

MAR 24 2016

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD
March 24, 2016

JOHNS MANVILLE,)	
)	
Complainant,)	
)	
v.)	PCB 14-3
)	(Enforcement)
ILLINOIS DEPARTMENT OF)	
TRANSPORTATION,)	
)	
Respondent.)	

HEARING OFFICER ORDER

A motion for protective order (Mot.) was filed by the respondent Illinois Department of Transportation (IDOT) on March 21, 2016. On March 23, 2016, complainant Johns Manville (JM) filed its response (Resp.).

Abbreviated Procedural History

On March 3, 2016, the Board granted JM's motion for leave to file a second amended complaint and directed the hearing officer to set discovery deadlines and a new hearing date. March 3, 2016 Board Order at 3. In discussing the second amended complaint, the Board found that JM sought "to add a factual allegation that, since 1971, the State of Illinois owned a right-of-way on the south side of Greenwood Avenue that is within Site 6." *Id.* at 2. The Board further found that JM also "adds that IDOT violated Section 21(d) of the Act and that IDOT caused or allowed disposal of asbestos waste in violation of Section 21(e)." *Id.*

IDOT submitted its proposed discovery schedule suggesting dates to conduct limited discovery on March 10, 2016. Later on March 10, 2016, JM filed its proposed discovery schedule (Proposal) stating in pertinent part that it "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." Proposal at 1.

After review of the respective discovery proposals, I issued an order the parties agreed to on March 14, 2016, setting among other things, the dates on which the limited discovery would be served and completed.

Discussion and Ruling

IDOT contends that the number of interrogatories, document requests and requests to admit served on it by JM far exceeds the anticipated quantity the limited issue, ownership interest of right of way, presented in the second amended complaint requires. Mot. at 1-3.

JM responds by stating that the discovery served on IDOT is needed and was anticipated because IDOT “concealed its interest in a right of way” and only recently learned that IDOT has an interest in the right of way. Resp. at 1. Further, JM argues, IDOT’s recent introduction of an expert witness addressing this issue requires the propounded discovery. *Id.* at 2.

Both parties have needlessly complicated an agreed abbreviated discovery format and schedule. First, I was unaware that IDOT served discovery, because IDOT failed to file its discovery requests with the Board in accordance with my March 14, 2016 order. And although JM complied with this directive in my order, the scope of the discovery requests JM propounded on IDOT far exceeds its representations in the proposed discovery schedule, upon which my order was based. JM stated that it “anticipate[d] propounding limited, expedited written discovery” relating to IDOT’s alleged ownership and/or control of the right of way put in issue by the second amended complaint. Proposal at 1. As noted, JM requested “leave to propound five additional interrogatories upon IDOT to address these limited issues. . . .” *Id.*

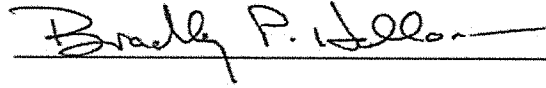
I relied on JM’s representations regarding the limited scope of expected written discovery—*i.e.*, five additional interrogatories, not five additional interrogatories beyond the limit in the Board’s procedural rules (*see* 35 Ill. Adm. Code 101.620(a)) in the event JM exceeded that limit—in adopting an *expedited* discovery schedule. That schedule is perhaps inadequate to allow IDOT to respond to the discovery requests JM actually propounded—six interrogatories with multiple subparts, 20 requests for production of documents, and 12 requests for admission. It may well be insufficient to allow JM to respond to the discovery requests IDOT apparently served on it—according to JM, six interrogatories as well as document requests. Mot. Exh. F at 1. I cannot determine whether it is, however, because IDOT failed to file the requests with the Board as ordered.

The parties are reminded that, as agreed, a hearing has been scheduled in the above-captioned matter commencing on May 10, 2016. I exercise my discretion under Section 101.616(d) of the Board’s procedural rules to regulate discovery to keep it within reasonable bounds. The parties are directed to respond to the propounded written discovery requests, including requests to admit, to the extent that the discovery is within the scope of the limited issue presented. If the respective parties discern that the questions and requests are beyond the scope of the limited issue of interest in the right of way, they should state accordingly.

The parties are given to March 30, 2016, to file their respective responses to the discovery. All other time schedules outlined in my March 14, 2016, order remain unchanged.

All discovery is to be filed with the Board and served on the hearing officer on the dates due.

IT IS SO ORDERED.

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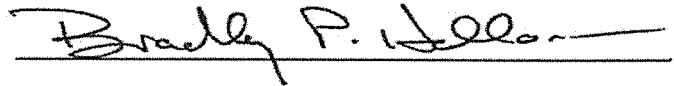
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CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were e-mailed and mailed, first class, on March 24, 2016, to each of the persons on the attached service list.

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on March 24, 2016:

John T. Therriault
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Ste. 11-500
Chicago, Illinois 60601

A handwritten signature in black ink that reads "Bradley P. Halloran" with a horizontal line underneath.

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
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“@” denotes email service

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