

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter Of:)	
)	
JOHNS MANVILLE, a Delaware corporation,)	
)	
Complainant,)	PCB No. 14-3
)	
v.)	
)	
ILLINOIS DEPARTMENT OF TRANSPORTATION,)	
)	
Respondent.)	

NOTICE OF FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on August 12, 2014, I caused to be filed with the Clerk of the Pollution Control Board of the State of Illinois, Complainant's Response to Respondent's Demand for a Bill of Particulars, copies of which are attached hereto and herewith served upon you via e-mail. Paper hardcopies of this filing will be made available upon request.

Dated: August 12, 2014

Respectfully submitted,

BRYAN CAVE LLP

Attorneys for Complainant Johns Manville

By:  _____
 Susan Brice
 ARDC No. 6228903
 Kathrine Hanna
 ARDC No. 6289375
 161 North Clark Street, Suite 4300
 Chicago, Illinois 60601
 (312) 602-5124
 Email: susan.brice@bryancave.com

CERTIFICATE OF SERVICE

I, the undersigned, certify that on August 12, 2014, I caused to be served a true and correct copy of Complainant's Response to Respondent's Demand for a Bill of Particulars upon all parties listed on the Service List by sending the documents via e-mail to all persons listed on the Service List, addressed to each person's e-mail address. Paper hardcopies of this filing will be made available upon request.


Kathrine Hanna

SERVICE LIST

Evan J. McGinley
Office of the Illinois Attorney General
69 West Washington Street, Suite 1800
Chicago, IL 60602
E-mail: emcginley@atg.state.il.us

Matthew D. Dougherty
Assistant Chief Counsel
Illinois Department of Transportation
Office of the Chief Counsel, Room 313
2300 South Dirksen Parkway
Springfield, IL 62764
E-mail: Matthew.Dougherty@illinois.gov

Illinois Pollution Control Board
Brad Halloran, Hearing Officer
James R. Thompson Center
100 W. Randolph, Suite 11-500
Chicago, IL 60601
E-mail: Brad.Halloran@illinois.gov

Illinois Pollution Control Board
John Therriault, Clerk of the Board
James R. Thompson Center
100 W. Randolph, Suite 11-500
Chicago, IL 60601
E-mail: John.Therriault@illinois.gov

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter Of:)	
)	
JOHNS MANVILLE, a Delaware corporation,)	
)	
Complainant,)	PCB No. 14-3
)	
v.)	
)	
ILLINOIS DEPARTMENT OF TRANSPORTATION,)	
)	
Respondent.)	

COMPLAINANT’S RESPONSE TO RESPONDENT’S DEMAND FOR A BILL OF PARTICULARS

Complainant JOHNS MANVILLE (“JM”) hereby responds to Respondent ILLINOIS DEPARTMENT OF TRANSPORTATION’S (“IDOT”) Demand for a Bill of Particulars as follows:

1. On July 15, 2014, Respondent filed a Demand for a Bill of Particulars in this case with respect to Paragraphs 33 and 34 of Complainant’s Amended Complaint, in which JM referenced “IDOT engineering drawings” as support for its allegations that IDOT used asbestos-containing material (“ACM”) as fill and otherwise used, spread and/or buried ACM during construction of the Greenwood Avenue embankments and during construction and/or obliteration of Bypasses A and B.

2. Complainant objects to Respondent’s Demand because Respondent makes no attempt to explain why it is entitled to a Bill of Particulars under these circumstances. Even assuming a bill of particulars is available in an action before the Illinois Pollution Control Board, the Illinois Code of Civil Procedure only entitles one to such a bill if the allegations are “so

wanting in details that the responding party should be entitled to a bill of particulars.” 735 ILCS 5/2-607(a)(2012). The only justification proffered by Respondent is that the allegations are vague and lacking in detail; however, no attempt is made to explain why that is so.

3. Additionally, Complainant objects to Respondent’s Demand because it fails to comply with 735 ILCS 5/2-607 in that it does not “point out specifically the defects complained of or the details desired.” 735 ILCS 5/2-607(a)(emphasis added). Rather, Respondent contends that it is “unable to determine what ‘IDOT engineering drawings’ Johns Manville is referring to in Paragraphs 33 and 34 of its Amended Complaint.” This is essentially a discovery request. JM cannot provide substantial “additional detail” regarding these drawings without ultimately providing Respondent copies of the requested documents. Despite numerous attempts by Complainant to set a discovery schedule, virtually no discovery has been conducted to date. Respondent’s discovery request is premature because discovery has not yet begun in this case.

4. Subject to and without waiving the foregoing objections, Complainant states that the referenced drawings generally consist of the plans for the proposed highway at F.A. Route 437 – Section 8-HB & 8-VB Lake County, which are included as Exhibit I to IDOT’s CERCLA Section 104(e) Response.

Dated: August 12, 2014

Respectfully submitted,

BRYAN CAVE LLP

Attorneys for Complainant Johns Manville

By: 
Susan Brice
ARDC No. 6228903
Kathrine Hanna
ARDC No. 6289375

161 North Clark Street, Suite 4300
Chicago, Illinois 60601
(312) 602-5124
Email: susan.brice@bryancave.com