



**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

**RESPONDENT'S MOTION TO RESCHEDULE HEARING**

NOW COMES RESPONDENT, the Illinois Department of Transportation ("IDOT"), through its attorney LISA MADIGAN, Attorney General of the State of Illinois, which moves the Pollution Control Board ("Board"), pursuant to Board Rule 101.502, 35 Ill. Adm. Code 101.502, to reschedule the hearing which is currently to begin on May 10, 2016, to a new start date that is at least six weeks out from the current May 10<sup>th</sup> start date. In support of its Motion, IDOT states as follows:

**STATEMENT OF FACTS**

On February 26, 2016, just over two weeks prior to the then-currently scheduled start of March 15, 2016 hearing date in this matter, Johns Manville filed its Motion for Leave to File a Second Amended Complaint ("Motion for Leave").

On March 3, 2016, the Board issued an opinion and order granting Johns Manville's Motion for Leave ("March 3<sup>rd</sup> Order"). The Board's March 3<sup>rd</sup> Order gave Respondent IDOT until April 3, 2016 to answer Johns Manville's Second Amended Complaint.

On March 7, 2016, during a status conference with the parties, the Hearing Officer advised the parties to propose a discovery schedule for this matter and to file it by March 10,

2016. The Hearing Officer noted during the March 7<sup>th</sup> status hearing that the discovery to be taken at this juncture in the case was to be limited in scope.

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

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

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

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

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

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

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

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

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

As of the filing of this Motion, IDOT and Johns Manville are attempting to finalize a schedule for the depositions of IDOT's employees and expert witnesses. While these depositions will for the most part take place in Schaumburg, Illinois, at IDOT's District 1 offices, it is possible that one of the depositions that Johns Manville has indicated that it wishes to take would need to take place in Springfield, Illinois. Additionally, Johns Manville has advised IDOT that if it wishes to take a Rule 206 deposition for Johns Manville (a matter which is currently under consideration), that deposition will need to take place in Denver, Colorado, where Johns Manville's corporate offices are located.

**ARGUMENT**

When the Board issued its March 3<sup>rd</sup> Order, it set in motion a sequence of pre-trial events in this case that has been all encompassing and has required IDOT to devote all of its energies in this case to conducting and responding to a substantial amount of discovery, attempts at resolving discovery disputes, motion practice, and responding to Johns Manville's Second Amended Complaint. Moreover, as of the date of the filing of this Motion, there is still a substantial amount of oral discovery that has yet to be conducted in this case, as well as further expert discovery. Indeed, Johns Manville presently proposes to depose Keith Stoddard, IDOT's expert witness on April 28, 2016, to disclose its expert witness at an as yet identified point in time the following week, thereby giving IDOT only a few days to take the deposition of Johns Manville's rebuttal witness, if keeping the current May 10 through 12, 2016 hearing dates. Given the extraordinary and intense – indeed, almost impossible - sequence of events which have transpired in this case over the past six weeks, IDOT has been unable to resume the preparations it was making for hearing in this case, prior to the issuance of the Board's March 3<sup>rd</sup> Order. Under these circumstances, it would be extremely prejudicial to IDOT for the Board to proceed with the current May 10<sup>th</sup> through 12<sup>th</sup> hearing dates.

Conversely, were the Board to grant IDOT's motion to reschedule the hearing in this matter, there would be little if any prejudice to Johns Manville. As has been discussed during prior status conferences in this case, following the hearing in this matter, the parties will be given time to file post-hearing briefs. Then, the Board will need time to review the evidence, the transcripts from the hearing, and the post-hearing briefs, before ultimately issuing its opinion and order regarding this very complicated case. In the greater scheme of things, delaying the

start of the hearing in this case by a few weeks will not unduly prolong the time it will take to reach an outcome in this case.

Illinois courts have long recognized that litigants must have the opportunity to prepare and evaluate their cases for trial. As the Court observed in *Biehler v. White Metal Rolling & Stamping Corp.*, 30 Ill.App.3d 435, 446 (3<sup>rd</sup> Dist. 1975), “The purpose of discovery . . . is to enable attorneys to better prepare and evaluate their cases.” (Internal citations omitted.) As the *Biehler* court further noted:

The purposes of litigation are best served when each party knows as much about the controversy as is reasonably practicable; pretrial discovery procedures are intended to enhance the truth seeking process and good faith compliance with such procedures is both desirable and necessary.”

(Id.) (internal citations omitted.)

The issues and claims that are currently expected to be raised at hearing in this case are complex. In order to prepare its defense against Johns Manville’s claims, IDOT will need to review and evaluate thousands of pages of documents, likely hundreds of pages of deposition testimony and, due to recent events, will also need to prepare several IDOT witnesses to potentially testify at hearing. Given the ongoing and all-encompassing nature of current pre-hearing litigation demands in this case, IDOT has been unable to resume its preparations for hearing. Nor, given the likely scope of oral discovery in this matter, is it likely to be able to resume its trial preparations until some point in the first half of May, at the earliest. In light of these current circumstances, IDOT believes that in the interests of justice, and in order that it may adequately prepare and evaluate its case for hearing, it is appropriate for the Board to

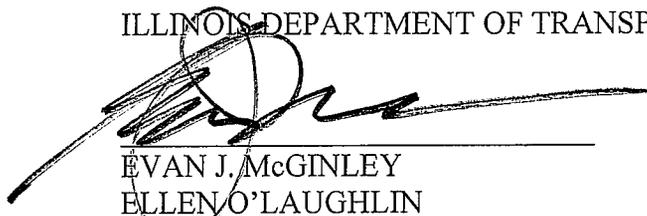
reschedule this case for new dates, at least six weeks out from the present May 10 through 12, 2016 hearing dates.<sup>1</sup>

WHEREFORE, Respondent, IDOT, respectfully requests that the hearing officer issue an order:

- 1) Rescheduling the currently-scheduled May 10, 2016 start date for this hearing to a new start date at least six weeks out from May 10<sup>th</sup>; and,
- 2) Granting such other relief as the hearing officer deems to be appropriate and just.

Respectfully Submitted,

ILLINOIS DEPARTMENT OF TRANSPORTATION



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<sup>1</sup> IDOT's request to reschedule this matter at least six weeks out from the current May 10<sup>th</sup> start date does not take into account Johns Manville's possible responses to its recently-filed Answer and Affirmative Defenses to Johns Manville's Second Amended Complaint. Thus, were Johns Manville to file any sort of motion to strike those affirmative defenses, it is quite likely that the hearing dates for this matter would have to be set out even further.

CERTIFICATE OF SERVICE

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

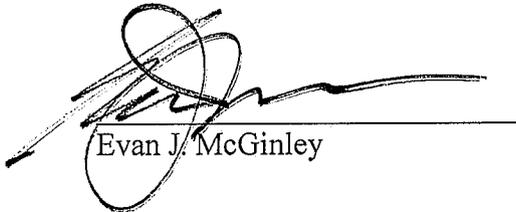
I, EVAN J. MCGINLEY, do hereby certify that, today, April 14, 2016, I caused to be served on the individuals listed below, by electronic mail, a true and correct copy of IDOT's

Motion to Reschedule Hearing on each of the parties listed below:

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