

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 THE ATTACHED CERTIFICATE OF SERVICE

Please take note that today, March 21, 2016, I filed Respondent, Illinois Department of Transportation's "Motion for a Protective Order," a copy of which are hereby served upon you.

Respectfully Submitted,

By:



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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JOHNS MANVILLE, a Delaware corporation,)	
Complainant,)	
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v.)	PCB No. 14-3
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ILLINOIS DEPARTMENT OF)	
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RESPONDENT'S MOTION FOR PROTECTIVE ORDER

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 101.616(b), 35 Ill. Adm. Code 101.616(b), and Illinois Supreme Court Rule 201(c)(1), for a protective order with respect to written discovery which Johns Manville propounded to IDOT on March 16, 2016.

STATEMENT OF FACTS

On March 3, 2016, the Board entered an order accepting Johns Manville's ("JM") proposed Second Amended Complaint for filing ("March 3rd Order"). (March 3rd Order, at 1.) The Board's March 3rd Order gave IDOT until April 12, 2016, in which to file an answer to the Second Amended Complaint and also directed the hearing officer to "set discovery deadlines and a new hearing date consistent with this order." (Id.)

On March 7, 2016, the hearing officer held a brief status hearing with the parties' respective counsel, at which time the parties were directed to file proposed discovery schedules with the Board on or before March 10, 2016 ("Discovery Schedules"). The hearing officer also

set another telephonic status hearing in this matter for March 14, 2016, at which time the parties would discuss a new hearing date for this matter, as well as discovery matters.

On March 10, 2016, both parties filed their respective Discovery Schedules. JM's Discovery Schedule stated that it "requested leave to propound five additional interrogatories upon IDOT to address these limited issues, which were not contemplated when the parties originally engaged in written and oral discovery." (JM Discovery Schedule, at 1.) (Emphasis added.) (A copy of JM's Discovery Schedule is attached hereto as Exhibit A.) **JM's Discovery Schedule made no reference to its intention to pursue taking any other additional written discovery.**

On March 14, 2016, the hearing officer conducted the most recent telephonic status hearing in this matter ("March 14th Hearing"). Both parties' respective counsel participated in the March 14th Hearing. During the March 14th Hearing, a new hearing date was discussed. The parties also discussed an expedited discovery schedule for the limited discovery to be taken in light of the Board's March 3rd Order. It was agreed at the March 14th Hearing that both parties would propound their discovery by March 16th and that all responses would be served on or before March 29th. During the March 14th Hearing, JM's counsel did not give any indication that the written discovery that it expected to propound would go beyond the written discovery that it had discussed in JM's Discovery Schedule.

On March 16, 2016, JM propounded six interrogatories, each of which contained multiple subparts, 21 document production requests and 12 requests for admission of fact on IDOT. (True and correct copies of each of these three written discovery requests are attached hereto as Exhibits B, C, and D, respectively.) Some of JM's new discovery was repetitive of its prior,

written discovery requests Had JM indicated it would issue such extensive discovery requests, IDOT would not have agreed to such an expedited schedule.

On March 18, 2016, IDOT's counsel emailed a Rule 201(k) letter to JM's counsel, taking issue with the nature and extent of the discovery that JM had propounded to IDOT and asserting that JM's discovery was not in keeping with the understandings and representations that had previously been made by JM's counsel in both its Discovery Schedule, as well as during the March 14th Hearing ("201(k) Letter") (A copy of IDOT's 201(k) Letter is attached hereto as Exhibit E). IDOT's 201(k) Letter requested that JM revise its written discovery requests to conform to the scope of JM's prior representations about the discovery that it had indicated that it would take. IDOT's 201(k) Letter also demanded that JM withdraw all of its requests for admission, as JM had never given any indication that it would seek such discovery.

On March 21, 2016, JM's counsel responded by email to IDOT's 201(k) Letter and stated that it would not reduce the number of written discovery requests that it had propounded to IDOT, nor would it withdraw its requests for admission. (A copy of JM's counsel's March 21st email is attached hereto as Exhibit F.)

ARGUMENT

A. LEGAL STANDARD APPLICABLE TO MOTIONS FOR PROTECTIVE ORDERS

Unlike the Illinois Supreme Court's rules, the Board's rules do not specifically provide for the granting of protective orders. However, the Board's rules governing discovery (e.g., Section 101.616) provide, in relevant part, that:

If the parties cannot agree on the scope of discovery or the time or location of any deposition, the hearing officer has the authority to order discovery or to deny requests for discovery.
(35 Ill. Adm. Code 101.616(b).)

The Board's rules governing discovery also provide that:

For purposes of discovery, the Board may look to the Code of Civil Procedure and the Supreme Court Rules for guidance where the Board's procedural rules are silent (see Section 101.100(b)).

Illinois Supreme Court Rule 201(c)(1) provides as follows:

(1) *Protective Orders.* The court may at any time on its own initiative, or on motion of any party or witness, make a protective order **as justice requires**, denying, limiting, conditioning or regulating discovery to prevent unreasonable annoyance, expense, embarrassment, **disadvantage, or oppression.**"
(Emphasis added.)

B. A PROTECTIVE ORDER IS REQUIRED BECAUSE JM IS ENGAGING IN GAMESMANSHIP WITH ITS WRITTEN DISCOVERY

As Illinois courts have noted, "the goal of the discovery process in Illinois is full disclosure" of information between litigations. *Am. Services Ins. Co., v. Olszewski*, 324 Ill.App.3d 743, 745 (1st Dist. 2001). A corollary to this goal is that the discovery process that has been enacted by the Illinois Supreme Court, and which is enshrined in its rules governing discovery, is that the process is designed to discourage parties from engaging in tactics that would surprise their opponents. *Gee v. Treece*, 365 Ill.App.3d 1029, 1038 (5th Dist. 2006). The Court's discovery rules are also intended to discourage "tactical gamesmanship." *Boland v. Kawasaki Motors, Mfg. Corp., USA*, 309 Ill.App.3d 645, 651 (4th Dist. 2000). The New Shorter Oxford American Dictionary defines "gamesmanship" as the use of "unsportsmanlike tactics."

JM's recently propounded written discovery is contrary to the spirit and policy underlying the Supreme Court's discovery rules. While the Board's March 3rd Order reopened discovery in this case relative to the new claims in JM's Second Amended Complaint, the Board intended that the parties only conduct limited discovery. JM certainly recognized in its Discovery Schedule that the written discovery to be taken by the parties would be limited in scope. During March 14th telephonic status hearing, JM's attorneys never once indicated that

their client would seek to take more extensive written discovery in this case, beyond the five interrogatories they sought leave to propound in its Discovery Schedule.

IDOT's counsel relied upon the representations put forth by JM's counsel during these status hearings and in JM's Discovery Schedule concerning the scope of its written discovery. It was with these representations in mind that IDOT's counsel was able to commit to respond to JM's written discovery by March 29, 2016. But the significantly more extensive written discovery propounded by JM - most especially the 12 requests for admissions of fact - goes far beyond the scope of written discovery that JM represented it would seek. JM had several opportunities to advise both the hearing officer, as well as IDOT, that it intended to seek more extensive written discovery. It failed to take advantage of these opportunities to provide any sort of advance notice to IDOT regarding the full extent of discovery that it would be seeking. As such, its tactics directly contravene the practice and spirit which discovery is to be conducted.

JM's new written discovery also goes beyond simply seeking information pertaining to its new claims. Several of its requests seek to discover on topics which were the subject of prior discovery requests. (*See e.g.*, Interrogatories Nos. 3 and 6; *See also*, Requests for Production Nos. 8, 10 and 13), matters for which discovery has already long since been closed. JM seems to think that simply by throwing the term "right of way" into a discovery request that it then allows it to inquire into a host of other issues for which discovery has long since closed. Finally, regarding JM's Requests for Admission, had it wished to serve such written discovery, it had ample time to do so while written discovery was still being taken and not at this point in the litigation.

JM's recent actions regarding the additional discovery to be taken at this time fall squarely within the definition of gamesmanship. It was patently unfair of JM to announce that it

was only seeking leave to propound five interrogatories, to never announce that it actually intended to propound substantially more than just five interrogatories, and then engage in discussions during the March 14th Hearing concerning deadlines for this new discovery. JM's actions are tantamount to "bait and switch" tactics and should not be sanctioned by the Board.

Given JM's tactics, it is also patently unreasonable to keep the current March 29th deadline for responding to written discovery, particularly as that deadline pertains to responding to JM's requests for admissions of fact. Through their substantial expansion in the scope of discovery to be taken, JM makes it impossible for IDOT to be able to fully respond to JM's discovery by the deadline, thereby potentially prejudicing IDOT's ability to defend itself at hearing in this matter. Moreover, as JM never gave any indication that it was going to be propounding requests for admission on IDOT, it is IDOT's position that there was never any understanding between the parties that the agreed-upon March 29th deadline for responding to written discovery also applied to JM's requests for admission of fact.¹

As indicated in its March 18th 201(k) Letter, IDOT is prepared to respond to more than simply the five interrogatories that JM initially indicated that it would be propounding. But as JM has rejected IDOT's offer to respond to a reduced number of written discovery requests (but not to requests for admission), it is now critical for IDOT to obtain a protective order from the Board that prevents JM's abusive discovery tactics. This is particularly true as to the issue of JM's requests for admission, for if the hearing officer believes that it is appropriate for IDOT to answer these discovery requests, fairness dictates that JM be given a full 28 days to be able to respond to these requests, as well as to the balance of JM's written discovery.

¹ It should also be noted that JM's requests for admission are internally inconsistent about the amount of time that IDOT has to respond to them; on the one hand, JM's requests include the Illinois Supreme Court-mandated warning that a party must respond to such requests within 28 days of being served with them, while in the very next paragraph, stating that IDOT only has until March 29th to respond.

WHEREFORE, Respondent, IDOT, respectfully requests that the hearing officer issue a protective order in favor of IDOT that:

1(a): Bars JM from propounding more than five (5) interrogatories, including subparts, and an appropriate number of requests for production of documents on IDOT, while also barring JM from propounding any requests for admission, and still holding to the current March 29, 2016 response deadline; or, alternatively,

1(b): Should the hearing officer deem all of JM's written discovery to be appropriate, to extend the deadline for answering this discovery from March 29, 2016, to April 12, 2016;

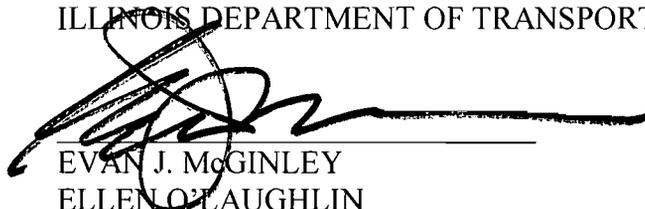
2. Reschedule the deadline for completing oral discovery, which is currently schedule to conclude on April 21, 2016, to May 6, 2016;

3. Reschedule the hearing dates, which are currently set for May 10, 11, and 12, 2016, to an appropriate future date, so as to allow for the completion of written and oral discovery; and,

4. Granting such other relief as the hearing officer deems to be appropriate and just.

Respectfully Submitted,

ILLINOIS DEPARTMENT OF TRANSPORTATION



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COMPLAINANT’S PROPOSED DISCOVERY SCHEDULE

Complainant JOHNS MANVILLE (“JM”) hereby submits, pursuant to the Hearing Officer’s March 7, 2016 Order, its Proposed Discovery Schedule as follows:

1. JM believes that all discovery proceedings, both written and oral, on the new, limited issues raised in JM’s Second Amended Complaint can be completed by **April 21, 2016**. JM anticipates propounding limited, expedited written discovery, addressing IDOT’s ownership, interest in and/or control over portions of Sites 3 and 6, including a right of way on the southern side of Greenwood Avenue (the “Right of Way”), the exact location of the Right of Way, and IDOT’s knowledge of its interest in the Right of Way. JM hereby requests leave to propound five additional interrogatories upon IDOT to address these limited issues, which were not contemplated when the parties’ originally engaged in written and oral discovery. JM can propound this discovery by **March 15, 2016** and believes IDOT should be able to respond by **March 29, 2016**. JM also anticipates taking the depositions of a Rule 206(a)(1) corporate representative of IDOT and, to the extent they are not the designated corporate representative, Keith W. Stoddard and Steven G. Warren, who were disclosed on IDOT’s witness list as IDOT



fact witnesses to address these same issues. JM believes it could conclude this oral discovery by **April 21, 2016** and proceed to hearing the first or second week of May.

2. Expert discovery is neither needed nor appropriate on the issues raised in JM's Second Amended Complaint. First, whether IDOT holds or has held an ownership interest in, a possessory interest in and/or exercised control over the Right of Way is an issue of fact, not opinion, which does not require scientific, technical, or other specialized knowledge to assist the trier of fact. The key factual issues are whether IDOT conveyed or officially abandoned its interest in the Right of Way after 1984 and what actions IDOT has taken with respect to the Right of Way since that time.

3. The second set of issues raised by the Second Amended Complaint is whether IDOT held or exercised sufficient ownership/possessory interest/control over the areas in the Right of Way to be liable under Section 21(d) of the Illinois Environmental Protection Act, 415 ILCS 5/21(d), a legal issue plainly within the Board's purview and expertise. IDOT should not be permitted to extend what is meant to be limited discovery in this case by disclosing a new expert witness to further delay these proceedings. While JM named V. Gina Gianelli, VP Illinois State Counsel for Chicago Title Insurance Company as a potential *fact* witness, Ms. Gianelli's anticipated testimony was limited to the genuineness/admissibility of a title search commissioned by JM, only if a stipulation between JM and IDOT could not be reached regarding the same. Should the Hearing Officer permit IDOT to disclose an additional expert witness at this late juncture, JM will also need to retain and disclose an expert witness.

WHEREFORE, Complainant JOHNS MANVILLE respectfully requests that the Hearing Officer Board enter an Order adopting proposed discovery dates as set forth above.

March 10, 2016

Respectfully submitted,

BRYAN CAVE LLP

Attorneys for Complainant Johns Manville

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CERTIFICATE OF SERVICE

I, the undersigned, certify that on March 10, 2016, I caused to be served a true and correct copy of *Complainant's Proposed Discovery Schedule* upon all parties listed on the Service List by sending the documents via e-mail to all persons listed on the Service List, addressed to each person's e-mail address.

 /s/ Lauren J. Caisman
Lauren J. Caisman

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COMPLAINANT’S THIRD SET OF INTERROGATORIES TO RESPONDENT

Complainant JOHNS MANVILLE (“JM”), by its attorneys, Bryan Cave LLP, hereby requests that the Illinois Department of Transportation (“IDOT”) respond to the following Interrogatories by March 29, 2016, pursuant to the Hearing Officer’s March 14, 2016 Order. These requests shall be deemed continuing so as to require supplemental responses if any further information is obtained any time after the initial responses are served.

INSTRUCTIONS AND DEFINITIONS

Each request is required to be answered on the basis of your entire knowledge, including all information in the possession of you, your agent(s), representative(s) and attorney(s). If any of the following requests cannot be responded to in full, respond to the extent possible, specifying the reason of or your inability to respond to the remainder, stating whatever information or knowledge you have concerning the unanswered portion, and identifying each person whom you believe has information regarding the subject of the request. If any response is qualified in any particular way, set forth the details of such qualification.



If you contend that any information or document responsive to a request is privileged, in whole or in part, or you otherwise object to any part of any request, or contend that any identified document would be excludable from production in discovery regardless of its relevance, state the reasons for each objection or ground for exclusion, and identify each person having knowledge of the factual basis, if any, on which the privilege or other ground is asserted. If the claim or privilege is asserted as to any document or communication, identify the document or communication in sufficient detail to indicate its general nature, the date of and the persons who are party to said document or communication.

The following definitions are applicable throughout the requests that follow:

A. "Complainant" or "JM" shall mean Johns Manville and all representatives, employees, agents, attorneys or other persons or entities acting for or on behalf of it.

B. "You" or "your" shall refer to the Illinois Department of Transportation ("IDOT") and all predecessor entities of IDOT as well as all divisions, representatives, employees, agents, attorneys, or other persons acting for or on behalf of IDOT or a predecessor entity.

C. "Document" means all written, printed, typed, punched, taped, filed or graphic matter, however produced or reproduced, of every kind and description, in any form or storage medium including but not limited to electronic data or storage, now or formerly in your actual or constructive possession, custody, trust, care or control including but not limited to any correspondence (including letters, emails and attachments, facsimiles and any other electronic or wire transmissions, cables, telegrams, TWX's, and telexes); memoranda and notices, memoranda of conversations, conferences or telephone conversations; reports; data compilations or analyses; logs and records; photographs; books; papers; manuals; handbooks; bulletins; advisories;

messages; magazines; periodicals; film strips or movies; press releases; newspaper clippings; pamphlets; studies; notations; working papers; charts; graphs; plans; drawings; diagrams; computer printouts; computer disks; computer hard drive material; electronic recordings; indexes; minutes; transcripts; contracts; agreements; leases; legal pleadings; invoices; billings; statements; accounting books or records; financial data of any kind; journals; ledgers; diaries; tax returns; bylaws; rules; regulations; constitutions; annual reports, programs; certifications; and resolutions.

D. "Communication" means any oral or written utterance or statement of any nature whatsoever, including, but not limited to, letters, facsimiles, emails, conversations, discussions and agreements between or among two or more persons, and any notations, memoranda or other documents memorializing all or part of any of the foregoing.

E. "Person" shall mean any natural person, firm, partnership, association, joint venture, corporation, governmental agency or other organization, or legal or business entity, including, without limitation, any party to this action.

F. "Relating to" means in any way comprising, describing, reflecting, embodying, contained in, referring to, connected with or pertaining or relating to, in whole or in part.

G. "Identify," "identity" or "identification," when used with reference to a document, means to set forth, with respect to the original and each copy thereof, the following:

(a) Information sufficient to identify the document, such as its date, the name and addressee or addressees, the name of the signer or signers, the title or heading of the document and its approximate number of pages. Form documents may be identified by title of the form, a description of the method or preparation and disposition of all copies;

(b) The identity and address or addresses of the person or persons to whom copies were sent;

(c) The present or last known location of the possessor of the original document (or, if that is unavailable, the most legible copy);

(d) If any document was, but is no longer, in your possession, custody or control, state what disposition was made of it and the reason for such disposition; or

(e) In lieu of specifically identifying documents as requested in paragraphs (a)-(d), documents may be generally described (with enough particularity to identify which documents are responsive to the document request) and produced for inspection and copying. Provided, however, that all documents not produced must be identified and if there are no documents responsive to a particular interrogatory, that must be indicated in the answer to the interrogatory. Provided further, if any document is withheld or not identified under a claim or privilege, you must (a) identify each such document with sufficient particularity as to author(s), address(es), or recipient(s) and contents to allow the matter to be brought before the court; (b) state the nature of the privilege(s) asserted; and (c) state in detail the factual basis for the claim or privilege.

H. "Identify," "identity" or "identification," when used with reference to a person who is an individual, means to state his or her full name, social security number and present (or last known) address, his or her present or last known employer, and the address of each employer or last known address, and the present or last position held; when used with reference to a person other than an individual person, "identify," "identity" or "identification" means to state its full name, its principal business address, the nature of the organization, if known, and the identify of its owner(s), operator(s), officer(s), partner(s) or other managing personnel.

I. "Identify," "identity" or "describe," when used with respect to an (including an alleged) offense, occurrence, instance, contract, transaction, decision, statement, communication or conduct (hereinafter collectively called "act"), or relationship, operation or activity, means to describe in substance the event or events constituting such act, or what transpired, the place, the date; and to identify all persons involved, present or having knowledge thereof, stating the subject matter of their knowledge and the manner in which such knowledge was acquired and to identify the documents referring or relating thereto.

J. Whenever you are requested to identify an agreement or communication, and such agreement or communication was oral, state the substance and date thereof, the identity of the

persons between whom it was made, the identity of each person present when it was made, and identify each document in which each such agreement was recorded or described or identify the location of such communication.

K. The Administrative Order on Consent (hereafter "AOC") shall refer to a June 2007 Administrative Order on Consent for the "Southwestern Site Area," which was entered into between, among others, United States Environmental Protection Agency ("USEPA") and Johns Manville and referenced in paragraph 10 of the Complaint in this action.

L. "Site 3" shall refer to the area known as Site 3 as defined in the AOC and located south of the Greenwood Avenue right-of-way and east of North Pershing Road in Waukegan, Illinois, including the land and subsurface that is part of this area.

M. "Site 6" shall refer to the area known as Site 6 as defined in the AOC and located on both sides of Greenwood Avenue in Waukegan, Illinois, including the land and subsurface that is part of this area.

N. The "104(e) Request" refers to the Request for Information under Section 104(c) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") sent by USEPA to IDOT on September 29, 2000.

O. The "Amstutz Project" shall refer to the construction project located in Lake County, Illinois that involved portions of Site 3 and Site 6 and has been identified previously as F.A. Route 42, Section 8-HB and 8-VB and includes any and all Bypasses, including Bypasses A, B and C.

P. "Site 3 Work" shall mean work done in order to build an embankment for Greenwood Avenue; work done to construct, maintain and/or remove Bypasses A and B and/or

any work done on Site 3 as part of the Amstutz Project, or to restore the surface or subsurface of Site 3 after removing Bypasses A and B.

Q. "Site 6 Work" shall mean work done in order to build an embankment for Greenwood Avenue; work done to construct, maintain and/or remove Bypasses A and B and/or any work done on Site 6 as part of the Amstutz Project, or to restore the surface or subsurface of Site 6 after removing Bypasses A and B.

R. "Right of Way" shall mean the IDOT right of way within the southeast quadrant of the intersection of Greenwood Avenue and Sand Street in Waukegan, Illinois, designated as Parcel No. 0393, as described at IDOT 002800.

S. "Environmental Liability" shall mean liability under CERCLA, RCRA, the Clean Water Act, the Clean Air Act, the Illinois Environmental Protection Act, the regulations adopted under each aforementioned statutes and tort law. As to tort law, the term only relates to tort law associated with the presence of contamination or the disposal of contamination.

T. "Contamination" shall mean any asbestos containing material, any Hazardous Substance under CERCLA, any Hazardous Waste or Solid Waste under RCRA, any pollutant under the Clean Water Act, any Waste under the Illinois Environmental Protection Act or applicable regulations, any pollutant under the Clean Air Act.

INTERROGATORIES

1. Describe what, if any, interests or rights, You currently possess or hold with respect to the Right of Way. If none, describe how and to whom You transferred, conveyed, abandoned, vacated, or divested Your interests or rights previously held with respect to the Right of Way.

2. Describe any and all steps taken by You or anyone doing work for You (including, but not limited to, Steven Gobelman, Keith Stoddard and/or any third party consultant, contractor, or agent) to determine whether and to what extent You were holding or held an interest in or rights with respect to the Right of Way, including the outcome of each step taken, since You received the 104(e) Request from USEPA on or about September 29, 2000.

3. Describe any and all instances in which You have performed or overseen any work (directly or under contract or other arrangement with any third party) including, but not limited to, upkeep, surveys, soil borings, maintenance and/or site inspections, at the property on which the Right of Way exists since January 1, 1965.

4. Describe IDOT's understanding of the meaning of the phrases "for highway purposes only" and "for highway purposes" as set forth in IDOT 002799, IDOT 002808, and IDOT 002816 and the nature and scope of the interest in real property that is conveyed by the use of the phrase.

5. Identify in the last 7 years occurrences in which You have performed remedial or removal actions relating to Contamination within, on, under, or above right of ways in which IDOT or its predecessor currently holds an interest and/or held an interest in the past.

6. Identify the "project" which "involve[d] acquisition of additional ROW or easement, and subsurface utility relocation or linear excavation" referred to in IDOT 003303, including, but not limited to, identifying the right of way that had previously been acquired that the document is referring to; the "additional" right of way to be acquired that the document is referring to; each task contemplated or performed regarding the project; how and to what extent the project was contemplated to involve the Right of Way, Site 3, Site 6, and/or other areas at the intersection of Greenwood and Sand Street.

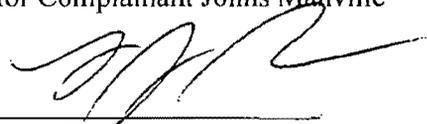
March 16, 2016

Respectfully submitted,

BRYAN CAVE LLP

Attorneys for Complainant Johns Manville

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CERTIFICATE OF SERVICE

I, the undersigned, certify that on March 16, 2016, I caused to be served a true and correct copy of *Complainant's Third Set of Interrogatories to Respondent* upon all parties listed on the Service List by sending the documents via e-mail to all persons listed on the Service List, addressed to each person's e-mail address. Paper hardcopies of this filing will be made available upon request.



Lauren J. Caisman

SERVICE LIST

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Respondent.)	

COMPLAINANT'S SECOND SET OF DOCUMENT REQUESTS TO RESPONDENT

Complainant JOHNS MANVILLE ("JM"), by its attorneys, Bryan Cave LLP, hereby requests that the Illinois Department of Transportation ("IDOT") respond to the following Document Requests by March 29, 2016, pursuant to the Hearing Officer's March 14, 2016 Order. These requests shall be deemed continuing so as to require supplemental responses if any further information is obtained any time after the initial responses are served.

INSTRUCTIONS AND DEFINITIONS

Each request is required to be answered on the basis of your entire knowledge, including all information in the possession of you, your agent(s), representative(s) and attorney(s). If any of the following requests cannot be responded to in full, respond to the extent possible, specifying the reason of or your inability to respond to the remainder, stating whatever information or knowledge you have concerning the unanswered portion, and identifying each person whom you believe has information regarding the subject of the request. If any response is qualified in any particular way, set forth the details of such qualification.



If you contend that any information or document responsive to a request is privileged, in whole or in part, or you otherwise object to any part of any request, or contend that any identified document would be excludable from production in discovery regardless of its relevance, state the reasons for each objection or ground for exclusion, and identify each person having knowledge of the factual basis, if any, on which the privilege or other ground is asserted. If the claim or privilege is asserted as to any document or communication, identify the document or communication in sufficient detail to indicate its general nature, the date of and the persons who are party to said document or communication.

The following definitions are applicable throughout the requests that follow:

A. "Complainant" or "JM" shall mean Johns Manville and all representatives, employees, agents, attorneys or other persons or entities acting for or on behalf of it.

B. "You" or "your" shall refer to the Illinois Department of Transportation ("IDOT") and all predecessor entities of IDOT as well as all divisions, representatives, employees, agents, attorneys, or other persons acting for or on behalf of IDOT or a predecessor entity.

C. "Document" means all written, printed, typed, punched, taped, filed or graphic matter, however produced or reproduced, of every kind and description, in any form or storage medium including but not limited to electronic data or storage, now or formerly in your actual or constructive possession, custody, trust, care or control including but not limited to any correspondence (including letters, emails and attachments, facsimiles and any other electronic or wire transmissions, cables, telegrams, TWX's, and telexes); memoranda and notices, memoranda of conversations, conferences or telephone conversations; reports; data compilations or analyses; logs and records; photographs; books; papers; manuals; handbooks; bulletins; advisories;

messages; magazines; periodicals; film strips or movies; press releases; newspaper clippings; pamphlets; studies; notations; working papers; charts; graphs; plans; drawings; diagrams; computer printouts; computer disks; computer hard drive material; electronic recordings; indexes; minutes; transcripts; contracts; agreements; leases; legal pleadings; invoices; billings; statements; accounting books or records; financial data of any kind; journals; ledgers; diaries; tax returns; bylaws; rules; regulations; constitutions; annual reports, programs; certifications; and resolutions.

D. "Communication" means any oral or written utterance or statement of any nature whatsoever, including, but not limited to, letters, facsimiles, emails, conversations, discussions and agreements between or among two or more persons, and any notations, memoranda or other documents memorializing all or part of any of the foregoing.

E. "Person" shall mean any natural person, firm, partnership, association, joint venture, corporation, governmental agency or other organization, or legal or business entity, including, without limitation, any party to this action.

F. "Relating to" means in any way comprising, describing, reflecting, embodying, contained in, referring to, connected with or pertaining or relating to, in whole or in part.

G. "Identify," "identity" or "identification," when used with reference to a document, means to set forth, with respect to the original and each copy thereof, the following:

(a) Information sufficient to identify the document, such as its date, the name and addressee or addressees, the name of the signer or signers, the title or heading of the document and its approximate number of pages. Form documents may be identified by title of the form, a description of the method or preparation and disposition of all copies;

(b) The identity and address or addresses of the person or persons to whom copies were sent;

(c) The present or last known location of the possessor of the original document (or, if that is unavailable, the most legible copy);

(d) If any document was, but is no longer, in your possession, custody or control, state what disposition was made of it and the reason for such disposition; or

(e) In lieu of specifically identifying documents as requested in paragraphs (a)-(d), documents may be generally described (with enough particularity to identify which documents are responsive to the document request) and produced for inspection and copying. Provided, however, that all documents not produced must be identified and if there are no documents responsive to a particular interrogatory, that must be indicated in the answer to the interrogatory. Provided further, if any document is withheld or not identified under a claim or privilege, you must (a) identify each such document with sufficient particularity as to author(s), address(es), or recipient(s) and contents to allow the matter to be brought before the court; (b) state the nature of the privilege(s) asserted; and (c) state in detail the factual basis for the claim or privilege.

H. "Identify," "identity" or "identification," when used with reference to a person who is an individual, means to state his or her full name, social security number and present (or last known) address, his or her present or last known employer, and the address of each employer or last known address, and the present or last position held; when used with reference to a person other than an individual person, "identify," "identity" or "identification" means to state its full name, its principal business address, the nature of the organization, if known, and the identify of its owner(s), operator(s), officer(s), partner(s) or other managing personnel.

I. "Identify," "identity" or "describe," when used with respect to an (including an alleged) offense, occurrence, contract, transaction, decision, statement, communication or conduct (hereinafter collectively call "act"), or relationship, operation or activity, means to describe in substance the event or events constituting such act, or what transpired, the place, the date; and to identify all persons involved, present or having knowledge thereof, stating the subject matter of their knowledge and the manner in which such knowledge was acquired and to identify the documents referring or relating thereto.

J. Whenever you are requested to identify an agreement or communication, and such agreement or communication was oral, state the substance and date thereof, the identity of the

persons between whom it was made, the identity of each person present when it was made, and identify each document in which each such agreement was recorded or described or identify the location of such communication.

K. The Administrative Order on Consent (hereafter "AOC") shall refer to a June 11, 2007 Administrative Order on Consent for the "Southwestern Site Area," which was entered into between, among others, USEPA and Johns Manville and referenced in paragraph 10 to the Complaint in this action.

L. "Site 3" shall refer to the area known as Site 3 as defined in the AOC and located south of the Greenwood Avenue right-of-way and east of North Pershing Road in Waukegan, Illinois, including the land and subsurface that is part of this area.

M. "Site 6" shall refer to the area known as Site 6 as defined in the AOC and located on both sides of Greenwood Avenue in Waukegan, Illinois, including the land and subsurface that is part of this area.

N. The "104(e) Request" refers to the Request for Information under Section 104(e) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") sent by USEPA to IDOT on September 29, 2000.

O. The "Amstutz Project" shall refer to the construction project located in Lake County, Illinois that involved portions of Site 3, Site 6 and Site 4/5 and has been identified previously as F.A. Route 42, Section 8-HB and 8-VB and includes any and all Bypasses, including Bypasses A, B and C.

P. "Site 3 Work" shall mean work done in order to build an embankment for Greenwood Avenue; work done to construct, maintain and/or remove Bypasses A and B and/or

any work done on Site 3 as part of the Amstutz Project, or to restore the surface or subsurface of Site 3 after removing Bypasses A and B.

Q. "Site 6 Work" shall mean work done in order to build an embankment for Greenwood Avenue; work done to construct, maintain and/or remove Bypasses A and B and/or any work done on Site 6 as part of the Amstutz Project, or to restore the surface or subsurface of Site 6 after removing Bypasses A and B.

R. "Right of Way" shall mean the IDOT right of way within the southeast quadrant of the intersection of Greenwood Avenue and Sand Street in Waukegan, Illinois, designated as Parcel No. 0393, as described at IDOT 002800.

S. "Environmental Liability" shall mean liability under CERCLA, RCRA, the Clean Water Act, the Clean Air Act, the Illinois Environmental Protection Act, the regulations adopted under each aforementioned statutes and tort law. As to tort law, the term only relates to tort law associated with the presence of contamination or the disposal of contamination.

T. "Contamination" shall mean any asbestos containing material, any Hazardous Substance under CERCLA, any Hazardous Waste or Solid Waste under RCRA, any pollutant under the Clean Water Act, any Waste under the Illinois Environmental Protection Act or applicable regulations, any pollutant under the Clean Air Act.

DOCUMENT REQUESTS

1. Any and all documents relating to the Right of Way from January 1, 1965 to present.

2. Any and all documents reviewed or consulted in responding to JM's Third Set of Interrogatories to Respondent, JM's First Set of Request for Admission to Respondent, and/or to these Requests.

3. Any and all Communications relating to the Right of Way from January 1, 1965 to the filing of JM's original Complaint in this cause, including, but not limited to, Communications internal to You and Communications with others (including the City of Waukegan, utilities, and/or Comed).

4. Any and all Communications relating to the Right of Way since the filing of JM's original Complaint in this cause, including, but not limited to, Communications internal to You and Communications with others (including the City of Waukegan, utilities, and/or Comed).

5. Any and all documents relating to efforts by You or others doing work for You since the filing of JM's original Complaint in this cause to determine what, if any, interest You have ever held and/or what, if any, rights You have ever possessed relating to the Right of Way.

6. Any and all documents relating to efforts by You or others doing work for You between the time IDOT received the 104(e) Request from USEPA on or about September 29, 2000 and the filing of JM's original Complaint in this cause to determine what, if any, interest You have ever held and/or what, if any, rights You have ever possessed relating to the Right of Way.

7. Any and all documents involving Steven Gobelman and/or Keith Stoddard and the Right of Way, including but not limited to Communications to or from either of them.

8. Any and all documents relating to any work, construction, design, oversight, maintenance, use (including storage or disposal of materials or equipment), repair, clean up, surveying, soil borings, upkeep and/or inspections done by anyone, including You, regarding or within the Right of Way since January 1, 1965.

9. Any and all memoranda, manuals, policy documents, procedure documents, and/or documents containing an opinion or guidance relating to the scope of the interest, and any associated rights, responsibilities and/or obligations, that are conveyed when IDOT or its

predecessor obtain[ed] a right of way for “highway purposes” or for “highway purposes only” from 1965 to present.

10. Any and all memoranda, manuals, policy documents, procedure documents, and/or documents containing an opinion or guidance relating to the ownership of and/or interest in structures built or improvements made by IDOT or its predecessor involving rights of way obtained by IDOT or its predecessor for “highway purposes” or “for highway purposes only” from 1965 to present.

11. Any and all memoranda, manuals, policy documents, procedure documents, and/or documents containing an opinion or guidance relating to the amount of control IDOT or its predecessor is or was allowed to exercise regarding a right or way obtained by IDOT or its predecessor for “highway purposes” or for “highway purposes only” from 1965 to present.

12. Any and all memoranda, manuals, policy documents, procedure documents and/or documents containing opinions or guidance relating to IDOT or its predecessor’s rights, responsibilities and/or obligations with respect to rights of ways obtained by IDOT or its predecessor, including, but not limited to, those obtained for “highway purposes” or for “highway purposes only.”

13. Any and all memoranda, manuals, policy documents, procedure documents, and/or documents containing an opinion or guidance related to IDOT or its predecessor’s potential Environmental Liability associated with a right of way obtained by IDOT or its predecessor for “highway purposes” or for “highway purposes only.”

14. Any and all memoranda, manuals, policy documents, procedure documents or documents containing opinions or guidance relating to IDOT or its predecessor’s potential Environmental Liability for Contamination it places or placed; abandons or abandoned; treats or

treated; stores or stored and/or otherwise handles or handled within, under or above a right of way in which it holds or held an interest.

15. Any and all documents relating to permits possessed by IDOT or its predecessor relating to the Right of Way.

16. Any and all documents relating to utilities within, on, under, or above the Right of Way.

17. Any and all documents relating to rights of way obtained by IDOT or its predecessor from Johns Manville or others relating to work done on the Amstutz Project along Greenwood Avenue and east of the Chicago Northwestern railroad tracks in Waukegan, Illinois.

18. Any and all documents transferring, conveying, abandoning, vacating, and/or divesting an interest in the Right of Way from January 1, 1965 to present.

19. Any and all documents relating to the "project" identified in IDOT 003303.

20. Any and all maps, plats, drawings, surveys, bids, and/or specifications associated with the Right of Way, including any construction, reconstruction, demolition, maintenance, and/or upkeep of the Right of Way that You have performed, managed, and/or overseen, at any time, including those that delineate the Right of Way after completion of the Amstutz Project.

21. Any and all IDOT policies and/or procedures in effect from January 1, 1965 to present regarding right of ways.

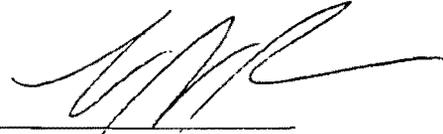
March 16, 2016

Respectfully submitted,

BRYAN CAVE LLP

Attorneys for Complainant Johns Manville

By:



Susan Brice, ARDC No. 6228903
Lauren J. Caisman, ARDC No. 6312465
161 North Clark Street, Suite 4300
Chicago, Illinois 60601
(312) 602-5124
Email: lauren.caisman@bryancave.com

CERTIFICATE OF SERVICE

I, the undersigned, certify that on March 16, 2016, I caused to be served a true and correct copy of *Complainant's Second Set of Document Requests to Respondent* upon all parties listed on the Service List by sending the documents via e-mail to all persons listed on the Service List, addressed to each person's e-mail address. Paper hardcopies of this filing will be made available upon request.



Lauren J. Caisman

SERVICE LIST

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

COMPLAINANT'S FIRST SET OF REQUESTS FOR ADMISSION TO RESPONDENT

WARNING: Failure to respond to the following requests to admit within 28 days may have severe consequences. Failure to respond to the following requests will result in all the facts requested being deemed admitted as true for this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding or an attorney.

Complainant JOHNS MANVILLE ("JM"), by its attorneys, Bryan Cave LLP, hereby requests that the Illinois Department of Transportation ("IDOT") respond to the following Requests for Admission by March 29, 2016, pursuant to the Hearing Officer's March 14, 2016 Order and in accordance with 35 Ill. Adm. Code § 101.618(e). These requests shall be deemed continuing so as to require supplemental responses if any further information is obtained any time after the initial responses are served.

INSTRUCTIONS AND DEFINITIONS

The following definitions are applicable throughout the requests that follow:

A. "Complainant" or "JM" shall mean Johns Manville and all representatives, employees, agents, attorneys or other persons or entities acting for or on behalf of it.

B. "You" or "your" shall refer to the Illinois Department of Transportation ("IDOT") and all predecessor entities of IDOT as well as all divisions, representatives,



employees, agents, attorneys, or other persons acting for or on behalf of IDOT or a predecessor entity.

C. "Document" means all written, printed, typed, punched, taped, filed or graphic matter, however produced or reproduced, of every kind and description, in any form or storage medium including but not limited to electronic data or storage, now or formerly in your actual or constructive possession, custody, trust, care or control including but not limited to any correspondence (including letters, emails and attachments, facsimiles and any other electronic or wire transmissions, cables, telegrams, TWX's, and telexes); memoranda and notices, memoranda of conversations, conferences or telephone conversations; reports; data compilations or analyses; logs and records; photographs; books; papers; manuals; handbooks; bulletins; advisories; messages; magazines; periodicals; film strips or movies; press releases; newspaper clippings; pamphlets; studies; notations; working papers; charts; graphs; plans; drawings; diagrams; computer printouts; computer disks; computer hard drive material; electronic recordings; indexes; minutes; transcripts; contracts; agreements; leases; legal pleadings; invoices; billings; statements; accounting books or records; financial data of any kind; journals; ledgers; diaries; tax returns; bylaws; rules; regulations; constitutions; annual reports, programs; certifications; and resolutions.

D. "Communication" means any oral or written utterance or statement of any nature whatsoever, including, but not limited to, letters, facsimiles, emails, conversations, discussions and agreements between or among two or more persons, and any notations, memoranda or other documents memorializing all or part of any of the foregoing.

E. "Person" shall mean any natural person, firm, partnership, association, joint venture, corporation, governmental agency or other organization, or legal or business entity, including, without limitation, any party to this action.

F. "Relating to" means in any way comprising, describing, reflecting, embodying, contained in, referring to, connected with or pertaining or relating to, in whole or in part.

G. "Identify," "identity" or "identification," when used with reference to a document, means to set forth, with respect to the original and each copy thereof, the following:

(a) Information sufficient to identify the document, such as its date, the name and addressee or addressees, the name of the signer or signers, the title or heading of the document and its approximate number of pages. Form documents may be identified by title of the form, a description of the method or preparation and disposition of all copies;

(b) The identity and address or addresses of the person or persons to whom copies were sent;

(c) The present or last known location of the possessor of the original document (or, if that is unavailable, the most legible copy);

(d) If any document was, but is no longer, in your possession, custody or control, state what disposition was made of it and the reason for such disposition; or

(e) In lieu of specifically identifying documents as requested in paragraphs (a)-(d), documents may be generally described (with enough particularity to identify which documents are responsive to the document request) and produced for inspection and copying. Provided, however, that all documents not produced must be identified and if there are no documents responsive to a particular interrogatory, that must be indicated in the answer to the interrogatory. Provided further, if any document is withheld or not identified under a claim or privilege, you must (a) identify each such document with sufficient particularity as to author(s), address(es), or recipient(s) and contents to allow the matter to be brought before the court; (b) state the nature of the privilege(s) asserted; and (c) state in detail the factual basis for the claim or privilege.

H. "Identify," "identity" or "identification," when used with reference to a person who is an individual, means to state his or her full name, social security number and present (or last known) address, his or her present or last known employer, and the address of each employer

or last known address, and the present or last position held; when used with reference to a person other than an individual person, "identify," "identity" or "identification" means to state its full name, its principal business address, the nature of the organization, if known, and the identify of its owner(s), operator(s), officer(s), partner(s) or other managing personnel.

I. "Identify," "identity" or "describe," when used with respect to an (including an alleged) offense, occurrence, contract, transaction, decision, statement, communication or conduct (hereinafter collectively called "act"), or relationship, operation or activity, means to describe in substance the event or events constituting such act, or what transpired, the place, the date; and to identify all persons involved, present or having knowledge thereof, stating the subject matter of their knowledge and the manner in which such knowledge was acquired and to identify the documents referring or relating thereto.

J. Whenever you are requested to identify an agreement or communication, and such agreement or communication was oral, state the substance and date thereof, the identity of the persons between whom it was made, the identity of each person present when it was made, and identify each document in which each such agreement was recorded or described or identify the location of such communication.

K. The Administrative Order on Consent (hereafter "AOC") shall refer to a June 2007 Administrative Order on Consent for the "Southwestern Site Area," which was entered into between, among others, United States Environmental Protection Agency ("USEPA") and Johns Manville and referenced in paragraph 10 of the Complaint in this action.

L. "Site 3" shall refer to the area known as Site 3 as defined in the AOC and located south of the Greenwood Avenue right-of-way and east of North Pershing Road in Waukegan, Illinois, including the land and subsurface that is part of this area.

M. "Site 6" shall refer to the area known as Site 6 as defined in the AOC and located on both sides of Greenwood Avenue in Waukegan, Illinois, including the land and subsurface that is part of this area.

N. The "104(e) Request" refers to the Request for Information under Section 104(e) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") sent by USEPA to IDOT on September 29, 2000.

O. The "Amstutz Project" shall refer to the construction project located in Lake County, Illinois that involved portions of Site 3 and Site 6 and has been identified previously as F.A. Route 42, Section 8-HB and 8-VB and includes any and all Bypasses, including Bypasses A, B and C.

P. "Site 3 Work" shall mean work done in order to build an embankment for Greenwood Avenue; work done to construct, maintain and/or remove Bypasses A and B and/or any work done on Site 3 as part of the Amstutz Project, or to restore the surface or subsurface of Site 3 after removing Bypasses A and B.

Q. "Site 6 Work" shall mean work done in order to build an embankment for Greenwood Avenue; work done to construct, maintain and/or remove Bypasses A and B and/or any work done on Site 6 as part of the Amstutz Project, or to restore the surface or subsurface of Site 6 after removing Bypasses A and B.

R. "Right of Way" shall mean the IDOT right of way within the southeast quadrant of the intersection of Greenwood Avenue and Sand Street in Waukegan, Illinois, designated as Parcel No. 0393, as described at IDOT 002800.

S. "Environmental Liability" shall mean liability under CERCLA, RCRA, the Clean Water Act, the Clean Air Act, the Illinois Environmental Protection Act, the regulations adopted

under each aforementioned statutes and tort law. As to tort law, the term only relates to tort law associated with the presence of contamination or the disposal of contamination.

T. "Contamination" shall mean any asbestos containing material, any Hazardous Substance under CERCLA, any Hazardous Waste or Solid Waste under RCRA, any pollutant under the Clean Water Act, any Waste under the Illinois Environmental Protection Act or applicable regulations, any pollutant under the Clean Air Act.

REQUESTS FOR ADMISSION

1. Admit that the Right of Way encompasses portions of Site 6.

ANSWER:

2. Admit that the Right of Way encompasses portions of Site 3.

ANSWER:

3. Admit that IDOT currently has a right to use the Right of Way.

ANSWER:

4. Admit that IDOT has had a right to use the Right of Way since 1971.

ANSWER:

5. Admit that IDOT never transferred, conveyed, or divested itself of its interest in the Right of Way.

ANSWER:

6. Admit that IDOT has never vacated or abandoned the Right of Way.

ANSWER:

7. Admit that IDOT does not hold or maintain any permits to conduct waste-storage, waste-treatment, or waste-disposal operations on Site 3, Site 6, and/or the Right of Way.

ANSWER:

8. Admit that IDOT has never held or maintained any permits to conduct waste-storage, waste-treatment, or waste-disposal operations on Site 3, Site 6, and/or the Right of Way.

ANSWER:

9. Admit that the Right of Way is part of a "State highway" (as defined in 605 ILCS 5/2-203).

ANSWER:

10. Admit that IDOT has not surrendered jurisdiction of the Right of Way, or any portion thereof or any improvements thereon, as provided for in 605 ILCS 5/4-406.1 or 65 ILCS 5/11-91.2-1.

ANSWER:

11. Admit that IDOT has not entered into any written contract with any other highway authority for the jurisdiction, maintenance, engineering, or improvement of the Right of Way, or any portion thereof or any improvement thereon, as provided for in 605 ILCS 5/4-409.

ANSWER:

12. Admit that IDOT has not authorized any highway authority other than IDOT to enter into any written contract with another highway authority other than IDOT for the jurisdiction, maintenance, administration, engineering, or improvement of the Right of Way, or any portion thereof or any improvement thereon, as provided for in 605 ILCS 5/4-409.

ANSWER:

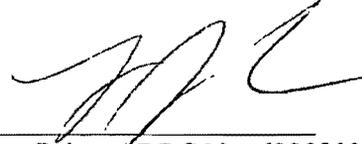
March 16, 2016

Respectfully submitted,

BRYAN CAVE LLP

Attorneys for Complainant Johns Manville

By:



Susan Brice, ARDC No. 6228903
Lauren J. Caisman, ARDC No. 6312465
161 North Clark Street, Suite 4300
Chicago, Illinois 60601
(312) 602-5124
Email: lauren.caisman@bryancave.com

CERTIFICATE OF SERVICE

I, the undersigned, certify that on March 16, 2016, I caused to be served a true and correct copy of *Complainant's First Set of Requests for Admission to Respondent* upon all parties listed on the Service List by sending the documents via e-mail to all persons listed on the Service List, addressed to each person's e-mail address. Paper hardcopies of this filing will be made available upon request.



Lauren J. Caisman

SERVICE LIST

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

March 18, 2016

VIA EMAIL

Ms. Susan Brice
Ms. Lauren Caisman
Bryan Cave, LLC
161 North Clark Street
Suite 4300
Chicago, Illinois 60601-3315

Re: Johns Manville v. Illinois Department of Transportation, PCB 14-3
Rule 201(k) Letter Regarding March 16th Discovery Requests

Dear Susan and Lauren:

We are sending this Rule 201(k) letter regarding the propriety of Johns Manville's ("JM") March 16, 2016 written discovery requests ("Discovery Requests") to the Illinois Department of Transportation ("IDOT"). IDOT believes that the nature and scope of the Discovery Requests represents a gross divergence from the representations made by JM in its March 10, 2016 Proposed Discovery Schedule ("Discovery Schedule"), which indicated JM's intention to propound only five interrogatories to IDOT. During our March 14, 2016 status conference with our hearing officer, you gave no indication that JM had any intention to seek additional written discovery beyond propounding the five interrogatories that JM referenced in its Discovery Schedule. It was therefore somewhat shocking to us when, on March 16, 2016, you served us with six interrogatories, each of which contained multiple subparts, 20 requests for production of documents ("Document Requests"), and 12 requests for admission of fact ("Requests for Admissions").



IDOT believes that JM's Discovery Requests are inappropriate, in light of what JM had represented prior to serving them on IDOT and the stage of this litigation. In the wake of the Pollution Control Board's March 3, 2016 opinion and order regarding your motion for leave to file a second amended complaint, it had seemed that both JM and IDOT were in agreement that only limited written and oral discovery would be taken, and only on the issues related to the new claims and facts alleged in your Second Amended Complaint. It was based on this seeming understanding and the representations which both parties made to our hearing officer at the March 14th status hearing, that IDOT agreed to the parties propounding any written discovery that they sought by March 16th and responding to that written discovery by March 29th. However, since the number and scope of JM's Discovery Requests goes well beyond what was discussed during our March 14th status hearing, and beyond the new allegations of the Second Amended Complaint, IDOT believes that it would be oppressive and unfair for IDOT to have to abide by an agreement that was based on different understandings and representations about written discovery at this time.

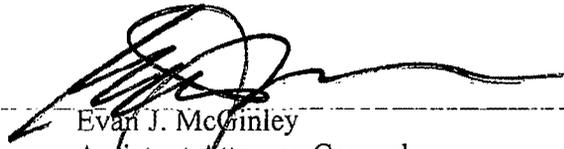
IDOT is willing to respond to a written discovery requests that are more in line with JM's prior representations contained in the Discovery Schedule, and made to the hearing officer at the March 14th status hearing and that solely pertain to the newly alleged matters. We therefore request that you serve IDOT with a revised and more appropriate set of written discovery requests (e.g., interrogatories and requests for production of documents) that is more in line with JM's prior representations in this case. Please note that in making this overture, IDOT reserves all of its rights to object to the propriety of individual written discovery requests, as may be appropriate, when responding to a more appropriately scaled set of revised written discovery requests.

Finally, we, request that you withdraw all of your Requests for Admissions. We believe that this is appropriate, given the fact that prior to serving the Requests on us, you never once gave any indication that these would be part of the "limited" written discovery that you wished to conduct at this time. We also believe that this is appropriate, as the Requests for Admissions that you have propounded go beyond the newly alleged matters in your Second Amended Complaint. Had you had the courtesy to mention your intention to serve these Requests on us in advance of, or even during, the March 14th status conference, we could have discussed this matter at that time. Given your failure to provide us with any advance notice of your intention to serve these Requests for Admissions on us, we believe that the more appropriate action at this time is to withdraw them completely.

As we would like to resolve the issues surrounding your Written Discovery as soon as possible, we request a response to this letter by noon on Monday, March 21st.

Thank you for your attention to this matter.

Regards,



Evan J. McGinley
Assistant Attorney General
69 West Washington Street
Suite 1800
Chicago, IL 60602
312.814.3153
emcginley@atg.state.il.us

cc: Matthew Dougherty, IDOT
Ellen O'Laughlin, IAG

McGinley, Evan

From: Caisman, Lauren <lauren.caisman@bryancave.com>
Sent: Monday, March 21, 2016 11:46 AM
To: McGinley, Evan; O'Laughlin, Ellen; Dougherty, Matthew D.
(Matthew.Dougherty@Illinois.gov)
Cc: Brice, Susan
Subject: Johns Manville v. IDOT, PCB 14-3 - Response to IDOT Rule 201(k) Letter

Evan,

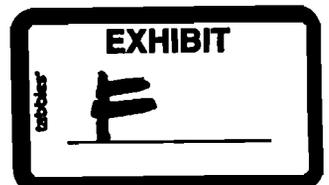
We are in receipt of your Rule 201(k) letter dated March 18, 2016. While the Illinois Department of Transportation ("IDOT") claims that it "believes that the nature and scope of the Discovery Requests represents a gross divergence from the representations made by JM," such a belief is unfounded.

As an initial matter, Johns Manville's ("JM") Second Set of Document Requests, Third Set of Interrogatories, and First Set of Requests for Admission (the "Discovery Requests") are necessary in light of the fact that IDOT had failed to produce documents responsive to JM's First Set of Document Requests. Though JM's First Set of Document Requests included requests for, among others, "any and all documents related to Sites 3 and 6," almost no documents with respect to the Right of Way were produced, though situated on Sites 3 and 6. Thus, in some respects, JM is now seeking discovery on the relevant issues that it already should have received, but which IDOT did not produce or disclose.

It was IDOT, not JM, that sought to reopen discovery in this matter on the issues in JM's Second Amended Complaint. IDOT, then, cannot now complain that it is burdensome or "oppressive" to respond to the discovery requests, including all Document Requests, Interrogatories, and Requests for Admission propounded by JM. Once discovery was reopened, JM never indicated that it would seek only oral discovery or to solely serve written interrogatories. To the contrary, JM expressly asked the Hearing Officer to clarify that reopening discovery included written discovery, not just depositions. Under the Illinois Rules of Civil Procedure and the Illinois Pollution Control Board ("IPCB") regulations, written discovery includes interrogatories, requests for production, *and* requests for admission.

IDOT misreads JM's Proposed Discovery Schedule in assuming that JM would only issue 5 interrogatories, and seek no further discovery. JM asked for leave to propound 5 additional interrogatories, only due to the limit on the number of interrogatories allowed under the Illinois and IPCB Rules. In case JM would otherwise exceed the thirty interrogatory limit with this new round of discovery, JM asked for leave to serve a few additional interrogatories. There was no need to address document requests or requests for admission as these are unlimited in number under the applicable rules. In fact, IDOT did not feel the need to address the number of discovery requests it would be propounding in its proposed discovery schedule. Neither did JM.

Given that IDOT propounded six Interrogatories as well as Document Requests, IDOT should not complain that JM also propounded six Interrogatories and Document Requests. That JM took advantage of the discovery available to it and propounded Requests for Admission as well provides no reason for IDOT to be excused from responding to JM's Requests for Admission.



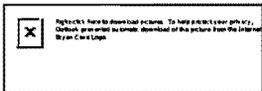
Electronic Filing - Received, Clerk's Office : 03/21/2016

IDOT's Discovery Requests, not JM's, are the ones that are not narrowly tailored to the new issues raised by JM's Second Amended Complaint. IDOT's Interrogatories and Requests for Documents seek discovery about allegations of JM's Second Amended Complaint, but not necessarily those that are changed or new. Further, nowhere in your correspondence does IDOT provide any explanation as to why or how JM's Discovery Requests are unrelated to the new claims or facts alleged in JM's Second Amended Complaint. JM's Discovery Requests are, in fact, all narrowly tailored to the new issues raised, including issues JM anticipates IDOT's proffered expert witness to raise. JM's Discovery Requests are all in line with the topics on which JM disclosed it would seek discovery in its Proposed Discovery Schedule. Nevertheless, it was IDOT, not JM, that expanded the scope of this limited round of discovery by introducing an expert witness in this case (over JM's objection). Because of the expert issues, the scope of which was only ordered during the March 14 status conference with the Hearing Officer, after JM submitted its Proposed Discovery Schedule, the Discovery Requests propounded by JM are necessary, appropriate, and fair in order to also address the expert issues raised, but not otherwise contemplated in JM's Proposed Discovery Schedule.

JM will not be withdrawing any of its Discovery Requests and will not hesitate to file a Motion Compel should IDOT not abide by its discovery obligations in this matter and respond in full to JM's Discovery Requests.

Please feel free to contact me if you would like to discuss further (Susan is out of the office this week).

Thank you,
Lauren



Lauren Caisman
Associate

T: +1 312 602 5079 F: +1 312 698 7479

BRYAN CAVE LLP 161 North Clark Street, Suite 4300, Chicago, IL 60601-3315

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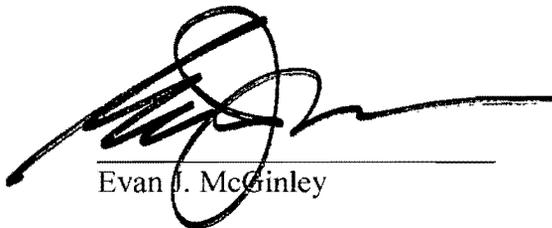
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bc11p2016

CERTIFICATE OF SERVICE

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

I, EVAN J. MCGINLEY, do hereby certify that, today, March 21, 2016, I caused to be served on each of the individuals listed below, by first class mail and electronic mail, a true and correct copy of the attached "Motion for a Protective Order."

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