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OCT 11 2005

STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 7, 2005

The Honorable Dorothy Gunn
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

Re: ***People v. Midwest Grain Products of Illinois, Inc.***
PCB No. 97-179

Dear Clerk Gunn:

Enclosed for filing please find the original and four copies of a NOTICE OF FILING and COMPLAINANT'S MOTION FOR LEAVE TO REPLY TO RESPONDENT'S RESPONSE TO COMPLAINANT'S MOTION TO STRIKE INTERROGATORIES, OR, IN THE ALTERNATIVE, MOTION FOR PROTECTIVE ORDER and COMPLAINANT'S REPLY TO RESPONDENT'S RESPONSE TO COMPLAINANT'S MOTION TO STRIKE INTERROGATORIES, OR, IN THE ALTERNATIVE, MOTION FOR PROTECTIVE ORDER in regard to the above-captioned matter. Please file the original and return a file-stamped copy to me in the enclosed, self-addressed envelope.

Thank you for your cooperation and consideration.

Very truly yours,

Jane E. McBride
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

JEM/pp
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

OCT 11 2005

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF)
ILLINOIS,)
)
Complainant,)
)
v.)
)
MIDWEST GRAIN PRODUCTS OF)
ILLINOIS, INC., an Illinois corporation,)
)
Respondent.)

PCB NO. 97-179
(Enforcement)

NOTICE OF FILING

To: Patrick M. Flachs
Amy Wachs
Husch & Eppenger LLC
190 Carondelet Plaza, Ste. 600
St. Louis, MO 63105

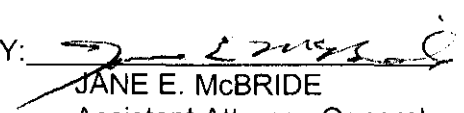
PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, COMPLAINANT'S MOTION FOR LEAVE TO REPLY TO RESPONDENT'S RESPONSE TO COMPLAINANT'S MOTION TO STRIKE INTERROGATORIES, OR, IN THE ALTERNATIVE, MOTION FOR PROTECTIVE ORDER and COMPLAINANT'S REPLY TO RESPONDENT'S RESPONSE TO COMPLAINANT'S MOTION TO STRIKE INTERROGATORIES, OR, IN THE ALTERNATIVE, MOTION FOR PROTECTIVE ORDER, copies of which are attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: 
JANE E. McBRIDE
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: October 7, 2005

CERTIFICATE OF SERVICE

I hereby certify that I did on October 7, 2005, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, COMPLAINANT'S MOTION FOR LEAVE TO REPLY TO RESPONDENT'S RESPONSE TO COMPLAINANT'S MOTION TO STRIKE INTERROGATORIES, OR, IN THE ALTERNATIVE, MOTION FOR PROTECTIVE ORDER and COMPLAINANT'S REPLY TO RESPONDENT'S RESPONSE TO COMPLAINANT'S MOTION TO STRIKE INTERROGATORIES, OR, IN THE ALTERNATIVE, MOTION FOR PROTECTIVE ORDER:

To: Patrick M. Flachs
Amy Wachs
Husch & Eppenberger LLC
190 Carondelet Plaza, Ste. 600
St. Louis, MO 63105

and the original and five copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

A copy was also sent by First Class Mail with postage thereon fully prepaid to:

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Springfield, IL 62794


JANE E. McBRIDE
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD **RECEIVED**
CLERK'S OFFICE

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

v.

MIDWEST GRAIN PRODUCTS OF
ILLINOIS, INC.

Respondent.

PCB 97-179
(Enforcement)

OCT 11 2005
STATE OF ILLINOIS
Pollution Control Board

**COMPLAINANT'S MOTION FOR LEAVE TO REPLY TO RESPONDENT'S RESPONSE TO
COMPLAINANT'S MOTION TO STRIKE INTERROGATORIES,
OR, IN THE ALTERNATIVE, MOTION FOR PROTECTIVE ORDER**

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, and moves for leave to reply to Respondent's Response to Complainant's Motion to Strike Interrogatories, or, In the Alternative, Motion for Protective Order, and in support of said motion, states as follows:

1. Given the volatile, abrupt and limited outcome of the parties' last informal discussions regarding the instant discovery dispute, Respondent's Response to Complainant's Motion is the first time Complainant has been presented with detailed new information, reasoning, argument and explanation Respondent included in its filing in response to Complainant's motion and objections. In prior discussions, Respondent's response regarding the number of interrogatories has been limited to Respondent's answer that Complainant's objection was without merit. Respondent has simply stated that the number of interrogatories it propounded and all of the subparts are proper, and consistent with applicable authority.

Respondent did not address the issue in detail, as it has done in its response.

2. Further, Complainant contends that there are important omissions of fact in Respondent's response, and, also, Complainant contends it should be allowed to respond to statements that Complainant finds to be misstatements made by Respondent in its response.

3. Complainant will suffer material prejudice if it is not allowed to respond to the new information presented in Respondent's response, and the omissions of fact and

misstatements relative to and contained within Respondent's response.

4. In the interest of efficiency and economy of time, Complainant files its reply contemporaneously with this motion for leave.

WHEREFORE, for the foregoing reasons, Complainant respectfully requests the Hearing Officer grant its motion for leave to file a reply to Respondent's Response to Complainant's Motion to Strike Respondent's Interrogatories, or, In the Alternative, Motion for Protective Order.

Respectfully submitted,
PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN,
Attorney General
of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY:


JANE E. MCBRIDE
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
(217) 782-9031
Dated: October 7, 2005

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

v.

MIDWEST GRAIN PRODUCTS OF
ILLINOIS, INC.

Respondent.

PCB 97-179
(Enforcement)

STATE OF ILLINOIS
Pollution Control Board

**COMPLAINANT'S REPLY TO RESPONDENT'S RESPONSE TO
COMPLAINANT'S MOTION TO STRIKE INTERROGATORIES,
OR, IN THE ALTERNATIVE, MOTION FOR PROTECTIVE ORDER**

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, and replies to Respondent's Response to Complainant's Motion to Strike, as follows:

1. Respondent's response to Complainant's motion belies the actuality of the manner in which it drafted its interrogatories. Respondent aptly cites authority. As apt as its citation to authority is, to an equal degree, is its disingenuous argument regarding the true nature of its interrogatories. Its interrogatories, as drafted, could not be any more contrary to the holding of the authority it cited. Rather than asking a general question and eliciting detail regarding the common theme of the interrogatory, Respondent's individual interrogatories constitute a list of specific, mostly unrelated, but if related, unrecognizably so, requests for broad areas of information.

2. The best way to illustrate the fact that Respondent's interrogatories are completely contrary to the holdings of the authority it cites, are to look at the interrogatories themselves.

Interrogatory No. 24, states:

Describe IEPA's analysis of the monetary losses suffered by MGP as applied to the following:

- a. The penalty of \$1,062.580
- b. The BACT determination; and
- c. The determination of economic reasonable technology

This is not a question that goes from a general inquiry to eliciting detail regarding the original inquiry, but rather it inquires about a nondescript concept of "monetary losses" in three completely different contexts, that is, three discrete subject areas. This is not one interrogatory. It is three interrogatories.

3. In many of its interrogatories, Respondent poses no general interrogatory that establishes a common theme, but instead presents the interrogatory as a list of separate queries. There is no progression from the general to the specific, or common to eliciting details. There is only a list of multiple separate inquiries. This has to have been done purposefully, it's a tactic, so the Respondent doesn't have to take responsibility for establishing a common theme, but instead can list all sort of wide-ranging queries. In its response, Respondent now identifies some of these interrogatories as having a common theme. One interrogatory that stands out in this regard is Interrogatory 11, which concerns the notion of penalty. Rather than posing a single succinct interrogatory regarding penalty, and then going to the specific, Respondent just starts listing independent separate, wide-ranging queries, that generally concern the single notion of penalty. But never does it state one single interrogatory and then elicit details.

4. Respondent in its response regarding these Interrogatories 14 and 16 identifies large general topics each interrogatory allegedly concerns. Again, instead of taking responsibility to draft a succinct general inquiry and go to the specific, the interrogatories evidently address topic areas. The many subparts, that are interrogatories in and of

themselves, are a list of wide-ranging questions concerning a topic area. Respondent has failed to draft an interrogatory, succinctly requesting a single set of information, and then eliciting details. No, Respondent has, unstated to Complainant in the form of a single interrogatory, set its intention on a topic area and drafted a list of questions relevant to the topic area. Respondent has found a tactic by which it gives itself license to pose many interrogatories in a set of questions it falsely labels a single interrogatory just because they all allegedly relate to a single "topic area".

5. Interrogatory 21 is another example as to why Complainant has come to the conclusion that Respondent's discovery requests and subsequent answers to informal attempts to resolve discovery disputes are harassment and have resulted in undue expenditure of time and resources. Respondent, in its response concerning Interrogatory 21, complains that Complainant is "shifting the burden" upon Respondent. Complainant asks how is Complainant improperly "shifting the burden". Isn't the burden on Respondent to accurately draft its interrogatories with precision so as to ask for what it truly is looking for? Why should Complainant guess at what exemptions Respondent has in mind? It is obvious, so very obvious, that Respondent is playing games with Complainant. Respondent is using discovery as a strategic tactic, to try to trip Complainant up over the term "exemption". This is why Complainant asserts harassment and Respondent's intent to cause undue expenditure in time and resources. Why can't Respondent simply identify which exemptions it has in mind and ask a question specific to that exemption.

6. Interrogatory No. 8, as drafted, is mind boggling. Interrogatory No. 8 states: "With respect to the allegations contained in the Complaint and the subject matter thereof, please state or identify the following:" The Respondent then lays out four subparts that evidently are relevant to the major modification determination. However, the way this interrogatory is

worded, it would require the Complainant to go back and analyze the interrogatory, and its own response, with regard to the “allegations contained in the Complaint” and “the subject matter” thereof, for each of four separate questions containing the term “major modification”. Why draft an interrogatory like this? What does this truly mean? Why not make a general inquiry as to the major modification determination and then elicit details and specifics. The way this interrogatory is drafted, it asks four separate questions, and asks them “in respect to the allegations contained in the Complaint and the subject matter thereof.” It is just mind boggling as to what the drafter was thinking when he or she put this question together.

7. Respondent in its response, in the middle paragraph of page 6, provided an explanation and labeled the “common themes” that evidently were the basis for Interrogatory 8 and others. Even though this may have been the intent of the drafters, it is not the way these interrogatories read. Interrogatory 7 is an example. The body of the interrogatory itself asks that equipment and processes be identified. It then goes on, in the subparts, to ask a whole list of other specific questions that go way beyond the identification of the equipment and processes. If the interrogatory is about the major stationary source determination, why was there not a general question regarding that determination posed and then details elicited. Instead, the drafter asks 11 questions, each asking for specifics of its own. The drafter never asks anything recognizable as a single general question which would constitute the single interrogatory itself. Interrogatory 7 truly constitutes 11 questions. No common theme or general interrogatory is stated.

8. Particularly frustrating is Interrogatory 19 and others like it. In Interrogatory 19, Respondent presents four very broad, general requests: (1) describe any and all communications regarding particulate air emission modeling related to the MGP facility, (2) the identity of all data relating to air emission tests conducted at MGP, (3) the identity of emission

data associated with MGP, (4) and/or the identity of air particulate modeling related to the MGP facility. Where is the general inquiry? Where is the interrogatory that sets the "common theme". What is the question? There are obviously four requests in this interrogatory, but not a one of them is identifiable as the original single interrogatory. Interrogatory No. 19 is particularly frustrating because of the number of times the identity, description and data concerning "air emission modeling", "air emission tests," "emission data," and "air particulate modeling" are asked for in not only this interrogatory, but other interrogatories in this first set of requests. It is asked for in individual specific questions with no general theme in Interrogatory No. 7, in the same manner in Interrogatory No. 8, and Interrogatory 9 asks for descriptions of communications concerning "air particulate emission issues."

9. Respondent claims that Complainant's position is "draconian." Nothing could be further from the truth. Complainant's position is dead on, absolutely square and on point with the authority cited by Respondent. Each interrogatory should consist of a single inquiry and any subpart should truly be something that elicits detail on point with the original general inquiry. That is not how Respondent's interrogatories are drafted. They are drafted as a list of specific, independent questions, not as a general question followed by something eliciting specific details. As such, it leaves Complainant searching for the original single inquiry upon which to focus, and frustrated by what is presented instead, that being multiple queries that are not related to any single inquiry.

Reply to Respondent's interrogatory-specific analysis

Interrogatory No. 1. In its response, Respondent compares its own Interrogatory 1 to Complainant's Interrogatory 29. Complainant's Interrogatory 29 poses a single question, despite Respondent's misplaced emphasis, in its response, on Complainant's use of the term "and/or." The single notion in Complainant's Interrogatory No. 29 is the identification, for each

response to Complainant's interrogatories, of all persons involved in the preparation of the response to the interrogatory. That's it. Respondent's Interrogatory No. 1 starts out, "Please identify." Again, where is the single interrogatory, that is, where is the general inquiry? From there, Respondent's question: (a) actually asks three questions; item (b) asks for four pieces of information; and question (c) asks for yet another piece of information.

Interrogatory 2 through 5. Contrary to Respondent's position that it is entitled to ask four interrogatories about witnesses that include subparts, the inquiry regarding witnesses is dictated by specific sections of the Illinois Code of Civil Procedure. In one of these four interrogatories, Respondent cites to an outdated portion of the code, making the interrogatory indiscernible. The information that can and should be elicited about witnesses can be covered in two interrogatories. The interrogatories pertinent to witnesses should at least be consistent with the code, so as to make them understandable and allow the Complainant to respond. Subparts as utilized by Complainant in its two interrogatories regarding witnesses are customary. As stated above, Complainant's objection points out the duplicitous and indiscernible nature of the interrogatories regarding witnesses, which is directly related to the excessive number of interrogatories. Without the duplication, and without the improperly based interrogatory, Respondent would have two interrogatories instead of four and would save the Complainant the time and effort of responding to Respondent's excessive number of interrogatories.

Interrogatory 7. Respondent claims all of its subparts are relevant to a particular common theme. First of all, there is no generally stated interrogatory that would clearly state a common theme or basic subject matter of the question. If the Respondent is asking about the major stationary source determination, it should succinctly pose an interrogatory and then elicit detail. That is not what was done here. The Respondent asked 11 separate questions. The

interrogatory is a list of 11 specific queries. Each subpart seeks a set of information in and of itself that stands on its own, not necessarily related to any other. It was not obvious, from reading the interrogatory in all its various subparts, what the common theme was since the specific subparts involved so many tangents. Respondent claims this interrogatory is pertinent to its affirmative defense, but yet makes no mention of the affirmative defense in the initial language of the interrogatory. Perhaps if Respondent drafted a succinct interrogatory that discussed the major stationary source determination and its affirmative defense, it would greatly facilitate a constructive response to this interrogatory.

Interrogatory 8. Complainant's reply to Respondent's response regarding Interrogatory 8 is identical to Complainant's reply regarding Interrogatory 7 and is also stated above in paragraph 6 of this reply. Interrogatory No. 8 represents 4 separate questions. Each subpart seeks a set of information in and of itself that stands on its own, not necessarily related to any other. It was not obvious, from reading the interrogatory in all its various subparts, what the common theme was since the specific subparts are complete within themselves and are not related to any initial, single interrogatory that mentions "major modification." The initial statement in this interrogatory makes a general reference to the Complaint. Like Interrogatory No. 7, Respondent claims this interrogatory is pertinent to its affirmative defense, but yet makes no mention of the affirmative defense in the initial language of the interrogatory. Perhaps if Respondent drafted a succinct interrogatory that discussed the major modification determination and its affirmative defense, it would greatly facilitate a constructive response to this interrogatory. If Respondent fails to be precise, it leaves Complainant guessing which is a waste of time and resources. It is evident from Respondent's response that there was a specific intention behind the interrogatory, but Respondent completely failed to mention either purpose in a succinct, single interrogatory, that may then be followed by specifics designed to

elicit detail.

Interrogatories 9 and 10: In its response, Respondent states that “A casual comparison of the request shows that Interrogatory 9 has set out a request for communications related to “air particulate permits or air particulate emission issues” within a specific time period, and between specific parties.” The term “air particulate issues” is overly broad, and when this interrogatory is read in conjunction with the other several interrogatories that ask for identical information, there is a very significant question as to too many interrogatories, asking for a very confusing combination of information, said requests being duplicative in nature. All of these duplicative questions result in a combined number of interrogatories that exceed the limit set by Board rule and the Illinois Civil Code of Procedure, and cause the Complainant undue expense in resources and time. If the Respondent only would have asked the question in a manner that resembled its actual purpose in asking the question, it is apparent the interrogatories may have been much more succinct, but Respondent didn’t. Instead, it took liberty to ask and re-ask for information, to ask for information using overly broad terms that result in no precision, and to propound way too many interrogatories. Obviously, all of this was done trying to skirt the Board’s rules and the state statute. Given the level and tone of argument that has resulted from attempts to clarify the requests, and the lack of cooperation in informal discussions, it is apparent Respondent is still trying to skirt discovery requirements. Also in its response, Respondent indicates that Interrogatory 10 is meant to focus on permit modifications and application modifications. It concludes with the smart remark that Complainant is answering its own question. The question was posed because Respondent’s original interrogatory was so poorly drafted as to be unclear. Why should Complainant have to guess? Why should Complainant have to deal with convoluted phrases such as “air particulate permit modification” and “air particular permit application modification” when Respondent has been functioning in

the state's regulatory environment for years and very well can be much more precise itself rather than use convoluted general terms that make no sense? Complainant's objection to these interrogatories is relevant to the issue of number of interrogatories in that, use of such general terms frustrate the purpose of answering the interrogatory and also tend to make the interrogatories appear very duplicative. Information responsive to such general requests about the issuance of permits and modification to permits is information that is also responsive to many other interrogatories posed in this first set.

Interrogatory No. 11. This is an interrogatory in which, again, Respondent poses no general interrogatory that establishes the common theme, but instead presents the interrogatory as a list of 5 separate queries. There is no progression from the general to the specific, or common to eliciting details. There is only a list of five separate inquiries. This had to have been done purposefully. It's a tactic so the Respondent doesn't have to take responsibility for establishing a common theme, but instead can list all sort of wide-ranging queries, generally related to the single notion of penalty.

Interrogatories 14 and 16. Respondent in its response regarding these interrogatories identifies topic areas for the various interrogatories. Again, instead of taking responsibility to draft a succinct general inquiry and go to the specific, the interrogatories are instead wide-ranging lists of separate queries that have no stated common theme. They appear to address topic areas, but they do not concern one clearly stated inquiry. Respondent also raises questions about information requested in Complainant's interrogatories. Complainant is more than happy to address any concerns or questions Respondent might have. The questions stated in the response are the first time Respondent raised the issues. If the interrogatories appear duplicative to Respondent, Complainant is more than happy to discuss the true intent of the interrogatories.

Interrogatory No. 19. Respondent's response regarding Interrogatory No. 19 defies the actual language of the interrogatory as propounded to Complainant. Respondent states in its response that Interrogatory 19 asks for one thing: IEPA air emission modeling at the MGP site. But this is how Interrogatory 19 reads:

Describe and an all communications within IEPA and/or between IEPA and MGP, USEPA, August Mack or any third party regarding particulate air emissions modeling related to the MGP facility and identify all data relating to air emission tests conducted at the MGP site, emission data associated with the MGP facility, and/or air particulate modeling related to the MGP facility.

As set forth in Complainant's motion, Complainant reads this interrogatory to ask for the following: four very broad, general requests: (1) describe any and all communications regarding particulate air emission modeling related to the MGP facility, (2) the identity of all data relating to air emission tests conducted at MGP, (3) the identity of emission data associated with MGP, (4) and/or the identity of air particulate modeling related to the MGP facility. Complainant asked, "How do items (1) and (4) differ? In (1), is Respondent asking for communications, and in the second, asking the State to identify all air particulate modeling? If Respondent truly intended this interrogatory to ask for IEPA's air emission modeling at the MGP site, why did it not so state? Why instead did it include all this wide ranging language. There are two answers: (1) Respondent did a horrible job of drafting this interrogatory, or (2) Respondent is disingenuous in its response and it truly meant to ask four very wide ranging queries to continue to cast its fishing net very wide, resulting in the undue harassment of Complainant and causing Complainant unnecessary expenditure in time and resources.

Interrogatory No. 21. Complainant's reply regarding Interrogatory 21 is set forth in Paragraph 5 of this reply and will not be restated here.

10. As Respondent has cited in its response, the purpose of the limit on interrogatories is not to prevent discovery, but to prevent potentially excessive use of this

particular discovery device. *Power & Telephone Supply Co. v. Suntrust Banks, Inc.* 2004 U.S. Dist. Lexis 6325 (W.D.Tenn. March 15, 2004). In the foregoing, Complainant has set forth exactly how Respondent has taken great, and improper, license with this discovery device, that being interrogatories governed by a limit of 30, including subparts, thereby exercising excessive use of the device that will result in unnecessary expenditure of time and resources by the Complainant.

11. Respondent makes issue of Complainant's discussion regarding the volume of material its discovery requests call for. Complainant is certainly cognizant and prepared to produce the volume of material generated in this matter over the many years it has remained at issue. However, Complainant objects to requests that require Complainant to take the time and expend resources to examine the same material in a multitude of contexts that may potentially result in truly unnecessary efforts to produce materials in response to an excessive number of duplicative requests.

12. Complainant is fully prepared and, of course, has initiated work to respond to Respondent's discovery requests. However, it also is not going to let itself be the subject of excessive discovery requests, harassment, and requests that result in the unnecessary expenditure of time and effort.

Respondent's FOIA Request

13. In its response to Complainant's motion, Respondent stated that is submitted a FOIA request to obtain documents responsive to Complainant's discovery requests so that Respondent may produce the documents, evidently, back to Complainant. This is absurd.

14. In initial informal discussions, Complainant asked Respondent its reason for submitting a FOIA request at this time, when discovery was already pending. Respondent's answer was that it submitted a FOIA request because it was apparent the client had never done

so in the past, and because Respondent felt the FOIA request might address any and all documents a discovery request might miss. In essence, Respondent was using the FOIA as yet another device to obtain documents from the Complainant regarding the exact same issues as were currently pending in the enforcement case for which discovery requests were issued. One issue that was discussed was that the FOIA request, under state law, would actually result in the production of fewer documents because of the exemptions available under state law. For whatever reason, but potentially mindful of the information that the FOIA request was not going to increase the size of the net cast by Respondent in its fishing for documents, Respondent decided to temporarily withdraw its FOIA request until discovery production was complete and Respondent would be able to determine if it felt it wanted to re-issue the FOIA request.

15. It could not be more obvious, from the progression of events, and from the very words of the Respondent itself in the exhibits attached to Complainant's original motion, that Respondent has re-issued its FOIA request as a vendetta against Complainant for simply sending an 8-page letter seeking clarification and reconsideration of discovery requests, and for filing a motion to strike. The FOIA request is very clear evidence of the Respondent's desire to cause Complainant undue expenditure of time and effort, and also Respondent's intention to harass the Complainant.

Informal Communications In An Attempt to Resolve Discovery Disputes

16. Complainant disputes Respondent's representation of communications between the parties regarding this discovery dispute.

17. Prior to the discussion on August 29, 2005, the parties had engaged in constructive discovery discussions.

18. The discussion that occurred on August 29, 2005 resulted in Respondent's failure to constructively respond to and address Complainant's objection to the number of

interrogatories propounded. It was clear from the discussion that the parties did not agree on the issue. For whatever reason, which is somewhat uncomprehensible to Complainant, Respondent states in its response that it came away from the August 29, 2005 discussion under the impression the Complainant was satisfied with the outcome of the teleconference. Nothing could be further from the truth.

19. In that Complainant was totally unsatisfied with the outcome of the August 29, 2005 teleconference, it immediately detailed its objections relevant to the number of interrogatories propounded, in a letter dated August 31, 2005 to Respondent. In that the parties were under a lapsing discovery schedule, and in that it was obvious that the parties were not in agreement about the issue of the number of interrogatories propounded by Respondent, Complainant made one more attempt to resolve the dispute via negotiation by sending a letter detailing Complainant's objections. The level of detail was meant to serve a constructive purpose. It was meant to thoroughly explain the Complainant's objections. Complainant asked for a quick response to the letter for two reasons. First of all, as stated above, the discovery schedule was lapsing. Secondly, it was fairly obvious that the parties were in disagreement about the issue and, therefore, the matter would become the subject of a motion to strike or a protective order. There was no sense delaying the filing of such motion. Respondent's response to the letter bore this out. The Respondent made it very clear it disagreed with Complainant's objections.

20. Unfortunately, when counsel for Complainant picked a target date for the response, she was oblivious to the court holiday. The choice of the date was an inadvertent error.

21. Pursuant to the Supreme Court Rules governing discovery, counsel for the parties are directed to engage in negotiated resolution of discovery disputes. Complainant's

August 31, 2005 letter was meant to facilitate the applicable rule.

WHEREFORE, for the foregoing reasons and on the foregoing grounds, in conjunction with the reasons, grounds and arguments set forth in Complainant's original motion to strike, or in the alternative, for a protective order, Complainant respectfully requests that the Hearing Officer grant its motion to strike, or in the alternative, its motion for a protective order limiting Respondent's interrogatives to prevent undue expense and harassment.


Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General
of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY:


JANE E. MCBRIDE
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
(217) 782-9031
Dated: October 7, 2005

STATE OF ILLINOIS)
) ss
COUNTY OF SANGAMON)

AFFIDAVIT

I, JANE E. MCBRIDE, after being duly sworn and upon oath, state as follows:

1. I am the Assistant Attorney General assigned to the matter of *People v. Midwest Grain Products of Illinois, Inc.*, PCB 97-179.

2. I am executing this Affidavit to accompany Complainant's Reply to Respondent's Response to Motion to Strike Respondent's Amended First Set of Interrogatives, or, in the alternative, Motion for Protective Order Limiting Interrogatories to Prevent Undue Expense and Harassment.

3. The assertions set forth in Complainant's Motion regarding the progression of this matter are correct and accurate, to the best of Affiant's knowledge and belief.

Further, Affiant sayeth not.


JANE E. MCBRIDE

Subscribed and sworn to before me
this 7th day of October, 2005.


NOTARY PUBLIC

