BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
Complainant,)	
v.)	PCB No. 13 - 12 (Enforcement – Air)
NACME STEEL PROCESSING, LLC,)	(2)
a Delaware limited liability corporation,)	
)	
Respondent.)	

NACME STEEL PROCESSING, LLC's MOTION FOR LEAVE FILE REPLY BRIEF

- 1. NACME, pursuant to IPCB rule 101.500(e), and in order to avoid material prejudice, requests leave to file a Reply to the State's "Objections to NACME's Motion to Compel Depositions" (hereafter, "State's Response").
- 2. The State's Response goes beyond merely responding to NACME's Motion to Compel and instead requests affirmative relief, i.e., to limit NACME's discovery.
- 3. In fairness to NACME leave to file a Reply should be granted so that it can rebut the State's unsupported demand to limit the scope of NACME's discovery to a certain time frame.
- 4. NACME will be prejudiced if a full briefing on new matter asserted by the State is not conducted, not least because the State fails to supply any factual support for its affirmative request to limit NACME's discovery to a certain time frame while at the same time the State's own discovery requests in this matter are not limited to this time frame.

5. Wherefore, NACME seeks leave to file the attached Reply brief.

Respectfully Submitted,

NACME STEEL PROCESSING, L.L.C.,

Respondent

One of Its Attorneys

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

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached NACME STEEL

PROCESSING, LLC's MOTION FOR LEAVE FILE REPLY BRIEF, by e-mail 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

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

Date: May 30, 2013

John T. Therriault, Assistant Clerk 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

- 3 -

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
Complainant,)	
v.)	PCB No. 13 - 12 (Enforcement – Air)
NACME STEEL PROCESSING, LLC, a Delaware limited liability corporation,)	(Emoreoment 1111)
Respondent.)	

NACME STEEL PROCESSING, LLC's REPLY TO THE STATE'S OBJECTIONS TO NACME'S MOTION TO COMPEL

- 1. The State's "Objections to NACME's Motion to Compel Depositions" (hereafter, "State's Response") goes far beyond merely responding to NACME's Motion to Compel and, instead, requests affirmative relief.
- 2. Wrapped up in the State's premature argument about whether an attorney client privilege exists with respect to examination of IEPA attorney Julie Armitage is a request that NACME be limited to the examination of any individual as to matters occurring only after April 2002. (State's Response, pp. 5-6). The State argues that this is the "relevant" time frame.
- 3. There are many reasons why the State's demand should be rejected:
- a) The request for affirmative relief demanded by the State does not belong in a Response brief.

- b) The State's own discovery requests in this matter span the time period 2000 forward, yet it seeks to limit NACME's discovery to April 2002 forward. (See, State's discovery requests, Ex. 1 to NACME's Response to State's Motion to Compel, filed herein)
- c) The State argues that "...any inquiry into the permitting history of NACME prior to the stack test conducted April 2002 by NACME, which is the basis for determining NACME to be a "major source", is not relevant..." (State's Response, p. 6). But the State's assertion is merely argument, not a fact of record. Moreover it is argument about a fact upon which the State bears the burden of proof. NACME is entitled to conduct discovery on any matter on which the State bears the burden of proof, including how it permitted the subject facility and when in fact the State first determined that NACME was allegedly a "major source".
- d) As the State itself has argued repeatedly in this matter, under Board rule 101.616 (a): "All relevant information and information calculated to lead to relevant information is discoverable." The State fails to show how examination of Ms. Armitage or other witnesses on matters arising prior to April 2002 does not meet this standard.

For all of the above reasons the State's request in its Response demanding affirmative relief limiting NACME's discovery, should be denied.

Respectfully Submitted,

NACME STEEL PROCESSING, L.L.C.,

Respondent

By:____

One of Its Attorneys

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

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached NACME STEEL

PROCESSING, LLC's REPLY TO THE STATE'S OBJECTIONS TO NACME'S

MOTION TO COMPEL by e-mail 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 30, 2013