

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

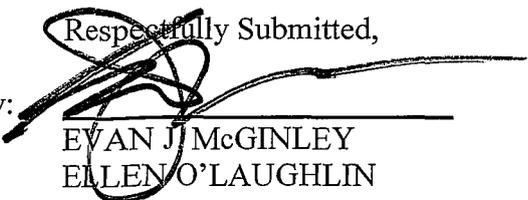
**NOTICE OF FILING AND SERVICE**

To: ALL PERSONS ON THE ATTACHED CERTIFICATE OF SERVICE

Please take note that today, April 22, 2016, Respondent, Illinois Department of Transportation, filed and served IDOT's Motion to Reschedule Hearing Date with the Clerk of the Pollution Control Board, a copy of which are hereby served upon you.

Respectfully Submitted,

By:

  
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**CERTIFICATE OF SERVICE**

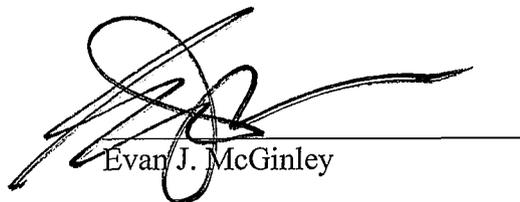
***Johns Manville v. Illinois Department of Transportation, PCB 14-3 (Citizens)***

I, EVAN J. MCGINLEY, do hereby certify that, today, April 22, 2016, I caused to be served on the individuals listed below, by electronic mail, a true and correct copy of IDOT's Motion to Reschedule Hearing on each of the parties listed below:

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Evan J. McGinley

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

JOHNS MANVILLE, a Delaware corporation, )  
Complainant, )

v. )

PCB No. 14-3  
(Citizen Suit)

ILLINOIS DEPARTMENT OF )  
TRANSPORTATION, )  
Respondent. )

**RESPONDENT'S REPLY IN SUPPORT OF ITS  
MOTION TO RESCHEDULE HEARING**

NOW COMES RESPONDENT, the Illinois Department of Transportation ("IDOT"), through its attorney LISA MADIGAN, Attorney General of the State of Illinois, which files this reply in support of its April 18, 2016 Motion to Reschedule ("Motion"), pursuant to Board Rule 101.502, 35 Ill. Adm. Code 101.502, to reschedule the hearing which is currently set to begin on May 10, 2016, to a new start date. In support of its Reply regarding rescheduling of the hearing, IDOT states as follows:

Johns Manville ("JM") has successfully caused a detour at the eve of hearing and is attempting to prevent IDOT from adequately defending itself at hearing by tying up its resources such that it cannot prepare for trial. Unless IDOT is allowed adequate time to prepare for hearing by the Board, this whole proceeding will be rendered fundamentally unfair and extremely prejudicial to IDOT. This appears to be JM's litigation strategy.

Specifically, JM sought to amend its complaint a month before the hearing even though it could have done so much earlier. Since amending its complaint, JM has conducted voluminous and off-topic discovery, which has tied up precious IDOT resources. The discovery requests resulted in the production of over 8,000 pages of documents, and despite this, JM then filed an unsuccessful motion to compel regarding a substantial number of the requests. JM has also

scheduled four depositions in Schaumburg, Illinois for three days next week and has moved to strike three of eight IDOT affirmative defenses.

Finally, in what is perhaps the most prejudicial move, JM will disclose its expert at the end of the day on May 2, 2016. JM then proposes that IDOT only have two days to analyze the JM expert disclosure before making him available for deposition. By contrast, IDOT provided its expert disclosure a full four weeks before the expert's deposition. Further, JM says its expert report is "not going to be lengthy", but because JM has pursued claims regarding an alleged "right of way", which are legally and factually misguided and entirely baseless, it is very unclear what an "expert" could state for JM with respect to these claims. Also, because JM propounded far more written discovery than it had previously represented, its representation about the brevity of its expert disclosure is questionable. JM could have disclosed its expert earlier, but strategically waited until the week before trial.

If the current schedule is maintained, then during the week before trial, IDOT would not be preparing for hearing and finalizing its hearing defense, but would instead be responding to JM's "expert" and acting on JM's motion to strike three of IDOT's eight Affirmative Defenses. It is in no way an exaggeration to state that if this proceeding goes forward under the current schedule, IDOT will be denied the appropriate opportunity to adequately defend itself.

This appears to be JM's goal. The best explanation for JM's issuance of expansive new discovery, making new and completely groundless and misguided complaint allegations, disclosing its expert later on the eve of the hearing, as scheduled, is that this is simply JM's litigation strategy: to tie up IDOT resources and make IDOT do anything but prepare for trial. The Board should not permit JM's abusive tactics and gamesmanship.

JM's gamesmanship is evidenced in its response to IDOT's Motion to reschedule the hearing. JM simply complains about "IDOT's lack of preparedness". This demonstrates that JM's strategy since it sought leave to file the Second Amended Complaint, approximately a month before the scheduled hearing, was to create diversions. Another illustration is that JM states it diplomatically agreed to forgo taking the deposition of Steve Warren, someone with no knowledge of the matter and who IDOT has no intention of calling as a witness. It is obvious that JM's arguments about their willingness to compromise mean nothing, and are merely an attempt to confuse the very real issues related to the scheduling of this case for hearing.

JM has been involved with this site for many years and is either aware, or should be aware of all known legal issues involving the sites. The fact that JM argues it is ready for trial is meaningless, given its long history with the sites and its already well-developed claims against third-parties. JM's accuses IDOT of "stonewalling" and "concealing" which is simply nonsense, and an attempt to cover their weak claims as well as JM's attempt to obfuscate this matter.

IDOT has responded completely, accurately, and in good faith to all JM's demands. It should not now be prejudiced by the currently scheduled hearing date.

The prejudice to IDOT would be tremendous, and contrary to what JM argues, rescheduling this matter would cause no prejudice to JM.

In particular, this matter is not urgent. The remediation of the sites at issue will not be delayed by anything that occurs in this Board proceeding, including rescheduling of the hearing date; rescheduling the hearing date will cause no detriment to the environment whatsoever. JM knew it would have to remediate Sites 3 and 6, for years: It entered into the AOC with the US EPA in 2007, a full nine years ago, and six years before it filed its first complaint against IDOT before this Board. Moreover, regardless of when the hearing occurs, there will inevitably be

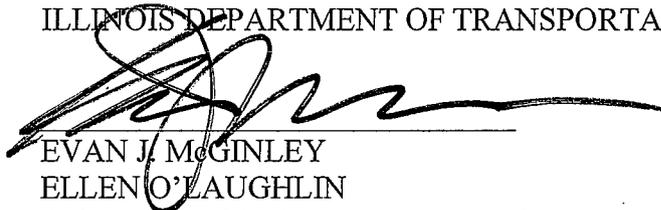
further briefing and it will be some time before a final appealable order is entered by the Board. And subsequent to that, a potential lengthy appeals process could lie ahead. Simply put, there is absolutely nothing critical about having the hearing within the next few weeks other than that it is just JM's litigation strategy to deny IDOT the ability to defend itself. If JM wanted a remedy sooner, it could have, and should have, filed this lawsuit years before it did.

IDOT has no wish to prolong this matter, and looks forward to defending and denying JM's claims, but not at the expense of fairness. IDOT filed its Motion to Reschedule the Hearing consistent with the Hearing Officer's direction, and to the extent that an Affidavit is needed, please see the attached Affidavit.

WHEREFORE, Respondent, IDOT, respectfully requests that the hearing officer issue an order as requested in Respondent's Motion to Reschedule Hearing.

Respectfully Submitted,

ILLINOIS DEPARTMENT OF TRANSPORTATION



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5. On March 14, 2016, the parties held another status conference with the Hearing Officer, at which time the scheduling of discovery was discussed. The Hearing Officer ordered the parties to serve their written discovery by March 16, 2016, and to respond to all written discovery by March 29, 2016. IDOT was also directed to file its expert disclosure statement for Keith Stoddard on or before March 31, 2016. The Hearing Officer also ordered any additional oral discovery to be completed in the case by April 21, 2016.

6. On March 16, 2016, IDOT served five interrogatories and five requests for production of documents on Johns Manville. Johns Manville, in turn, served six interrogatories, each containing subparts, 21 document production requests, and 12 requests for admission of fact on IDOT.

7. On March 21, 2016, IDOT filed a Motion for Protective Order with the Board, principally arguing that Johns Manville's proposed written discovery went well beyond what the parties had agreed to. The Hearing Officer ultimately did not grant IDOT's Motion, but extended the time for the parties to submit written discovery until March 30, 2016.

8. On March 30, 2016, IDOT filed and served responses as to all of Johns Manville's written discovery and on March 31, 2016, IDOT filed and served its expert disclosure statement for Keith Stoddard.

9. On April 1, 2016, Johns Manville sent a 201(k) letter to IDOT with respect responses to Johns Manville's written discovery. Subsequently, on April 4, 2016, the parties' attorneys held a telephone conference to meet and confer regarding IDOT's responses to written discovery.

10. On April 8, 2016, Johns Manville filed a 16 page Motion to Compel against IDOT, regarding 17 of its responses to Johns Manville's written discovery.

11. On April 12, 2016, Johns Manville served a Notice for Rule 206 deposition covering eight separate topics on IDOT. Johns Manville served a Subpoena for Records on the Illinois Geological Survey on that same date. Additionally, on April 12<sup>th</sup>, as directed by the Board's March 3<sup>rd</sup> Order, IDOT filed its Answer and Affirmative Defenses to Johns Manville's Second Amended Complaint.

12. On April 13, 2016, IDOT filed and served its revised responses to Johns Manville's Third Set of Interrogatories. Also on April 13, 2016, Johns Manville served deposition notices on IDOT for the depositions of IDOT employees Steven G. Warren and James A. Stumpner.

13. On April 14, 2016, IDOT filed and served its Response to Johns Manville's Motion to Compel. Additionally on April 14<sup>th</sup>, Johns Manville served IDOT with a notice for deposition for the fact and expert discovery depositions of Keith Stumpner.

14. Johns Manville is taking a Rule 206(a)(1) deposition of IDOT on eight topics with three IDOT employees on Monday, April 25 and Tuesday April 26, 2016. On Tuesday, April 25, JM will also depose IDOT employee, James Stumper. JM has also scheduled the expert and fact depositions of IDOT's expert, Keith Stoddard for Thursday, April 28, 2016. All of these depositions will all take place in Schaumburg, Illinois, at IDOT's District 1 offices.

15. Additionally, Johns Manville has advised IDOT that if it wishes to take a Rule 206 deposition for Johns Manville (a matter which is currently under consideration), that deposition will need to take place in Denver, Colorado, where Johns Manville's corporate offices are located.

16. On May 2, 2016, at the end of the day, JM will disclose its expert.

17. On May 5, JM will make its expert available for deposition.

18. Whether IDOT wants to take JM's Rule 206 deposition is largely influenced by what JM's expert report or disclosure states.

19. The factual matters set forth in my Affidavit are true in substance and in fact, to the best of my knowledge, information and belief.

FURTHER AFFIANT SAYETH NOT.



EVAN J. MCGINLEY

SUBSCRIBED AND SWORN to before me  
this 22nd day of April, 2016



NOTARY PUBLIC

