

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	AC 12-51
	)	
Complainant,	)	
	)	(IEPA No. 87-12-AC)
v.	)	
	)	
NORTHERN ILLINOIS	)	
SERVICE COMPANY,	)	
	)	
Respondent.	)	

**NOTICE OF FILING**

TO: John T. Therriault (E-FILED)  
Assistant Clerk  
Illinois Pollution Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, IL 60601-3218

Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, IL 60601-3218

Scott B. Sievers  
Special Assistant Attorney General  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

PLEASE TAKE NOTICE that I have electronically filed with the Office of the Clerk of the Pollution Control Board the Respondent's Memorandum in Opposition to Complainant's Motion for Leave to File an Amended Administrative Citation, a copy of which is herewith served upon you.

NORTHERN ILLINOIS SERVICE COMPANY,  
Respondent,

By Peter DeBruyne, P.C.

By   
Peter DeBruyne, Its Attorney

Peter DeBruyne  
Peter DeBruyne, P.C.  
838 North Main Street  
Rockford, IL 61103  
Telephone (815) 964-3810  
Fax (815) 964-3813  
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CERTIFICATE OF SERVICE

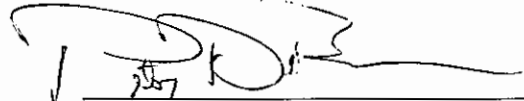
Peter DeBruyne hereby certifies that he has served a copy of the foregoing NOTICE OF FILING upon:

John T. Therriault (E-FILED)  
Assistant Clerk  
Illinois Pollution Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, IL 60601-3218

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Springfield, IL 62794-9276

by enclosing true copies thereto to Bradley P. Halloran and Scott B. Sievers at the addresses referred to above in envelopes duly addressed bearing proper first class postage and deposited in the United States mail at Rockford, Illinois, on January 21, 2012.

  
Peter DeBruyne

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	AC 12-51
	)	
Complainant,	)	
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	)	
NORTHERN ILLINOIS	)	
SERVICE COMPANY,	)	
	)	
Respondent.	)	

**RESPONDENT'S MEMORANDUM IN OPPOSITION TO  
COMPLAINANT'S MOTION FOR LEAVE TO FILE AN  
AMENDED ADMINISTRATIVE CITATION**

Complainant seeks to file an amended Administrative Citation pursuant to 735 ILCS 5/2-616(a). The Second District Appellate Court recently has reaffirmed the bases for allowing such an amendment. As noted in *Ponto v. Levan*, 2012 Ill.App. (2d), 110355, ¶25, the bases are: (1) whether the proposed amended complaint would cure defective pleadings; (2) whether the amendment would surprise or prejudice the opposing party; (3) whether the amendment was timely filed; and (4) whether the movant had previous opportunities to amend.

On each of these grounds, complainant's motion fails. First the proposed amended Administrative Citation cures no defect in the current pleading. Instead it cumulates the penalty which is sought. Second the proposed amendment does prejudice respondent because discovery in the form of document requests have been served long ago on August 6, 2012. At this late date to require respondent to recommence the discovery proceedings in a citation type atmosphere is burdensome and oppressive. Further, complainant has served discovery on respondent on December 18, 2012 and respondent has expended time and effort in responding to that discovery in terms of the existing Administrative Citation and Petition for Review. Thus

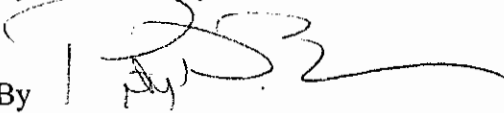
more burden would be heaped upon respondent to have to recommence its effort in view of an amended Administrative Citation. Third, the amendment has not been timely filed. The Administrative Citation was filed on May 7, 2012 and complainant has had in its own files for five years the subject matter for which it is seeking an amendment. It has known for five years that such judicial proceedings had taken place and had been concluded. No explanation has been given as to why this amendment is needed or why it was not more timely filed. Finally, it is clear that complainant has had previous opportunities to amend. Over seven months have passed since the date of the filing of the Administrative Citation in this case. At this late date, complainant's tardiness should not be excused.

For these reasons, the motion to amend the Administrative Citation should be denied.

Respectfully submitted,

NORTHERN ILLINOIS SERVICE COMPANY,  
Respondent,

By Peter DeBruyne, P.C.

By 

Peter DeBruyne, Its Attorney

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CERTIFICATE OF SERVICE

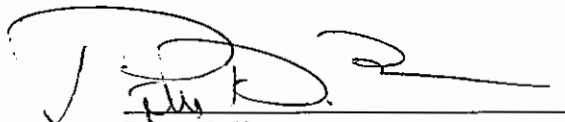
Peter DeBruyne hereby certifies that he has served a copy of the foregoing RESPONDENT'S MEMORANDUM IN OPPOSITION TO COMPLAINANT'S MOTION FOR LEAVE TO FILE AN AMENDED ADMINISTRATIVE CITATION upon:

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Assistant Clerk  
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Peter DeBruyne