

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY)	
)	
Complainant,)	
)	
v.)	AC 2012-051
)	(IEPA No. 87-12-AC)
NORTHERN ILLINOIS)	(Administrative Citation)
SERVICE COMPANY,)	
)	
Respondent.)	

NOTICE

John T. Therriault
Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601-3218

Peter DeBruyne
Peter DeBruyne, P.C.
838 North Main Street
Rockford, IL 61103

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

PLEASE TAKE NOTICE that I have today caused to be filed COMPLAINANT'S REPLY TO RESPONDENT'S OPPOSITION TO STATEMENT OF HEARING COSTS with the Illinois Pollution Control Board, a copy of which is served upon you.

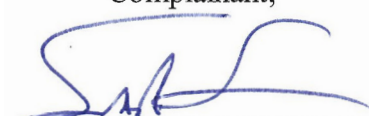
Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Dated: January 13, 2015

Scott B. Sievers
Attorney Registration No. 6275924
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

Complainant,

BY:  _____

Scott B. Sievers
Special Assistant Attorney General

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY)	
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Complainant,)	
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v.)	AC 2012-051
)	(IEPA No. 87-12-AC)
NORTHERN ILLINOIS)	(Administrative Citation)
SERVICE COMPANY,)	
)	
Respondent.)	

**COMPLAINANT’S REPLY TO
RESPONDENT’S OPPOSITION TO STATEMENT OF HEARING COSTS**

NOW COMES the Complainant, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA”), and, pursuant to 35 Ill. Adm. Code 101.300(c) and 108.506(b), replies to Respondent Northern Illinois Service Company’s Opposition to Complainant’s Statement of Hearing Costs (“Opposing Brief”) as follows:

I. NORTHERN INITIATED SUBSTANTIAL DISCOVERY.

In its Opposing Brief, Northern Illinois Service Company (“Northern”) states that “Complainant’s insistence upon engaging in extensive discovery, including the taking of depositions with respect to this ‘traffic ticket’ case, was ... neither prudent nor ‘necessary’ in any general sense to the prosecution of its case.” Northern’s assertion is highly misleading, as Northern was the first to pursue discovery in this action.

Northern served Illinois EPA with its request for production of documents on August 6, 2012, which was months before Illinois EPA served its written discovery requests upon Northern on December 18, 2012. (Exs. A, B & C.)

Northern also raised the notion of taking discovery depositions before Illinois EPA did. As reflected in the Hearing Officer Order of August 23, 2012, “[t]he parties are discussing a deposition schedule for the respondent’s inspector.” The idea of Illinois EPA taking depositions came after Northern first sought to depose Inspector Donna Shehane.

In addition, the depositions taken by Illinois EPA of William Hoff and Paul Munson *together* took substantially less time than did Northern’s deposition of Inspector Shehane. Munson’s deposition ran one hour and 20 minutes, and Hoff’s deposition ran only 38 minutes, for a total of one hour and 58 minutes. Northern’s deposition of Inspector Shehane, by contrast, lasted three hours and five 5 minutes. (Exs. D, E & F.)

Thus, the evidence shows that Northern initiated and participated in the pursuit of substantial discovery in this action.

II. ALL ITEMIZED COSTS WERE ASSOCIATED WITH THE HEARING.

Not surprisingly, as this Board is part of a different branch of the government than the judiciary, it has different rules than the judiciary. The Illinois Code of Civil Procedure and the Illinois Supreme Court rules provide for recovery of particular litigation costs by a prevailing party. *See, e.g.* 735 ILCS 5/5-108 and Illinois Supreme Court Rule 208(d). However, this Board’s rules are broader, extending to all costs associated with a hearing, with the exception of attorney’s fees or witness fees for persons employed by Illinois EPA. *See, e.g.*, 35 Ill. Adm. Code 108.500(b)(3) and 108.502.

Section 108.502 of this Board’s rules provides in pertinent part that, “[w]ithin 30 days after the close of the hearing or as otherwise directed by the hearing officer, the Agency or Delegated Unit must submit to the Clerk of the Board and serve on all parties an itemized listing of the costs **associated with the hearing.**” 35 Ill. Adm. Code 108.502 (2015) (emphasis added).

As noted in paragraphs three and four of the affidavit attached as Exhibit A to that statement, all three depositions were referenced in the hearing in this action. In fact, Northern's Munson was impeached with his deposition testimony. (Tr. at 101:20-104:9.) The hearing no doubt would have taken longer and been less focused without the depositions ensuring that witnesses would not stray from their prior sworn testimony. Further, the lodging and per diem expenses incurred by Illinois EPA were incurred for the undersigned to travel more than three hours from his Springfield office for a 9 a.m. hearing in Rockford. Thus, Illinois EPA submits that all of the costs it incurred and itemized in Complainant's Statement of Hearing Costs were "associated with the hearing" in this action.

WHEREFORE, the Complainant, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, prays that this honorable Board ORDER the Defendant to pay \$994.00 to the Complainant for its hearing costs in this case.

Respectfully submitted,


ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Complainant,

Dated: January 13, 2015

Scott B. Sievers
Attorney Registration No. 6275924
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

BY:



Scott B. Sievers
Special Assistant Attorney General

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

RESPONDENT NORTHERN ILLINOIS SERVICE COMPANY'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS FROM COMPLAINANT ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

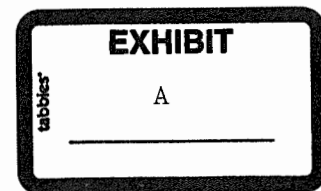
Respondent NORTHERN ILLINOIS SERVICE COMPANY ("NISC") requests that Complainant produce the following documents within twenty-five (25) days.

DEFINITIONS

1. "Complainant" refers to the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("EPA") and its agents, assigns, employees, attorneys and all other persons acting or purporting to act on its behalf.

2. "Respondent" refers to NISC and its agents, assigns, employees, attorneys and all other persons acting or purporting to act on its behalf.

3. "Document(s)" shall mean or refer to all written or graphic matter of every kind or description, however produced or reproduced, whether draft or final, original or reproduction, and all tangible things specifically including, but not limited to: writings, drawings, graphs, charts, photographs, phone records, data compilation (from which information can be obtained, translated, if necessary, through devices into reasonably usable form), letters, correspondence, e-mail, internal e-mail, memoranda, minutes, notes, contracts, agreements, memoranda of conversations, microfilm, desk calendars, periodicals, bulletins, circulars, notices, rules, regulations, prospectii, directions, teletype messages, inter-office communications, reports, business worksheets, computer tapes, disks and/or similar electro-magnetic data recording devices, tape recordings (both audio and video), credit files, evidences of indebtedness, negotiable instruments, or materials similar to any of the foregoing, however denominated, which are in the possession,



custody or control of the party upon whom the interrogatory is served or to which said party can obtain access.

4. "Communication(s)" shall mean or refer to all inquiries, discussions, conversations, negotiations, agreements, understandings, meetings, telephone conversations, letters, e-mail, notes, telegrams, advertisements or other form of verbal exchange, whether oral or written.

5. "Relate to," including its various forms such as "relating to" shall mean: consist of, refer to, reflect or be in any way logically or factually connected with the matter discussed.

6. With respect to the production of any documents which are claimed to be privileged, a statement shall be provided by the attorney for defendant, setting forth as to each document:

- a. the name of the sender, if any, of the document;
- b. the name of the author of the document;
- c. the name of the person, if any, to whom copies are/were sent;
- d. the date of the document;
- e. the date on which the document was received by those having possession, custody or control of the document;
- f. a brief description of the nature and the subject matter of the document; and
- g. the statute, rule or decision which is claimed to give rise to the privilege.

7. "Person" means or refers to any individual, corporation, partnership, association, organization and any and all other entities of all types and natures.

8. The period of time encompassed by this request shall be from September 1, 2009 through the present, unless otherwise specified.

9. "You" or "Your" means or refers to Complainant.

10. "Describe (ing)", when used with respect to an agreement or event, means to identify all documents relating to or referring thereto; to identify all persons present or having knowledge thereof, stating the subject matter of their knowledge and the manner in which such knowledge was acquired (e.g., "John Doe; knows terms of oral agreement; present at meeting, party to conversation, etc.") and to state what acts were done by each person who in any way participated in an agreement or was present at any event being described.

11. "Identify (ing, ied)", when used with respect to a communication means to state the name and present address of each person present at the communication and to state the subject matter of the communication. If the communication was in writing, identify all documents that relate to the communication in the manner provided above.

12. "Identify (ing, ied)", when used with respect to an individual, means to state the person's full name, race, present business affiliation and position, if known, and the present home address, past position and business affiliation, if any, with any of the parties herein.

13. "Identify (ing, ied)", when used with respect to a document, means to state the date, author, addressee, recipient, document type (e.g. "letter, contract, minutes, memoranda, etc.") and to identify its last known custodian and location.

14. "Expert witness" shall have the same meaning as in Rule 26 of the Federal Rules of Civil Procedure, and shall include, but not be limited to a party, an employee of a party, former employees or an independent contractor.

DOCUMENTS REQUESTED

1. All documents relating to paragraph two of the allegation of "FACTS" in the Administrative Citation.

2. All documents relating to paragraphs (1)-(3) of "VIOLATIONS" of the Administrative Citation.

3. All documents consisting of or relating to communications between, on the one hand, Donna Shehane, and, on the other hand, other employees of the Complainant and Respondent, which communications relate to the allegations of facts or violations contained in the Administrative Citation.

4. All documents consisting of or relating to the education and/or training of Donna Shehane regarding her position as a field inspector for the Land Pollution Control Division of the Complainant.

5. The original photographs, copies of which are attached as Exhibits to Donna Shehane's Affidavit attached to the Administrative Citation.

6. All documents consisting of or relating to the alleged inspection of Respondent's facility occurring on December 7, 2011.

7. All documents consisting of or relating to the inspection of Respondent's facility allegedly occurring on September 15, 2009.

8. All documents consisting of or relating to inspections conducted by Donna Shehane between March 14, 2010 and March 14, 2012 in which she cited a violation of 415 *ILCS* 55(k)(1) or other Sections of the Illinois Environmental Protection Act related

to used or waste tires.

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
Email: pdebruyne@sbcglobal.net

CERTIFICATE OF SERVICE

I hereby certify that I did on the 6th day August, 2012, by regular mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the foregoing Respondent Northern Illinois Service Company's First Request for Production of Document from Complainant Illinois Environmental Protection Agency on the following:

Michelle M. Ryan
Special Assistant Attorney General
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276


Peter DeBruyne

CERTIFICATE OF SERVICE

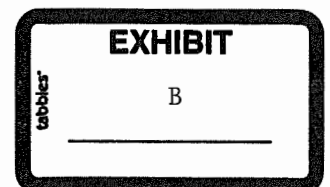
I, the undersigned attorney at law, hereby certify that on December 18, 2012, I served true and correct copies of COMPLAINANT'S FIRST INTERROGATORIES TO RESPONDENT by first class mail of the United States Postal Service upon the following persons:

Peter DeBruyne
Peter DeBruyne, P.C.
838 North Main Street
Rockford, IL 61103

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY



Scott B. Sievers
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544
(217) 782-9143 (TDD)

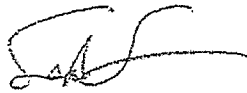


CERTIFICATE OF SERVICE

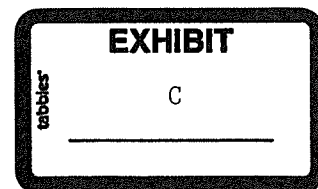
I, the undersigned attorney at law, hereby certify that on December 18, 2012, I served true and correct copies of COMPLAINTANT'S FIRST REQUESTS TO PRODUCE TO RESPONDENT by first class mail of the United States Postal Service upon the following persons:

Peter DeBruyne
Peter DeBruyne, P.C.
838 North Main Street
Rockford, IL 61103

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY



Scott B. Sievers
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544
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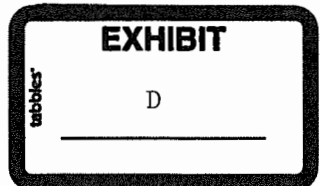
BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Complainant,)
)

vs.) AC2012-051

) (IEPA No.
NORTHERN ILLINOIS) 87-12-AC)
SERVICE COMPANY,) (Administrative
Respondent.) (Citation)

The discovery deposition of WILLIAM
HOFF, taken in the above-entitled cause before DIANE
HROMEK, C.S.R. and Notary Public at the Law Offices of
Peter DeBruyne, P.C., Rockford, Illinois on the 22nd day
of October, 2013, at the hour of 2:42 o'clock p.m.



1 Q. Okay.

2 MR. SIEVERS: I don't believe I have anything
3 further.

4 MR. DeBRUYNE: Okay, I have no further questions.

5 MR. SIEVERS: Thank you for your time.

6 MR. DeBRUYNE: I want to the reserve signature on
7 that.

8 THE WITNESS: Okay -- thanks.

9 MR. SIEVERS: Let me get you the exhibits here.

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11 (Whereupon the deposition ended at 3:20
12 o'clock p.m., and further deponent saith not.)

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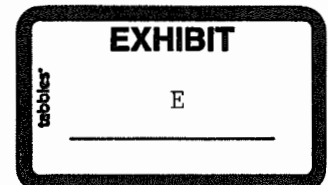
BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Complainant,)

vs.

NORTHERN ILLINOIS) AC2012-051
SERVICE COMPANY,) (IEPA No.
Respondent.) (87-12-AC)
) (Administrative
) (Citation)

The discovery deposition of PAUL
MUNSON, taken in the above-entitled cause before DIANE
HROMEK, C.S.R. and Notary Public at the Law Offices of
Peter DeBruyne, P.C., Rockford, Illinois on the 22nd day
of October, 2013, at the hour of 1:00 o'clock p.m.



1 On Exhibit 6, do you know where those
2 materials came from?

3 A. I don't know for certain but it looks like they
4 came from the yard.

5 Q. But you don't know, is that correct?

6 A. I don't know for sure, no.

7 MR. SIEVERS: I have nothing further.

8 MR. DeBRUYNE: I don't have any questions.

9 THE WITNESS: That's it?

10 (Whereupon, the
11 deposition ended at 2:20
12 o'clock p.m., and further
13 deponent saith not.)
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STATE OF ILLINOIS
BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)

Complainant,)

vs.)

NORTHERN ILLINOIS SERVICE)
COMPANY,)

Respondent.)

**CERTIFIED
COPY**

CASE NO. AC 12-51

DEPOSITION OF
DONNA SHEHANE

The deposition of Mrs. Donna Shehane taken on behalf of the respondent before Julie M. Andreoni Castree, Certified Shorthand Reporter and Registered Professional Reporter at 9:05 a.m., October 22, 2013, in the offices of Attorney Peter DeBruyne, P.C., 838 North Main Street, Rockford, Illinois.

A P P E A R A N C E S

SCOTT B. SIEVERS, Special Assistant Attorney General, Illinois Environmental Protection Agency, 1021 North Grand Avenue East, Springfield, Illinois, appearing for the complainant.

EXHIBIT
F

1 A. No.

2 MR. DeBRUYNE: No further questions.

3 MR. SIEVERS: I have nothing further.

4 (Whereupon, at 12:10 p.m. the deposition was
5 concluded.)

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Illinois Environmental Protection Agency v. Northern Illinois Service Co.
Pollution Control Board No. AC 12-51

CERTIFICATE OF SERVICE

Scott B. Sievers, Special Assistant Attorney General, herein certifies that he has served a copy of the foregoing **COMPLAINANT'S REPLY TO RESPONDENT'S OPPOSITION TO STATEMENT OF HEARING COSTS** upon:

John Therriault
Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601-3218

Peter DeBruyne
Peter DeBruyne, P.C.
838 North Main Street
Rockford, IL 61103

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

by mailing true copies thereof to the addresses referred to above in envelopes duly addressed bearing proper first class postage and deposited in the United States mail at Springfield, Illinois, on January 13, 2015.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Dated: January 13, 2015

Scott B. Sievers
Attorney Registration No. 6275924
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

Complainant,

BY:



Scott B. Sievers
Special Assistant Attorney General