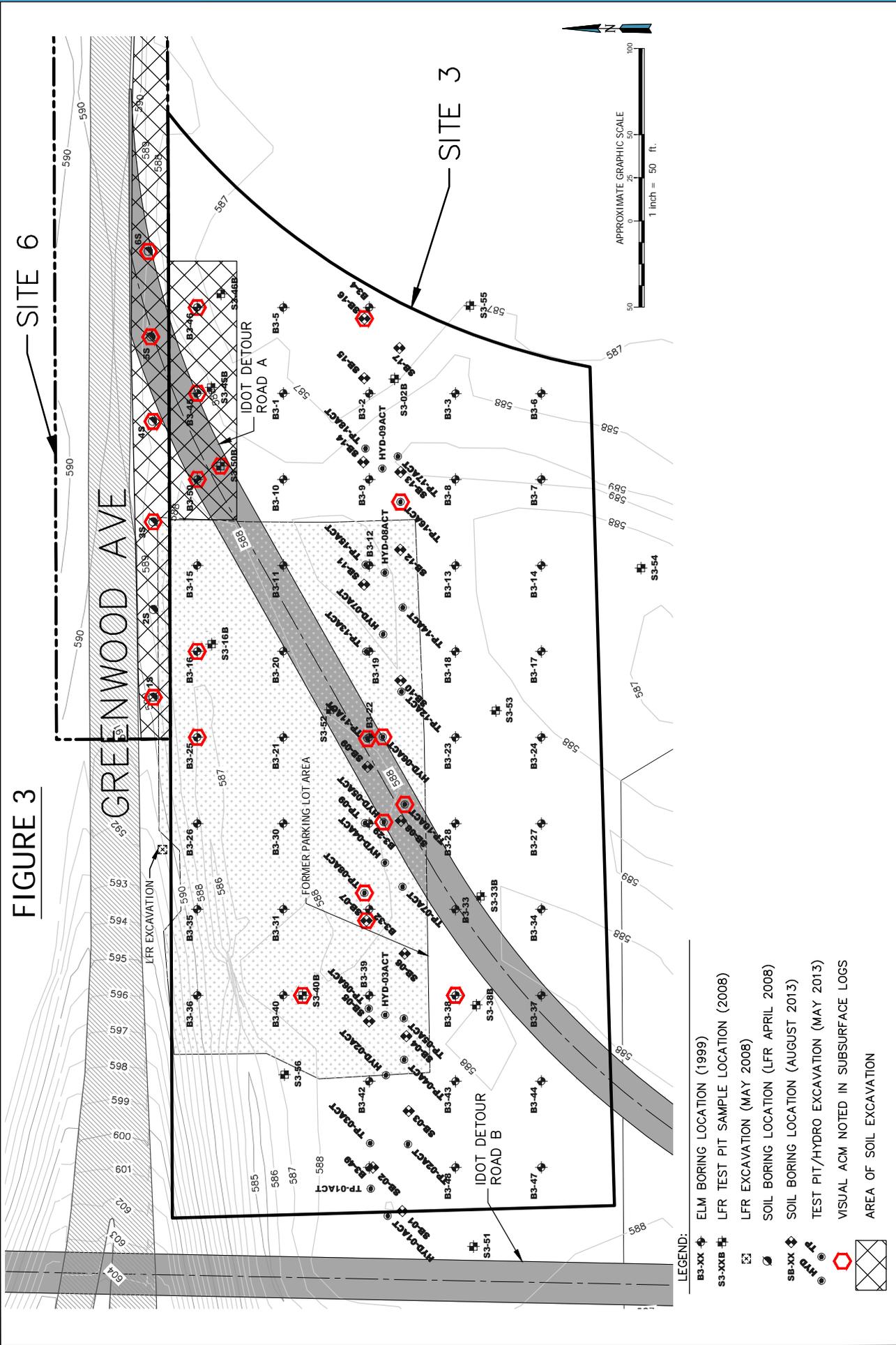
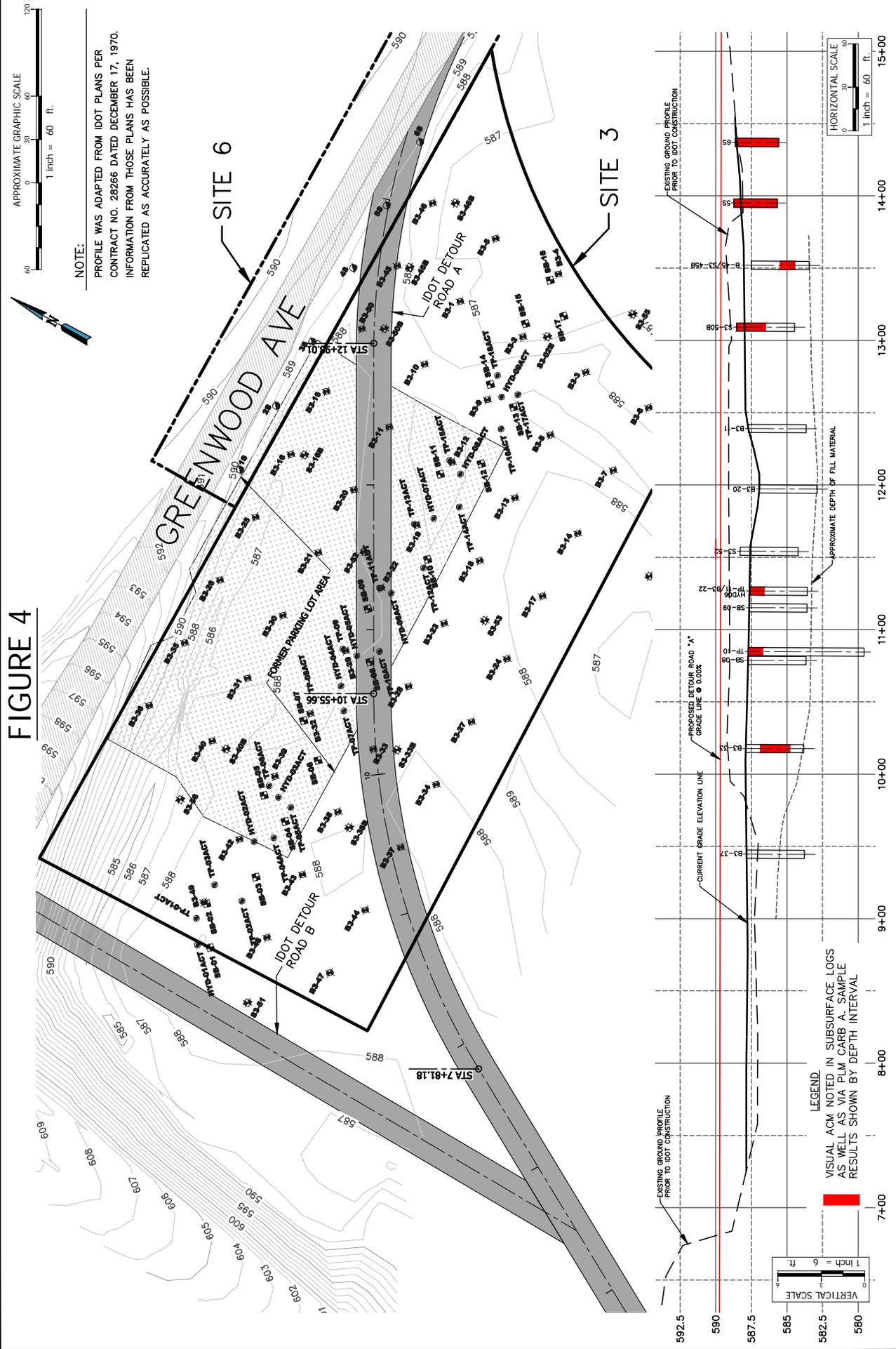


FIGURE 4



NOTE:  
 PROFILE WAS ADAPTED FROM IDOT PLANS PER CONTRACT NO. 28266 DATED DECEMBER 17, 1970. INFORMATION FROM THOSE PLANS HAS BEEN REPLICATED AS ACCURATELY AS POSSIBLE.

LEGEND:  
 VISUAL ACM NOTED IN SUBSURFACE LOGS AS WELL AS VIA PLM CARB A SAMPLE RESULTS SHOWN BY DEPTH INTERVAL



**APPENDIX A**

**DOUGLAS G. DORGAN, JR. RESUME**

Principal

### **Fields of Expertise**

Environmental Site Assessments, Environmental Permitting, Brownfield's Redevelopment, Groundwater Impact Assessments, Environmental Remedial Projects, Risk Based Corrective Action

### **Certification**

Licensed Professional Geologist, State of Indiana  
Licensed Professional Geologist, State of Illinois  
OSHA Supervisor's Health & Safety Training  
Chemical-terrorism Vulnerability Information (CVI)  
Authorized User

### **Education**

B.S. Earth Science, Eastern Illinois University, 1986  
Graduate Course Work in Environmental Studies, Sangamon State University, 1986  
M.S. Geography/Environmental Science, Northern Illinois University, 1993

### **Professional Summary**

Mr. Dorgan serves as Principal and Senior Project Manager with Weaver Consultants Group. He has over twenty years of environmental and solid waste control project experience. He currently leads the firm's Environmental Practice professional staff. He has supervised completion of numerous projects including multi-phase environmental site assessments, risk based corrective action, Brownfield's redevelopment, hydrogeological investigations, groundwater impact assessments, remediation planning and implementation, multi media compliance audits, UST closures, and solid waste management facility permitting.

Prior to joining Weaver Consultants Group, Mr. Dorgan was an Office Director for a national environmental consulting firm.

### **Select Project Experience**

He has been involved in over 50 state voluntary remediation program projects at sites located in states throughout the Midwest and Southwest. These projects have utilized a range of closure strategies involving site-specific fate and transport

modeling, risk assessment, remediation, land use controls, and engineered barriers. Many of these projects were completed in support of property acquisition and consequently completed in accordance with aggressive schedule and risk mitigation requirements.

Mr. Dorgan has provided services to both private and public sector clients redeveloping Brownfield's. Plans have included residential, retail, commercial, industrial, and mixed use developments. Work has been performed pursuant to various state and federal grant and revolving loan programs. He also consults on the unique construction related aspects of developing distressed properties.

He manages activities performed in compliance with a RCRA Hazardous Waste Management Permit for a major steel company located in Northwest Indiana. Responsibilities include supervision of preparation of permit renewal and amendment applications, permit negotiations with IDEM and USEPA, and ongoing groundwater sampling and reporting for a hazardous waste landfill network comprised of 64 monitoring points. Mr. Dorgan also manages RCRA Corrective Action activities for the site, including preparation of required plans and deliverables and investigation and corrective measures implementation pursuant to approved workplans.

Mr. Dorgan managed acquisition of a comprehensive "No Further Remediation" letter pursuant to the Illinois Site Remediation Program for a 14-acre parcel located in the northern suburbs of Chicago. A soil and groundwater investigation was performed to assess site impacts. Tier 2 modeling and development of site specific background following the Illinois Tiered Approach to Corrective Action Objectives (TACO) methods were used to support appropriate soil and groundwater remediation objectives. Remediation activities included removal of 45,000 tons of debris and fill material, and excavation and disposal of LUST contaminated soils.

As Principal in Charge, Mr. Dorgan is responsible for overseeing design, permitting and compliance



Principal

activities for a Type II and III Solid Waste Disposal facility in Pines, Indiana. He is also responsible for oversight of ongoing RI/FS activities for the Town of Pines Superfund Site in Pines, Indiana. On behalf of a major PRP, Mr. Dorgan is collaborating with other technical consultants on the implementation of the RI/FS and ongoing remedial measures development and construction.

He managed the site investigation and Indiana Voluntary Remediation Program activities for a large glass manufacturing facility in Central Indiana. Site investigation activities resulted in remediation of select facility areas to control for impacts attributable to semi-volatile organic compounds, polychlorinated biphenyl's (PCB's), and inorganic constituents. Additional site measures included removal of contaminated creek sediments and implementation of a comprehensive groundwater investigation.

Mr. Dorgan is currently managing an Illinois SRP application for a former die casting facility with PCB impacts to facility structures, soils, and shallow groundwater. Extensive site investigation has been undertaken and TACO Tier 2 and 3 modeling performed. A Site Investigation and Remediation Objectives Report has been submitted to support remediation objectives negotiation. He is coordinating planning for remedial activities including the acquisition of a Pollution Legal Liability and Environmental Cost Cap insurance policy.

He was Project Manager for a comprehensive Phase I Environmental Site Assessment of the General Motors Danville, IL gray iron foundry whose operations date to the early 1940s. Project required a detailed records review and site inspection to identify potential areas of concern. Subsequent responsibilities included developing a scope of work for site investigation.

Mr. Dorgan managed implementation of a facility-wide investigation for PCB-related impacts at a die casting facility in Chicago, Illinois. The investigation included sampling of soil, concrete, structural

surfaces, and process equipment. Based on investigation results, alternative risk-based opinions were evaluated for site remediation. In support of on-going litigation, an engineering remediation cost estimate was generated.

Mr. Dorgan managed RCRA Corrective Action activities for a specialty steel manufacturing facility in Niles, Michigan. Activities include operation and monitoring of an Interim Measures groundwater remediation system, implementation of preliminary subsurface investigations, development of RCRA RFI Workplans, and negotiations with Michigan Department of Environmental Quality personnel.

Mr. Dorgan managed a Phase I, II, and III Environmental Site Assessment of a 45-acre business park in Indianapolis. Project activities were performed on an accelerated basis to facilitate an aggressive land transfer negotiation. A detailed hydrogeologic assessment and a risk assessment was performed, quantifying required remedial measures.

He conducted comprehensive and media-specific environmental compliance audits of facilities located in four states for a major medical diagnostic imaging equipment manufacturer. Comprehensive audits were performed for select waste and scrap material management facilities. Audits included recommendations for corrective measures in addition to development of a division-wide program for management of recoverable waste streams.

Mr. Dorgan was the Project Manager for a Phase I and II Environmental Site Assessment of a 1.1 million square foot former can manufacturing facility in Chicago. Assessment activities were designed to evaluate long term liabilities and environmental considerations associated with facility reuse and/or demolition planning.

He has secured a focused NFR letter pursuant to Illinois SRP requirements for a fleet maintenance facility in the Chicago area. Project activities were implemented on an expedited basis to accommodate a property transaction. Direct

Principal

negotiations and communications with the IEPA allowed the NFR letter to be issued within 10 weeks of submission of the Site Investigation and Remediation Objectives Report.

Mr. Dorgan was responsible for managing environmental compliance aspects of a comprehensive underground storage tank management program implemented by a major electric utility company in Northern Illinois. The project required UST removal oversight/closure certification, site investigation, regulatory reporting, corrective action design/supervision, and regulatory negotiation. Project activities were concurrently undertaken at over 30 sites.

### **Publications/Presentations**

Contributing author *"Municipal Solid Waste Landfills - Volume I General Issues,"* University of Illinois at Chicago, November, 1989

*"Conducting Phase I Environmental Site Assessments,"* presented to the DeKalb County Economic Development Corporation, Industry Roundtable, DeKalb, IL, November, 1990

*"Environmental Audits for Selection of Solid Waste Disposal Sites,"* presented at Waubensee Community College, Sugar Grove, IL, November, 1992

*"Distribution of Cadmium, Copper, Lead and Silver in Surface Soils of the Chicago Metropolitan Area,"* Northern Illinois University, August, 1993

*"Conducting Effective Environmental Site Assessments,"* presented to the Institute of Business Law Conference 'Environmental Regulation in Illinois', September, 1993

*"Minimizing Liability in Real Estate Transactions by Conducting Effective Environmental Site Assessments,"* New Mexico Conference on the Environment, Journal of Conference Proceedings, April, 1994

*"General Geologic/Hydrogeologic and Contaminant Transport Principles,"* presented to ITT/Hartford Insurance Co., January, 1996

*"Environmental Site Assessments and the Due Diligence Process,"* presented to the AIG

Environmental seminar 'Legal Actions Against Facilities', March, 1998

*"Brownfields Development, TACO and the SRP Process,"* presented to the Calumet Area Industrial Commission Executive Council, May, 1998

*"Property Acquisition and the Due Diligence Process,"* presented to Cushman and Wakefield Corporate Services Department, August, 1998

*"Brownfields Development, TACO and the SRP Process,"* presented to the Calumet Area Industrial Commission, March, 1999

*"Risk Management Tools for Contaminated Site Development,"* presented to a construction industry seminar 'A View From the Top', February, 2000

*"Voluntary Remediation of Brownfields/Risk Based Remediation"* presented to Illinois Association of Realtors, October, 2002

*"Blue Skies for Brownfields",* Illinois Association of Realtors Magazine, May 2003

*"Environmental Considerations Associated with Site Development",* presented to Power Construction Operations Meeting, March 2006

*"Weaver Consultants Group Environmental Manager AAI Roundtable",* facilitator and presenter, June 2006

*"Overview of AAI and ASTM E1527-05: The Changing Due Diligence Landscape",* presented to Grand Rapids Chamber of Commerce Environmental Committee, January, 2007

*"Weaver Consultants Group Environmental Manager Vapor Intrusion Roundtable",* facilitator and presenter, July/November, 2007

*"Brownfields Redevelopment: A Catalyst for Change",* presented to Indian University Northwest, July, 2011

### **Professional Affiliations**

National Brownfield Association  
Air and Waste Management Association



**APPENDIX B**

**BIBLIOGRAPHY OF DOCUMENTS CITED**

## **APPENDIX B**

### **BIBLIOGRAPHY OF DOCUMENTS CITED**

1. 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.
2. 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.
3. 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.
4. 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), prepared for Johns Manville and prepared by USEPA Region 5.
5. Fourth Five-Year Review Report for Johns-Manville Site dated April 30, 2013, prepared for USEPA Region 5 and prepared by USEPA Region 5.
6. Enforcement Action Memorandum dated November 30, 2012, prepared for Johns Manville and Commonwealth Edison Company and prepared by USEPA Region 5.
7. Standard Specifications for Road and Bridge Construction dated January 1, 2012, prepared for Illinois Department of Transportation and prepared by Illinois Department of Transportation.
8. 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.
9. Brad Bradley (USEPA) to Denny Clinton (Johns Manville) dated July 10, 1998, *Exhibit C*.
10. Second Five-Year Review Report for Johns-Manville Site dated May 2, 2003, prepared for USEPA Region 5 and prepared by USEPA Region 5.
11. Bruce D. Ray (Johns Manville) to Margaret Herring (USEPA Region 5) dated July 1, 1999, *Response to CERCLA Section 104(e) Request*.
12. 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.
13. Respondents Response Document to Engineering Evaluation/Cost Analysis (EE/CA), Revision 4, as Modified and Approved by USEPA; Southwestern Site Area, Waukegan,

## **APPENDIX B**

### **BIBLIOGRAPHY OF DOCUMENTS CITED**

Illinois dated March 12, 2012, prepared for USEPA Region 5 and prepared by AECOM Technical Services, Inc.

14. 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.
15. 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.
16. Williams, E.G.; Von Aspern, K., *Asbestos Cement Pipe: What if it Needs to be Replaced?*, HDR Engineering, Inc.
17. Modifications to the Engineering Evaluation/Cost Analysis dated February 2012, prepared for Johns Manville and prepared by USEPA Region 5.
18. Complainant's Motion for Leave to File it's First Amended Complaint, In the Matter of: Johns Manville, a Delaware Corporation, Complainant, vs. Illinois Department of Transportation, Respondent, PCB No. 14-3 dated March 12, 2014

**APPENDIX C**

**AECOM REMOVAL ACTION WORKPLAN COST ESTIMATE**

**Sub-Project Cost Detail Report (with Markups)**

**Estimate Documentation for Site 3 (probable cost):**

1. Dewatering and soil removal can be accomplished over Nicor gas line (2640 cy)
2. Decommissioning 8-inch North Shore Gas pipe and AT&T lines
3. Establish Clean utility corridor along City of Waukegan water main (330 LF)
4. Install 2-foot soil cover over entire site and site restoration (3.14 acres)
5. Dewatering and limit soil removal in northeastern corner (900 cy)

Nicor Gas Line excavation + city water main 3250 cy  
 Northeastern corner soil excavation area 900 cy  
 Clean corridor for North Shore Gas easement 794 cy  
 Additional utility excavation pits for NSG and AT&T 500 cy  
 Vegetative cover area 3.14 acre

Total Sub-Project Marked-up Cost: \$3,329,171.00

Description	Quantity	UOM	Material	Labor	Equip	Sub Bid	Extended Cost	Estimating Notes
AECOM - regulatory, field sampling, air monitoring	1	LS	\$0.00	\$0.00	\$0.00	\$180,000.00	\$180,000.00	
DMP - RSE	1	LS	\$0.00	\$0.00	\$0.00	\$60,000.00	\$60,000.00	
Utility abandonment - north shore gas	1	LS	\$0.00	\$0.00	\$0.00	\$188,940.00	\$188,940.00	25% of Oct 2013 Cost Estimate
Utility abandonment - AT&T	1	LS	\$0.00	\$0.00	\$0.00	\$111,655.60	\$111,655.60	35% of Oct. 28, 2014 cost estimate
Utility Installation - AT (Phase II)	1400	LF	\$0.00	\$0.00	\$0.00	\$75.00	\$105,000.00	Move utilities underground
Required soil excavation + water main removal	5444	CY	\$0.00	\$0.00	\$0.00	\$40.00	\$217,777.78	Excavation, transportation and landfill disposal
Dewatering operations plus water disposal (NSWRD)	21,600,000	GAL	\$0.00	\$0.00	\$0.00	\$0.10	\$2,160,000.00	30 days dewatering at 500 gpm, incl labor & equipment
Install road crossing - horizontal bore for dewatering pipe	100	LF	\$0.00	\$0.00	\$0.00	\$200.00	\$20,000.00	
Install new 10-inch HDPE water main	330	LF	\$0.00	\$0.00	\$0.00	\$60.00	\$19,800.00	
Geotextile	15,198	SY	\$0.00	\$0.00	\$0.00	\$2.50	\$37,994.00	
Borrow Pit Sand - backfill excavation	5444	CY	\$0.00	\$0.00	\$0.00	\$14.00	\$76,222.22	
Borrow Pit Sand - vegetative cover sand layer	2,633	CY	\$0.00	\$0.00	\$0.00	\$14.00	\$36,461.07	
Clay final cover material - 15-inch thickness	6,332	CY	\$0.00	\$0.00	\$0.00	\$8.00	\$50,658.67	
Imported Compost-Sand mix	1,266	CY	\$0.00	\$0.00	\$0.00	\$25.00	\$31,661.67	
Chain-link fencing	1,700	LF	\$0.00	\$0.00	\$0.00	\$20.00	\$34,000.00	

**Sub-Project Cost Detail Report (with Markups)**

**Estimate Documentation for Site 6 (Probable Cost):**

Ongoing remedial action for Site 6 portion of the Southwestern Sites

1. Excavation of ACM impacts
2. Excavation and Replacement of Water Main Clean Utility Corridor on N Side of Greenwood Ave (4417 CY)
3. Decommissioning of North Shore Gas main on N Side of Greenwood Ave
3. Conventional trench box installation of 10-inch water line (3482 LF)
4. Site restoration (1.30 AC)

Excavation for ACM impacts	7510 cy	
Trenching for City of Waukegan water main	4901 cy	plus 30% contingency
Excavation for additional ACM identified in 2014 sampling	2000 cy	
Excavation for utility pits (North Shore Gas, A&T)	500 cy	
Length of new 10-inch HDPE water main	3482 LF	
Area of excavation for site restoration	1.80 AC	

Site 6 Sub-Project Total Cost: \$4,074,989.40

Description	Quantity	UOM	Material	Labor	Equip	Sub Bid	Extended Cost	Estimating Notes
AECOM - regulatory, soil sampling, air monitoring	1	LS	\$0.00	\$0.00	\$0.00	\$140,000.00	\$140,000.00	
DMP - RSE	1	LS	\$0.00	\$0.00	\$0.00	\$60,000.00	\$60,000.00	
Utility abandonment - north shore gas (cost estimate)	1	LS	\$0.00	\$0.00	\$0.00	\$377,875.00	\$377,875.00	50% of Oct 2013 quote
Utility abandonment and relocation - (Oct 2014 work order)	1	LS	\$0.00	\$0.00	\$0.00	\$207,360.40	\$207,360.40	65% of Oct. 28, 2014 quote
Utility Installation - ATT Fiber optic underground run (Phase II)	1400	LF	\$0.00	\$0.00	\$0.00	\$75.00	\$105,000.00	Move utilities underground
Required soil excavation + water main removal	14911	CY	\$0.00	\$0.00	\$0.00	\$40.00	\$596,440.00	Excavation, transportation, landfill disposal
Dewatering operations plus water disposal	20,160,000	LS	\$0.00	\$0.00	\$0.10	\$0.10	\$2,016,000.00	70 days dewatering at 500 gpm, incl labor & equipment
Install new 10-inch HDPE water main	3482	LF	\$0.00	\$0.00	\$0.00	\$60.00	\$208,920.00	
Borrow Pit Sand - excavation backfill	14,911	CY	\$0.00	\$0.00	\$0.00	\$14.00	\$208,754.00	
Vegetation	1	LS	\$0.00	\$0.00	\$0.00	\$15,000.00	\$15,000.00	
Chain-link fencing	3,482	LF	\$0.00	\$0.00	\$0.00	\$20.00	\$69,640.00	
Traffic control	1	LS	\$0.00	\$0.00	\$0.00	\$50,000.00	\$50,000.00	

**EXHIBIT 2**

Transcript of the Testimony of  
**DOUGLAS G. DORGAN**

**Date:** May 6, 2015

**Case:** JOHNS MANVILLE VS. IDOT

**TOOMEY REPORTING**

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May 6, 2015

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

The deposition of DOUGLAS G. DORGAN, JR., LPG, called by the Respondent for examination, taken pursuant to the Illinois Pollution Control Board's procedural rules and the Illinois Rules of Civil Procedure pertaining to the taking of depositions for the purpose of discovery, taken before KATHLEEN M. DUFFEE, a Notary Public within and for the County of Cook, State of Illinois, and a Certified Shorthand Reporter of said state, at Suite 1800, 69 West Washington Street, Chicago, Illinois, on the 6th day of May, A.D. 2015 at 10:06 a.m.

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1 Q. Okay. Who would those consulting services  
2 actually be provided to for roads and things of that  
3 nature?

4 A. Generally, the services are provided to  
5 property owners that are developing properties.

6 We do work on projects in Indiana that  
7 involve the Indiana Department of Transportation where  
8 we're working directly for communities that are doing  
9 projects with the Indiana Department of Transportation,  
10 but in Illinois most of our work relates to working  
11 with private property owners that are developing  
12 properties and managing access issues and easements  
13 and issues of curb cuts, roadway realignments that are  
14 needed to support the commercial development.

15 Q. Thank you. So in the process of developing  
16 the opinions that you have offered in this case by way  
17 of your expert report, to what extent did you work  
18 with Mr. Talbot in the development of those opinions?

19 A. I consulted Mr. Talbot in the engineering  
20 issues related to the past construction efforts that  
21 took place at the site.

22 Q. Okay. And how extensively did you consult with  
23 Mr. Talbot about those particular issues, about the  
24 construction-related aspects of work that was done at

TOOMEY REPORTING (312) 853-0648

1 the site?

2 **A. Generally, I interfaced with John and members**  
3 **of his team in seeking support in the preparation of**  
4 **some of the figures that were produced in the expert**  
5 **report.**

6 Q. And when you say "figures," what figures are  
7 you referencing?

8 **A. The figures primarily with respect to the**  
9 **cross-sections that overlay the historic site**  
10 **conditions with the changed conditions as a result of**  
11 **the Amstutz construction project.**

12 Q. And we are talking about his having reviewed  
13 documentation related to the Amstutz construction  
14 project; correct?

15 **A. That's correct.**

16 Q. In the course of --

17 MR. MCGINLEY: Let's actually, if we could,  
18 mark this as Exhibit No. 2, please.

19 (WHEREUPON, Dorgan Deposition  
20 Exhibit No. 2 was marked for  
21 identification as of 05/06/2015.)

22 BY MR. MCGINLEY:

23 Q. Mr. Dorgan, what I'm handing you and what the  
24 court reporter is marking as Exhibit 2 is entitled  
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1 editorial comments, any suggestions about language  
2 that was used in the report, any figures in the report,  
3 things like that?

4 **A. Yes, he provided input and information as it**  
5 **relates to his review of the information.**

6 Q. And how extensively would you say that he  
7 provided that sort of editorial input into the report?

8 **A. I wouldn't consider it to be extensive. I**  
9 **was asking him to look at and be sure that I was**  
10 **accurately representing and translating information**  
11 **that had been presented in the record into some of our**  
12 **figures, and that would have been about the extent of**  
13 **our interaction on that.**

14 Q. Okay. During the course of the time that you  
15 were working on your engagement for Bryan Cave, you  
16 initially were provided documents. You said you  
17 reviewed documents. Those documents, I assume, were  
18 provided by Bryan Cave; is that correct?

19 **A. That's correct.**

20 Q. Okay. And initially the documents that you  
21 were provided, were you provided any subsequent  
22 documents by Bryan Cave or was it just the documents  
23 that initially they asked you to take a look at?

24 **A. If I recall correctly, I think there were kind**  
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1 THE WITNESS: Is there one more?

2 MS. BRICE: Yes.

3 THE WITNESS: Oh, I'm sorry. Page 18, second  
4 full paragraph.

5 BY MR. MCGINLEY:

6 Q. One second here. Yes. This would be the one  
7 beginning "as discussed"?

8 A. The reference to Section 2.4.2.2 should be to  
9 Section 3.6.

10 Q. Okay. Thank you. Let's resume then.

11 A. If we may before we resume your questioning,  
12 I'd like to offer a clarification on a previous line  
13 of questioning if I may.

14 Q. Sure. What would that be?

15 A. This has to do with the involvement of others  
16 that supported the development of the work product.

17 Q. Uhm-hmm.

18 A. I wanted to clarify that the opinions that have  
19 been expressed in the report are my opinions. I  
20 believe I have the necessary qualifications to render  
21 the opinions. I have experience with each of the  
22 opinions that have been referenced, and that those that  
23 supported the project had been performing tasks at my  
24 direction that were more of an administrative nature

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1 than certainly were not intended to be expert in  
2 nature.

3 Q. Okay. And you're saying administrative, but  
4 certainly when you say or characterize the efforts  
5 of others that supported your work as being  
6 administrative, I mean, that doesn't really include  
7 actual drafting or writing of the report; correct? I  
8 mean, that's not administrative.

9 A. The work that was performed by others was being  
10 done at my direction, at my request, to produce the  
11 work product that I felt was necessary to support the  
12 report that was being generated.

13 Q. And would that also be true of Mr. Talbot?

14 I mean, Mr. Talbot interfaced with you.  
15 You consulted with Mr. Talbot, but unlike, let's say,  
16 Mr. Cantor or Mr. Treece, Mr. Talbot is actually listed  
17 as one of the people who's also engaged with you in the  
18 effort to work on behalf of Bryan Cave; correct?

19 A. Yes. At the outset of our engagement there had  
20 been some notion that both my expertise and John  
21 Talbot's expertise may be needed.

22 It became evident as we began evaluating  
23 the record and as the opinions, the preliminary  
24 opinions were formulated and as I continued to refine

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1 and flesh out those opinions, that there really wasn't  
2 a need for John Talbot's expertise; that because he had  
3 looked at some of the early documentation, he did help  
4 in the development of the graphics as I have stipulated  
5 earlier, but he did not contribute opinions to the  
6 report.

7 Q. Okay. Well, thank you for that clarification.

8 I'd like to turn your attention now to  
9 Section 3 of your report. This is the opinions, and  
10 about the site usage, I'd like to go back and explore  
11 a couple of questions with you about this.

12 I mean, you said that Section 3.1 --  
13 I assume that Section 3.1 is based on your having  
14 reviewed the project record as you've described it  
15 earlier, and as you've noted a number of the reports  
16 that you cite in your bibliography more or less talk  
17 about a similar type of description of the site,  
18 describe it in similar terms as to having been vacant  
19 prior to the construction of the parking lot, the  
20 approximate period of time in which the parking lot  
21 was in operation, and that it was in existence until  
22 the parking lot was taken out of service.

23 Is that, I mean, is it fair to say that  
24 that's what Section 3.1 is based on?

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1     tasked by Bryan Cave to provide this, or did you do  
2     this of your own volition?

3           **A. The whole report was done of my own volition.**  
4     **The opinions are those that I formulated as a result**  
5     **of my review of the record. There's references in**  
6     **the record to issues associated with the Act, and I**  
7     **have provided an opinion concerning it.**

8           Q. And my -- again, is it your testimony that  
9     you decided to include Section 3.4 of your own  
10    volition? You weren't asked to provide that? That  
11    wasn't part of the scope of the engagement?

12           **A. I wasn't asked to provide any of these**  
13    **specific opinions. I was asked to review the record**  
14    **and develop opinions, and I've done so.**

15           Q. So this is simply your opinion on a legal  
16    question; correct?

17           MS. BRICE: Objection, calls for a legal  
18    conclusion.

19           MR. MCGINLEY: Well, I believe that's exactly  
20    what's being offered in this portion of the report.

21           MS. BRICE: Well, I don't think he said.  
22    He said based upon his experience. He's not saying --  
23    he's not drawing a legal conclusion, I don't believe.

24    BY MR. MCGINLEY:

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1 Q. You're making certain statements about what  
2 you believe this Act -- how the actions that you've  
3 discussed in other parts of your report would be in  
4 violation of Section 21 of the Act; correct?

5 A. My --

6 MS. BRICE: Objection, mischaracterizes the  
7 document.

8 BY THE WITNESS:

9 A. My opinion is based upon, as I've stated in  
10 the report, my experience and how I've seen IDOT [sic]  
11 apply the Environmental Protection Act to other similar  
12 scenarios and I've attempted to avoid offering a legal  
13 opinion.

14 I'm really referencing to what I have  
15 seen IDOT -- excuse me -- IEPA and the way in which  
16 IEPA and in some instances USEPA enforce the  
17 Environmental Protection Act relative to these types  
18 of similar issues.

19 BY MR. MCGINLEY:

20 Q. Have you in the course of other work that  
21 you've done ever produced a similar opinion or provided  
22 similar types of advice with respect to whether or not  
23 a violation of state law, state environmental law may  
24 have occurred?

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1           **A.** I have provided counsel to clients relative to  
2 how the requirements of the Environmental Protection  
3 Act may apply to the circumstances they have at their  
4 sites. I have not previously testified to similar  
5 matters.

6           Q. What provisions of Section 21 of the Act do  
7 you believe would have been violated as a result of  
8 the conduct that you allege IDOT engaged in during  
9 the Amstutz project?

10           MS. BRICE: Again, calls for a legal  
11 conclusion. I don't think he's trying to give a legal  
12 opinion. He's saying how IDOT has -- based upon his  
13 experience, how IEPA has treated similarly situated  
14 circumstances.

15 BY MR. MCGINLEY:

16           Q. Well, I mean, you're familiar with Section 21  
17 of the Act; correct?

18           **A. Yes.**

19           Q. So, I mean, do you off the top of your -- based  
20 on your experience, rather, if you were consulting with  
21 a client, would you point them to just, say, would you  
22 say generally this type of conduct might violate  
23 Section 21 of the Act, or would you point them more  
24 specifically to subprovisions of the Act that might be

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**EXHIBIT 3**

**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>	)	

**AFFIDAVIT OF DOUGLAS G. DORGAN, JR.**

I, Douglas G. Dorgan, Jr., hereby declare and state as follows:

1. I am over the age of twenty-one, of sound mind, and am capable of making this declaration.

2. I am currently a Principal with Weaver Consultants Group responsible for managing the Environmental Practice Group, and the Site Building and Infrastructure Consulting Practice Group. In these positions, I have personal knowledge about what types of records environmental consultants and experts typically and reasonably rely upon in assessing the cause of contamination on a particular site or in a particular area. If called as a witness, I can competently testify to the matters stated herein. The statements set forth in this affidavit are true and correct, to the best of my knowledge and belief based upon my experience as an environmental consultant and expert.

3. In working for engineering firms and as an environmental consultant, including for engineering firms since 1986, I have experience and knowledge in the fields of

environmental consulting; engineering; geology; remedial investigations; and the planning, design, and construction of industrial, commercial and institutional properties.

4. After graduating from Eastern Illinois University in 1986 with a Bachelor of Science in Earth Science, I began working for the engineering firm Eldredge Engineering and Associates, Inc., which was later acquired by Wehran Engineering Corporation. My work included engineering design assignments under the supervision of Professional Engineers. My project responsibilities included, but were not limited to, design of grading plans, stormwater conveyance systems (including plans and profiles), roadways, environmental control systems, and end use plans. In addition, I performed a wide variety of field services including construction quality assurance testing, surveying, environmental monitoring, soil borings and soil sample collection, groundwater, sediment and surface water sampling and physical soil testing.

5. Moreover, while working for Eldredge Engineering and Associates, Inc. and Wehran Engineering Corporation, I was responsible for drafting site plans, including land use plans, cross-sections, soil profiles, tables, and figures. I did this by reviewing design drawings, engineering documents, and grading plans, among other documents. I was also responsible for designing the site plans myself. This involved designing grading plans, laying contours and tying contours into existing site features, designing storm water drainage ditches, preparing final cover designs, and reviewing cross sections and soil profiles. I was also responsible for construction quality assurance on many of these projects.

6. In 1995, I began working for Weaver Boos Consultants, which later became Weaver Consultants Group. There, I have supervised the completion of numerous projects involving, by way of example, multi-phase environmental assessments, remediation planning,

design and implementation oversight, and a range of permitting and compliance tasks such as development of stormwater pollution prevention plans (“SWPPP”) and spill control and counter measure plans (“SPCC”).

7. Additionally, for the past five years, I have served as Principal for Weaver Consultants Group’s Site Building and Infrastructure Consulting Practice Group. The Site Building and Infrastructure Consulting Practice Group focuses largely on site development engineering. In my role as Principal, I am responsible for the supervision of projects which involve engineering; surveying; site development; grading; creating utility layouts; site ingress and egress planning; infrastructure design; roadway and highway design; development of general and technical construction specifications; coordinating contractor bidding and bid selection; and coordinating and monitoring construction efforts,. In supervising the design and construction of engineering projects, I often review partial and final engineering and design drawings, draft specifications, evaluate bid documents, and study historical documents (including site plans, cross-sections, soil profiles, land use plans, and aerial photographs). In more current role, for example, I frequently review site design plans for a major development on the east coast that is undergoing environmental cleanup and economic redevelopment. My work requires a careful review of site development planning documents, including site plans, grading plans, utility layout plans, stormwater conveyance plans, and construction specifications and details, particularly with respect to assessing possible concerns with existing site environmental conditions.

8. I also have substantial experience with construction projects involving environmental components. From 1986 to the present, my work has included developing general and technical specifications for construction projects; preparing bid documents for construction

projects; construction contractor selection; construction oversight; and construction monitoring. From 1986 to the early 1990s, I supported projects involving the design and construction of on-site roadways. In this work, I drafted technical specifications, cross sections, bid specifications, and other documents relating to the roadway project at hand. My ongoing project work still includes design and construction of on-site roadways, as well as working with state and local agencies and municipalities related to public roadways and right-of-ways. I supervise a team that designs and builds, among other things, roads and highways. Recently, a team I supervise completed a preliminary access road design that allows a site owner to limit impacts to the local public roadway system, mitigating hazards associated with the historic need to transverse the public roadway. Weaver Consultants provided the preliminary design for this project including layout plans and details; drainage feature plans and details; pavement subgrade preparation details; and pavement width and construction specifications. The next phase of the project will progress to signal design and county approval submittals, and ultimately we will be engaged to provide construction oversight.

9. During my tenure with Eldredge Engineering, and later Wehran Engineering, which was subsequently acquired by EMCON, I completed my Masters Degree in Geography, with a Concentration in Environmental Science. My Masters Degree was earned in 1994 from Northern Illinois University. Additionally, during this time, I became a Licensed Professional Geologist in both the State of Illinois and Indiana. As a Licensed Professional Geologist, I have extensive experience in reviewing, and have reviewed many soil cross sections. Many of the projects that I work on involve generating soil cross sections and evaluating soil materials, including fill material. I am very familiar with and have drafted and/or reviewed numerous documents similar to Sheets 4, 5, 71, 72 in the IDOT Engineering Drawings/Plans for the

Amstutz Highway construction project. At times, I have also compared soil boring tests to engineering drawings. It is very common for geologists to perform this type of work.

10. All of the documents that I reviewed in preparing my Expert Report and Expert Rebuttal Report in this case were the types of documents that I had seen or had experience analyzing previously. In fact, I have drafted and designed many of these types of documents myself, including soil profiles and construction specifications, as well as site and construction plans.

11. In trying to determine the cause of contamination, an environmental expert would reasonably rely upon a response to a Comprehensive Environmental, Response, Compensation, and Liability Act ("CERCLA") Section 104(e) request that asks questions about conduct that might have caused the contamination in question. An environmental expert would also reasonably and typically rely upon historical documents, including aerial photographs, engineering drawings, construction specifications, administrative records (including those of the USEPA), and soil investigation reports and boring logs, to the extent available, in making this determination.

12. I reviewed and relied upon IDOT's November 27, 2000 response to the USEPA's CERCLA Section 104(e) request while preparing my expert report dated March 16, 2015. The information contained therein was consistent with the other evidence reviewed and relied upon in my Expert Report indicating that IDOT caused the contamination. I also relied upon IDOT's 104(e) response in forming the opinions set forth in my Expert Rebuttal Report dated July 27, 2015.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and

correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Dated: February 15, 2016



Douglas G. Dorgan, Jr.

**EXHIBIT 4**



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HON. LISA MADIGAN, Illinois Attorney General

BY: MR. EVAN J. MCGINLEY, Asst. Attorney Genl.

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On behalf of the Respondent.

1 did not go through his report and try to rebut  
2 everything he said.

3 Q. Okay. With respect to Mr. Dorgan's  
4 report, are there other aspects of his report that  
5 you do rebut that are not contained in what we call  
6 Exhibit 1?

7 A. This is the only, as your term,  
8 rebutting that I have.

9 Q. Okay. So just for an example, there are  
10 figures attached to Mr. Dorgan's expert report?

11 A. Right.

12 Q. Okay. Do you dispute the accuracy of  
13 any of those figures?

14 A. I believe his figures were accurate in  
15 what he was presenting.

16 Q. Understood. So just so I'm clear  
17 because I think I gave you a bad question  
18 originally.

19 Other than the opinions contained in  
20 Exhibit 1, you do not have any other rebuttal  
21 points with respect to Mr. Dorgan's report; is that  
22 correct?

23 A. As I stated before, I did not go through  
24 his report to rebut everything that he had written

1           A.     Correct, that is one of the exposure  
2 routes.

3           Q.     Have you looked at the final remedial  
4 action work plan?

5           A.     I don't believe I was ever provided a  
6 copy of the final remedial work plan.

7           Q.     Do you dispute the accuracy of any of  
8 Mr. Dorgan's calculations or figures in his report?

9           A.     Figures regarding -- I mean,  
10 calculations regarding what?

11          Q.     What needed to be done with respect to  
12 the remedy. Remember, there was a whole bunch of  
13 calculations done as to how much it was going to  
14 cost?

15                    You didn't rebut it, so I'm assuming  
16 that --

17          A.     I didn't --

18          Q.     -- you don't have any opinions on that?

19          A.     I don't have no opinions regarding that.

20                    MS. BRICE: Okay. I got this last  
21 night, so I want to ask about this because I  
22 didn't have a chance to really look at it.

23                    MR. MCGINLEY: That's fine.

24                    MS. BRICE: So last night I received