

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 NACME STEEL PROCESSING, LLC,)
 a Delaware limited liability corporation,)
)
 Respondent.)

PCB No. 2013 – 12
(Enforcement – Air)

NACME STEEL PROCESSING, INC’s OBJECTION TO STATE’S REQUEST TO FILE REPLY BRIEF IN SUPPORT OF MOTION TO STRIKE AFFIRMATIVE DEFENSES

Pursuant to Board Rule 101.500, Respondent NACME STEEL PROCESSING, Inc, (“NACME”) objects to the PEOPLE OF THE STATE OF ILLINOIS’ (the “State”) “Motion for Leave to Reply Instanter a Reply Brief in Support of Motion to Strike and Dismiss Respondent’s Amended Affirmative Defenses”, and in support of its objection, states as follows:

1. Board Rule 101.500 states in relevant part: *“The moving person will have no right to reply, except as permitted by the Board or the hearing officer to prevent material prejudice.”*

The State however ignores this rule.

2. The State openly flouts this rule by replying before getting permission to do so, including a “Reply Brief” section within its purported request to file a reply. The State is required to follow the rules like anyone else and this clear attempt at an end-run should be rejected.

3. Moreover, in its purported “request to file”, the State offers no support for its bare boned statement that it will be prejudiced if it is not allowed to reply in order to explain alleged “misrepresentations” by NACME supposedly contained in NACME’s Response brief. Instead, the State proceeds to argue in the “Reply Brief” section of its purported request for leave to file a

reply, about whether its interpretation of case law and its distillation of the “facts” is superior to NACME’s.

4. Rather than making a showing that a reply is necessary “to prevent material prejudice”, the State simply makes further argument on top of its motion to strike brief, and without permission to do so. The State merely asserts its own interpretation of the law and facts, but does not cite single case in support of its FESOP argument, nor does it rebut NACME’s case law citations. Thus its hand-wringing over “misrepresentations” is wholly unsupported. On NACME’s waiver and estoppel defenses, the State fails to show any need to reply in order to “prevent material prejudice”, but replies anyway arguing a different interpretation of the case law from NACME’s interpretation.

5. The issue raised by the State’s underlying Motion to Strike is whether NACME has met a prima facie pleading standard. The State is not *materially* prejudiced, or prejudiced at all, simply because NACME has a different view of the relevance of the facts plead by the State and the case law as applied to those facts. In sum, the State wholly fails to show any threat of prejudice here, beyond its not getting in the last word.

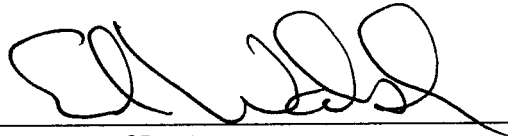
6. The Board rules are specifically drafted to prevent the tactics employed here by the State. NACME respectfully suggests that the hearing officer assigned to this case, or the Board, is more than capable of separating out the arguments of the parties and reaching a correct legal conclusion on the two briefs filed by the parties. There is no reason to accept the State’s bald assertion that it will be materially prejudiced unless it can file an additional brief reiterating the arguments that it already made in its original brief.

Accordingly, the “Motion for Leave to Reply Instantly a Reply Brief in Support of Motion to Strike and Dismiss Respondent’s Amended Affirmative Defenses”, should be denied.

Respectfully submitted,

NACME STEEL PROCESSING, L.L.C.,

Respondent

By: 
One of Its Attorneys

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CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached **NACME STEEL PROCESSING, INC'S OBJECTION TO STATE'S REQUEST TO FILE REPLY BRIEF IN SUPPORT OF MOTION TO STRIKE AFFIRMATIVE DEFENSES**, by Email and U.S. Regular Mail, upon the following person:

Nancy J. Tikalsky
Assistant Attorney General
Office of the Illinois Attorney General
Environmental Bureau
69 West Washington Street, Suite 1800
Chicago, Illinois 60602

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

Bradley P. Halloran, Hearing Officer
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
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**NACME STEEL PROCESSING, L.L.C.,
Respondent**

By:



Edward V. Walsh, III

Date: April 1, 2013