

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING AND SERVICE

To: ALL PERSONS ON THE ATTACHED CERTIFICATE OF SERVICE

Please take note that today, May 10, 2016, Respondent, Illinois Department of Transportation, filed and served IDOT'S RESPONSE TO COMPLAINANT'S MOTION FOR LEAVE TO FILE A REPLY IN SUPPORT OF ITS PARTIAL MOTION TO STRIKE RESPONDENT'S AFFIRMATIVE DEFENSES with the Clerk of the Pollution Control Board, a copy of which is hereby served upon you.

Respectfully Submitted,

By:



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CERTIFICATE OF SERVICE

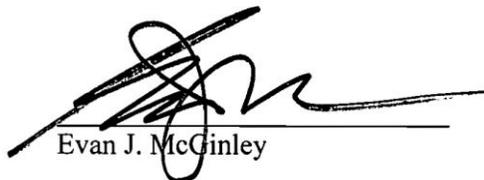
Johns Manville v. Illinois Department of Transportation, PCB 14-3 (Citizens)

I, EVAN MCGINLEY, do hereby certify that, today, May 10, 2016, I caused to be served on the individuals listed below, by electronic mail, a true and correct copy, of IDOT's Response to Complainant's Motion for Leave to File a Reply in Support of Its Partial Motion to Strike Respondent's Affirmative Defenses on each parties listed below:

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Evan J. McGinley

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**IDOT'S RESPONSE TO COMPLAINANT'S MOTION FOR LEAVE TO FILE A REPLY
IN SUPPORT OF ITS PARTIAL MOTION TO STRIKE RESPONDENT'S
AFFIRMATIVE DEFENSES**

RESPONDENT, the Illinois Department of Transportation ("IDOT"), hereby files its Response to Complainant's Motion for Leave to File a Reply in Support of Its Partial Motion to Strike Respondent's Affirmative Defenses and states as follows:

IDOT objects to Complainant's request for leave to file a Reply in support of its Partial Motion to Strike Affirmative Defenses and requests that leave be denied because Complainant's Reply does not provide any new facts or information nor is it necessary to correct the record. Johns Manville ("JM") merely reiterates arguments that it has already made in its Partial Motion to Strike Affirmative Defenses and attempts to skew the record.

Complainant argues that it is prejudiced by discovery orders issued by the Hearing Office but fails to identify or describe a single discovery request that it was prevented from propounding. JM did not issue nor seek to issue any discovery regarding IDOT's Affirmative Defenses, including the Sixth, Seventh and Eighth affirmative defenses. This has been a highly contested matter and the parties have filed motions regarding numerous matters. In fact, JM did issue more discovery than it had represented and zealously argued its right to do so. It also had

filed a Motion to Compel, which was denied. But here, JM attempts to use its non-action as a sword. Clearly, if JM had wanted some document or information from IDOT, it would not have waited or been reluctant to seek information or facts from IDOT.

JM also fails to show how it is prejudiced or prevented from making its case at hearing or in post-hearing briefs. JM is not restricted or limited in the arguments or evidence it may choose to present. For example, the facts pertaining to this matter do not change whether it is an alleged violation of the version of the Act in 1970 or an alleged violation of the version of the Act in 2016. When viewed under the proper iteration of the Act, and assuming the allegations of the Second Amended Complaint to be true, IDOT's actions could not be a violation of the Act. Moreover, IDOT identified the version of the Act in 1970 on its Amended Exhibit list, No. 12, which was filed with the Board on March 2, 2016, and JM has had ample notice of this IDOT defense.

By falsely claiming prejudice, JM seeks to mask its true goal of trying to prevent IDOT from making obvious (and good) arguments that the version of the Act in place at the time of the alleged activity would control (Seventh affirmative defense) as well as proving the Fifth and Sixth affirmative defenses regarding necessary parties to this action.

JM appears to acknowledge that it does have the opportunity to present its case when alternatively, JM asks the Board to issue an order providing that JM's Second Amended Complaint be viewed as conforming to the evidence to be presented and incorporating allegations that in the alternative IDOT violated the prior versions of the Act and Board regulations. IDOT believes handling the matter in this fashion would result in a fair and equitable resolution.

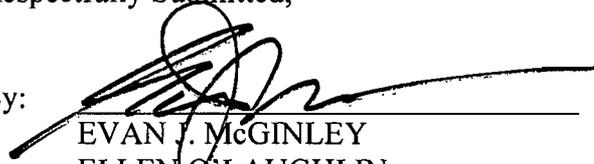
The affirmative matter pled by IDOT is proper and contrary to JM's arguments, there is

no prejudice while the prejudice to IDOT would be tremendous if it were not allowed to prove its Fifth, Sixth and Seventh affirmative defenses.

Finally, because JM makes no new arguments in its Reply in Support of Its Partial Motion to Strike Respondent's Affirmative Defenses, leave to file the Reply should be denied.

Respectfully Submitted,

By:



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