

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 SECOND SET OF REQUESTS
FOR PRODUCTION OF DOCUMENTS**

Complainant JOHNS MANVILLE ("JM") hereby responds to Respondent ILLINOIS DEPARTMENT OF TRANSPORTATION'S ("IDOT") Second Set of Requests for Production of Documents ("Requests") 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 Requests 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 Requests 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 Requests 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 Requests 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 Requests 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 Request 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 Requests 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 Requests 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.

DOCUMENT REQUEST # 1:

All documents which pertain or relate to the allegations in Paragraph 9 of your Second Amended Complaint regarding the “adjacent property owned by Commonwealth Edison (“ComEd”) and the State of Illinois.”

ANSWER:

JM objects to this Request 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 Request 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 Request to the extent that it seeks documents that were already produced by JM to IDOT in this litigation, were already produced by IDOT to JM in this litigation, and/or that otherwise are already or should

already be within IDOT's possession, custody, and/or control. JM further objects to this Request to the extent that it seeks the production of documents 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 0000001-0006648, and IDOT 000001-003447. JM particularly identifies JM 0006016-0006018, IDOT 002797-002856, and IDOT 003296-003343. JM is producing any additional nonprivileged documents which are presently known to JM, and which are in JM's possession, custody, or control. Because JM's investigation continues, JM reserves the right to amend these responses if new or additional information becomes available to it.

DOCUMENT REQUEST # 2:

All documents which pertain or relate to the allegations in Paragraph 12 of your Second Amended Complaint that the State of Illinois "has owned, held an interest in and/or controlled portions of Site 6, including a right of way on the southern side of Greenwood Avenue."

ANSWER:

JM objects to this Request 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 Request to the extent that it seeks documents that were already produced by JM to IDOT in this litigation, were already produced by IDOT to JM in this litigation, and/or that otherwise are already or should already be within IDOT's possession, custody, and/or control. JM further objects to this Request to the extent that it seeks the production of documents 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 0006016-0006018, IDOT 002797-002856, and IDOT 003296-003343. JM is producing any additional nonprivileged documents which are presently known to JM, and which are in JM's possession, custody, or control. Because JM's investigation continues, JM reserves the right to amend these responses if new or additional information becomes available to it.

DOCUMENT REQUEST # 3:

All documents which pertain or relate to the allegations in Paragraph 71 of your Second Amended Complaint.

ANSWER:

JM incorporates its responses to Requests Nos. 1 and 2 as its response to Request No. 3.

DOCUMENT REQUEST # 4:

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

ANSWER:

JM objects to this Request 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 Request 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 Request to the extent

that it seeks documents that were already produced by JM to IDOT in this litigation and, therefore, are already within IDOT's possession, custody, and/or control. JM further objects to this Request to the extent that it plainly seeks the production of documents 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. JM is producing any additional nonprivileged documents which are presently known to JM, and which are in JM's possession, custody, or control. Because JM's investigation continues, JM reserves the right to amend these responses if new or additional information becomes available to it.

March 30, 2016

Respectfully submitted,

BRYAN CAVE LLP

Attorneys for Complainant Johns Manville

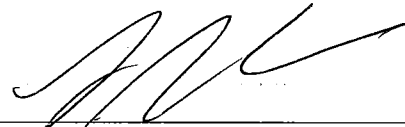
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CERTIFICATE OF SERVICE

I, the undersigned, certify that on March 30, 2016, I caused to be served a true and correct copy of *Complainant's Response to Respondent's Second Set of Requests for Production of Documents* 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.



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