

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

To: ALL PERSONS ON SERVICE LIST

Please take note that today, February 16, 2016, I have filed the following document in the above-referenced matter with the Clerk of the Illinois Pollution Control Board, the following documents, copies of which are hereby served upon you:

- Respondent's Response to Complainant's Motion to Exclude Opinion Testimony of Steve Gobelman; and
- Respondent's Response to Complainant's Motion to Bar Respondent Illinois Department of Transportation from Calling Steve Gobelman as a Lay Witness at Hearing

Respectfully Submitted,

By: 

EVAN J. MCGINLEY
ELLEN O'LAUGHLIN
Assistant Attorneys General
Environmental Bureau
69 W. Washington, 18th Floor
Chicago, Illinois 60602
(312) 814-3153
emcginley@atg.state.il.us
eolaughlin@atg.state.il.us
mccaccio@atg.state.il.us

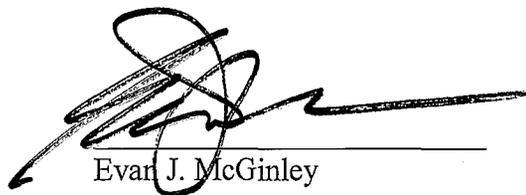
MATTHEW J. DOUGHERTY
Assistant Chief Counsel
Illinois Department of Transportation
Office of the Chief Counsel, Room 313
2300 South Dirksen Parkway
Springfield, Illinois 62764
(217) 785-7524
Matthew.Dougherty@Illinois.gov

CERTIFICATE OF SERVICE

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

I, EVAN J. MCGINLEY, do hereby certify that, today, February 16, 2016, I caused to be served on the individuals listed below, by first class mail and electronic mail, a true and correct copy of the attached Notice of Filing, as well Respondent's Response to Complainant's Motion to Exclude Opinion Testimony of Steve Gobelman and Respondent's Response to Complainant's Motion to Bar Respondent Illinois Department of Transportation from Calling Steve Gobelman as a Lay Witness at Hearing.

John Therriault, Assistant Clerk Illinois Pollution Control Board James R. Thompson Center 100 West Randolph, Suite 11-500 Chicago, Illinois 60601 John.Therriault@illinois.gov	Bradley Halloran Hearing Officer Illinois Pollution Control Board James R. Thompson Center 100 West Randolph, Suite 11-500 Chicago, Illinois 60601 Brad.Halloran@illinois.gov
Susan Brice Lauren Caisman Bryan Cave LLP 161 North Clark Street, Suite 4300 Chicago, Illinois 60601 Susan.Brice@bryancave.com Lauren.Caisman@bryancave.com	Matthew J. Dougherty Assistant Chief Counsel Illinois Department of Transportation Office of the Chief Counsel, Room 313 2300 South Dirksen Parkway Springfield, Illinois 62764 Matthew.Dougherty@Illinois.gov



Evan J. McGinley

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

**RESPONDENT'S RESPONSE TO COMPLAINANT'S MOTION TO EXCLUDE
OPINION TESTIMONY OF STEVEN GOBELMAN**

Now comes Respondent, Illinois Department of Transportation ("IDOT"), by and through its attorneys, LISA MADIGAN, Attorney General for the State of Illinois, who herewith sets forth its response to Complainant's, JOHNS MANVILLE ("JM"), Motion to Exclude Opinion Testimony of Steven Gobelman ("Motion"). IDOT states as follows in support of its response.

I. INTRODUCTION

Johns Manville's ("JM") case against the Illinois Department of Transportation ("IDOT") is based on alleged events that occurred more than 40 years ago. Anyone who worked for IDOT when it built a railroad overpass on Greenwood Avenue, in Waukegan, Illinois in the early 1970s ("Project"), is certainly retired and quite likely now dead. The only available evidence today concerning how the Project was constructed is contained in IDOT's documents for the Project. Due to the highly technical and esoteric nature of these documents, only someone with specialized knowledge and experience is capable of explaining what these documents mean and what they can tell us today about how the Project was constructed.

With over 21 years' of directly relevant experience working for IDOT (as well as seven previous years working for the Illinois EPA), now former IDOT employee Steven Gobelman is

uniquely qualified to serve as IDOT's expert witness in this case. As Mr. Gobelman stated in his expert report and as he testified to during his deposition, among his many duties while with IDOT, he served as the Department's expert technical reviewer for Highway Authority Agreements.¹ In this role, he frequently had to review old construction plans and other historic documents in order to determine how highway project had been designed and constructed. While working for Illinois EPA, Mr. Gobelman was the project manager for a number of contaminated sites being remediated under the auspices of the federal Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"). Clearly, Mr. Gobelman possesses the relevant experience to provide expert testimony at hearing in this matter. *Broussard, v. Huffman Manuf. Co.*, 108 Ill.App.3d 356, 362-3 (3rd Dist. 1982).

In light of Mr. Gobelman's obvious credentials as an expert in this matter, there is simply no merit to JM's motion *in limine* ("Motion"), which seeks to bar him from testifying as an expert at the upcoming hearing. In its Motion, JM argues that Mr. Gobelman does not have any relevant expertise and has really not developed any opinions in this matter. This argument is wrong because, as argued in more fully below: 1) it is based on turning a blind eye to Mr. Gobelman's qualifications; and, 2) it elevates semantics over substance. As such, JM's Motion should be denied and Mr. Gobelman should be permitted to testify at hearing in this matter.

II. REBUTTAL TO JM'S STATEMENT OF FACTS

Toward the end of its Statement of Facts, JM identifies certain "undisputed facts" that are set out in a series of four bullet points.² (Mot. at 4.) While IDOT agrees that the facts set forth

¹ A Highway Authority Agreements or "HAA" is entered into between IDOT and a local government and addresses issues with possible contamination caused by the local government which has or may enter onto IDOT property or rights of way.

² For purposes of responding to JM's Motion, IDOT has chosen to address only a limited portion of the Statement of Facts contained in the Motion. IDOT's decision not to challenge other facts set forth in the Motion's Statement of Facts should not be interpreted as representing either IDOT's acquiescence to or admission of those facts.

in the first of these bullets are “undisputed,” it rejects that characterization with respect to the facts listed under the second through fourth bullet points, as both inaccurate and misleading.

IDOT believes that JM’s second bullet point of “undisputed facts,” pertaining to remarks attributed to Duane Mapes, IDOT’s resident engineer for the Project, mischaracterizes the attribution of the statement. While it is true that IDOT’s November 27, 2000 CERCLA 104(e), response states that Mr. Mapes “recalled dealing with some asbestos pipe and burying some of it,” JM’s Motion fundamentally mischaracterizes the circumstances behind the statement, as Mapes did not make the statement in IDOT’s response. Rather, the statement was made to an IDOT attorney in response to IDOT’s underlying 104(e) letter some 15-20 years after Mr. Mapes had worked on the project and several years after he had retired from IDOT.³ Additionally, the statement is vague and ambiguous concerning what, precisely, Mr. Mapes may have meant in general, or where the asbestos pipe he was referring to was ever buried, if at all.

JM’s third bullet point of “undisputed facts” is inaccurate, as it only partially sets forth relevant language from IDOT’s January 2, 1971 “Standard Specifications for Road and Bridge Construction” (“Standard Specifications”)⁴, and then goes on to misread the provision, thereby making it seem as if it required in all cases that “‘broken concrete’ encountered either be placed in embankments during construction or buried under two feet of earth cover on the Project site as directed by the IDOT resident engineer.” (Mot. at 4.) Section 202.203 of the Standard Specifications reads as follows:

Wherever possible, stones and boulders occurring with the right of way shall be placed in embankments in layers and compacted, in accordance with Section 207. All stones, stumps, boulders, broken rock, broken concrete and related materials that cannot be placed in the embankment shall be disposed of a locations designated by the Engineer with the right of way; in borrow sites on or adjacent to

³³ On February 8, 2016, IDOT filed a motion *in limine* barring JM from introducing into evidence Mapes’s statement at hearing.

⁴ A copy of a portion of the Standard Specifications is attached to JM’s Motion as Exhibit 6.

the right of way or at other locations outside the right of way. These materials shall be buried under a minimum of 2 feet of earth cover.

While Section 202.203 of the Standard Specifications allows for the placement of broken concrete in available embankments, as a fuller reading of the text from this section of the Standard Specifications makes clear, this is only one of several options available for disposal of material such a broken concrete. Moreover, JM fundamentally misreads Section 202.203 as mandatory in all instances. But, as Mr. Gobelman testified to during his July 10, 2015 deposition, this is a misreading of this section of the Standard Specifications. As explained by Mr. Gobelman, the correct reading of Section 202.203 is that it:

Is representing that if the contractor wants to use concrete in his embankment, that is the method in which he has to do it, that it has to be broken, embedded in soil, you know, bigger than two feet and all that kind of stuff. It isn't telling the contractor that he has to use concrete in his embankment. (Gobelman Deposition ["Dep.,"] at 85:2-12.) (Emphasis added.)⁵

The fourth and final bullet point of "undisputed facts," asserts that according to "the Project construction documents, the ACM that USEPA has ordered to be moved are located almost exclusively with the zone of fill material IDOT placed on Sites 3 and 6." (Mot., at 4.) This statement is starkly at odds with the results which JM has obtained during fieldwork at the Sites and which shows that ACM has been found throughout Site 3 and 6. Indeed, ACM has been found well outside of the area in which any work was likely done during the construction project, a fact which can be discerned by referring to some of the figures included as part of Douglas Dorgan's, JM's expert witness, expert report. (A copy of Mr. Dorgan's Report ("Dorgan Rept.") is attached as Exhibit 7 to JM's Motion.)

² A complete copy of Mr. Gobelman's Deposition is attached to as Exhibit 2 to JM's Motion.

III. REBUTTAL TO “EXPERT REPORTS AND OPINIONS” PORTION OF MOTION

JM seeks to impugn the opinions of Mr. Gobelman, arguing that he has not developed any opinions in regards to this matter, based upon his responses to questions put to him by JM’s counsel, during his July 10, 2015 deposition. (Mot. at 5-7.) During one part of his deposition, Mr. Gobelman was asked and he responded, as follows:

Q: Okay. Let’s look at your report. Where are the opinions found in this report? It seems like you have certain things that are underlined. Are those the opinions or are they something else?

A: Yeah. I would say the underlined portions are sort of the opinions.

Q: Okay. Sort of or they are the opinions?

A: Well, yeah, okay. If you want to – yeah. I don’t necessarily look at them as opinions.

Q: Okay. Well, I –

A: But they were a –sort of like the, in your [i.e., the legal] realm, the opinions.

Q: Okay. So just for procedural purposes, we need to know exactly what your opinions are because that’s what I need to ask you the questions about.

A: Okay.

Q: So other than what is underlined, do you have other opinions in this report?

A: No.

(Motion, at 5-6, citing Gobelman Dep. 35:16-36:16.)

JM now argues that “Mr. Gobelman wavered on whether he was actually ‘offering’ any opinions in this case[.]” Such an assertion by JM is nothing more than semantics, as it is entirely clear both from his deposition testimony and his report that Mr. Gobelman was both providing opinions about the case and rebutting portions of Mr. Dorgan’s expert report. The above-quoted

testimony demonstrates that he was aware that he was offering opinions that are relevant to this matter. (Id. 36:5-6.) He then testified that he was “very certain” about the opinions he was offering in this matter. (Id. 36:19.) Still later in his deposition, Mr. Gobelman acknowledged that his purpose in developing his opinions was, at least in part, to rebut some, if not all of Mr. Dorgan’s opinions. (Id. 43:1-45:1.) Such statements are entirely consistent with and follow from the opening sentence of Mr. Gobelman’s report, where he states that “I have been asked by counsel for the Respondent to review and comment on the Expert Report of Douglas G. Dorgan Jr (sic).” (Expert Rebuttal Report of Steve L. Gobelman [“Gobelman Report”], at 1.)⁶ Given that a significant portion of Mr. Gobelman’s report and opinions are aimed at rebutting the opinions of JM’s expert witness, Mr. Gobelman’s opinions are properly admitted at hearing. *Davis v. Kraff*, 403 Ill.App.3d 20, 21 (1st Dist. 2010).

IV. ARGUMENT

A. IDOT Has Complied With The Requirements of Illinois Supreme Court Rule 213(f) and Mr. Gobelman’s Satisfies the Criteria Set Forth Therein

In its Motion, JM asserts that Mr. Gobelman is not offering any opinions in this matter and instead is “merely [providing] commentary on Mr. Dorgan’s Expert Report” (Mot. at 7.) Moreover, JM asserts that because the word “opinion” appears only once in the underlined sections of Mr. Gobelman’s Report, JM calls into question whether Mr. Gobelman has developed any opinions that are germane to this case. As discussed in more detail below, JM’s assertions are without merit and appear to be based on requirements for the admissibility of expert or opinion testimony at hearing that are not set forth in Rule 213(f) nor find any basis in law.

JM’s assertions overlook two very important and highly relevant questions. First, does Mr. Gobelman possess the requisite “experience and qualifications [that] afford him knowledge

⁶ A true and correct copy of Mr. Gobelman’s report is attached to JM’s Motion as Exhibit 7.

that is not common to lay persons”? Second, will the Mr. Gobelman’s testimony, if admitted at hearing, “aid the trier of fact in reaching its conclusions”? *Torres v. Midwest Development Co.*, 382 Ill.App.3d 20, 26 (1st Dist. 2008)(citations omitted). Mr. Gobelman’s expected testimony at hearing in this matter would answer both questions in the affirmative.

Mr. Gobelman’s qualifications, as described in his report and as further expounded upon during his deposition, demonstrate that he has extensive, relevant experience on issues that go to the ultimate question that will need to be decided by the Board: did IDOT, during the course of working on the Project, undertake the work in a manner that resulted in a violation of Sections 21(a) and (e) of the Act, 415 ILCS 5/21(a) and (e)? Mr. Gobelman’s Report and deposition testimony demonstrate beyond question that he is capable of offering evidence that can speak to this fundamental question.

First, during the approximately seven years that he worked for Illinois EPA, he was the Project Manager for a number of contaminated sites being remediated by Illinois EPA’s oversight, pursuant to the requirements for such work under CERCLA. (Gobelman Rept. §1, at 1.) He is therefore very familiar with the process for investigating and remediating such sites. But of greater importance to the questions at issue in this particular case is the fact that for more than 20 years, he was IDOT’s “environmental guy” and was often called upon to undertake what might be described as forensic investigations of old IDOT projects that had environmental issues associated with them. (Id. at 1-2) This required Mr. Gobelman to recreate past field work for closed projects, which in turn required him to review and interpret historic construction documents, such as the ones at issue in this case. (Id.) As part of his forensic investigations into these past projects, he has “reviewed historical photographs for a very, very long time.” (Gobelman Dep. 200:13-17.) Given his vast experience, the opinions that he developed in

conjunction with his report and which he is prepared to testify on at hearing, are extremely well founded and are not, as JM contends, speculative.

Of critical importance to this case, Mr. Gobelman's opinions provide well-founded theories that rebut those offered by Mr. Dorgan. Mr. Gobelman's theories are based on his extensive knowledge of historic IDOT construction practices, and his ability to decipher the construction documents that lie at the heart of this case. Mr. Gobelman's theories in this case are superior to Mr. Dorgan's theories because they are based on Mr. Gobelman's in depth understanding of IDOT construction practices, particularly as those practices pertain to understanding the construction of now historic projects. (*See e.g.*, Gobelman Rept. §3, at 2-5, and §4, at 5-6.) In his report, Mr. Gobelman discusses why IDOT's construction of the Project could not have given rise to the ACM contamination that currently exists at Site 3. (*Id.*) By comparison (and by JM's own admission), Mr. Dorgan lacks any understanding or expertise that is relevant to the question of how IDOT constructed the Project in the early 1970s. (*Mot.* at 5.) Therefore, it is Mr. Dorgan's opinions about how IDOT's conduct of the Project gave rise to the current conditions at the site that are without merit, not Mr. Gobelman's.

Mr. Gobelman's highly relevant experience and specialized knowledge will provide the Board with critical testimony about IDOT's historic work practices. But of even more importance, Mr. Gobelman possesses the knowledge and experience to interpret the substantial number of historic construction-related documents that will likely be introduced into evidence at hearing. By JM's own admission, its expert, Douglas Dorgan, does not have any experience in the design and construction of highway projects. Accordingly, Mr. Gobelman's testimony

regarding how the Project was constructed is of the utmost importance and the Board should allow him to testify at hearing without limitation.⁷

B. Mr. Gobelman's Opinions Regarding Utilities, Economic Motivation and USEPA's Rationale for Requiring the Specified Remedy for the Sites Are Based on His Experience and Specialized Knowledge

1) Utilities

JM contends that Mr. Gobelman's opinions regarding how work on utility lines at and beneath the site could potentially result in the disturbance of subsurface ACM are speculative. (Mot., 19-20.) As with his other opinions related to this case, Mr. Gobelman's opinions on this issue are based on his knowledge and years of relevant work experience. It is also based on the undisputed fact that there are utility lines which cross the Sites, both above and below the surface. While Mr. Gobelman may not have spoken with any representatives of the utility companies whose lines cross the Sites, as an expert witness he may rely upon the reports and other documents that USEPA has issued regarding site investigation and remediation work at the Sites in forming his opinions on this topic. *R.J. Management Co. v. SRLB Development Corp.*, 346 Ill.App.3d 957, 969 (2nd Dist. 2004). Thus, his reliance on the USEPA's November 30, 2012 Enforcement Action Memorandum in the formation of his opinions about how the presence of utility lines at the Sites influenced USEPA's decision to require the creation of clean utility corridors at the Sites was well founded and based on properly relied upon source material.

⁷ Somewhat ironically, JM impliedly acknowledges and explicitly relies upon Mr. Gobelman's expertise in interpreting historic photographs to bolster statements in its own Motion. (See Motion, p.4, bullet point 4, which in part is based on Mr. Gobelman's interpretation of two historic photographs involving the former parking lot.) JM cannot have it both ways: arguing on the one hand that Mr. Gobelman possesses neither the background nor the relevant experience to provide any meaningful opinions in this case, while at the same time relying on that very same background and experience to bolster its own case.

2) Economic Motivations

JM also seeks to bar Mr. Gobelman's testimony regarding its possible use of "all types of ACM materials including Transite® pipes to build the employee parking lot. (Gobelman Rept., §7, p.7.), claiming that this opinion is "pure conjecture." (Mot. at 20.) JM's argument in this regard conveniently overlooks three very salient points. First, Mr. Gobelman's opinion is based on his having reviewed facts and information contained in reports which JM has produced in this case, specifically, ELM Consultants, LLC's December 10, 1999 "Surface and Subsurface Characterization Site 2 and Site 3 Former Johns Manville Manufacturing Facility Waukegan Illinois" ("ELM Report"), which specifically stated that ACM was used in the construction of the former parking lot. (Gobelman Dep. 68:1-7, citing ELM Report at 7-2.)⁸

The second point which supports Mr. Gobelman's opinion that JM would have used ACM to construct the parking lot is that is area where the parking lot was constructed was historically low-lying area. (Gobelman Rept. §7, at 7.) Thus, in constructing the parking lot, JM would have needed to have built up the area on which it ultimately constructed the parking lot. (Id.)

The third and final point which supports Mr. Gobelman's theory is that Mr. Gobelman has over 21 years of highly relevant work experience at IDOT (*See generally*, Gobelman Rept. §2, pp.1-2). He has a strong understanding of the economics and cost considerations that play into undertaking construction projects. (*See, e.g.*, Id. §7, pp. 7-8; *See also* Dorgan Dep., 189:15-21 ["it's my experience that you will use whatever is readily available to build your parking [lot.]") Certainly, the Transite pipe which JM manufactured at its plant would have provided a readily available source of material for use in constructing the parking lot.

⁸ A copy of excerpts from the ELM Report are attached as Exhibit A hereto.

Ultimately, the question of how JM constructed the parking lot may be critical to the Board's resolution of this case. It therefore follows that Mr. Gobelman's testimony regarding this question, which is based in no small part on facts contained within JM's own documents, as well as his many years of experience with IDOT, could provide the Board with assistance in deciding this critical question. As such, his testimony in this matter should not be barred.

3. Knowledge of USEPA's Rationale for Site Remedy

Finally, JM contends that Mr. Gobelman should be barred from testifying about how USEPA has approached the cleanup of the Sites, because he never spoke to anyone at USEPA "and he admits that he has not even read the USEPA file." (Mot. at 20.) While Mr. Gobelman admitted that he did not speak with anyone at USEPA during the course of preparing his opinions in this matter (Gobelman Dep. 21:22-24), it is unclear how JM can say that "he has not read the USEPA file" on this case.

As an initial matter, though, JM's assertion that Mr. Gobelman's opinions in this matter are lacking because he did not speak with anyone at USEPA holds him to a standard that JM does not hold its own expert to, as there is no indication that Douglas Dorgan ever spoke with anyone at that agency. He most certainly makes no reference to ever having spoken with anyone at USEPA during the course of preparing his opinions in this matter. (*See generally*, Dorgan Rept., Sec. 1.3.) And, assuming Mr. Dorgan had ever spoken to anyone at USEPA about this site in the course of preparing his opinions in this matter, one assumes JM would have made note of that conversation in their underlying Motion.

Furthermore, regarding the question of reading "the USEPA file", it is unclear just what "USEPA file" JM is referring to in its Motion. Is this a reference to the entire administrative record maintained by USEPA for the Johns Manville Superfund Site? If so, the USEPA's

website lists almost 250 items that are part of that agency's administrative record, which appears to contain both substantive technical reports, as well as correspondence from environmental groups and non-governmental organizations submitted to USEPA regarding the Johns Manville Superfund Site. (*available at* <http://semispub.epa.gov/src/collection/05/AR63651>.) Under any circumstances, regardless of what constitutes the "USEPA file", there is no indication that Mr. Dorgan read through this file either. (*See e.g.*, Dorgan Report, Sec. 1.3 ("Information Considered"), at 3, which contains no reference to having reviewed any "USEPA file.") Again, one presumes that had Mr. Dorgan "read the USEPA file" for his work on these Sites, JM would have included an affirmative statement to that effect in its underlying Motion.

If, however, JM is contending that Mr. Gobelman has failed to review any of the most significant technical documents that JM has submitted to USEPA, then they are simply wrong. At his deposition, Mr. Gobelman testified that he had reviewed Mr. Dorgan's Report and the documents cited in his bibliography. (Gobelman Dep. 9:5-9.) Dorgan's bibliography, in turn, cites several documents, including the Removal Action Work Plan and other technical documents that either JM submitted to USEPA or which USEPA issued in response to documents that JM submitted to the agency, and which are part of the agency's administrative record for the JM Site. There are therefore no grounds upon which JM can plausibly argue that Mr. Gobelman does not understand how USEPA is dealing with the Sites, or the reasons why it is requiring JM to undertake a more substantive remediation approach with the Sites.

Mr. Gobelman is eminently qualified to provide an opinion about USEPA's concerns with respect to addressing contamination issues at the Site. Given just what documents and information Mr. Gobelman did review, and when further considering his experience working on

CERCLA related cleanups for IEPA, as well as his considerable experience determining the extent of investigations which were required for impacted soils at IDOT projects.

V. CONCLUSION

Mr. Gobelman possesses the required specialized knowledge and experience to allow him to qualify as an expert witness and to testify during the Board's upcoming hearing in this matter. He is uniquely capable of providing the Board with the necessary understanding of the highly technical matters concerning how IDOT constructed the Project. How Johns Manville can possibly argue that Mr. Gobelman's opinions, which are in part based on many 21 years of conducting forensic reviews of past construction projects and the possible environmental impacts of those projects, are unfounded and based on speculation, is a mystery. Johns Manville's Motion is without merit and should be denied in its entirety.

Respectfully Submitted,

ILLINOIS DEPARTMENT
OF TRANSPORTATION

By: 

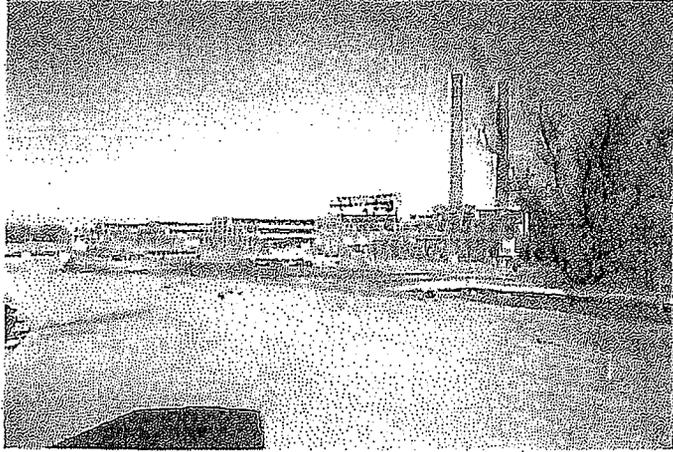
EVAN J. MCGINLEY
ELLEN O'LAUGHLIN
Assistant Attorneys General
Environmental Bureau
69 W. Washington, 18th Floor
Chicago, Illinois 60602
(312) 814-3153
emcginley@atg.state.il.us
eolaughlin@atg.state.il.us
mccaccio@atg.state.il.us

MATTHEW J. DOUGHERTY
Assistant Chief Counsel
Illinois Department of Transportation
Office of the Chief Counsel, Room 313
2300 South Dirksen Parkway
Springfield, Illinois 62764
(217) 785-7524
Matthew.Dougherty@Illinois.gov

EXHIBIT A

**Surface and Subsurface Characterization
Site 2 and Site 3
Former Johns Manville Manufacturing Facility
Waukegan, Illinois
Volume 1, Appendix A – Appendix K**

DRAFT



*Former Johns Manville
Manufacturing Facility*



Site 2

Prepared For:
Johns Manville

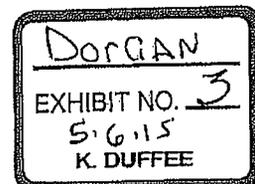
Prepared By:

E L M CONSULTING, L.L.C.

December 10, 1999



Site 3



DRAFT

SURFACE AND SUBSURFACE CHARACTERIZATION FOR SITE 2 AND SITE 3

**FORMER JOHNS MANVILLE MANUFACTURING FACILITY
1871 NORTH PERSHING ROAD
WAUKEGAN, ILLINOIS 60087**

VOLUME 1, APPENDIX A – APPENDIX K

Prepared for:

Johns Manville Corporation
Littleton, Colorado

Prepared by:

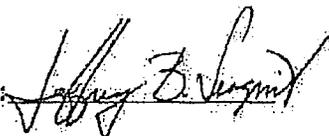
ELM Consulting, L.L.C.
Barrington, Illinois

Written by:



Jeff Stringer
Project Manager

Reviewed by:



Jeffrey B. Seagrist, QEP
Senior Project Manager

Project No. 98000701

December 1999

DRAFT

**SURFACE AND SUBSURFACE CHARACTERIZATION FOR
SITE 2 AND SITE 3**

**FORMER JOHNS MANVILLE MANUFACTURING FACILITY
1871 NORTH PERSHING ROAD
WAUKEGAN, ILLINOIS 60087**

TABLE OF CONTENTS

1.0 EXECUTIVE SUMMARY	1-1
1.1 Statement of Purpose and Scope of Work	1-1
1.2 Surface and Subsurface Characterization Summary	1-1
1.3 Threatened and Endangered Plant Species Survey Summary	1-3
1.4 Wetland Delineation Summary	1-3
1.5 Conclusions	1-3
2.0 INTRODUCTION.....	2-1
2.1 Introduction	2-1
2.2 ACM Definition and Standard.....	2-1
3.0 SITE DESCRIPTION	3-1
3.1 Regional Location	3-1
3.2 Site Boundaries, Physiography and Land Use	3-1
3.2.1 Former JM Manufacturing Facility Description	3-1
3.2.2 Site 2 Description	3-1
3.2.3 Site 3 Description	3-2
4.0 REGULATORY ACTIVITIES.....	4-1
5.0 SITE ACTIVITY AND SAMPLING PLAN.....	5-1
5.1 Defoliation of Site 2 and Site 3.....	5-1
5.2 Inspection of Site 2 and Site 3 for Surface ACM.....	5-1
5.3 Establish Grids for Sites 2 and 3 to Determine Subsurface Soil Sampling Points	5-2
5.4 Subsurface Soil Sampling	5-2
5.5 Soil Core Inspection of Site 2.....	5-2
5.6 Soil Core Inspection of Site 3.....	5-2
5.7 Qualitative Threatened and Endangered Plant Species Survey of Site 2 and Site 3	5-3
5.8 Wetland Delineation of Site 2 and Site 3	5-3
5.9 Contractor Information	5-3
6.0 DOCUMENTATION OF FIELD ACTIVITIES.....	6-1
6.1 Defoliation of Site 2 and Site 3.....	6-1
6.2 Inspection of Site 2 and Site 3 for Surface ACM.....	6-1
6.3 Establish Grids for Site 2 and Site 3 to Determine Sampling Points	6-3
6.4 Subsurface Soil Sampling	6-3
6.5 Soil Core Inspection of Site 2	6-4
6.5.1 Inspection of Soil Cores for Asbestos Containing Material	6-4
6.5.2 Description of Site 2 Figures.....	6-8
6.5.3 Inspection of Soil Cores for Expended/Unexpended Lead Shot and Lead Shavings.....	6-9
6.5.4 Inspection of Soil Cores for Municipal Waste	6-12
6.6 Soil Core Inspection of Site 3.....	6-12
6.6.1 Inspection of Soil Cores for Asbestos Containing Material	6-13
6.6.2 Description of Site 3 Figures.....	6-16

DRAFT

6.7	Qualitative Threatened and Endangered Plant Species Survey at Site 2 and Site 3	6-17
6.7.1	Results of the Threatened and Endangered Plant Species Survey at Site 2	6-18
6.7.2	Results of the Threatened and Endangered Plant Species Survey at Site 3	6-20
6.8	Wetland Delineation at Site 2 and Site 3	6-20
6.8.1	Methodology	6-21
6.8.2	Wetlands Delineated at Site 2.....	6-21
6.8.2.1	"Scrub-Shrub" Wetlands	6-21
6.8.2.2	"Man-Induced" Wetlands.....	6-22
6.8.2.3	"Waters of the U.S." - Lake Michigan	6-23
6.8.3	Wetlands Delineated at Site 3.....	6-23
7.0	INTERPRETATION OF RESULTS AND CONCLUSIONS.....	7-1
7.1	ACM at Site 2.....	7-1
7.2	ACM at Site 3.....	7-1
7.3	Lead and Municipal Waste at Site 2	7-2
7.4	Threatened and Endangered Plants of Site 2 and Site 3.....	7-3
7.5	Wetland Delineation of Site 2 and Site 3	7-3
8.0	RECOMMENDATIONS	8-1
8.1	Management of ACM at Site 2 and Site 3.....	8-1
8.2	Management of the Threatened and Endangered Species at Site 2	8-1
8.3	Management of the Wetlands at Site 2 and Site 3	8-2

DRAFT

Therefore, in the opinion of CBBEL, the areas characterized as "Man-Induced" wetlands (Figure 27) are jurisdictional wetlands utilizing COE methodology for Atypical Situations under the subsection regarding man-induced wetlands and do not meet the COE exemption criteria for creation in dry land because the graded area in the upland soil portions of the parcel have been abandoned for at least five years (Appendix K).

Dominant plants identified by CBBEL in the "Man-Induced" wetlands included narrow-leaved cattail (*Typha angustifolia*), late goldenrod (*Solidago gigantea*) and purple loosestrife (*Lythrum salicaria*). The mean C-value for these wetlands was 2.64, which is indicative of a disturbed area and describes wetland vegetation of low quality. Appendix C (Photograph #31-Photograph #33) contains photos and Figure 27 shows the approximate locations of each of these wetlands. The approximate size of each of the "Man-Induced" wetlands are found on Figure 27. These wetlands have not been professionally field surveyed so exact size has not been established. However, each of these wetlands is less than one-half acre in size.

6.8.2.3 "Waters of the U.S." - Lake Michigan

CBBEL staff characterized this jurisdictional "Waters of the U.S." area on the east end of Site 2 (Figure 27). The area consists of Lake Michigan and contiguous beachfront. At the time of the CBBEL site visit, evidence of positive wetland hydrology included drift material and water marks. The soil profile was almost exclusively sand and contained no organic streaking (Appendix K).

6.8.3 Wetlands Delineated at Site 3

CBBEL staff identified two jurisdictional wetlands on Site 3, which were characterized as "Emergent Drainageways" and are labeled as such on Figure 28.- One wetland on the northwest side of Site 3 consists of a well defined drainageway containing steep side slopes and shallow flowing water. The wetland located on the northeast side of Site 3 consists of a more shallow drainage swale at the base of railroad tracks which make up the study area's eastern boundary. The wetlands are dominated by lower quality herbaceous vegetation consisting of primarily cattail (*Typha angustifolia*), purple loosestrife (*Lythrum salicaria*) and red-rooted spikerush (*Eleocharis erythropoda*). Evidence of positive wetland hydrology included shallow inundation, saturation and driftlines. The soil is mapped as Made Land, however, the profiles were dark in color, contained low chroma matrices and organic odors. These soil conditions are characteristics commonly associated with hydric soils (Appendix K).

The mean C-value for these wetlands was 3.14, which is indicative of a disturbed area and describes wetland vegetation of low quality. Appendix C (Photograph #43 and Photograph #44) contains photos and Figure 28 shows the approximate locations of each of these wetlands. The approximate size of each of the emergent drainageways are found on Figure 28. These wetlands have not been professionally field surveyed so exact size has not been established. However, each of these wetlands are less than one acre in size.

After the completion of the wetland delineation at Site 2 and Site 3, it was estimated that there were approximately 3.5 total acres of jurisdictional wetland and "Waters of the U.S." based on the methodology established by the U.S. Army COE. In the opinion of CBBEL, any alteration of wetlands under present regulations will require a permit. CBBEL recommends that on-site wetland area be avoided to the extent possible.

DRAFT**7.0 INTERPRETATION OF RESULTS AND CONCLUSIONS**

According to the results of the surface and subsurface characterization of Site 2 and Site 3, it is evident that non-friable ACM is present on the surface of the Sites and within the subsurface at 0-3' bgs. Because the ACM found at these two Sites is in a non-friable form (transite pipe, bituminous roofing materials, and asbestos-ore type material), the threat to human health and the environment is negligible. This conclusion is also supported by the fact that all air monitoring for friable asbestos during fieldwork activities resulted in no exposure of friable asbestos to field personnel (Appendix F).

7.1 ACM at Site 2

Surface ACM was located throughout Site 2 with the exception of the beachfront area east of the dune and on the southeast end of the Site (Figure 2 - Appendix L). This is consistent with reports that berms used during the Pam Am Games that consisted of ACM were leveled after the completion of the games. Visible ACM was removed from the Site during the surface characterization. However, ELM personnel have located small pieces of ACM on the Site since the completion of the surface inspection. As previously mentioned however, this ACM is in a non-friable form and is of little threat to human health or the environment.

All subsurface ACM with asbestos content greater than one percent at Site 2 was located in the area of the former shooting range building and the fishing pier parking lot. No subsurface ACM with asbestos content greater than one percent was located on the beach or within the fishing pier area. Asbestos content greater than one percent was found only in four locations from the 0-1' interval, 10 locations at the 1-2' interval and nine locations at the 2-3' interval. There was a total of 64 separate soil sampling locations and a total 71 four-foot cores penetrated and inspected. Additionally, of the 206 one-foot soil intervals inspected, 36 (or 17.4%) contained visible ACM.

Visual identification of the ACM with the soil intervals proved to be a highly effective method for determining ACM in the subsurface. Of the 36 one-foot intervals submitted for PLM analysis where ACM was visually observed, 35 (or 97.2%) contained a given quantity of asbestos. This is to be expected because these 36 samples submitted were actual pieces of suspected ACM. Additionally, 126 one-foot intervals were submitted for PLM analysis where no ACM was observed in any of the intervals. Of those 126 intervals, only one (0.79%) yielded asbestos content greater than 1%.

In summary, there is little ACM at 0-3' bgs when the size of the Site and the number of soil sampling locations are taken into account. There is no ACM in the fishing pier area and along the beach. Most of the ACM observed was located in the areas where the former berms were created and then subsequently leveled.

7.2 ACM at Site 3

Surface ACM was located throughout Site 3 with the exception of the south-central portion of the Site. Historically, the former JM Administration Building parking lot was located on the northeast end of the Site. According to JM, the parking lot was constructed with materials containing ACM. Over a period of years during the use of

DRAFT

the lot and during and after its demolition, ACM was distributed throughout the surrounding area. Visible ACM was removed from the Site during the surface characterization. However, ELM personnel have located small pieces of ACM on the Site since the completion of the surface inspection. As previously mentioned however, this ACM is in a non-friable form and is of little threat to human health or the environment.

Subsurface ACM with asbestos content of greater than one percent at Site 3 was located on the northeast side of the Site. Also, one location in the central portion of the Site and one location on the southwest portion of the Site yielded samples with asbestos content of greater than one percent. Little to no subsurface ACM was located on the east, south and northwest portions of the Site. Asbestos content greater than one percent was found only in four locations from the 0-1' interval, two locations at the 1-2' interval and three locations at the 2-3' interval. There was a total of 48 separate soil sampling locations and a total 60 four-foot cores penetrated and inspected. Additionally, of the 168 one-foot soil intervals inspected, 11 (or 6.5%) contained visible ACM.

Visual identification of the ACM with the soil intervals proved to be a highly effective method for determining ACM in the subsurface. Of the 11 one-foot intervals submitted for PLM analysis where ACM was visually observed, 11 (or 100%) contained a given quantity of asbestos. This is to be expected because these 11 samples submitted were actual pieces of suspected ACM. Additionally, 143 one-foot intervals were submitted for PLM analysis where no ACM was observed in any of the intervals. Of those 143 intervals, only one (0.69%) yielded asbestos content greater than 1%.

In summary, there is little ACM at 0-3' bgs when the size of the Site and the number of soil sampling locations are taken into account. ACM in the subsurface was mostly concentrated in the area of the former parking lot. This is to be expected since the materials used to build the former parking lot contained ACM.

7.3 Lead and Municipal Waste at Site 2

Of the 71 samples submitted for total lead analysis, one sample yielded a total lead concentration above The Tier 1 Soil Remediation Objective for Industrial/Commercial and Residential Properties for lead of 400 mg/kg. This concentration was 831 mg/kg at B2-2a. Since all of other samples were below the referenced threshold of 400 mg/kg, the distribution and potential impact of expended/unexpended lead shot and lead shavings at Site 2 were sufficiently addressed. However, to confirm that there is not an accumulation of lead at B2-2a, additional soil sampling may be warranted at this location.

The soil samples from B2-2a and B2-16a (the two soil samples yielding the highest total lead concentration) were also submitted for TCLP analysis. The concentrations from the TCLP analysis were 2.7 mg/L and 0.078 mg/L, respectively. The soil sample from B2-2a exceeded the Soil Component of the Groundwater Ingestion Exposure Route Value for Class II groundwater of 0.1 mg/L. The concentration of 2.7 mg/L did exceed the established threshold. However, no remedial action is necessary as a result of this concentration because the drinking water source for the City of Waukegan is Lake Michigan. The City of Waukegan has entered into a Memorandum of Understanding with the IEPA that shows Waukegan has adopted an ordinance that effectively prohibits the installation or use of groundwater as a

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.)	

RESPONDENT’S RESPONSE TO COMPLAINANT’S MOTION *IN LIMINE* TO BAR RESPONDENT ILLINOIS DEPARTMENT OF TRANSPORTATION FROM CALLING STEVEN GOBELMAN AS A LAY WITNESS AT HEARING

Respondent, Illinois Department of Transportation, through its attorney LISA MADIGAN, Attorney General of the State of Illinois, hereby files this Response to Johns Manville’s Motion *in Limine* to Bar Respondent Illinois Department of Transportation from Calling Steven Gobelman as a Lay Witness at Hearing and states the following:

On March 17, 2014, Johns Manville (“JM”) issued Complainant’s First Set of Interrogatories to Respondent which included the following Interrogatory: “3. Describe any and all persons contacted in responding to the 104(e) Request.”

On April 30, 2015, the Illinois Department of Transportation (“IDOT”) served its Supplemental Response to JM’s First set of Interrogatories and stated the following: “... In addition to those individuals previously identified by IDOT in its response to this interrogatory, IDOT states as follows: Steven Gobelman. Mr. Gobelman is employed by IDOT and may be

contacted through IDOT's counsel." (IDOT made this good faith supplementary response even given the vagueness and lack of definitions provided by JM in issuing its Interrogatory 3.)

JM's inquiry on May 4, 2015, focused on whether it would want to depose Mr. Gobelman regarding any "person contacted in response to a 104(e) response", and JM stated, " We'd likely want to depose him if he will be testifying or if you are planning to rely on him for anything. Thank you." As of May 4, 2015, the 104(e) response is the only area for which Mr. Gobelman had been identified. Also during this timeframe, IDOT was assessing its expert response and analyzing Mr. Gobelman's expertise.

On May 29, 2015, which was the deadline for IDOT to identify its expert witness to respond to the March 16, 2015, report presented by Mr. Dorgan, IDOT served the Expert Rebuttal Report of Steven L. Gobelman, and notified IDOT that Mr. Gobelman will serve as IDOT's expert for this matter. Now, beginning on May 29, 2015, Mr. Gobelman had also been identified as our expert witness. JM's statement that it would want to depose Mr. Gobelman if he will be testifying or relied upon for anything by JM had obviously been revisited and addressed again by the parties. Following discussions on scheduling and further document exchanges between the parties, on June 19, 2015, JM served its notice of deposition of Mr. Gobelman.

On July 10, 2015, JM did depose Mr. Gobelman and thoroughly questioned and examined him about a broad range of topics, including his involvement with a 104(e) response. Ms. Brice, JM's attorney, questioned Mr. Gobelman about his role in responding to the 104(e) response, about others involved in 104(e) response, how he maintained the file and why he believes the 104(e) response involved the entire project, not just Sites 3 and 6. IDOT did not object to JM's line of questioning and did not attempt to stop JM from exploring Gobelman's

factual knowledge on this topic. See deposition transcript pages 23:5 to 32:20, 40:7 to 18, 48:8 to 49:16, 51:24 to 53:21 and 236:1 to 237:7 from Mr. Gobelman's deposition attached hereto as Exhibit A.

JM also questioned Mr. Gobelman about many areas in relation to the Sites at issue and nearby and many questions had factual underpinnings. For instance, JM asked Mr. Gobelman about his knowledge of Transite pipe, (p. 53:23 to 57:4), his inquiry into ownership of Site 3 and 6, factual knowledge of burying Transite pipe (p. 208:16-18), maintenance of IDOT files (p. 20:12 to 21:21), and the IDOT contract for the Amstultz project, (69:11-12). See *e.g.* Gobelman transcript pages attached hereto as Exhibit B.

JM now argues it has not deposed Mr. Gobelman as "a lay witness". That is flatly wrong because JM fully explored any facts or issues pertaining to a 104(e) and many other factual areas. JM did not limit its questioning to expert or opinion only knowledge. It fully explored anything it wanted to. For JM to now argue that it somehow was denied the opportunity to question Mr. Gobelman about his involvement in the 104(e) response or any other issues, factual or otherwise, is ridiculous and disingenuous. JM cross examined Mr. Gobelman extensively, including questions on the 104(e) response and other areas.

JM is not prejudiced or harmed in any way nor was it prevented from fully discovering Mr. Gobelman's knowledge. Instead JM seeks to limit IDOT from presenting its defense to JM's claims. This matter dates back to 1970 and the facts anyone can testify to regarding that time frame are few. Mr. Gobelman may be the only living person involved in IDOT's response to the 104(e) response and if IDOT wishes to ask him questions about it during hearing, IDOT should be allowed to. JM must not be allowed to prevail in its gamesmanship and prevent IDOT from defending itself when there is no prejudice, surprise, or lack of opportunity to JM in fully

discovering what Mr. Gobelman may know and may testify about. If JM does not agree or wants to question Mr. Gobelman's credibility regarding certain facts, it has the opportunity to do so. However, there is no reason to limit Mr. Gobelman's testimony, nor to alter the flow of the hearing in analyzing whether Mr. Gobleman's testimony relates to a fact or had been limited. IDOT must be allowed to fully present its defense and this restriction would prevent it from doing so.

The parties' witness lists have not yet been exchanged as they are to be exchanged by February 18, 2016. However, IDOT does plan on calling Mr. Gobelman to testify and based on this motion, and IDOT's other motion, there is no basis to limit Mr. Gobelman's factual (or expert) testimony.

IDOT hereby respectfully requests that JM's Motion in Limine to Bar Respondent Illinois Department of Transportation from Calling Steven Gobelman as a Lay Witness at Hearing be denied and that its alternative request to limit the lay testimony of Steven Gobelman be denied.

Respectfully Submitted,

ILLINOIS DEPARTMENT
OF TRANSPORTATION

By:



EVAN J. MCGINLEY
ELLEN O'LAUGHLIN
Assistant Attorneys General
Environmental Bureau
69 W. Washington, 18th Floor
Chicago, Illinois 60602
(312) 814-3153
(312) 814-3094
emcginley@atg.state.il.us
eolaughlin@atg.state.il.us
mccaccio@atg.state.il.us

MATTHEW J. DOUGHERTY
Assistant Chief Counsel
Illinois Department of Transportation
Office of the Chief Counsel, Room 313
2300 South Dirksen Parkway
Springfield, Illinois 62764
(217) 785-7524
Matthew.Dougherty@Illinois.gov

EXHIBIT A

6 (Pages 21 to 24)

21

22

1 process after based on the previous job that was
2 done.

3 Q. And why else?

4 A. Well, if there's any disputes, claims,
5 that may have occurred, through whether it's the
6 contractor and stuff, then they can use that
7 information, too.

8 Q. And do you know how far back those
9 drawings go?

10 A. I would -- I don't know the -- exactly 10
11 how long they go. I would surmise they at least go
12 back to Eisenhower and the federal highway program.
13 But I would guess since we changed names since
14 then -- because, I guess, IDOT used to be -- what
15 was it called before -- public work and that. So I
16 suspect they possibly could have the plans from the
17 '30s when things were drawn.

18 Q. Okay. So Eisenhower would be the
19 1950's?

20 A. '50s, late '50s, yeah, when the
21 interstate program started.

22 Q. Did you talk to anyone at USEPA with
23 respect to your work involving this project?

24 A. No.

1 Q. Did you talk to anyone at IEPA?

2 A. No.

3 Q. Did you talk to anyone at Westin
4 Consultants?

5 A. Regarding this particular project?

6 Q. Mm-hmm.

7 A. No.

8 Q. Did you talk to any other consultants
9 regarding this particular project?

10 A. No.

11 Q. Who did you talk to at IDOT?

12 A. The chief counsel.

13 Q. And who else?

14 A. Attorney General's Office.

15 Q. Anyone else?

16 A. Well, I think in the initial meeting
17 that we had prior to me being considered an expert
18 we talked to people from our Bureau of
19 Construction. I think Tim Kell was there.

20 Q. Okay. And who is Tim Kell?

21 A. He is the acting bureau chief of
22 construction in central office in Springfield.

23 Q. And what happened in that meeting with
24 Tim Kell? What were you talking about?

23

24

1 A. They asked us about what we knew about
2 the project and construction practices.

3 Q. And what did you know about the project?

4 A. I knew the project from the beginning of
5 the 104(e) response from IDOT, and it was the --
6 talked about the project back when the original
7 lawsuit occurred.

8 Q. And what did you tell them about what
9 you knew about the project?

10 A. Well, it's -- most of it's summarized in
11 the report, but I told them what I knew about the
12 project was that that was there with Randy Schick
13 in responding to the 104(e) and that I was also
14 around when Phil McQuillan was -- put together a
15 response regarding the initial lawsuit discovery.

16 Q. And what was the conversation about
17 IDOT's role in handling asbestos at Site 3 and
18 Site 6?

19 MR. MCGINLEY: Objection; lacks
20 foundation, vague, and ambiguous.

21 THE WITNESS: Could you rephrase that?
22 BY MS. BRICE:

23 Q. Sure.

24 A. I'm not sure I understand what you're

1 saying.

2 Q. You said you were at a meeting and
3 were talking about the history of project and
4 lawsuits; is that right?

5 A. Yes.

6 Q. And the lawsuits surround -- the
7 lawsuits are about essentially who caused the
8 asbestos is contamination at Site 3 and Site 6
9 that right?

10 MR. MCGINLEY: Objection; calls for
11 speculation.

12 BY MS. BRICE:

13 Q. In part.

14 A. In part, yes.

15 Q. What did you discuss on that subject
16 your meeting?

17 A. We didn't really discuss that aspect.
18 We were discussing what information that could be
19 provided.

20 Q. What do you mean what information could
21 be provided?

22 A. Well, I mean it was more of putting
23 together what was being -- what was provided to
24 Randy Schick dealing with the 104 what was

25

26

1 provided -- pretty much, in a sense bringing the
2 IDOT chief counsel the Attorney General's counsel
3 up to speed of what -- how things were done through
4 the other parts, you know, what we did with Schick,
5 what he did, how he put together what Phil had
6 done, and those aspects.

7 Q. So there was no discussion over whether
8 IDOT actually or its contractor actually moved the
9 asbestos around in the 1970s?

10 A. I don't believe we talked about that
11 specifically at that meeting.

12 Q. Did you talk about asbestos at all at
13 that meeting?

14 A. Other than that it was the basis of the
15 lawsuit, yes.

16 Q. Okay. Let's take it out of the context
17 of that meeting and all of your conversations that
18 you had regarding this entire project because you
19 have been involved since the 104(e) request, right?

20 A. Correct.

21 MR. MCGINLEY: Objection. I think that
22 misstates his testimony.

23 BY MS. BRICE:

24 Q. Okay. Have you been involved in this

1 matter since the 103 [sic] request was sent to
2 from USEPA?

A. Off and on, yes.

Q. In all of your conversations and
meetings and correspondences relating to this
matter starting with the 104(e) request up until
right now, what conversations or correspondence
have you been involved in surrounding the question
of whether IDOT placed, moved, or caused asbestos
to be present on Sites 3 Or 6? When I say "IDOT",
I mean IDOT or its contractor.

A. The conversations that we had all along
always have been about whether it was normal
construction practices and not specifically
relating to the parts of the case.

Q. So no one's ever talked about whether
not IDOT actually moved, spread, disposed of
asbestos at the site?

A. That aspect was only done based upon
research in looking at Dorgan's stuff.

Q. You never talked to Mr. McGinley about
that?

A. Only in that it relates to the
testimony -- to the work. Prior to that it was

27

28

1 just whether it was normal construction practices
2 and how it related to it back then as compared to
3 now and what we did.

4 Q. What was the chief counsel's view on
5 of this, IDOT's chief counsel's view?

6 A. I don't know what the IDOT chief counsel
7 view is.

8 Q. Well, you said you've talked to him
9 quite a bit about this -- well, maybe not quite a
10 bit.

11 You've talked to him, and he's been
12 involved in this; isn't that right?

13 A. If you're referring to Matt Dougherty

14 Q. Yes.

15 A. -- that he has been involved, yes.

16 Q. Right.

17 And what did --

18 A. I have not had in-depth conversations
19 with him.

20 Q. Have you had any conversations with him
21 about whether or not IDOT is responsible for the
22 asbestos that is located on Site 3 and Site 6?

23 A. I don't believe I've had that kind of
24 conversation with him.

Q. Okay. Have you had any conversatio
with anyone else about whether IDOT is responsib
for the contamination on Sites 3 and 6?

A. Other than what's presented in my
report.

Q. So you have not talked to Mr. McGinle
about that at all except for providing him your
written report.

Is that your testimony?

MR. MCGINLEY: Objection; asked and
answered at this point.

THE WITNESS: Yes.

BY MS. BRICE:

Q. You had no conversations at all --

A. The only conversations --

Q. -- about your opinion --

A. The only conversations that we've had
was -- dealt with practices. In regards to my
opinion, we have had no conversation regarding
opinion. I was asked to provide an opinion and
write something up, and that's what was done.

Q. Okay. We'll come back to that.
What was your role in the 104(e)

response?

29

30

1 A. It was more of a technical gopher, in 1
2 essence. Randy Schick had -- needed some
3 information on different questions that he had to 3
4 respond to, and he came to me to find that
5 information.

6 Q. And what did you do?

7 A. I found that information.

8 Q. What information?

9 A. I found him -- I think I found some of 9
10 the figures regarding that -- construction plans. 10
11 I found him some of the maps that he needed to 11
12 provide. I provided him some of the -- I went and 12
13 got him some of the historical aerial photos. 13

14 Q. Have you ever talk to Duane Mapes?

15 A. No, I did not.

16 Q. Did you ever talk to anyone who worked 16
17 on the project in the 1970s?

18 A. No.

19 Q. Have you ever talked to anyone at any 19
20 time who worked on the project in the 1970s?

21 A. No.

22 Q. Did Randy Schick talk to you about his 22
23 conversation with Duane Mapes?

24 A. No.

Q. Did you review the 104(e) response
before it went out?

A. No.

Q. What was your understanding of IDOT's
belief regarding whether or not it was responsible
for asbestos contamination at the site when it
presented the USEPA with the 104(e) response?

MR. MCGINLEY: Objection; compound,
assumes facts not in evidence.

THE WITNESS: I don't believe we had
any belief.

BY MS. BRICE:

Q. Okay. What was your understanding of
Mr. Mapes -- He was the resident engineer, right?

A. Correct.

Q. What is a resident engineer?

A. A resident engineer in the district is
responsible for individual contracts that they're
out in the field watching get built and making su
its being built in conformance with the plans and
specs.

Q. Okay. And so this project, Duane Mapes
was the resident engineer, correct?

A. Correct.

31

32

1 Q. And was he out on the site all the time 1
2 or most of the time?

3 A. I do not know.

4 Q. Is it typical for the resident engineer 4
5 to be present at the location of the construction 5
6 project most of the time?

7 A. It is typical that a resident engineer 7
8 will be at the project all the time he can be
9 there, yes.

10 Q. Did you attempt to locate anyone who 10
11 worked on the project in the 1970s in the course of 11
12 working on this?

13 A. No. Sorry.

14 Q. Why not?

15 A. Well, it was -- I think my perception 15
16 was that there was no one else alive.

17 Q. And why was that -- Did someone tell you 17
18 that or -- Why was that your perception?

19 A. Well, I -- because it was such an old 19
20 project, I did not think there was anyone around
21 anymore.

22 Q. Have you spoken to anyone that worked on 22
23 the 104(e) response while working on this matter?
24 And I mean talking about now. I'm talking about

present time, so that was a confusing question.
Let me start over.

You worked on the 104(e) response.

There were a number of other people that
worked on the 104(e) response, right?

A. I do not know who else worked on it
other than Randy Schick and myself.

Q. And who?

A. Randy Schick and myself.

Q. Oh, myself. Sorry.

And Randy Schick is deceased; is that
correct?

A. That is correct.

Q. So did you make any attempts to find
who else worked on the 104(e) response and to go
talk to them about what they knew about it?

A. I did not believe there was anybody else
that worked on the 104(e).

Q. Well, did you ever had any conversation
with Mr. Schick about his conversation with
Mr. Mapes?

MR. MCGINLEY: Objection; asked and
answered.

THE WITNESS: I did not.

10 (Pages 37 to 40)

37		38	
1	Q. What's your current position with IDOT?	1	A. They can.
2	A. Currently I am a Technical Manager	2	Q. How about with respect to the project
3	Q. What does that mean?	3	issue here? And we can get into this in more
4	A. Well, it's just a title that -- that --	4	detail later. But there are limits of
5	that's in the State's system. It's not related to	5	construction. There's easements. And there's
6	responsibilities.	6	right of ways.
7	Q. Okay. So what do you do?	7	A. Correct.
8	A. I didn't mean to feed you the question,	8	Q. Who owns the area within the right of
9	but...	9	way with respect to this project?
10	Q. It's a pretty innocuous question.	10	A. I believe it's a mixed issue of
11	A. I oversee -- I'm sort of like the	11	ownerships.
12	environmental technical expert on soil and	12	Q. Okay.
13	groundwater issues. I oversee contracts that	13	A. Currently.
14	investigate State right of way and determine what	14	Q. Okay. Who historically owned it in th
15	soil contamination or groundwater contamination	15	1970s?
16	exist, and then I take all that information that	16	A. I believe in 1970, at the beginning of
17	the consultant provides, I write special	17	this project, there were resolutions that were
18	provisions, I put together pay items and	18	created by the City of Waukegan and Lake County
19	quantities. I insert all that stuff or have the	19	that they were going to purchase all right of way
20	district insert all that stuff into the contract	20	east of -- in essence, east of the railroad track
21	plan so it can be bid on.	21	Q. Did they do that?
22	Q. And does the state own the areas within	22	A. No, they did not.
23	the right of way that are designated on the various	23	Q. And so did IDOT own it prior to that
24	plans for specific projects?	24	time?

39		40	
1	A. IDOT purchased the right of way and the	1	A. I did not investigate that aspects.
2	easements.	2	Q. When were you first contacted about th
3	Q. And when did IDOT purchase the right of	3	specific lawsuit?
4	way and easements?	4	A. I believe I was contacted by Phil
5	A. I believe it was sometime prior to	5	McQuillan when it was originally -- when he became
6	construction, like 1970 or so.	6	aware of it.
7	Q. And for how long did IDOT own the right	7	Q. And why did he contacted you; because
8	of way and the easements?	8	you were involved in the 104(e)?
9	A. I am not sure when IDOT gave up the	9	A. I believe he contacted me because I
10	right of way, but the easements in association with	10	like I stated, I'm somewhat the environmental
11	Site 3 were reverted back once construction is	11	expert on soil and groundwater issues.
12	complete.	12	Q. Understood.
13	Q. Right.	13	And what did you tell him about the
14	How about the right of ways, though? I	14	case?
15	mean, does IDOT still own those right of ways	15	A. I believe I probably told him that I w
16	associated with Site 3 and Site 6?	16	involved in the 104(e), and I believe most of the
17	A. From my -- the information that I have	17	discussions we had were just looking at historical
18	that I found that Waukegan -- City of Waukegan owns	18	area photographs.
19	the right of way and jurisdiction of the road.	19	Q. Did he ask you or anyone else ask you
20	Q. Which right of way?	20	any time is there any, you know, validity to this
21	A. The right of way of Sands and Greenwood	21	argument that IDOT put asbestos-containing
22	Avenue.	22	materials --
23	Q. And when did Waukegan take over that	23	A. I don't recall --
24	right of way from IDOT?	24	Q. -- on the ground at Site 3 or 6?

12 (Pages 45 to 48)

45

46

1 to confirm or deny what he wrote.
 2 Q. Right. But this is my chance to take
 3 your deposition on his report.
 4 So I need to know is there anything else
 5 in his report as you sit here today that you are
 6 intending to rebut at a hearing or at trial on this
 7 matter?
 8 A. I have no plans on rebutting any other
 9 aspects of his report at this time.
 10 Q. Did anyone assist you in preparing the
 11 report?
 12 A. No.
 13 MS. BRICE: Can we take a short break.
 14 (Brief recess.)
 15 (Gobelman Group Exhibit No. 2 marked
 16 for identification.)
 17 BY MS. BRICE:
 18 Q. Mr. Gobelman, I've marked for the record
 19 Deposition Exhibit 2, which are Illinois Department
 20 of Transportation's Responses to Complainant's
 21 First Set of Interrogatories, and I believe the
 22 second document is -- it actually has the same
 23 title, but I think it's the supplemental responses
 24 So if you turn to the last page of each

1 document there is a verification which you signed
 2 correct?
 3 A. Yes.
 4 Q. Are those your signatures on both of
 5 these documents -- Is that your signature on both
 6 of these documents?
 7 A. You say "both."
 8 Q. Well, there's two.
 9 A. Oh, I only have one.
 10 Q. Oh, it's here (indicating).
 11 A. Okay. Yes.
 12 Q. How did you verify that these responses
 13 were correct?
 14 A. I read it.
 15 Q. That's it?
 16 A. Well, in regards to my signature, I read
 17 it. This was accurate. And I signed it.
 18 Q. Okay. Did you do any investigation to
 19 determine that the statements made in this document
 20 are accurate?
 21 A. I believe everything -- the
 22 investigation was done prior to the development of
 23 this document.
 24 Q. What investigation?

47

48

1 A. The review of all the information.
 2 Q. Your review? Did you review all this
 3 information prior to April of 2015?
 4 A. Let's see.
 5 (Witness peruses document.)
 6 THE WITNESS: Based to my -- to the
 7 best of my knowledge, the information
 8 provided here was accurate and correct.
 9 BY MS. BRICE:
 10 Q. Okay. When did you review the records
 11 relating to this lawsuit in order to prepare your
 12 expert report?
 13 A. I do not know when that started.
 14 Q. Okay.
 15 A. It was after the initial meeting with
 16 the Attorney General's Office.
 17 Q. Was it before you signed Deposition
 18 Exhibit 2? Had you reviewed all of these records
 19 before you signed Deposition Exhibit 2?
 20 A. I am not sure if I reviewed all the
 21 records prior to this, but I reviewed a lot of the
 22 records.
 23 Q. Prior to signing the document?
 24 A. Yes.

1 Q. So did you sign the document based upon
 2 your review of the records and your determination
 3 that the statements were accurate, based upon your
 4 review of the records?
 5 A. Based upon my knowledge. The best of
 6 knowledge, the information that was provided was
 7 correct.
 8 Q. Did you try and find Randle Schick's
 9 file to confirm the statements?
 10 MR. MCGINLEY: Objection; vague and
 11 ambiguous.
 12 BY MS. BRICE:
 13 Q. Well, Randle Schick, right, was the
 14 attorney who worked on the 104(e) response, right?
 15 A. Correct.
 16 Q. And did he have a file on the 104(e)
 17 response?
 18 A. Yes.
 19 Q. Okay. Have you looked at his file?
 20 A. Yes.
 21 Q. Okay. Has that entire file been
 22 produced, to your knowledge?
 23 A. I have no knowledge when it was
 24 produced --

49

50

1 Q. Okay. And what did you --

2 A. -- because I don't have control of it.

3 Q. What did you find in that file?

4 A. His response to the 104(e) and other

5 documentations.

6 Q. What other documentations?

7 A. I do not have a list of every document

8 that was in that file.

9 Q. Okay. Well, what do you recall being in

10 that file?

11 A. I recall that there was information on

12 the contract plans and the attachments associated

13 with -- that were provided in the 104(e).

14 Q. Okay. Do you recall any notes being in

15 that file?

16 A. I do not recall any notes.

17 Q. Did you take any other steps other than

18 reading the document, which is Deposition Exhibit

19 2, and thinking about your knowledge with respect

20 to what you had reviewed up until that time to --

21 Strike that.

22 Did you take any other steps other than

23 reviewing the document and referring then your mind

24 back to what you had previously read before you

1 signed that verification form?

2 A. No, I did not take any other steps.

3 MR. MCGINLEY: Can I, just for the

4 of the record because this is a group

5 exhibit, but the reporter's only stamped

6 first one, can we just read the Bates number

7 into the record?

8 MS. BRICE: Definitely. Go right

9 ahead.

10 MR. MCGINLEY: The exhibit consists

11 IDOT 003279 through IDOT 003295.

12 MS. BRICE: I'm going to mark for the

13 record Deposition Exhibit 3, which is also

14 group exhibit, and it is IDOT 000378 through

15 391, and then the other document does not

16 have a Bates stamp on it. There is a Bates

17 stamp version in the record. But it is the

18 November 27, 2000 response to the 104(e)

19 request from USEPA.

20 (Gobelman Exhibit No. 3 marked for

21 identification.)

BY MS. BRICE:

Q. I'm going to focus on the second

51

52

1 document, which is the responses from IDOT. And if

2 you can turn to Attachment A, which is the second

3 page, there is a list of people who I believe are

4 the people that were involved in helping prepare

5 the 104(e) response.

6 A. Yes.

7 Q. Are any of these people still at IDOT?

8 A. I don't believe any of them are still

9 with IDOT.

10 Q. Do you know where any of them are

11 currently?

12 A. The only person that I know currently is

13 Mike Hine, and he is with the Federal Highway

14 Administration.

15 Q. Okay. Did you reach out to Mike Hine

16 prior to preparing your expert report in this case?

17 A. No.

18 Q. And if you can take a look at Question

19 5, which is on Page 000382, which talks about:

20 "Identify the acts or

21 omissions of any person, other

22 than your employees, contractors,

23 or agents that may have caused

24 the release or threat of release

of hazardous substances..."

basically at the site. I'm not quoting

it.

Did you have any role in responding to

that question?

A. I did not have a role in responding to

that question.

Q. Okay. And then Question 10:

"Describe all arrangements

for the transportation, movement,

or placement of ACM that was in

situ at Area of Concern No. 3..."

Did you have any role in responding to

that question?

MR. MCGINLEY: Can we, just for the

sake of the record, indicate what the Bates

number for that is, please.

MS. BRICE: Sure. 000383.

MR. MCGINLEY: Thank you.

THE WITNESS: I did not have a role in

that.

BY MS. BRICE:

Q. If you turn to the actual response,

1 second-to-last page, it talks about, on Response
 2 No. 9:
 3 "...the Department of Public
 4 Works and Buildings had a
 5 responsibility for maintenance,
 6 traffic enforcement and control
 7 of By-Pass A during the period of
 8 its construction."
 9 What does that mean in your mind? What
 10 were they responsible for doing?
 11 A. It means that -- that the IDOT contract
 12 was in control. There was a contract, and then
 13 they had control of doing the work associated with
 14 those properties. They were -- they had access and
 15 control.
 16 Q. That IDOT did?
 17 A. IDOT, yes, or at that time Public Works
 18 and Building.
 19 Q. And that is a predecessor to IDOT?
 20 A. Yes.
 21 Q. Okay. Done with that.
 22 What experience do you have with
 23 Transite pipe made in the 1970s?
 24 MR. MCGINLEY: Objection; vague and

1 ambiguous.
 2 THE WITNESS: I have no experience with
 3 the making of Transite pipe.
 4 BY MS. BRICE:
 5 Q. Do you have any experience with the
 6 handling of Transite pipe made in 1970s?
 7 MR. MCGINLEY: Same objection; vague
 8 and ambiguous.
 9 THE WITNESS: I guess I don't
 10 understand your question.
 11 BY MS. BRICE:
 12 Q. Okay. What is Transite pipe?
 13 A. It's an asbestos cement pipe.
 14 Q. Have you ever seen Transite pipe that
 15 was made in the 1970s?
 16 A. I do not recall whether I have seen
 17 Transite pipe that was made in the '70s.
 18 Q. What does Transite pipe look like?
 19 A. Asbestos concrete pipe, which is usual
 20 referred to as Transite pipe, is a concrete pipe
 21 that has, depending on the -- the year that it wa
 22 made, certain percentages of asbestos in it.
 23 Q. Can you tell by looking at the pipe
 24 whether or not it has asbestos in it or not?

1 A. I believe in the older versions where it
 2 had a higher percentage of asbestos in it, you
 3 could look at it and tell that it was that type of
 4 pipe.
 5 Q. Okay. How do you know that?
 6 A. I guess just from obtaining knowledge
 7 through the years.
 8 Q. Okay. But you've never seen pipe that
 9 was made in the 1970s, Transite pipe?
 10 A. I do not recall seeing pipe made in the
 11 1970s.
 12 Q. Do you know how much asbestos Transite
 13 pipe contained in the 1970s?
 14 A. I know at one point it was in the 70
 15 80 percent asbestos, but then it went down to
 16 manufacturing down to 8 to 10 percent asbestos
 17 contained. But I do not know what dates those
 18 percentages relate to in the '70s.
 19 Q. And do you have any experience with
 20 Transite pipe made prior to the 1970s?
 21 A. No experience regarding prior to 1970
 22 Transite pipe.
 23 Q. And have you ever seen Transite pipe
 24 that was made prior to the 1970s?

1 A. I don't recall whether or not I have
 2 seen Transite pipe prior to 1970.
 3 Q. Do you know how Transite pipe made in
 4 the 1970s or prior thereto degrades?
 5 A. I do not know how Transite pipe degra
 6 prior to 1970.
 7 Q. Do you know how someone in the 1970s
 8 would describe pieces of Transite pipe that they
 9 encountered?
 10 MR. MCGINLEY: Objection; calls
 11 speculation.
 12 You can answer, if you understand
 13 the question.
 14 THE WITNESS: I would -- in my view, i
 15 the construction business, they would call i
 16 concrete pipe.
 17 BY MS. BRICE:
 18 Q. Was it prohibited to use concrete pipe
 19 for IDOT projects in the 1970s?
 20 MR. MCGINLEY: Objection; vague and
 21 ambiguous.
 22 THE WITNESS: No. We use concrete pip
 23 today.
 24 BY MS. BRICE:

233

234

1 email.
2 (Witness peruses document.)
3 THE WITNESS: I was -- I didn't know
4 what was going on, so I was asking a question
5 when they were -- I think that's around --
6 Oh, I think that was - the meeting was
7 scheduled to meet Evan for the first time,
8 and so I was trying to -- I was getting
9 thrown into it, and I didn't know what was
10 going on. So I was just asking general
11 questions of "What's going on?"
12 BY MS. BRICE:
13 Q. Right.
14 Did you go to the strategy meeting?
15 A. I went to that meeting, yes.
16 Q. And what strategy was discussed at that
17 meeting?
18 A. I believe we were just answering the
19 AG's questions on what was going on. I don't think
20 it was called to be a strategy meeting.
21 Q. All right. Thanks. So I just have,
22 two, I think, other questions.
23 There was a document in the file that's
24 referred to in your bibliography that was produced

1 that was created by LFR, July 8th, 2008, I believe
2 Do you know the document I'm talking
3 about, where they were digging in the embankment
4 and --
5 A. Yeah.
6 Q. I'm trying to not waste time.
7 So digging in the embankment, and they
8 found the -- looking for the KV line, right, and
9 there was asbestos down in the embankment.
10 Do you need me to pull the document?
11 A. I don't recall it off the top of my
12 head.
13 MS. BRICE: We'll do it really fast --
14 go ahead. We'll just mark it later. We're
15 going to mark this as --
16 Deposition Exhibit 13?
17 THE COURT REPORTER: Yes.
18 MS. BRICE: Okay. July 8th, 2008, LFR
19 document.
20
21 (Gobelman Exhibit No. 13 marked for
22 identification.)
23 BY MS. BRICE:
24 Q. Have you reviewed this document before

235

236

1 A. Yes, I believe I have seen this.
2 Q. Okay. I have a very simple question.
3 Are you offering any opinions in this
4 case with respect to this document?
5 A. I don't believe it's offering anything
6 in regards to contradicting anything that's written
7 in here.
8 Q. I'm sorry. I didn't understand what you
9 said.
10 A. Well, it's referring to utility lines,
11 and it does somewhat deal with, you know, that
12 utility lines were being maintained and excavated.
13 Q. Okay. But are you -- other than that,
14 are you offering any opinions or rebutting this in
15 any way?
16 A. I do not believe I'm specifically
17 rebutting anything in here.
18 Q. Okay. One last question.
19 You said in your report -- you were
20 talking about Duane Mapes and what he said in the
21 104(e) response. And I believe this is on -- in
22 Opinion No. 9.
23 Okay. So see Opinion No. 9 on your
24 report, middle of the first paragraph, you say:

1 "As stated in Mr. Dorgan's
2 report and in the Department's
3 104(e) response dated November
4 27, 2000, 'Retired Resident
5 Engineer, Duane Mapes, recalled
6 dealing with asbestos pipe during
7 the project and burying some of
8 it:
9 You then say:
10 "Mr. Mapes recalled dealing
11 with asbestos pipe during the
12 project, the project meaning the
13 entire construction project, not
14 just Johns Manville parking lot
15 on Site 3 and Site 6."
16 How do you know that?
17 A. Just in the context in which it was
18 written.
19 Q. But you never spoke to Mr. Mapes, right?
20 A. No.
21 Q. And you never talked to Mr. Schick about
22 what Mr. Mapes said, right?
23 A. No.
24 Q. Okay. So you're just assuming that

60 (Pages 237 to 240)

237

1 that's what he was referring to; is that right?

2 A. Well, because he used the term "during

3 the project," and "the project" relates to the

4 entire project, not just specifically to a

5 particular spot on the project.

6 MS. BRICE: Okay. Gotcha.

7 Okay. I think we're done.

8 MR. MCGINLEY: Okay.

9 THE COURT REPORTER: Read and sign?

10 MR. MCGINLEY: Yes.

11 FURTHER DEPONENT SAITH NAUGHT.

238

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

2 In The Matter of:)

3)

4 JOHNS MANVILLE, a Delaware)

5 Corporation,)

6) PCB No. 14-3

7 Complainant,) (Citizen Suit

8 vs.)

9)

10 ILLINOIS DEPARTMENT OF)

11 TRANSPORTATION,)

12)

13 Respondent.)

14 I, STEVEN L. GOBELMAN, state that I have

15 read the foregoing transcript of the testimony

16 given by me at my deposition on the 10th day of

17 July, 2015, and that said transcript constitutes a

18 true and correct record of the testimony given by

19 me at said deposition except as I have so indicated

20 on the errata sheets provided herein.

21 _____

22 STEVEN L. GOBELMAN

23 No corrections (Please initial _____)

24 Number of errata sheets submitted _____ (per

25 _____)

26 SUBSCRIBED AND SWORN to

27 before me this _____ day

28 of _____, 2015.

239

1 I, MARY ANN CASALE, a Certified

2 Shorthand Reporter of the State of Illinois, do

3 hereby certify that heretofore, to-wit:

4 On July 10, 2015, personally appeared

5 before me STEVEN L. GOBELMAN, a witness in a case

6 now pending and undetermined before The Illinois

7 Pollution Control Board Johns Manville is the

8 Complainant and The Illinois Department of

9 Transportation is the Defendant.

10 I further certify that the witness was

11 first duly sworn to testify to the truth, the whole

12 truth, and nothing but the truth in the cause

13 aforesaid; that the testimony then given by the

14 said witness was reported stenographically by me in

15 the presence of said witness, was thereafter

16 converted to the written English word via

17 computer-aided transcription, and the foregoing is

18 a true and complete transcript of the testimony so

19 given by said witness as aforesaid; that the

20 signature of the witness to the foregoing

21 deposition was not waived.

22 I further certify that the taking of

23 this deposition was pursuant to Notice and that

24

240

1 there were present at the taking of said deposition

2 the appearances as hereinbefore noted. I further

3 certify that I am not a relative or employee or

4 attorney or counsel, nor a relative or employee of

5 such attorney or counsel for any of the parties

6 hereto, nor interested directly or indirectly in

7 the outcome of this action.

8 IN TESTIMONY WHEREOF, I have hereunto

9 set my hand and affixed my notarial seal this 10th

10 day of July 2015.

11 _____

12 MARY ANN CASALE, CSR, RPR, CLVS, CMRS

13 Illinois C.S.R. License No. 084-002668

EXHIBIT B

14 (Pages 53 to 56)

53	54
<p>1 second-to-last page, it talks about, on Response 2 No. 9: 3 ". . .the Department of Public 4 Works and Buildings had a 5 responsibility for maintenance, 6 traffic enforcement and control 7 of By-Pass A during the period of 8 its construction." 9 What does that mean in your mind? What 10 were they responsible for doing? 11 A. It means that -- that the IDOT contract 12 was in control. There was a contract, and then 13 they had control of doing the work associated with 14 those properties. They were -- they had access and 15 control. 16 Q. That IDOT did? 17 A. IDOT, yes, or at that time Public Works 18 and Building. 19 Q. And that is a predecessor to IDOT? 20 A. Yes. 21 Q. Okay. Done with that. 22 What experience do you have with 23 Transite pipe made in the 1970s? 24 MR. MCGINLEY: Objection; vague and</p>	<p>1 ambiguous. 2 THE WITNESS: I have no experience with 3 the making of Transite pipe. 4 BY MS. BRICE: 5 Q. Do you have any experience with the 6 handling of Transite pipe made in 1970s? 7 MR. MCGINLEY: Same objection; vague 8 and ambiguous. 9 THE WITNESS: I guess I don't 10 understand your question. 11 BY MS. BRICE: 12 Q. Okay. What is Transite pipe? 13 A. It's an asbestos cement pipe. 14 Q. Have you ever seen Transite pipe that 15 was made in the 1970s? 16 A. I do not recall whether I have seen 17 Transite pipe that was made in the '70s. 18 Q. What does Transite pipe look like? 19 A. Asbestos concrete pipe, which is usual 20 referred to as Transite pipe, is a concrete pipe 21 that has, depending on the -- the year that it was 22 made, certain percentages of asbestos in it. 23 Q. Can you tell by looking at the pipe 24 whether or not it has asbestos in it or not?</p>
55	56
<p>1 A. I believe in the older versions where it 2 had a higher percentage of asbestos in it, you 3 could look at it and tell that it was that type of 4 pipe. 5 Q. Okay. How do you know that? 6 A. I guess just from obtaining knowledge 7 through the years. 8 Q. Okay. But you've never seen pipe that 9 was made in the 1970s, Transite pipe? 10 A. I do not recall seeing pipe made in the 11 1970s. 12 Q. Do you know how much asbestos Transite 13 pipe contained in the 1970s? 14 A. I know at one point it was in the 70 and 15 80 percent asbestos, but then it went down to 16 manufacturing down to 8 to 10 percent asbestos 17 contained. But I do not know what dates those 18 percentages relate to in the '70s. 19 Q. And do you have any experience with 20 Transite pipe made prior to the 1970s? 21 A. No experience regarding prior to 1970 22 Transite pipe. 23 Q. And have you ever seen Transite pipe 24 that was made prior to the 1970s?</p>	<p>1 A. I don't recall whether or not I have 2 seen Transite pipe prior to 1970. 3 Q. Do you know how Transite pipe made in 4 the 1970s or prior thereto degrades? 5 A. I do not know how Transite pipe degrades 6 prior to 1970. 7 Q. Do you know how someone in the 1970s 8 would describe pieces of Transite pipe that they 9 encountered? 10 MR. MCGINLEY: Objection; calls 11 speculation. 12 You can answer, if you understand 13 the question. 14 THE WITNESS: I would -- in my view, in 15 the construction business, they would call it 16 concrete pipe. 17 BY MS. BRICE: 18 Q. Was it prohibited to use concrete pipe 19 for IDOT projects in the 1970s? 20 MR. MCGINLEY: Objection; vague and 21 ambiguous. 22 THE WITNESS: No. We use concrete pipe 23 today. 24 BY MS. BRICE:</p>

57

58

1 Q. Okay. Was it prohibited to use concrete
2 pipe that contained asbestos in it for IDOT
3 projects in the 1970s?
4 A. No. It was not prohibited.
5 Q. What expertise are you relying on in
6 offering your opinions?
7 A. In regarding what?
8 Q. Everything.
9 What are you saying you're an expert in?
10 A. Well, my expertise comes from eight
11 years at Illinois EPA doing project management,
12 permitting, overseeing cleanups, State funded and
13 voluntary. I also spent the last 21 years at IDOT
14 doing environmental expertise in regarding cleanups
15 of dealing with soil and groundwater contamination,
16 how it has to be properly managed, any aspects of
17 spills relating to yards, any aspects regarding
18 compliance assessments, creating environmental
19 management systems for operational yards. I
20 oversaw -- I should take that back.
21 I didn't oversee. I did the technical
22 reviews of all highway authority agreement projects
23 in which I determined cost associated to what those
24 parties -- based upon what IDOT did an

1 investigation and removed as part of construction
2 An aspect of that was I had to go through old
3 historical records, put together the pieces of which
4 was done, and historical records to determine what
5 aspects -- what types of work was done there and
6 how that could be related back to the agreement
7 and -- as far as cost recovery.
8 Q. Okay.
9 A. I provided testimony and stuff at
10 numerous environmental regulations, the TACO
11 regulations, Tiered Approach to Corrective Action
12 objectives, the clean construction or demolition
13 debris regulations.
14 Q. Do you have any expertise with regard
15 how materials were handled by IDOT or its
16 contractors in the 1970s?
17 MR. MCGINLEY: Objection; vague and
18 ambiguous.
19 THE WITNESS: Could you repeat that
20 again?
21 BY MS. BRICE:
22 Q. Sure.
23 Do you have any expertise with respect
24 to how IDOT or its contractors handled various

59

60

1 types of materials --
2 A. I under- --
3 Q. -- in the 1970s?
4 A. Sorry. I understand how they managed
5 materials back in the 1970s.
6 Q. Okay. Are you an expert in how they
7 managed materials in the 1970s?
8 A. I do not know how you would define
9 "expert" of --
10 Q. Have you interviewed anyone with respect
11 to how exactly IDOT or its contractors handled
12 materials in the 1970s?
13 A. I did not interview anyone regarding how
14 they managed soils -- materials back then.
15 Q. Have you ever talked to anyone who
16 handled materials -- Strike that.
17 Have you ever attempted to study how
18 IDOT or its contractors handled materials on road
19 and bridge construction projects in the 1970s?
20 MR. MCGINLEY: Objection; vague and
21 ambiguous and compound.
22 THE WITNESS: Yes. I have reviewed the
23 1970 spec book.
24 BY MS. BRICE:

1 Q. Okay. Other than reviewing the book
2 have you done anything else to become an expert
3 how IDOT or its contractors handled materials for
4 road and bridge construction projects in the 1970
5 A. Outside of how things were managed on
6 this particular project, I reviewed the spec book
7 of how things were done.
8 Q. Right.
9 Other than reviewing the spec book, have
10 you done anything else to become an expert in this
11 topic?
12 A. I reviewed the spec book outside of this
13 project for things -- how things were done in the
14 1970s -- how they did in the spec book.
15 Q. I'm sorry. I'm confused by your answer.
16 You reviewed the spec book, right?
17 A. Correct.
18 Q. What else have you done to become an
19 expert on how materials were handled by IDOT and its
20 contractors in the 1970s?
21 A. You're asking me a question that is
22 related to the entirety of all IDOT work --
23 Q. Sure.
24 A. -- in the 1970s.

52 (Pages 205 to 208)

205

206

1 aren't anywhere --

2 Q. Okay.

3 A. -- and I have no idea.

4 (Witness peruses documents.)

5 THE WITNESS: And to me, the '67 photo

6 had a more pronounced draining feature to the 6

7 east side of it, and that's, you know, maybe 7

8 why nothing is showing up, that doesn't exist 8

9 anymore. Where on the '70 photo, there is a 9

10 less drainage feature on the east side coming 10

11 beside that parking lot.

12 I guess that's it.

13 BY MS. BRICE:

14 Q. Do you have any evidence at all that JM 14

15 buried Transite pipe on Site 3 and Site 6?

16 A. I have no evidence other than what was 16

17 listed in the reports.

18 Q. Okay. I'm going to skip over here to 18

19 Page 12 of your report.

20 A. We're done with the aerials for now? 20

21 Q. Yes, for now.

22 A. Sorry. Again, what page?

23 Q. Page 12, and this is where you're 23

24 talking about USEPA's concerns.

1 A. Okay.

2 Q. So I'm going to offer you my

3 hypothetical. Let's assume that the only

4 asbestos-containing material on Sites 3 and 6 was

5 pieces of cement concrete Transite pipe on the

6 surface and possibly a few fibers on the surface.

7 If this were the case, what would

8 USEPA's remedy have been?

9 A. If the only pieces -- or as you

10 describe, the remedy, in essence, would be the

11 same, which would be to remove all the

12 asbestos-containing material so that the utilitie

13 would have a clean corridor. So if it was only a

14 the surface and whatever small areas you depicted

15 then that would be the only areas that would need

16 to be remediated.

17 Q. Right.

18 So they wouldn't have to dig down and

19 dig out buried asbestos-containing material to

20 create the clean corridor, right?

21 A. They would have had just to clean out

22 remove what asbestos existed under your scenario.

23 Q. Which would be on the surface, correct

24 A. Under your scenario.

207

208

1 Q. Correct.

2 You have this sentence in here in the

3 third paragraph that starts with "knowing." It

4 says:

5 "Knowing that the

6 Department's Contractor did not

7 remove the parking lot to build

8 the detour road but could have

9 removed some of the parking lot

10 with the removal of the detour

11 road at the completing of the

12 construction project, the

13 asbestos-containing materials

14 beneath parking lot were placed

15 there during the construction of

16 the original parking lot by Johns

17 Manville and the spread of

18 asbestos-containing materials

19 during the 25 or more years the

20 parking lot was in service."

21 Can you explain this to me? What's your 21

22 point here?

23 A. The point was -- is that the placement 23

24 of asbestos -- we removed everything as it existed 24

1 but we may have removed some additional of the

2 parking lot as part of removal of the detour road

3 But there was still asbestos there based -- from

4 a -- in a sense, existing conditions. So that's

5 material, if the parking -- because the parking 1

6 was built with asbestos-containing material, so

7 that material is still at -- is beneath the parki

8 lot as it exists. And then there would have

9 been -- the operation of the -- because of the

10 operation there of the manufacturing, that there

11 were other debris and material that could have

12 ended up there through truck spillages, wind

13 blowing, all those types of material that asbesto

14 could have gotten onto that property.

15 Q. Right.

16 But you don't know that for a fact,

17 correct?

18 A. No.

19 Q. And so your point with this is? Again

20 I'm not sure I understand the point.

21 A. I believe the point was getting -- it

22 was just stating that the existing asbestos

23 conditions exist there, and the remedy was going

24 be the same no matter what IDOT did because there

17

18

1 A. I was just looking for background
2 information of things that the USEPA had posted.

3 Q. And what did you find?

4 A. The five-year progress reviews,
5 references to some other of the final documents.
6 I think the EEC- -- EECA was there.

7 Q. Are the historical engineering drawings
8 contained in the IRIS database?

9 MR. MCGINLEY: Objection; vague and
10 ambiguous.

11 THE WITNESS: I don't recall seeing any
12 historical -- Well, I mean, other than what
13 was in the reports, I don't see any separate.

14 BY MS. BRICE:

15 Q. Let me back up.

16 In general does IDOT's IRIS database
17 contain historical as-built drawings for projects
18 that were conducted in the past?

19 A. Well, now you're confus- -- you said
20 IDOT's.

21 Q. Well, I thought the IRIS database --

22 A. Well, then we're talking about two
23 separate things.

24 Q. Oh, okay. I'm talking about IDOT's IRIS

1 database.

2 A. Meaning Illinois State?

3 Q. It's IRIS when you Google, Illinois
4 Department of Transportation's IRIS database that
5 contains historical records.

6 A. Then I have to strike what I said
7 because I did not review that.

8 Q. Okay. Did you look at any microfiche?

9 A. No.

10 Q. I saw an email where you -- I think it
11 was you who said something I saw in the piles of
12 microfiche or microfilm. You were looking for a
13 document, and you said I thought I saw that in the
14 piles of microfilm.

15 Does that ring a bell?

16 A. Well, most of the -- Okay. I did not
17 look at microfilm, but what we get is a PDF of all
18 the historical information that would have been on
19 the film.

20 Q. Okay. So you looked at a PDF of all that
21 historical information that would have been on the
22 film related to this site?

23 A. Yes, both related to IDOT's, according
24 to their project.

19

20

1 Q. Understood.

2 And is this where IDOT keeps its
3 historical as-built drawings for bridge and road
4 construction?

5 A. They can be found there. Typically they
6 would be found at the district offices.

7 Q. And when you said they could be found
8 there, where is "there"?

9 A. Meaning central office in Springfield.

10 Q. And would they also be on microfilm at
11 the district office?

12 A. Yes.

13 Q. Do you know if -- Strike that.

14 Do you know where these as-built
15 drawings were found?

16 A. The plans that were -- The contract
17 plans that were let were found at the district
18 office.

19 Q. What about the drawings, you know -- And
20 I'll bring them out in a bit. But there's the
21 drawings of -- All the engineering drawings, right?
22 There's 81 pages of engineering drawings for the
23 project?

24 A. I believe we're referring to the same

1 thing. That is the bid document drawing, the
2 engineering drawings.

3 Q. I thought you were talking about the
4 contract itself. So I'm talking about --

5 A. No. There's two --

6 Q. Right.

7 A. -- separate things that go out with --

8 Q. Understood.

9 A. -- the letting.

10 Q. So I'm talking about the drawings.

11 A. Yes.

12 Q. Do you know where those were found?

13 A. They were found at the district
14 office -- I should say that is where I obtained
15 copy from.

16 Q. So you got an independent set of the
17 drawings from the district office; is that correct?
18 They were not provided to you by counsel; is that
19 right?

20 A. Correct.

21 Q. And why does IDOT retain historical
22 as-built drawings for bridge and road construction?

23 A. We retain those things so that next
24 project that comes along can start the design

6 (Pages 21 to 24)

21

22

1 process after based on the previous job that was
2 done.
3 Q. And why else?
4 A. Well, if there's any disputes, claims,
5 that may have occurred, through whether it's the
6 contractor and stuff, then they can use that
7 information, too.
8 Q. And do you know how far back those
9 drawings go?
10 A. I would -- I don't know the -- exactly
11 how long they go. I would surmise they at least go
12 back to Eisenhower and the federal highway program.
13 But I would guess since we changed names since
14 then -- because, I guess, IDOT used to be -- what
15 was it called before -- public work and that. So I
16 suspect they possibly could have the plans from the
17 '30s when things were drawn.
18 Q. Okay. So Eisenhower would be the
19 1950's?
20 A. '50s, late '50s, yeah, when the
21 interstate program started.
22 Q. Did you talk to anyone at USEPA with
23 respect to your work involving this project?
24 A. No.

1 Q. Did you talk to anyone at IEPA?
2 A. No.
3 Q. Did you talk to anyone at Westin
4 Consultants?
5 A. Regarding this particular project?
6 Q. Mm-hmm.
7 A. No.
8 Q. Did you talk to any other consultants
9 regarding this particular project?
10 A. No.
11 Q. Who did you talk to at IDOT?
12 A. The chief counsel.
13 Q. And who else?
14 A. Attorney General's Office.
15 Q. Anyone else?
16 A. Well, I think in the initial meeting
17 that we had prior to me being considered an expert
18 we talked to people from our Bureau of
19 Construction. I think Tim Kell was there.
20 Q. Okay. And who is Tim Kell?
21 A. He is the acting bureau chief of
22 construction in central office in Springfield.
23 Q. And what happened in that meeting with
24 Tim Kell? What were you talking about?

23

24

1 A. They asked us about what we knew about
2 the project and construction practices.
3 Q. And what did you know about the project?
4 A. I knew the project from the beginning of
5 the 104(e) response from IDOT, and it was the --
6 talked about the project back when the original
7 lawsuit occurred.
8 Q. And what did you tell them about what
9 you knew about the project?
10 A. Well, it's -- most of it's summarized in
11 the report, but I told them what I knew about the
12 project was that that was there with Randy Schick
13 in responding to the 104(e) and that I was also
14 around when Phil McQuillan was -- put together a
15 response regarding the initial lawsuit discovery.
16 Q. And what was the conversation about
17 IDOT's role in handling asbestos at Site 3 and
18 Site 6?
19 MR. MCGINLEY: Objection; lacks
20 foundation, vague, and ambiguous.
21 THE WITNESS: Could you rephrase that?
22 BY MS. BRICE:
23 Q. Sure.
24 A. I'm not sure I understand what you're

1 saying.
2 Q. You said you were at a meeting and
3 were talking about the history of project and
4 lawsuits; is that right?
5 A. Yes.
6 Q. And the lawsuits surround -- the
7 lawsuits are about essentially who caused the
8 asbestos is contamination at Site 3 and Site 6
9 that right?
10 MR. MCGINLEY: Objection; calls for
11 speculation.
12 BY MS. BRICE:
13 Q. In part.
14 A. In part, yes.
15 Q. What did you discuss on that subject
16 your meeting?
17 A. We didn't really discuss that aspect.
18 We were discussing what information that could be
19 provided.
20 Q. What do you mean what information could
21 be provided?
22 A. Well, I mean it was more of putting
23 together what was being -- what was provided to
24 Randy Schick dealing with the 104 what was

18 (Pages 69 to 72)

69

70

1 is currently buried on Site 3 and Site 6?
2 A. My report reflects that it's very
3 unlikely and maybe impossible that IDOT put
4 material in Site 3 and Site 6.

5 Q. Okay. I thought you said it was
6 possible earlier, so that's why I was confused.

7 A. No.

8 Q. So your opinion is that it is unlikely
9 that IDOT or its contractor buried the asbestos.
10 Is that your opinion?

11 A. It's not an opinion. It's based upon
12 the factual evidence of the contract.

13 Q. So are you offering an opinion or not?
14 I mean, that's what this deposition is about.

15 A. Right. I don't understand -- Maybe
16 our -- maybe my definition of "opinion" and your
17 definition of "opinion" isn't necessarily the same.

18 Q. Okay. But you're being offered as an
19 expert in this case, okay, and there's rules that
20 govern experts and what their opinions are.

21 And so I need to know if you're going to
22 get up on the stand and say, "This is my opinion
23 based upon my experience, knowledge, et cetera
24 that, you know, Johns Manville caused this and IDOT

1 didn't." I need to know if you're going to offer
2 that as an opinion or not.

3 A. My opinions are what's in that report.

4 Q. Okay. But I'm asking you right now

5 A. Okay.

6 Q. -- you've just said four or five
7 different things, so I'm trying to understand.
8 Are you saying that what -- Let's go
9 back.

10 What are you saying caused the asbestos
11 on Site 3 and Site 6?

12 A. I am not saying anything regarding what
13 caused the asbestos on Site 3 and 6 other than what
14 was factually found in the record of the reports
15 written.

16 Q. Okay. So you're just reciting what the
17 record said?

18 A. I would assume that a report that is
19 written for Johns Manville would be accurate.

20 Q. Okay. Other than reciting what's in the
21 records, are you doing anything else?

22 A. In regards to?

23 Q. This expert report.

24 A. In regards to what?

71

72

1 Q. In regards to what you are calling
2 opinions that are underlined. You said you're
3 reciting what's in the record.

4 Are you then arriving at an opinion
5 based upon a number of factors and saying, "This is
6 my opinion," or are you just saying, "This is what
7 the record says"?

8 A. To me you're being very vague right now.
9 I don't understand what your question is.

10 Q. Okay. Well, my question is: How did
11 you come to the conclusions that you came to in
12 your report? They're based upon the record, right?

13 A. Correct.

14 Q. Are they based upon anything else?

15 A. No.

16 Q. Okay. And so we've got asbestos buried
17 in Site 3 and Site 6. You know, Johns Manville
18 could have caused it, IDOT or its contractor could
19 have caused it.

20 Is there --

21 A. No.

22 Q. Are there any other -- Oh, they didn't?
23 There's no possibility?

24 A. I do not believe it is possible that

1 IDOT or its contractor could have.

2 Q. 100 percent certain?

3 A. As close as you can get to that.

4 Q. Did you consider any other
5 possibilities?

6 A. The evidence that is in the construction
7 record does not lead to any other opinion, other
8 than it is not there by contractor or IDOT.

9 Q. How do you rule out that the IDOT's
10 contractor didn't take the Transite pipe, concrete
11 Transite pipe, break it up. And then put it in the
12 embankments or put it in the road on Site 3 or in
13 and around Site 3 in the road and bury it?

14 MR. MCGINLEY: Objection; compound.

15 THE WITNESS: You have to go back to
16 the beginning of a contract and understand
17 what the contract is telling the contractor
18 to do. There was a sequencing of events that
19 have to occur. You cannot pass A and go onto
20 B until A is done. So there's a sequence of
21 events, A, B, C, D, E, let's say. You cannot
22 skip. A has to be done first to its
23 entirety, then B, then C.

24 BY MS. BRICE: