

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JOHNS MANVILLE, a Delaware corporation,)

Complainant,)

v.)

**ILLINOIS DEPARTMENT OF
TRANSPORTATION,**)

Respondent.)

**PCB No. 14-3
(Citizen Suit)**

**COMPLAINANT’S RESPONSE TO RESPONDENT’S THIRD SET OF
INTERROGATORIES**

Complainant JOHNS MANVILLE (“JM”) hereby responds to Respondent ILLINOIS DEPARTMENT OF TRANSPORTATION’S (“IDOT”) Third Set of Interrogatories (“Interrogatories”) as follows:

**PRELIMINARY STATEMENT/ GENERAL OBJECTIONS/
RESERVATIONS OF RIGHTS**

1. The following responses are based upon the information that is presently known and reasonably available to JM. JM has made a reasonable effort to respond to the Requests to the best of its present knowledge, information and belief. JM believes that these responses are accurate as of the date made. However, many of the matters inquired about in the Requests, specifically related to IDOT’s interest in the Right of Way since the 1970s, took place decades ago and, due to the passage of time, relevant information may be incomplete or no longer available. JM has endeavored to investigate all relevant facts and circumstances, and the following responses are based upon its investigation efforts to date. JM cannot, however, exclude the possibility that other documents exist that may provide additional or more complete information and, therefore, that continued investigation may reveal more

complete information. JM reserves the right to amend these responses if new or additional information becomes available to it.

2. No incidental or implied omissions are intended by the responses herein. JM's responses or objections to any request or part thereof are not intended as an admission that JM accepts or admits the existence of any facts set forth or assumed by such request. The fact that JM has agreed to provide information in response to part or all of any request is not intended as a waiver by JM to any other objection it may have to the request or to the admissibility of the information produced.
3. The responses herein are made solely for the purpose of this action. JM reserves the right to object to the use of any response in any other action. By providing information in response to any request, JM does not intend to authorize the use of such information in any other action than the one at bar, nor does it waive any right it may have to object to the further use of the information provided in this action, and thus reserves any and all rights JM may have to further use.
4. JM objects to the Interrogatories as a whole to the extent they are overly broad, unduly burdensome, and not reasonably limited in time or scope. For those same reasons, JM objects to the Interrogatories as irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. JM also specifically objects to the Definitions and the Instructions in that they are overly broad, vague, ambiguous, unduly burdensome, and are not reasonably limited in scope or time.
5. JM objects to the Interrogatories to the extent they seek information and/or documents that are protected by federal and state law privileges or protections, including, but not limited to, the attorney-client privilege, work product privilege, witness statement privilege, party

communications privilege, consulting expert privilege, and joint-defense privilege contained in the Illinois Code of Civil Procedure, Supreme Court Rules, and the Illinois Pollution Control Board (“IPCB”) Rules. Subject to the foregoing, JM will provide responses according to the provisions of the Illinois Code of Civil Procedure, Supreme Court Rules, and IPCB Rules, and JM objects to all Instructions and/or Definitions to the contrary. JM and its counsel hereby assert all applicable privileges and protections with respect to its responses and produced materials. To the extent the Interrogatories seek information or documents not presently known to or readily ascertainable, JM reserves all rights to object to any subsequent discovery on the basis of privilege or any other basis. JM and its counsel hereby assert and maintain all applicable privileges and protections with respect to any information and/or documents that may subsequently be discovered in accordance with these responses.

6. JM does not concede that any of its responses to the Interrogatories are or will be admissible evidence at a trial of this action. JM reserves the right to challenge the relevance, discoverability and/or admissibility of any and all responses and produced materials. JM does not waive any objection, on any ground, whether or not asserted herein, to the use of any such responses at the hearing.
7. JM objects to each Interrogatory to the extent that it is compound, misleading, broad, vague, ambiguous or uncertain to the extent that JM cannot determine the precise nature of the information sought. JM cannot respond to such Interrogatories without creating an unreasonable risk of inadvertently providing a misleading, confusing, inaccurate or incomplete response.

8. As to the Definitions and Instructions, to the extent they are inconsistent with the normal and customary usage of words pursuant to the Illinois Code of Civil Procedure, Supreme Court Rules, and IPCB Rules and seek to create and impose requirements beyond those imposed by the applicable Rules, JM objects.
9. JM objects to producing any documents previously provided by IDOT to JM, by JM to IDOT, or equally available to IDOT from another source, because any such documents are already in the possession of IDOT or are equally available to them and producing them would create a burden on JM that outweighs any likely benefit to IDOT.
10. JM objects to the use in the Interrogatories of the term “every”, “all”, “each”, “any”, or any other similar words of expansion to the extent that they are overly broad or unduly burdensome.
11. The foregoing Preliminary Statement and General Objections are incorporated by reference into each of the responses provided below.

INTERROGATORY NO. 1:

Identify all facts and bases for the allegations set forth in Paragraph 9 of the Second Amended Complaint.

ANSWER:

JM objects to this Interrogatory on the grounds it is not limited to the allegations of paragraph 9 of JM’s Second Amended Complaint that were not previously included in JM’s Amended Complaint and, as such, does not pertain to the limited scope for which discovery in this matter was reopened. JM objects to this Interrogatory on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, not reasonably limited in time or scope, and not reasonably calculated to lead to the discovery of admissible evidence. JM also objects to this

Interrogatory to the extent that it seeks information that was already produced by JM to IDOT in this litigation, was already produced by IDOT to JM in this litigation, and/or that otherwise already is or should already be within IDOT's possession, custody, and/or control. JM further objects to this Interrogatory to the extent that it seeks information protected by the attorney-client privilege, consulting expert privilege, and/or the work product doctrine. Subject to and without waiving these objections or the General Objections, with respect to the ownership of adjacent property, JM refers to the allegations in its Complaint, statements made in the expert reports of Douglas Dorgan Jr. and Steven Gobelman, statements made in the depositions of Douglas Dorgan Jr. and Steven Gobelman, JM 000001-0006648, and IDOT 000001-003447. JM particularly identifies JM 0006016-0006018, which shows the State of Illinois never transferred its interest in the right of way Parcel No. 0393 to the City of Waukegan, IDOT 002797-002856, and IDOT 003296-003343. Because JM's investigation continues, JM reserves the right to amend these responses if new or additional information becomes available to it.

INTERROGATORY NO. 2:

Identify all facts and bases for the allegations set forth in Paragraph 12 of the Second Amended Complaint.

ANSWER:

JM objects to this Interrogatory on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, not reasonably limited in time or scope, and not reasonably calculated to lead to the discovery of admissible evidence. JM also objects to this Interrogatory to the extent that it seeks information that was already produced by JM to IDOT in this litigation, was already produced by IDOT to JM in this litigation, and/or that otherwise already is or should already be within IDOT's possession, custody, and/or control. JM further objects to this Interrogatory to the

extent that it seeks information protected by the attorney-client privilege, consulting expert privilege, and/or the work product doctrine. Subject to and without waiving these objections or the General Objections, JM refers to the allegations in its Complaint, statements made in the expert reports of Douglas Dorgan Jr. and Steven Gobelman, statements made in the depositions of Douglas Dorgan Jr. and Steven Gobelman, JM 000001-0006648, and IDOT 000001-003447. JM particularly identifies JM 00006016-0006018, showing that, the State of Illinois, “acting by and through the Department of Public Works and Buildings, now Department of Transportation, Division of Highways” as having an interest in Parcel No. 0393 since 1971 and that said parcel was not transferred to anyone but retained by the State. JM also identifies IDOT 002797-002856 and IDOT 003296-003343. JM believes that other portions of Site 6 are owned by the City because these portions do not appear to be part of the Right of Way and because JM entered into an access agreement with the City to do work and was led to believe by the City and by IDOT, at least through its and its experts representations in this litigation, that the City owned all of Site 6 and that any right of way obtained from ComEd involving Sites 3 and 6 was subsequently conveyed to the City. Because JM’s investigation continues, JM reserves the right to amend these responses if new or additional information becomes available to it.

INTERROGATORY NO. 3:

Identify all facts and bases for the allegations set forth in Paragraph 71 of the Second Amended Complaint.

ANSWER:

JM incorporates its responses to Interrogatories Nos. 1 and 2 as its response to Interrogatory No. 3.

INTERROGATORY NO. 4:

Identify all documents which pertain or relate to the Plaintiffs allegations in Paragraph 9, 12 or 71 of the Second Amended Complaint.

ANSWER:

JM objects to this Interrogatory to the extent that it is duplicative of Interrogatories Nos. 1-3 and of IDOT's Second Set of Requests for Production of Documents. Subject to and without waiving this objection or the General Objections, JM refers IDOT to JM's responses to Interrogatories Nos. 1-3 and to JM's responses to Requests Nos. 1-3 of IDOT's Second Set of Requests for Production of Documents.

INTERROGATORY NO. 5:

Identify all steps taken by Complainant in regard to the allegations newly made in the Second Amended Complaint.

ANSWER:

JM objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome, not reasonably limited in time or scope, and not reasonably calculated to lead to the discovery of admissible evidence. JM also objects to this Interrogatory on the grounds that the phrases "steps taken" and "in regard to the allegations newly made" are confusing, vague, ambiguous, undefined, and subject to multiple interpretations. JM also objects to this Interrogatory to the extent that it seeks information that was already produced by JM to IDOT in this litigation and, therefore, is already within IDOT's possession, custody, and/or control. JM further objects to this Interrogatory to the extent that it plainly seeks information protected by the attorney-client privilege, consulting expert privilege, and/or the work product doctrine. Subject to and without waiving these objections or the General Objections, JM refers IDOT to its previous production JM 0006016-0006018 and incorporates statements in its Motion for Leave

to Amend, Motion for Leave to Reply, and Reply. Answering further, following the deposition of Steven Gobelman, JM began to question the ownership of the Right of Way and suspected that the State/IDOT might own the Right of Way. In September, AECOM and an attorney from Walker Wilcox Matousek, LLP met with Chicago Title Insurance Company (“Chicago Title”), on behalf of JM, to discuss the possibility of Chicago Title performing a chain search and/or other title work with respect to the Right of Way. Thereafter, on September 29, 2015, AECOM requested a title commitment. The property to be searched was depicted on a drawing and a grant document, copies of which were provided to Chicago Title. On October 2, 2015, the request was followed up with a formal application for title insurance submitted through Walker Wilcox on behalf of JM. According to Walker Wilcox, the formal order requested that Chicago Title issue a title commitment on the Right of Way parcel, but Chicago Title provided a commitment that did not have the correct legal description. Thereafter, JM, via Walker Wilcox, requested a revised commitment actually covering the Right of Way parcel. But ultimately Chicago Title notified Walker Wilcox that it would be unable to issue a title commitment for the requested parcel because it did not issue commitments for “roadway parcels.” Instead, Chicago Title indicated that JM could obtain a title search showing the deeds and conveyances that affected the subject parcel. Chicago Title referred JM to Property Insight to complete the search of deeds and conveyances affecting the subject parcel. On January 14, 2016, JM received a Title Search Report from Property Insight. Because JM’s investigation continues, JM reserves the right to amend these responses if new or additional information becomes available to it.

INTERROGATORY NO. 6:

Identify all documents which pertain to steps taken by Complainant in regard to the allegations newly made in the Second Amended Complaint.

ANSWER:

JM incorporates its response to Interrogatory No. 5 and further objects to this Interrogatory to the extent that it is duplicative of Interrogatory No. 5 and of IDOT's Second Set of Requests for Production of Documents.

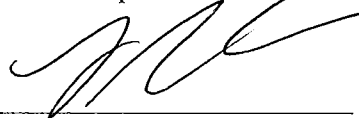
March 30, 2016

Respectfully submitted,

BRYAN CAVE LLP

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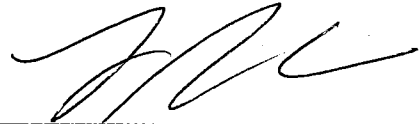
VERIFICATION

The undersigned, under the penalties as provided by law pursuant to Section 5/1-109 of the Illinois Code of Civil Procedure, 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/she verily believes to be true.

By: Brew Tracy

CERTIFICATE OF SERVICE

I, the undersigned, certify that on March 30, 2016, I caused to be served a true and correct copy of *Complainant's Response to Respondent's Third Set of Interrogatories* 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

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