

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

|   |   |                        |
|---|---|------------------------|
| PEOPLE OF THE STATE OF ILLINOIS,          | ) |                        |
|   | ) |                        |
| Complainant,                              | ) |                        |
|   | ) |                        |
| v.  | ) | <b>PCB No. 13 - 12</b> |
|   | ) | (Enforcement – Air)    |
| NACME STEEL PROCESSING, LLC,              | ) |                        |
| a Delaware limited liability corporation, | ) |                        |
|   | ) |                        |
| Respondent.                               | ) |                        |

**NACME STEEL PROCESSING L.L.C.'S EMERGENCY MOTION TO COMPEL DEPOSITIONS**

**I. Introduction**

This motion is brought under 35 IAC ¶101.502 and seeks to compel the appearance for deposition of various Illinois Environmental Protection Agency (“IEPA”) employee witnesses identified by Complainant (the “State”) to testify at hearing in this matter. The State, through various shifting arguments, is trying to re-write the Illinois Pollution Controls Board’s (the “Board”) procedural rules to change the commonplace and routine method for providing notice, and the place, for depositions of disclosed party witnesses. Making various self-contradicting arguments, the State refuses to produce its witnesses in Cook County and insists that subpoenas issue for each one. Depositions in this case must be completed by May 31, 2013 under the current scheduling order. As such prompt ruling on this motion is respectfully requested.

**II. Background Facts**

**A. IEPA Witnesses Based in Springfield**

By e-mail dated May 1, 2013, NACME's counsel asked counsel for the State if she would provide a few alternative dates in the middle to end of the month of May for the availability of two IEPA employees, Valery Brodsky, a permit engineer and Julie Armitage, an IEPA attorney, for deposition at NACME's counsel's office in Chicago. (A copy of the May 1, 2013 e-mail and subsequent e-mail thread is attached as Exhibit A).

The State refused to provide dates for deposition or to produce the witnesses in Cook County, stating:

"I believe that witnesses are to be deposed in the county where they reside or are employed unless there is agreement between parties otherwise. I'm afraid IEPA won't agree to depositions in Chicago. Julie and Valeriy are employed in Springfield, so depositions will have to take place in Springfield"

The State cited Illinois Supreme Court Rule 203 ("S.Ct.Rule") in support of this argument. (Id.)<sup>1</sup>

NACME's counsel pointed out that in fact S.Ct.Rule 203 requires in the case of a Plaintiff deponent that witnesses appear for deposition in the county where the action is pending, in this case Cook County where the State, not NACME, filed this action. (Id.)

The State then changed its argument stating that under Illinois Pollution Control Board Rule 101.622 (f) (35 IAC § 101.622 (f); hereafter "Board Rule") witnesses to be deposed may be required to attend only in the county in which they reside or maintain an office address. (Id.)

NACME made another attempt to secure agreement on the depositions in a letter dated May 2, 2013 stating that:

"In fact Board rule 101.622 (f) has no applicability here as it pertains to subpoenaed witnesses. The witnesses in question are party witnesses for whom no subpoena is required. The Board's rules do not directly address the location of depositions for party witnesses, but Supreme Court Rule 203, which you originally advanced in your argument, does. Under Board rule 101.100 (b) the Board is to look to the Supreme Court rules for guidance where the Board's procedural rules are silent. As such, Supreme Court rule 203 which requires plaintiff deponents

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<sup>1</sup> In a witness disclosure dated April 30, 2013 the State identified a total of 4 Springfield based witnesses for hearing, including Mr. Brodsky but not including Ms. Armitage. Nacme intend to depose these witnesses as well.

to be produced in the county in which the matter is pending, applies here. Moreover, the IEPA chose to file this matter in Cook County and it should be willing to live with that choice. Unless you agree promptly to produce IEPA witnesses for deposition in Cook County we will file a motion to compel with the Board.” (See Exhibit B)

In its last response the State changed arguments once again, this time stating in a letter dated May 3, 2013:

I agree that Section 101.100(b) and 101.616 of the Illinois Pollution Control Board (Board) rules state that the Board may look to the Supreme Court Rules for guidance where the Board’s procedural rules are silent. But under Section 101.622(a) of the Board’s rules speak to this issue wherein the rule requires a subpoena to be issued by the Board’s clerk for *all* deposition and hearing testimony witnesses. Therefore, *all* witnesses are subpoena witnesses, unlike circuit court civil actions. Nonetheless, if Supreme Court rule 203 did apply, the IEPA is not the Plaintiff-witness under a matter brought by the People of the State of Illinois, who is the named Plaintiff in circuit court matters. (See Exhibit C; emphasis supplied)

The State cited no Board precedent for these new assertions and provided none when asked by NACME’s counsel.

B. Julie Armitage

In the course of the above communications, the State first refused to produce Ms. Armitage “as a policy the Attorney’s General Office” and subsequently because she is an attorney for the IEPA. (See, Exhibit A and the State’s May 3, 2013 letter attached as Exhibit C). In an attempt to resolve this aspect of the discovery dispute between the parties, NACME’s counsel responded in a letter dated May 7, 2013, as follows:

You are in possession of approximately 3,000 pages of documents that we produced in this litigation. Directing your attention to those documents produced to us by the Illinois Environmental Protection Agency (“IEPA”) pursuant to a Freedom of Information Act Request and bates labeled “IEPA FOIA 0001-0440” and subsequently produced to you, there are numerous documents showing Ms. Armitage as author or recipient. There are a small number of documents that IEPA withheld from production on the basis of privilege and these are not among them. We are entitled to examine Ms. Armitage on these documents and any matters that arise out of them. (see Board Rule 101.616 (e)) If Ms. Armitage believes there is an attorney-client privilege with respect to any matter, she can assert it at that time. Finally, as you know from separate correspondence we believe that Ms. Armitage must be produced for deposition in Chicago. You have disagreed with this and we will address it by motion. (see Exhibit E)

### III. Argument

#### A. IEPA's Disclosed Witnesses For Hearing Must Appear in Cook County for Deposition

The State seeks to re-write the Board's rules to require that *all* witnesses in cases before the Board need to be subpoenaed for deposition, including, as here, employees of parties to the action who are disclosed as witnesses for hearing. It then argues that because such subpoenaed witnesses need appear for deposition only in their home counties, and not in the county where the State filed its action, the State need not produce Springfield based IEPA employee-witnesses for deposition in Cook County.

The Board must not allow its rules to be twisted in a way that gives the State, or any party, a tactical advantage. The State seeks to impose on NACME the time and expense of travelling to another part of the State far from where the State filed this action. The State filed this case in Cook County and its witnesses should have to appear here for their depositions as stated in Supreme Court Rule 203. Moreover, the needless cost and inefficiency of following the State's approach, in comparison to the routine practice applied in civil courts, and under Illinois' Supreme Court rules, for simple notice of deposition to party witnesses, is obvious.

The State admits that where the Board's procedural rules are silent, the Board looks to Illinois' Supreme Court Rules for guidance. It then ignores this acknowledgement and reads into the Board witness subpoena rule the word "all". (See Exhibit C) In fact the word "all" does not appear in Board Rule 101.622(a). As distinct from such notices to parties, the Supreme Court rules provide, like Board Rule 101.622(a), for the issuance of subpoenas to non-party witnesses. There is no merit or logic in the State's argument that "all" witnesses must be called by subpoena under Board rules. Where, as here, the Board's rules are silent on the procedure for securing the

depositions of party witnesses, the Illinois Supreme Court rules fill the gap, as the Board intended and as acknowledged by the State. S.Ct Rule 204 (3) states: “*Service of notice of the taking of the deposition on any party or person who is currently an....employee of a party is sufficient to require the appearance of the deponent...*”. S.Ct. Rule 203 states that depositions are to be taken... “*in the case of a Plaintiff deponent, in the county in which the action is pending*”.

Mr. Brodsky and Ms. Armitage are unarguably employees of the State of Illinois, the named Complainant in this case. As such, they are required to appear for deposition in Cook County on simple notice, not by subpoena.

B. The IEPA is a Party in This Action

Evidently realizing the weakness of its subpoena argument, the State has a back- up argument that’s more of a stretch- that the IEPA is not in fact a party in this action. This argument has many holes in it. First, the witnesses in issue are employees of the IEPA an agency of the State of Illinois, the named Complainant in this action. Second, while it is recognized that the Attorney General can bring an action solely in its own right, that is not what happened here. The State’s Complaint recites on its face that the action is brought “by the Attorney General of the State of Illinois, on her own motion *and at the request of the Illinois Environmental Protection Agency...*” (See, Complaint head paragraph and Count I paragraph 1) In other words the Attorney General is acting, in part, as the attorney for the IEPA as plaintiff. Count I paragraph 2 of the Complaint states that the IEPA... “is an agency of the State of Illinois....and charged, inter alia, with the duty of enforcing the Act.” These are not the allegations of a non-party to this enforcement action but rather the allegation of a plaintiff party.

Accordingly, State/IEPA employees are required to attend their depositions in Cook County on simple notice of deposition in this action.

C. IEPA Witness Julie Armitage is Subject to Deposition

The State's outright refusal to produce Ms. Armitage for deposition is wholly unsupported. The State's generalized argument that Ms. Armitage need not appear for deposition because she acted as an attorney in this matter begs the question. There is no basis, and the State does not present one, for refusing to allow examination of Ms. Armitage about documents produced to NACME by the IEPA of which she is either the author or recipient. The IEPA neither at the time of production of these documents over a year ago, nor since, has attempted to invoke any privilege regarding the documents. It has not requested the return of a single document. The IEPA's FOIA production did show that IEPA had screened the documents for release and some documents were withheld on privilege grounds, but they did not include the documents in issue here.

Board Rule 101.616(a), with exceptions not relevant here, states: "All relevant information and information calculated to lead to relevant information is discoverable...". The State in its above recited communications has made no argument why this rule does not apply here.

Furthermore, in its refusal to present Ms. Armitage for deposition, the State seeks to place a burden on NACME that finds no basis in the rules or case law, i.e. demanding that NACME specifically identify to the State what documents, etc., it seeks to inquire about. NACME has produced documents to the State, and in an effort to resolve this discovery dispute has zeroed the State into the bates number range in which the Armitage documents can be found. (See Exhibit D) NACME is not required to further tip its hand on its deposition strategy. The

State is however free to object to any question posed at deposition.<sup>2</sup> Further, if some privilege exists, of which no showing whatsoever has been made, it is solely the IEPA's to assert as the only possible holder of the privilege. The IEPA is free to invoke any privilege it holds at deposition.

## V. Conclusion

With time running short for the taking of depositions in this case the State should not be allowed to make a game out of discovery. IEPA employees should be presented for deposition in Cook County where the State filed this case on simple notice and without further obstruction by the State.

Respectfully Submitted,

**NACME STEEL PROCESSING, L.L.C.,**

**Respondent**

By: Edward V. Walsh  
One of Its Attorneys

Edward V. Walsh, III  
ReedSmith, LLP  
10 South Wacker Drive  
Suite 4000  
Chicago, Illinois 60606  
(312) 207-1000

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<sup>2</sup> Moreover, the State's argument contradicts its "IEPA is not a party" argument. If the IEPA is not a party, why is the State asserting potential attorney-client privilege arguments on the IEPA's behalf?

**CERTIFICATE OF SERVICE**

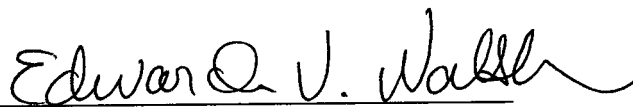
I, the undersigned, certify that I have served the attached **NACME STEEL PROCESSING L.L.C.'S EMERGENCY MOTION TO COMPEL DEPOSITIONS**, by email and U.S. Regular Mail, upon the following persons:

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  
Chicago, Illinois 60601

**NACME STEEL PROCESSING, L.L.C.,  
Respondent**

By:   
Edward V. Walsh, III

Date: May 8, 2013



# **EXHIBIT A**

---

**From:** Tikalsky, Nancy [mailto:ntikalsky@atg.state.il.us]  
**Sent:** Wednesday, May 01, 2013 5:07 PM  
**To:** Walsh III, Edward V.  
**Subject:** RE: State v NACME

Ed,

True, if this matter were file in Cook County circuit court, but this matter is filed with the Illinois Pollution Control Board and under IPCB rule Section 101.622 (f) witnesses to be deposed may be required to attend only in the county in which they reside or maintain an office address. None of the witnesses you named maintains an office address in Chicago.

By the way, as a policy the Attorney's General Office will not agree to the deposition of an attorney. So, I will not produce Julie Armitage for deposition.

Will let you know when I hear from IEPA on the availability for depositions in Springfield in mid-late May.

Warm regards,

Nancy J. Tikalsky

Nancy J. Tikalsky  
Assistant Attorney General  
Office of the Illinois Attorney General  
Environmental Bureau  
69 West Washington Street, Suite 1800  
Chicago, Illinois 60099  
312.814.8567

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**From:** Walsh III, Edward V. [<mailto:EWalsh@ReedSmith.com>]  
**Sent:** Wednesday, May 01, 2013 4:19 PM  
**To:** Tikalsky, Nancy  
**Cc:** 'David Susler'  
**Subject:** RE: State v NACME

Nancy, I will supplement interrogatory answers to provide expected testimony for Britt Wenzel. Answers to interrogatories 1 and 2 provide the expected subject matter for DuBrock and Hendriksen. The balance of witnesses are adverse (i.e. IEPA employees) and their expected testimony would be better known to you.

Supreme Court rule 203 requires in the case of a Plaintiff deponent that they appear in the county where the action is pending. Please let me know ASAP whether you intend to abide by the rule or whether I will have to file a motion.

I disagree that the hearing officer's ruling on the motion will have any impact on my ability to probe the permitting history of the facility with a representative deponent nor, of course, do I have to accept your unilateral framing of what the issues are in the case.

I am available to discuss any of this at your convenience.

**Ed Walsh**  
[ewalsh@reedsmith.com](mailto:ewalsh@reedsmith.com)  
**ReedSmith**  
312.207.3898

Reed Smith LLP  
10 South Wacker Drive  
Chicago, IL 60606-7507  
312.207.1000  
Fax 312.207.6400

---

**From:** Tikalsky, Nancy [<mailto:ntikalsky@atg.state.il.us>]  
**Sent:** Wednesday, May 01, 2013 3:55 PM  
**To:** Walsh III, Edward V.  
**Cc:** 'David Susler'  
**Subject:** RE: State v NACME

Ed,

I received your Witness Disclosure and it gives no description of what you expect them to testify on as required by S.Ct. rule 213 (f)(1). Could you please provide me some description?

Also, I believe that witnesses are to be deposed in the county where they reside or are employed unless there is agreement between parties otherwise. I'm afraid IEPA won't agree to depositions in Chicago. Julie and Valeriy are employed in Springfield, so depositions will have to take place in Springfield (S.Ct. rule 203).

I'll forward your inquiry to Julie but I'm not sure what the permitting history has to do whether or not you were a major source as early as 2002 and if so, did not apply for a CAAPP/FESOP instead of an SOP. I guess it depends on how the Board rules on our Motion to Strike or Dismiss Affirmative Defenses.

Warm regards,

Nancy J. Tikalsky

Nancy J. Tikalsky  
Assistant Attorney General  
Office of the Illinois Attorney General  
Environmental Bureau  
69 West Washington Street, Suite 1800  
Chicago, Illinois 60099  
312.814.8567

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**From:** Walsh III, Edward V. [<mailto:EWalsh@ReedSmith.com>]  
**Sent:** Wednesday, May 01, 2013 1:14 PM  
**To:** Tikalsky, Nancy  
**Cc:** 'David Susler'  
**Subject:** State v NACME

Nancy, can you give me a few alternative dates in the middle to end of the month for the availability of Valery Brodsky and Julie Armitage for deposition at my office.

In addition, in lieu of my sending out a notice, can you identify a representative deponent for the IEPA on the subject matter of the lawsuit, and particularly the permitting history of the facility? ( if its not Valery or Julie)

If you want to identify persons whose depositions you want to take on our side, I can likewise get some alternative dates. Regards, EVW.

**Ed Walsh**  
[ewalsh@reedsmith.com](mailto:ewalsh@reedsmith.com)  
ReedSmith  
312.207.3898

Reed Smith LLP  
10 South Wacker Drive  
Chicago, IL 60606-7507  
312.207.1000  
Fax 312.207.6400

\* \* \*

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and local provisions or (2) promoting, marketing or recommending to another party any tax-related matters addressed herein.

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**EXHIBIT B**

**ReedSmith**

Edward V. Walsh III  
Direct Phone: +1 312 207 3898  
Email: ewalsh@reedsmith.com

Reed Smith LLP  
10 South Wacker Drive  
Chicago, IL 60606-7507  
+1 312 207 1000  
Fax +1 312 207 6400  
reedsmith.com

May 2, 2013

**VIA EMAIL**

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

**Re: People of the State of Illinois v. NACME Steel Processing**

Dear Nancy,

This letter is written in an attempt to resolve a discovery dispute about the proper place for depositions of Illinois Environmental Protection Agency ("IEPA") employees. It also involves your refusal to produce for deposition Julie Armitage, an IEPA attorney.

**Place for Depositions**

By e-mail dated May 1, 2013 I had inquired about alternative dates for the deposition of IEPA permit engineer Valery Brodsky and for Ms. Armitage at my office in Chicago. You responded that these witnesses need not be produced in Chicago under Illinois Supreme Court Rule 203. (and later that Ms. Armitage need not be produced at all, addressed below) I responded that, indeed, Rule 203 requires plaintiff deponents to be produced in the county in which the matter is pending, here Cook County. You then shifted ground and argued that Illinois Pollution Control Board rule 35 IAC Section 101.622 (f) is actually controlling and that witnesses to be deposed may be required to attend only in the county in which they reside or maintain an office address. You stated that none of the witnesses you named maintains an office address in Chicago.

In fact Board rule 101.622 (f) has no applicability here as it pertains to subpoenaed witnesses. The witnesses in question are party witnesses for whom no subpoena is required. The Board's rules do not directly address the location of depositions for party witnesses, but Supreme Court Rule 203, which you originally advanced in your argument, does. Under Board rule 101.100 (b) the Board is to look to the Supreme Court rules for guidance where the Board's procedural rules are silent. As such, Supreme Court rule 203 which requires plaintiff deponents to be produced in the county in which the matter is pending, applies here. Moreover, the IEPA

Nancy J. Tikalsky  
May 2, 2013  
Page 2

ReedSmith

chose to file this matter in Cook County and it should be willing to live with that choice. Unless you agree promptly to produce IEPA witnesses for deposition in Cook County we will file a motion to compel with the Board.

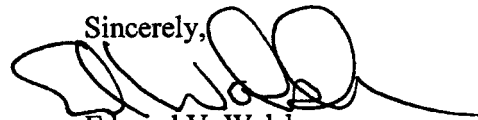
Refusal to Produce Julie Armitage for Deposition

With respect to Ms. Armitage you informed me following our initial discussion about the proper place for deposition, that Ms. Armitage would not be produced at all because it was IEPA's "policy" not to produce attorneys for deposition. You did not identify the policy, or whether it is written or informal or whether it has the force of law. As you know, Ms. Armitage has a long history with the subject site, including decisions made on permitting the site and whether or not the site was or was not a major source for purposes of applicability of Title V requirements. Numerous non-privileged documents have been produced through an IEPA FOIA either authored by or directed to Ms. Armitage on matters bearing on this litigation.

Unless you can justify your refusal to produce Ms. Armitage with statutory or case law support stating that IEPA attorneys are exempt from deposition regarding non-privileged matters within their knowledge, we will file a motion to compel and ask for appropriate relief under Supreme Court Rule 219 (c).

Please advise me of your decision as soon as possible. As you know depositions are to be completed this month and this morning I received your witness list consisting of 19 names. We will be hard pressed to complete depositions of these witnesses in the time allotted unless we have agreement right away on the above issues. (I will likely want to depose the 6 IEPA witnesses you disclosed, two of whom are based in Cook County, and I suppose you will depose all or some of the 13 remaining names on your list.)

Finally, I am available to discuss resolution of these issues.

Sincerely,  
  
Edward V. Walsh

EVW/rh



# **EXHIBIT C**



**OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS**

Lisa Madigan  
ATTORNEY GENERAL

May 3, 2013

Edward V. Walsh, III  
ReedSmith, LLP  
10 South Wacker Drive  
Chicago, IL 60606-7507

*Sent via email attachment*

**RE: People v. Nacme Steel Processing, LLC  
PCB No. 2013-12 (Enforcement-Air)**

Dear Ed:

I am writing in response to your letter dated May 2, 2013 regarding an apparent discovery dispute about the place for deposition of Illinois Environmental Protection Agency (Illinois EPA) employees whose place of employment is in Springfield, and your request to depose Julie Armitage, an attorney with the Illinois EPA.

I agree that Section 101.100(b) and 101.616 of the Illinois Pollution Control Board (Board) rules state that the Board may look to the Supreme Court Rules for guidance where the Board's procedural rules are silent. But under Section 101.622(a) of the Board's rules speak to this issue wherein the rule requires a subpoena to be issued by the Board's clerk for all deposition and hearing testimony witnesses. Therefore, all witnesses are subpoena witnesses, unlike circuit court civil actions. Nonetheless, if Supreme Court rule 203 did apply, the IEPA is not the Plaintiff-witness under a matter brought by the People of the State of Illinois, who is the named Plaintiff in circuit court matters.

Thank you for providing a description of the subjects that you intend to question Ms. Armitage about in a deposition that was missing in your Witness Disclosure. It is my understanding that Ms. Armitage has no direct factual knowledge of the Facility and its operations and Nacme's permit applications. Ms. Armitage reviewed facts presented to her by IEPA personnel and derived legal opinions through legal analysis of the facts presented. I have not seen Ms. Armitage author any documents after the stack test performed in April 2002, for which Nacme's 2005 CAAPP/FESOP PTE calculations and application was based on and for which this matter is based on and any documents with her initials were reviewed in light of her

position as an attorney, which is privileged information. Additionally, I have not seen Ms. Armitage author any document Respondent previously produced. Please provide the documents you claim Ms. Armitage authored pursuant to the Witness Disclosure rule 213 (f)(1) and the People's First Set of Interrogatories and Production of Documents.

As for the People's Witness Disclosure, the incomplete interrogatory questions provided by Respondent left me no choice but to add various undisclosed persons who represented Nacme in correspondence and documents related to the stack testing and permitting of the Nacme facility from April 2002 through January 2012. In that light, please provide the People with a complete answers to Interrogatories No.'s 3 (in documents corporate officers had discussions and correspondence with Illinois EPA regarding permitting and stack testing), 4, 12, 13, 14, 16, 19 and 20, which are well within the 30 interrogatory limit allowed under Section 101.620 of the Board's rules, which are the applicable rules applied to this Board matter.

Finally, please produce documents requested for the following Production Request No.'s:

- 10 – complaints of Nacme's operations can lead to evidence that air pollution occurred as a result of the improper permit and applicable regulations for the operations at the Facility.
- 11 - Nacme's financial interests can lead to evidence regarding its behavior in permitting choices at the Facility
- 12, 13 and 14 – Nacme's financial health which can lead to its decisions regarding permitting choices at the Facility.

If you have any further questions or concerns, please feel free to contact me.

Sincerely,

---

Nancy J. Tikalsky  
Assistant Attorney General  
Office of the Illinois Attorney General  
69 West Washington Street, Suite 1800  
Chicago, Illinois 60602  
(312) 814-8567

**EXHIBIT D**

# ReedSmith

Edward V. Walsh III  
Direct Phone: +1 312 207 3898  
Email: ewalsh@reedsmith.com

Reed Smith LLP  
10 South Wacker Drive  
Chicago, IL 60606-7507  
+1 312 207 1000  
Fax +1 312 207 6400  
reedsmith.com

May 7, 2013

## VIA EMAIL

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

### **Re: People of the State of Illinois v. NACME Steel Processing**

Dear Nancy,

This letter responds to yours of May 3, 2013 regarding disagreements over discovery.

#### 1. Julie Armitage

You are in possession of approximately 3,000 pages of documents that we produced in this litigation. Directing your attention to those documents produced to us by the Illinois Environmental Protection Agency ("IEPA") pursuant to a Freedom of Information Act Request and bates labeled "IEPA FOIA 0001-0440" and subsequently produced to you, there are numerous documents showing Ms. Armitage as author or recipient. There are a small number of documents that IEPA withheld from production on the basis of privilege and these are not among them. We are entitled to examine Ms. Armitage on these documents and any matters that arise out of them. (see Board Rule 101.616 (e)) If Ms. Armitage believes there is an attorney-client privilege with respect to any matter, she can assert it at that time. Finally, as you know from separate correspondence we believe that Ms. Armitage must be produced for deposition in Chicago. You have disagreed with this and we will address it by motion.

#### 2. Witness List

With regard to your witness disclosure of April 30, 2013, please be advised of the following:

- a. Listed witness Tom Beach is no longer employed by NACME and is living out of state. If you want me to try and find his contact information, please let me know.
- b. Listed witness Willam Reichel similarly is no longer employed by NACME and his whereabouts are unknown.

Nancy J. Tikalsky  
May 7, 2013  
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ReedSmith

- c. Listed witness Bob Wisdom is no longer employed by NACME and his whereabouts are unknown.
- d. Listed witness Jamie C. Iatropulos is no longer employed by Mostardi-Platt Environmental Services, Inc and her whereabouts are unknown.

The remaining 4 Mostardi witnesses that you identified acted at the direction and control of NACME disclosed witness Britt Wenzel. We agree that Mr. Wenzel's expected testimony is generally as you describe it in your disclosure. We have previously described in interrogatory answers the general knowledge of Mr. DuBrock and Mr. Hendriksen and agree that their expected testimony is generally as you describe it in your witness disclosure.

3. Interrogatories

Leaving aside that you have provided no detail for your statement about "corporate officers" who purportedly had discussions and correspondence with IEPA, we stand on our objections to interrogatory 3. I do not get your point with respect to interrogatories 4 and 12. Can you clarify? We stand on our objections to interrogatories 13-14, 16, 19 and 20. Like the Code of Civil Procedure, Board Rule 101.620 includes "subparts" in the count of the 30 maximum interrogatories allowed. Your interrogatories far exceed that number.

4. Document Requests

Respectfully, we find your argument about request No. 10 unconvincing. We know of no documents, other than IEPA's documents, reflecting complaints about improper permitting of the facility. However, note that documents have been produced about "complaints", including, those made by IEPA and including with respect to an alleged release of HCL in the vicinity of the facility in the early 2000s.

Your argument on Request No. 11 is not supported by any detail or facts whatsoever. We stand on our objections.

Similarly, your summary argument on Requests 12, 13 and 14 are unsupported. We stand on our objections.

I am available for a 201(K) conference on all or any of the above.

  
Sincerely,

Edward V. Walsh

EVW/rh