

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,
Complainant,
vs.
J & S COMPANIES, INC., a Missouri Corporation, and FIRST CHOICE CONSTRUCTION, INC., an Illinois Corporation,
Respondents.

PCB No. 06-33
(Enforcement)

RECEIVED
CLERK'S OFFICE
MAY 24 2006
STATE OF ILLINOIS
Pollution Control Board

NOTICE OF FILING AND PROOF OF SERVICE

The undersigned certifies that an original and nine copies of FIRST CHOICE CONSTRUCTION, INC.'S ANSWER TO REQUEST FOR ADMISSION OF FACT were served upon the Clerk of the Illinois Pollution Control Board, and one copy was served upon each of the following parties of record and the Hearing Officer in this cause by enclosing same in envelopes addressed to:

Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Suite 11-500
Chicago, IL 60601

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

J & S Companies, Inc.
C/o Daniel J. McAuliffe, R.A.
7777 Bonhamme Avenue, Ste. 2004
Clayton, MO 63105

Kristen Laughridge Gale (Hand Delivery)
Office of the Attorney General
Environmental Bureau
500 South Second Street
Springfield, IL 62706

with postage fully prepaid, and by depositing said envelopes in a U.S. Post Office Mail Box in Springfield, Illinois on the 22nd day of May, 2006, before 5:30 p.m., or via hand delivery as indicated

[Handwritten signature of Stephen F. Hedinger]
Stephen F. Hedinger

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This Pleading is being submitted on recycled paper

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FIRST CHOICE CONSTRUCTION, INC.'S ANSWER TO REQUEST FOR ADMISSION OF FACT

NOW COMES Respondent, FIRST CHOICE CONSTRUCTION, INC., and for its Answer to the "Request for Admission of Fact Directed Towards First Choice Construction, Inc.," states as follows:

1. In 2003, J & S Companies, Inc. hired First Choice Construction, Inc. to haul the construction and demolition debris from the Lansdowne Junior High School demolition site in East St. Louis, St. Clair County, Illinois.

ANSWER: Admit that in 2003, J & S Companies, Inc. hired First Choice Construction, Inc. to haul materials from Lansdowne Junior High School demolition site in East St. Louis, St. Clair County, Illinois. First Choice Construction, Inc. objects to the term "construction and demolition debris" as vague and undefined, and/or alternatively answers that it cannot truthfully admit or deny "construction and demolition debris" because that term is undefined in these requests for admission of fact, but is a term of art with specific definitions in other contexts.

2. Starting on or about February 6, 2003 until about December 3, 2003, First Choice Construction hauled approximately 92 truckloads of construction and demolition debris from the school demolition site to 7401 Bunkum Road, East St. Louis, St. Clair County, Illinois ("disposal site").

ANSWER: First Choice Construction, Inc. admits that starting on or about February 6, 2003, until about December 3, 2003, it hauled certain materials from the school demolition

debris from the school demolition site to 7401 Bunkum Road, East St. Louis, St. Clair County, Illinois (“disposal site”).

ANSWER: First Choice Construction, Inc. admits that starting on or about February 6, 2003, until about December 3, 2003, it hauled certain materials from the school demolition site to 7401 Bunkum Road, East St. Louis, St. Clair County, Illinois. First Choice Construction, Inc., objects to the terms “construction and demolition debris” as vague and undefined, and/or alternatively answers that it cannot truthfully admit or deny “construction and demolition debris,” because that term is undefined in these requests for admission of fact, but is a term of art in other contexts. First Choice Construction, Inc., cannot truthfully admit or deny “approximately 92 truckloads,” because First Choice Construction, Inc., did not count the truckloads. First Choice Construction, Inc., denies “disposal site”.

3. The construction and demolition debris disposed at the disposal site consisted of brick, metal, plaster, paper, wood, pipe insulation, wire, and rebar.

ANSWER: See answer to Request to Admit No. 2, above, with respect to “the construction and demolition debris.” First Choice Construction, Inc. denies there was a “disposal site,” and denies that it “disposed at the disposal site” any material. First Choice Construction, Inc., admits that the material delivered to the site was almost exclusively brick and other nonputrescible materials usable as clean fill, and First Choice Construction, Inc., admits that the materials may also have contained minor and de minimus amounts of metal, plaster, paper, wood, pipe insulation, wire and rebar, although the amounts to the best of the knowledge of First Choice Construction, Inc., were less than five percent of the volume delivered, incidental to the clean fill material.

4. The disposal site is not permitted by the Illinois Environmental Protection Agency (Illinois EPA) as a sanitary landfill.

ANSWER: First Choice Construction, Inc., objects to Request to Admit No. 4 on the basis of vagueness, as to what is meant by a “sanitary landfill,” which is undefined in the Request to Admit, but which is a term of art with a specific meaning in other contexts. First Choice Construction, Inc., denies that there was a “disposal site” located at 7401 Bunkum Road, East St. Louis, St. Clair County, Illinois, and First Choice Construction, Inc. cannot truthfully admit or deny whether that location is permitted by the Illinois Environmental Protection Agency (Illinois EPA) as a sanitary landfill, because First Choice Construction, Inc., has no independent knowledge of the Illinois EPA’s permitting activities.

GENERAL OBJECTION AND MOTION TO STRIKE

Respondent, First Choice Construction, Inc., further objects to the Requests to Admit served upon it, and asks that they be stricken, in light of Complainant’s failure to include the language required by 35 Ill. Adm. Code 101.618 (c) in the first paragraph of the request. First Choice Construction, Inc., notes that Complainant failed to include this required language in the Requests to Admit served upon Co-Respondent J & S Companies, Inc. as well.

WHEREFORE, Respondent, FIRST CHOICE CONSTRUCTION, INC., submits its answers to the “Request for Admission of Facts Directed Toward First Choice Construction, Inc.,” and asks that this Board strike those requests as non-compliant with this Board’s regulations.

Respectfully submitted,

FIRST CHOICE CONSTRUCTION, INC.,
Respondent

By its attorney,

HEDINGER LAW OFFICE

By *Stephen F. Hedinger*
Stephen F. Hedinger

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2601 South Fifth St.
Springfield, IL 62703
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AFFIDAVIT

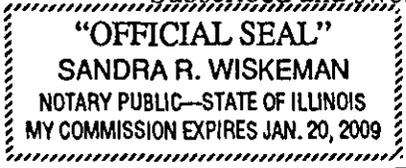
STATE OF ILLINOIS:

COUNTY OF St. Clair : SS.
:

Mike Bowman, President of First Choice Construction, Inc., upon oath, deposes and states that the foregoing answers to the "Request for Admission of Facts Directed Toward First Choice Construction, Inc.," are true and correct, to the best of his knowledge and belief, based upon his personal knowledge of the facts related therein.

Mike Bowman
Mike Bowman

Subscribed and sworn to before me this 19 day of May, 2006.



Sandra R. Wiskeman
Notary Public

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