

**IN THE APPELLATE COURT OF ILLINOIS  
FOR THE FOURTH DISTRICT**

JOHNS MANVILLE,	)	Petition for Review of
	)	Interim and Final Orders
	)	of the Illinois Pollution
Petitioner,	)	Control Board in its
	)	Docket No. 14-3
	)	
v.	)	
	)	
	)	
ILLINOIS POLLUTION CONTROL BOARD	)	
AND ILLINOIS DEPARTMENT OF	)	
TRANSPORTATION	)	
	)	
Respondent.	)	

**NOTICE OF FILING OF PETITION FOR REVIEW**

TO: Illinois Pollution Control Board  
Clerk of the Board  
100 West Randolph Street  
Suite 11-500  
Chicago, Illinois 60601  
[don.brown@illinois.gov](mailto:don.brown@illinois.gov)  
[PCB.Clerks@illinois.gov](mailto:PCB.Clerks@illinois.gov)

Please take notice that on September 7, 2023 Johns Manville electronically filed in the Appellate Court of Illinois, Fourth District, its Petition for Review of the Illinois Pollution Control Board's Opinions and Orders in PCB 14-3.

          /s/ Susan Brice            
Susan Brice  
*Attorney for Petitioner*

Susan Brice, ARDC # 6228903  
Kristen L. Gale, ARDC #6283338  
Nijman Franzetti LLP  
10 S. LaSalle St, Suite 3400  
Chicago, Illinois 60603  
(312) 262-5524  
[sb@nijmanfranzetti.com](mailto:sb@nijmanfranzetti.com)  
[kg@nijmanfranzetti.com](mailto:kg@nijmanfranzetti.com)

**PROOF OF SERVICE**

The undersigned certifies that on this 7th day of September, 2023, I served the enclosed Petition for Review and this Notice of Filing and Certificate of Service upon the Illinois Pollution Control Board and the Illinois Department of Transportation at the email addresses listed in the Notice of Filing and by depositing these materials, properly addressed and first class postage prepaid, before 5:00 p.m., in the U.S. Mail and via email.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Susan Brice  
Susan Brice  
*Attorney for Petitioner*

Susan Brice, ARDC # 6228903  
Kristen L. Gale, ARDC #6283338  
Nijman Franzetti LLP  
10 S. LaSalle St, Suite 3400  
Chicago, Illinois 60603  
(312) 262-5524  
[sb@nijmanfranzetti.com](mailto:sb@nijmanfranzetti.com)  
[kg@nijmanfranzetti.com](mailto:kg@nijmanfranzetti.com)

**SERVICE LIST**

Don Brown, Assistant Clerk  
[Don.brown@illinois.gov](mailto:Don.brown@illinois.gov)  
Brad Halloran, Hearing Officer  
[Brad.Halloran@illinois.gov](mailto:Brad.Halloran@illinois.gov)  
Illinois Pollution Control Board  
60 E Van Buren St, Ste 630  
Chicago, IL 60605

Matthew D. Dougherty  
Assistant Chief Counsel  
Illinois Department of Transportation  
Office of the Chief Counsel, Room 313  
2300 South Dirksen Parkway  
Springfield, IL 62764  
[Matthew.Dougherty@illinois.gov](mailto:Matthew.Dougherty@illinois.gov)

Ellen O’Laughlin  
Chris Grant  
Office of Illinois Attorney General  
69 West Washington Street, Suite 1800  
Chicago, IL 60602  
[Ellen.OLaughlin@ilag.gov](mailto:Ellen.OLaughlin@ilag.gov)  
[Chris.Grant@ilag.gov](mailto:Chris.Grant@ilag.gov)

**IN THE APPELLATE COURT OF ILLINOIS  
FOR THE FOURTH DISTRICT**

JOHNS MANVILLE,	)	Petition for Review of
	)	Interim and Final Orders of
Petitioner,	)	Illinois Pollution
	)	Control Board in its
v.	)	Docket No. 14-3
	)	
	)	
ILLINOIS POLLUTION CONTROL BOARD	)	
and, ILLINOIS DEPARTMENT OF	)	
TRANSPORTATION	)	
	)	
	)	
Respondent.	)	

**PETITION FOR REVIEW**

Petitioner, Johns Manville (“JM”), hereby petitions the Illinois Appellate Court, Fourth District, pursuant to 415 ILCS 5/41, 35 Ill. Adm. Code 101.906, and Supreme Court Rule 335 for review of the Opinions and Orders of the Illinois Pollution Control Board (“Board”) in *Johns Manville v. Illinois Dept. of Transportation*, PCB 14-3. The Board bifurcated the case. The initial Interim Order on Liability was issued on December 15, 2016 and found that the Illinois Department of Transportation (“IDOT”) was liable for causing or allowing open dumping of asbestos-containing material on properties located in Waukegan, Illinois in violation of the Illinois Environmental Protection Act (the “Act”).

The December 15, 2016 Order also determined that JM was entitled to recover cleanup costs from IDOT, but it delayed a decision on the amount of those costs. However, as to those costs, the Board held that the Act’s proportionate share liability rules did not apply and that IDOT must pay JM for the clean costs JM incurred “as a result of [IDOT’s] violations” of the Act.

The Board then directed the Hearing Officer to conduct a hearing for evidence on the following issues:

1. The cleanup work performed by JM in the portions of Site 3 and Site 6 where the Board found IDOT responsible for ACM waste present in soil.
2. The amount and reasonableness of JM's costs for this work.
3. The share of JM's costs attributable to IDOT.

Following a second hearing on these issues, the Board issued an Opinion and Order on these issues. It found, in part, that IDOT must reimburse JM \$620,203 in cleanup costs by September 18, 2023.

Petitioner seeks review of issues related to both Orders. The issues include, the legal question of the liability standard that applies to violations of the Act that expressly do not involve proportionate share liability; the legal question of whether the Board should have found IDOT liable for contamination in areas it owned or operated and thus allowed to remain; whether the Board employed and correctly applied the appropriate legal standard in allowing opinions of IDOT's expert witness (the same witness in both phases of the hearing) into evidence; and whether the Board erred in failing to consider evidence showing that IDOT was liable for a portion of the Site known as "5S to 8S." A decision on the first issue could potentially moot the other three issues.

DATED: September 7, 2023

Respectfully submitted,

/s/ Susan Brice  
Susan Brice  
*Attorney for Petitioner*

Susan Brice, ARDC # 6228903  
Kristen L. Gale, ARDC #6283338  
Nijman Franzetti LLP  
10 S. LaSalle St, Suite 3400  
Chicago, Illinois 60603  
(312) 262-5524  
[sb@nijmanfranzetti.com](mailto:sb@nijmanfranzetti.com)  
[kg@nijmanfranzetti.com](mailto:kg@nijmanfranzetti.com)