

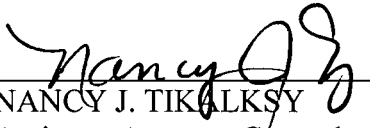
**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. 13-43
	)	(Enforcement - Air)
BLICK'S CONSTRUCTION CO., INC.,	)	
an Illinois corporation, and RON BRICKER,	)	
	)	
Respondents.	)	

**NOTICE OF ELECTRONIC FILING**

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board by electronic filing the following **PEOPLE'S MOTION TO COMPEL RESPONSES TO WRITTEN DISCOVERY**, a copy of which is attached and hereby served upon you.

LISA MADIGAN  
Attorney General of the  
State of Illinois

  
NANCY J. TIKALSKY  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602  
(312) 814-8567  
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Dated: April 26, 2016

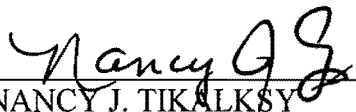
**THIS FILING IS SUBMITTED ON RECYCLED PAPER**

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Respondents.	)	

**CERTIFICATE OF ELECTRONIC SERVICE**

I, Nancy Tikalsky, an Assistant Attorney General, certify that on the 26<sup>th</sup> day of April 2016, I caused to serve the **PEOPLE'S MOTION TO COMPEL RESPONSES TO WRITTEN DISCOVERY** upon the service list hereto attached via electronic filing.

  
\_\_\_\_\_  
NANCY J. TIKALSKY  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
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Service List

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100 W. Randolph  
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Blickhan, Timemrwilke, et al  
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Quincy, IL 62301  
Attorney for Ron Bricker  
(*electronic filing*)

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**PEOPLE'S MOTION TO COMPEL  
RESPONSES TO WRITTEN DISCOVERY**

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois ("People" or "Complainant"), and pursuant to Illinois Pollution Control Board ("Board") Procedural Rule 101.616 (d) and 219, 35 Ill. Adm. Code 101.616(d) and 219, moves the Board for an order compelling the Respondent, BLICK'S CONSTRUCTION CO., INC., an Illinois corporation ("Blick's" ("Respondent")) to respond to Complainant's outstanding written discovery requests, to complete its witness disclosure, and to conduct depositions according to the Board procedural rules; and for the Board to grant a protective order and/or Board's supervision of discovery. In support thereof, the Complainant states and alleges as follows:

1. On September 24, 2015, the People served its Second Set of Interrogatories and First Request for Production of Documents on the Respondent, Blick's ("People's Written Discovery Requests") pursuant to the hearing officer's order dated July 21, 2015; responses to those filings were due on November 30, 2015. See copy of the Board's order dated July 21, 2015.

2. On October 26, 2015, the People agreed to allow additional time for Blick's to file its discovery requests on or before November 13, 2015, and its responses to People's Written Discovery Requests on or before January 15, 2016. See copy of the Board's order dated October 26, 2015.

3. On January 15, 2016, the People received Respondent's Answers to Complainant's Second Set of Interrogatories and Respondent's Responses to Complainant's First Request for Production to the People's Written Discovery Requests ("Blick's Responses"); but Blick's failed to provide documents referenced in Blick's Responses stating "responsive documents will be provided."

4. Additionally, Blick's Responses name a single lay witness and states that further witnesses will be identified.

5. To date, Blick's has failed to submit documents and has failed to identify further witnesses as referenced in Blick's Responses to the People in order to complete Blick's Responses.

6. Pursuant to guidance from Supreme Court Rule 201(k), Complainant has made reasonable attempts to resolve this discovery delay informally.<sup>1</sup>

7. On or about January 25, 2016, February 29, 2016, and April 4, 2016, and April 14, 2016 via electronic communications, the People agreed to allow additional time for Blick's to provide the People with the responsive documents to the People's Written Discovery Requests

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<sup>1</sup>**Supreme Court Rule 201 (k) Reasonable Attempt to Resolve Differences Required.** The parties shall facilitate discovery under these rules and shall make reasonable attempts to resolve differences over discovery. Every motion with respect to discovery shall incorporate a statement that counsel responsible for trial of the case after personal consultation and reasonable attempts to resolve differences have been unable to reach an accord or that opposing counsel made himself or herself unavailable for personal consultation or was unreasonable in attempts to resolve differences.

along with supplemental responses to People's Written Discovery Requests to March 14, 2016 and April 15, 2016 and April 22, 2016, respectively. See copy of the Board's orders dated January 25, 2016, February 29, 2016, and April 4, 2016, respectively.

8. The Board's Procedural Rules 101.616(a), 35 Ill. Admin. Code 101.616(a) reads, in pertinent part, as follows:

- a) All relevant information and information calculated to lead to relevant information is discoverable, excluding those materials that would be protected from disclosure in the courts of this State pursuant to statute, Supreme Court Rules or common law, and materials protected from disclosure under 35 Ill. Adm. Code 130.

9. In addition, the Board's Procedural Rules 101.616(d) and 101.100(b), 35 Ill. Admin. Code 101.616(d) and 101.100(b) read, in pertinent part, as follows:

101.616 Discovery

For purposes of discovery, the Board may look to the Code of Civil Procedure and the Supreme Court Rules for guidance where the Board's procedural rules are silent (see Section 101.100(b)).

101.100 (b) Applicability

b) The provisions of the Code of Civil Procedure [735 ILCS 5] and the Supreme Court Rules [Ill. S. Ct. Rules] do not expressly apply to proceedings before the Board. However, the Board may look to the Code of Civil Procedure and the Supreme Court Rules for guidance where the Board's procedural rules are silent.

10. As guidance, Supreme Court Rule 201(b)(1) reads as follows:

*“Full Disclosure Required.* Except as provided in these rules, a party may obtain by discovery full disclosure regarding any matter relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking disclosure or of any other party, including the existence, description, nature, custody, condition, and location of any documents or tangible things, and the identity and location of persons having knowledge of relevant facts. The word "documents," as used in these rules, includes, but is not limited to, papers, photographs,

films, recordings, memoranda, books, records, accounts, communications and all retrievable information in computer storage.

11. Clearly, People's Written Discovery Requests are relevant to the subject matter of the People's Complaint that alleges Blick's caused, threatened or allowed air pollution when asbestos was discharged and emitted into the environment, failed to provide adequate notice of asbestos removal, and failed to follow regulatory practices for asbestos abatement and waste handling at one of its demolition sites.

12. The People are disadvantaged at moving forward in scheduling and conducting depositions in a timely manner in this matter without the documents or witness disclosures Blick's has promised time and again to provide to the People to complete its Written Discovery Responses.

13. The Board's Procedural Rules 101.616(d), 35 Ill. Admin. Code 101.616(d) reads, in pertinent part, as follows:

d) The hearing officer may, on his or her own motion or on the motion of any party or witness, issue protective orders that deny, limit, condition or regulate discovery to prevent unreasonable expense, or harassment, to expedite resolution of the proceeding,  
(*Emphasis added.*) ILCS S. Ct. Rule 216(c).

14. Accordingly, Respondent has placed Complainant at a disadvantage by failing to comply with the Hearing Officer's orders and the Board's procedural rules. Therefore, Complainant is entitled to a Protective Order and/or the Board's Supervision of Discovery.

15. Complainant moves for a Protective Order and/or the Board's Supervision of Discovery, pursuant to Board's Procedural Rules 101.616(d), 35 Ill. Admin. Code 101.616(d) wherein the Board requires Blick's provides complete responses and relevant documents in response to the People's Written Discovery Requests and completes witness disclosures, or bar

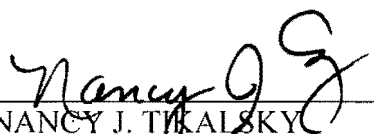
any evidence or testimony contained in the documents and by the undisclosed witnesses.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully prays that this Board enter an order containing the following:

- a) finding that Respondent has failed to comply with the Hearing Officer's orders dated October 26, 2015, January 25, 2016, February 29, 2016, and April 4, 2016 ;
- b) the entry of an order compelling Respondent provides the supplemental responses and documents to the Complainant's Written Discovery Requests, completes witness disclosures of which failure to do so results in:
  - i) Respondent being barred from filing any other pleading relating to any issue to which its refusal or failure relates;
  - ii) Respondent's pleadings relating to Respondent's overdue responses to Complainant's discovery be stricken; and
- c) granting such other and further relief as the Board deems appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS,  
*ex rel.* LISA MADIGAN, Attorney  
General of the State of Illinois

By:

  
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