

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING AND SERVICE

To: ALL PERSONS ON THE ATTACHED CERTIFICATE OF SERVICE

Please take note that today, April 14, 2016, Respondent, Illinois Department of Transportation, filed and served IDOT's Response to Complainant's Motion to Compel with the Clerk of the Pollution Control Board, a copy of which are hereby served upon you.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

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

I, EVAN J. MCGINLEY, do hereby certify that, today, April 14, 2016, I caused to be served on the individuals listed below, by electronic mail, a true and correct copy of IDOT's Response to Complainant's Motion to Compel on each of the parties listed below:

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IDOT’S RESPONSE TO COMPLAINANT’S MOTION TO COMPEL

NOW COMES RESPONDENT, the Illinois Department of Transportation (“IDOT”), through its attorney LISA MADIGAN, Attorney General of the State of Illinois, which herewith files its response to Complainant, Johns Manville’s Motion to Compel.

INTRODUCTION

On March 16, 2016, the parties exchanged what was supposed to have been “limited” written discovery in this case. IDOT served JM with five interrogatories and five requests for production of documents. JM, by comparison, served IDOT with its First Set of Requests for Admission of Fact (“RFA”) (12 RFAs), Second Set of Requests for Production of Documents (“RFP”) (21 RFPs) and Third Set of Interrogatories (“Interrogatories”) (6 Interrogatories) (collectively, “Written Discovery Requests”). IDOT then filed a motion for protective order, which the Hearing Officer did not grant. On March 30, 2016, IDOT served responses on JM as to all of its Written Discovery Requests. On April 1, 2016, JM sent IDOT a 201(k) letter taking issue with several of its responses to the Written Discovery. On April 4, 2016, the parties held a 201(k) discussion. Thereafter, on April 8, 2016, as specified by the Hearing Officer’s order, JM filed its Motion to Compel (“Motion”).

JM's Motion is baseless, as IDOT has, in fact, responded in good faith to all of JM's substantial Written Discovery. In spite of IDOT's responses, JM does not seem to like the answers that IDOT provided nor does it seem that JM got the responses they had hoped for, and now, through its hyper-aggressive and confusing Motion, seeks to make IDOT answer its Written Discovery in a way that does comport with either the facts or the law.

In its Motion, JM takes issue with 17 of IDOT's responses to its Written Discovery Requests. However, rather than setting forth its issues with these responses in any sort of logical, sequential fashion - for example, setting forth all of its objections to IDOT's responses to its Requests for Admission, followed by objections to IDOT's responses to its Second Set of Document Requests, etc. - JM has adopted what might be described as a "mix and match" approach, taking issue with certain responses to RFAs, then certain RFAs and RFPs, then on to an Interrogatory, and then back to an RFP. (*See specifically*, Mot. at 7-10.) And, with one exception (Mot. at 13-14), JM never includes the text of any of IDOT's actual responses for which it has brought this Motion.

In an effort to bring some degree of clarity to the issues raised by JM's Motion, and to also shed light on just why there is no merit to JM's objections to IDOT's discovery responses, IDOT has chosen to organize its response to this Motion so that all contested responses to RFAs are discussed first, followed by contested RFP responses and, finally, all contested Interrogatory responses. In order to further clarify the issues raised by JM's Motion, IDOT has for each contested discovery response, including the full text of not only the underlying discovery request, but the full text of IDOT's original response. IDOT then includes its position below the full text of each discovery request/response. By organizing its response to the Motion in this

fashion, it is IDOT's hope that the Hearing Officer will recognize that there is simply no merit to the issues which JM has raised regarding IDOT's discovery responses.

Finally, IDOT takes issue with JM's tone and assertions in its Motion that essentially allege IDOT of stonewalling and engaging in some sort of gamesmanship in responding to its Written Discovery. These allegations are ironic, given the fact that there is nothing "limited" about JM's propounded discovery. It is further irony for JM to assert that IDOT is engaging in stonewalling or gamesmanship, because during discussions with the Hearing Officer last month about the scope of limited discovery that would be permitted at this stage of the case, JM never once indicated that it intended to serve any RFAs or RFPs, let alone 12 and 21 such discovery requests, respectively. Yet, in spite of the substantial number of Written Discovery Requests propounded on IDOT, IDOT has, within a highly expedited timeframe, and at the expense of substantial amounts of time, energy, and resources, provided good faith responses to all of JM's Written Discovery. JM's Written Discovery, as well as this Motion, should be seen for what they are, i.e., an abuse of the discovery process, seemingly for purposes of oppression.

RESPONSES TO MOTION TO COMPEL

A. IDOT'S REPLIES TO JM'S MOTION TO COMPEL (REQUESTS FOR ADMISSIONS)

- **RFA Numbers 1 and 2**

In these RFAs, JM asked, and IDOT responded as follows:

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

Response

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

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

Response

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

IDOT’s Position Regarding RFAs Number 1 and 2

In the Second Amended Complaint, JM makes reference to “a right of way on the southern side of Greenwood Avenue” as the “ROW.” (SAC, ¶ 12), while in its definitions for its RFAs, JM defines “Right of Way” as “mean[ing] the IDOT right of way within the southeast quadrant of the intersection of Greenwood Avenue and Sand Street in Waukegan, Illinois, designated as Parcel No. 0393, as described at IDOT 008200.” As drafted, these two definitions do not encompass the same parcel of property.

JM objects to IDOT’s responses to RFAs 1 and 2 because of its use of the term “Grant for Public Highway” in its qualified admission to these two RFAs. IDOT employed this term because it is the Grant for Public Highway that gave rise to the Right of Way at issue in JM’s Second Amended Complaint. IDOT believes that its use of the term “Grant for Public Highway” is also appropriate, given JM use of different terms in its Second Amended Complaint and Written Discovery Requests, including RFAs 1 and 2, to describe the same parcel of property. Therefore, in the interest of clarity and consistency, IDOT used the term “Grant for Public Highway” in its qualified admissions to RFAs 1 and 2. To the extent any clarification is necessary, IDOT notes that the portion of the Grant for Public Highway at issue in this case is Parcel 393, but otherwise stands on its Responses to RFAs Number 1 and 2.

• **RFA Numbers 3 through 6**

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

Response

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

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

Response

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

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

Response

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

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

Response

IDOT herewith incorporates by reference each and every objection set forth above under its General Objections. IDOT also objects to this Request for Admission, because it calls for a legal conclusion. Further responding, IDOT objects to this Request for Admission's use of the terms "vacated" and "abandoned," as neither of these terms is defined within the "Instructions and Definitions" section of Johns Manville's First Set of Requests for Admission, and accordingly, each of the objected to terms are vague, ambiguous and potentially contradictory. IDOT will not speculate

as to the intended meaning of these terms and accordingly denies this Request for Admission.

IDOT's Position

JM objects to IDOT's responses to all four of these RFAs, based on its contention that IDOT somehow improperly objected to the terms incorporated in these Requests. (Mot. at 9-10.) Now, in its Motion, JM tellingly includes definitions for the terms which it employed in its four RFAs that IDOT objected to. (Id.)

JM is correct in stating that IDOT stands on its responses to each of these Requests. However, what JM fails to note in its Motion is that IDOT ultimately denied each of these four Requests. During the parties' April 4th 2016 conference, IDOT's counsel informed JM's counsel that, even with a clarification as to the meaning of the terms contained in these four RFAs, IDOT would still deny each of those Requests. Given IDOT's position, it is unclear just what additional or revised response JM is seeking to obtain from IDOT at this time regarding RFAs 3 through 6.

• **RFA Number 9**

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

Response

IDOT herewith incorporates by reference each and every objection set forth above under its General Objections. IDOT denies that the Right of Way is part of a "State highway (as defined in 605 ILCS 5/2-203)." IDOT further denies that the "Grant for Public Highway" is part of a "State highway (as defined in 605 ILCS 5/2-203)."

IDOT's Position

JM objects to IDOT's response to RFA 9 on the same grounds as it objected to IDOT's responses to RFA 1 and 2. It is unclear why JM finds IDOT's response to RFA 9 to be objectionable, as it contains not one, but two, unqualified denials to the Request. IDOT believes its response to RFA Number 9 is clear and unambiguous and stands on it as drafted.

- **RFA Number 11**

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

Response

IDOT herewith incorporates by reference each and every objection set forth above under its General Objections. IDOT also objects to this Request for Admission, because it calls for a legal conclusion. IDOT further objects to the use of the terms “written contract,” “highway authority for the jurisdiction,” “maintenance,” “engineering,” or “improvement” in this request, as none of those terms are defined in the “Instructions and Definitions” section of Johns Manville’s First Set of Requests for Admission, and accordingly, each of those terms are vague and ambiguous. IDOT will not speculate as to the intended meaning of these terms in the context of this Request for Admission. Accordingly, IDOT is unable to either admit or deny this Request for Admission.

IDOT’s Position

Upon further consideration, IDOT will revise its response to RFA Number 11.

- **RFA Number 12**

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

Response

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

IDOT’s Position

JM asserts that the language of RFA Number 12 “tracks the language of and reference[s] the Illinois Highway Code; it does not. This is so for the simple reason that

the Request incorporates extraneous language that is not found in the relevant statutory provision. The addition of this language (the “other than IDOT” clause) is what renders the Request “completely unintelligible” and bordering on the nonsensical. The additional, non-statutory language only serves to confuse the meaning of RFA Number 12 and IDOT therefore stands on its response to this Request.

B. IDOT’S RESPONSES TO JM’S MOTION TO COMPEL (REQUESTS FOR PRODUCTION OF DOCUMENTS)

• **RFP Number 3 and 5**

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

Response

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

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

Response

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

IDOT’s Position

JM issues with IDOT’s response to RFPs Number 3 and 5 are confusing, to say the least. It includes these two RFPs in a portion of its Motion that raises issues with three RFAs and three RFPs (including RFPs Number 3 and 5). (Mot. at 9-10.) In this portion of its Motion, JM claims, among other things that:

IDOT objected to these Discovery Requests (including Request for Production Number 3) on the ground that it would not “speculate on the intended meaning of” certain terms . . .

(Id.)

As can be clearly seen from the IDOT’s response to RFP Numbers 3 and 5, though, IDOT made no such objection with respect to these RFPs. Nowhere else in its Motion does JM specify any additional objections to these RFPs. Therefore, IDOT stands on its original response to RFPs 3 and 5 as being entirely proper.

- **RFP Number 4**

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

Response

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

IDOT’s Position

JM objects to IDOT’s response to RFP Number 4, asserting that it is “so incomplete such that it is inaccurate.” (Mot. at 12.) This is simply not the case. IDOT initially produced documents responsive to this RFP in response to JM’s initial set of requests for production of documents. IDOT then produced documents that are relevant to this RFP last year, in conjunction with JM’s deposition of IDOT’s expert witness, Steven Gobelman. Finally, last month, IDOT produced documents that are relevant to the subject matter of this RFP, in conjunction with disclosures related to its newly-named expert, Keith Stoddard. All other “Communications” that have been generated which are responsive to this Request have arisen in

the context of the attorney-client privilege and are obviously not subject to disclosure.

Accordingly, IDOT stands on its response to RFP Number 4.

- **RFP Number 6**

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

Response

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

IDOT's Position

JM asserts that IDOT has improperly objected to the term "interest" and insists that IDOT be compelled to provide a different response to this RFP. Putting aside the issue of IDOT's objection, JM's assertion is wholly without merit. IDOT produced a copy of its entire 104(e) Response to JM approximately one and half years ago, in conjunction with its production of documents responsive to JM's first set of document production requests. Given the time frame used by JM in this request, IDOT's previously produced 104(e) Response constitutes the entire universe of documents that are responsive to RFP Number 6.

It borders on bad faith for JM to propound 21 RFPs, including this one regarding subject matter that is duplicative of prior discovery, and then to make this RFP a subject of its 201(k) Letter and this Motion. The only way IDOT could revise its response to this RFP would be to produce - for a second time - its 104(e) Response and revise its response

to this RFP accordingly. Obviously, such actions are unwarranted in response to this RFP and therefore IDOT, in good faith, stands on its response.

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

Response

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

IDOT’s Position

On April 5, 2016, during a prior status conference in this case, IDOT committed to produce additional documents related to Keith Stoddard to JM. As noted on page 13 of the Motion, on that same date, IDOT produced 52 pages of documents, a production which only “served to reveal substantial gaps missing from IDOT’s document production and discovery responses.” (Mot. at 13.) JM goes on to claim that among the missing documents in IDOT’s production are documents “including attachments to numerous emails, manuals from 1973, 2001, and 2011, and communications relating to a Title Commitment obtained by IDOT and files sent to Mr. Stoddard that were not turned over to IDOT.” Other than this sweeping set of assertions regarding missing documents, though, JM gives no specific examples of what, documents it believes are missing from IDOT’s production (with the exception of referring to IDOT manuals). For example, IDOT gives no examples of emails which contained missing attachments. (Id.) Nor does JM seek to identify what communications it believes are missing with respect to the title commitment. IDOT has produced several emails between IDOT’s counsel and Keith Stoddard wherein the status of obtaining the title commitment was discussed. (See, e.g., IDOT

008419, March 30, 2016 email from E. McGinley to K. Stoddard.) More importantly, IDOT produced the title commitment to JM, as part of IDOT's 213(f) Expert Disclosure statement for Mr. Stoddard.

As for the issue of IDOT manuals, these manuals are housed at IDOT's Library in Springfield. IDOT is not trying to engage in any evasion in producing these manuals, but up until last week, IDOT's librarian (there is only one), was out of the office on vacation. Now that the librarian is back in the office, IDOT will be able to track down any departmental manuals that may be responsive to this RFP.

- **RFP Number 19**

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

Response

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

IDOT's Position

JM's lengthy arguments in support of its Motion as to Request Number 19 are the result of its fundamental misunderstanding of what the "project" is and IDOT's general procedures for planning new highway projects. (*See generally*, Mot. at 11-12.) The "project" at issue involves recent plans by IDOT (within the past few years) to replace a bridge on Greenwood Avenue, approximately 300 feet west of Pershing Road and the westernmost limits of Sites 3 and 6. The project will not involve any sort construction work on/adjacent to Sites 3 and 6.

IDOT has, however, in keeping with IDOT's standard practices, commissioned an endangered/threatened plant survey of areas adjacent to where actual construction of the "project" will occur, including portions of Site 3. IDOT has also commissioned a Wetland Delineation Report for the project which investigated areas adjacent to where construction will

occur, including a portion of Sites 3 and 6. And, IDOT conducted a survey of sites which had recognized environmental conditions, including Sites 3 and 6. None of this work, though, has anything to do with the issues related to this case. Thus, JM's attempts to take discovery on this matter should not be allowed, as "discovery should only be utilized to illuminate the actual issues in the case." *Sander v. Dow Chem. Co.*, 166 Ill.2d 48, 64 (1995).

Nevertheless, in an apparently hopeless effort to demonstrate to JM that the "project" has nothing to do with the issues in this case, and notwithstanding its belief that discovery on this topic is unwarranted, IDOT has produced two documents, totaling 324 pages, which clearly show that the "project" has had nothing to do with, and will have nothing to do with, Site 3, Site 6, or the "Right of Way." Accordingly, IDOT's efforts should be deemed to be more than adequate, as any additional discovery on this issue will simply not yield any evidence that is relevant to the issues of this case. Yet in spite of IDOT's good faith efforts to demonstrate that lack of any connection between the "project" and the issues in this case, JM remains adamant that they are entitled to unfettered discovery on this topic, at this late stage in the case. (Mot. at 11.) Notwithstanding the fact that the parties are only supposed to be conducting limited discovery, JM believes that IDOT must spare no effort in responding to its discovery requests, including this RFP. Their position regarding this RFP is absurd and IDOT stands on its response to this RFP.

C. IDOT'S RESPONSES TO JM'S MOTION TO COMPEL (INTERROGATORIES)

- **Interrogatory Number 1**

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

Response

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

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

IDOT's Position

JM contends that "IDOT failed to adequately respond the Interrogatory." (Mot. at 15.)

There is no merit to JM's contention. Notwithstanding its valid objections, IDOT then went on to provide what it believes is a detailed response to Interrogatory Number 1. As such, IDOT stands on its response.

• **Interrogatory Number 5**

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

Response

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

IDOT's Position

JM appears to object to IDOT's response to Interrogatory 5 because it believes that IDOT improperly limited the scope of its response to just Sites 3 and 6. (Mot. at 12.) IDOT disagrees. In addition to the objections set forth above in its original response, as noted in JM's Motion, IDOT also subsequently objected to this Interrogatory during the recent 201(k) conference with JM, because JM stated that it wanted IDOT to identify any remedial or removal actions that had occurred within the entire State of Illinois during the prior seven years.

JM's objections to IDOT's response to Interrogatory No. 5 are without merit. As an initial matter, it seeks information that goes well beyond the scope of limited written discovery that was supposed to be taken at this juncture in the case. Moreover, JM makes no attempt in its Motion to show why, given leave to take only limited written discovery in this case, it is entitled to an answer that would require IDOT to submit to the burden of reviewing records related to projects across the State. (*See generally*, Mot. at 12.) Discovery of the magnitude which JM seeks to obtain through this interrogatory is surely not what the Hearing Officer contemplated JM and IDOT taking in the case at this time (if ever). Accordingly, IDOT stands on its response to Interrogatory No. 5 as drafted.

- **Interrogatories Number 2 and 6**

On April 13, 2016, IDOT filed revised responses to these two interrogatories which IDOT believes resolve any issues which JM had with the underlying interrogatories. As such, it is unnecessary to discuss issues surrounding these two interrogatories.

Respectfully Submitted,

ILLINOIS DEPARTMENT OF TRANSPORTATION

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