

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
 by LISA MADIGAN, Attorney)
 General of the State of Illinois,)
)
 Complainant,)
 vs.)
 ENVIRONMENTAL HEALTH & SAFETY)
 SERVICES, INC., an Illinois corporation,)
)
 Respondent.)

PCB 05-51

(Enforcement-Air)

NOTICE OF FILING OF MOTION TO COMPEL ANSWERS OR RESPONSES TO WRITTEN DISCOVERY

TO: Mr. Bryan G. Selander
Schlueter Ecklund
4023 Charles Street
Rockford, IL 61108

Mr. Bradley P. Halloran, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, IL 60601

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board a certificate of service, notice of filing of Complainant's Motion to Compel Answers or Responses to Written Discovery, and Complainant's Motion to Compel Answers or Responses to Written Discovery, a copy of which is attached and herewith served upon you.

By: Katherine M. Hausrath Dated: 6/22/2006
Katherine M. Hausrath

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
Attorney General of the State of Illinois
By: Assistant Attorney General Katherine M. Hausrath
Environmental Bureau
188 West Randolph, 20th Floor
Chicago, IL 60601
312-814-0660

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
by LISA MADIGAN, Attorney)	
General of the State of Illinois,)	
)	
Complainant,)	
vs.)	PCB 05-51
)	
ENVIRONMENTAL HEALTH & SAFETY)	(Enforcement-Air)
SERVICES, INC., an Illinois corporation,)	
)	
Respondent.)	

COMPLAINANT'S MOTION TO COMPEL ANSWERS OR RESPONSES TO WRITTEN DISCOVERY

Now comes the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to Supreme Court Rule 219 and Section 101.616 of the Board's Procedural Rules, 35 Ill. Adm. Code 101.616, hereby moves for entry of an order to compel Respondent, ENVIRONMENTAL HEALTH & SAFETY, SERVICES, INC to provide answers or responses to all written discovery. Pursuant to Section 101.502(a) of the Board's Procedural Rules, 35 Ill. Adm. Code 101.502(a), this motion is directed to the hearing officer. In support of its motion, Complainant states as follows:

1. On April 7, 2006, Complainant served its First Set of Interrogatories on Respondent Environmental Health and Safety Services, Inc. pursuant to Supreme Court Rule 213 and Illinois Pollution Control Board Rule 101.620, 35 Illinois Administrative Code Section 101.620.
2. On May 26, 2006, Respondent's counsel faxed Complainant incomplete and inadequate answers to Complainant's First Set of Interrogatories. Respondents answer to Complainant's First Set of Interrogatories is

attached to and incorporated by reference into this motion as Exhibit A.

To date, Respondent has not served any further answers to Complainant's First Set of Interrogatories.

3. On April 7, 2006, Complainant served its First Request for the Production of Documents, Objects, and Tangible Things on Respondent Environmental Health and Safety Services, Inc. pursuant to Supreme Court Rule 214 and Illinois Pollution Control Board Rule 101.620, 35 Ill. Adm. Code 101.620.
4. To date, Respondent has failed to submit any responses to Complainant's First Request for the Production of Documents, Objects, and Tangible Things.
5. According to an agreed order entered April 5, 2006, the Respondent's responses to all discovery requests were due May 15, 2006.
6. Pursuant to Supreme Court Rule 201(k), Complainant has made numerous attempts to resolve this discovery dispute informally
7. At a telephonic status call on May 18, 2006, Respondent's counsel told Complainant and the hearing officer, Mr. Halloran, that the Respondent would get the answers to the interrogatories and responses to the productions requests to Complainant by May 25, 2006. If Respondent's counsel were not able to do this, the parties were directed to call Mr. Halloran to discuss the issue.
8. Complainant called the Respondent's counsel on May 25, 2006, at which point the Respondent's counsel assured Complainant that the Respondent

would submit all of the outstanding discovery requests by the middle of the week of May 29, 2006. In reliance on this statement, Complainant did not call Mr. Halloran.

9. On May 30, 2006, Complainant called Respondent's counsel to request the responses to Complainant's discovery requests.
10. On June 1, 2006, Complainant's counsel e-mailed Respondent's counsel a further request for the responses to Complainant's request for production. Respondent did not reply to this e-mail.
11. On June 2, 2006, Complainant sent out a written letter to Respondent that specifically outlined the deficiencies in Respondent's answers to the Interrogatories, and requested *all* outstanding discovery responses by June 15, 2006. This letter is attached to and incorporated by reference into this motion as Exhibit B. Respondent did not reply to this letter.
12. On June 20, 2006, in a final attempt to resolve this discovery dispute, Complainant sent an e-mail, requesting all of the outstanding discovery responses by June 21, 2006. Complainant also requested a call from Respondent's counsel by June 21, 2006, so that both parties could contact the hearing officer, Mr. Halloran.
13. Nearly every attempt that Complainant has made to resolve this discovery dispute has been ignored by Respondent. Complainant, after numerous attempts at personal consultation and many reasonable attempts to resolve the above discovery differences, has been unable to reach an accord with respondent's attorney. To date, Respondent has not provided any

documents in response to Complainant's First Request for the Production of Documents, Objects, and Tangible Things, and has provided severely inadequate responses to Complainant's First Set of Interrogatories.

WHEREFORE, the People of the State of Illinois respectfully requests that the hearing officer enter an order:

- A. Compelling Respondent, Environmental Health and Safety Services, Inc., to provide all responses to Complainant's First Request for the Production of Documents, Objects, and Tangible Things;
- B. Compelling Respondent, Environmental Health and Safety Services, Inc., to provide adequate answers to Complainant's First Set of Interrogatories, as outlined in Exhibit B; and
- C. Ordering such other and further relief as is appropriate under the circumstances.

PEOPLE OF THE STATE OF ILLINOIS,
by LISA MADIGAN, Attorney
General of the State of Illinois,

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY: 
KATHERINE M. HAUSRATH
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601
(312) 814-0660

EXHIBIT A

- b. Personal knowledge.

INTERROGATORY NO. 2

- a. Identify the full legal name, address, telephone number, occupation, salary, and responsibilities of each corporate officer of EH&S from December 1, 2002 to the present, including the officer's position and/or title, percent ownership in the corporation, and current or last known address as well as a detailed list of each officer's duties relating to the company, what type of management the officer exercised over or on behalf of the company, and what types of decisions the officer made on a day-to-day basis.
- b. Identify the name of each person who supervised, was/is personally involved in or actively participated in or controlled the day-to-day operations of EH&S, include - for each person identified - a detailed list of all duties he/she performed on behalf of the company, the title of each such person, whether the person acted in a supervisory or management capacity, and what types of decisions or actions each such person made on a day-to-day basis.

ANSWER NO. 2

- a. Randall Lee Oldenburger, 649 Roxbury Road, Rockford, IL 61107
President - 100% ownership - salary of \$30,000
Dailey direction to Supervisor
- b. Randall Lee Oldenburger, General Manager/President
Volodymyr Popaduyk, Supervisor

INTERROGATORY NO. 3

- a. Identify by name, address, telephone number, title, and job responsibilities each person who made company decisions on behalf of EH&S regarding compliance with Federal, State and/or local environmental and/or public health laws and regulations.
- b. State the name, address, telephone number, job title, duties, and responsibilities of any and all persons having knowledge of the operations at the facility and/or any of the facts alleged in the Complaint filed in People v. Environmental Health and Safety Services, Inc., PCB 05-51. Include all employees who were responsible for asbestos removal at the Site. Include any and all persons that EH&S intends to call as witnesses at a trial, and describe their relationship, if any, to EH&S.

ANSWER TO NO. 3

- a. Randall Lee Oldenburger, General Manager/President.
- b. Randall Lee Oldenburger, General Manager/President.
Volodymyr Popaduyk, Supervisor.
Miroslav Vaclavick, Worker.

INTERROGATORY NO. 4

- a. Identify all accountants or accounting firms that provided any type of services for EH & S for the past three years.
- b. Define EH&S' fiscal year and state the method of accounting used by EH&S.
- c. Provide a list of all EH&S assets and approximate worth of each asset.
- d. Identify all financial institutions or organizations where EH&S has applied for a loan or a line of credit in the past three years.

ANSWER TO NO. 4

- a. Lindstrom
- b. Cash
- c. _____
- d. Riverside Bank

INTERROGATORY NO. 5

Describe in detail EH&S' role in the asbestos removal at the Site, as referenced in Paragraph 6, Count I of Complainant's Complaint. Include a description of whether EH&S owned, operated, supervised, and/or controlled the asbestos removal at the Site.

ANSWER TO NO. 5

We were pre-cleaning boiler room when the project was stopped. No removal had been done.

INTERROGATORY NO. 6

State the duration of EH&S' asbestos removal at the Site, as referenced in Paragraph 6, Count I of Complainant's Complaint. Include the specific date that EH&S began asbestos removal activities at the Site and the date that EH&S stopped asbestos removal activities at the Site.

ANSWER TO NO. 6

Project stopped on the second day of original notice. Required, detailed and demanding compliance agreement was drawn up. Work resumed from March to October, 2003.

INTERROGATORY NO. 7

Did Randall Oldenberger sign the Notification in his capacity as Owner/Operator of the Site? If the answer is no, then state in whose capacity or on whose behalf Randall Oldenberger signed the Notification.

ANSWER TO NO. 7

Signed for the owner, William Thacker.

INTERROGATORY NO. 8

State whether EH&S informed the Illinois EPA that the removal activities did not commence on the date stated in the Notification. If yes, state the date on which EH&S so informed the Illinois EPA.

ANSWER TO NO. 8

Check notice.

INTERROGATORY NO. 9

Did EH&S submit to Illinois EPA a notification revising the originally scheduled date for asbestos removal activities? If yes, please state the date that EH&S submitted said revised notification.

ANSWER TO NO. 9

After start of Compliance Agreement.

INTERROGATORY NO. 10

Describe in detail the method used by EH&S to remove ACM from the boiler and boiler pipes at the Facility. Specifically, state whether EH&S

removed the ACM and dropped it to the floor of the Facility.

ANSWER TO NO. 10

ACM from pipes and boiler fell to floor because of rain and wind soaking it so it fell to the floor. All windows were gone for months and months allowing almost all ceilings, walls, pipe work, boiler insulation to get wet and fall from the substrate.

INTERROGATORY NO. 11

Did EH&S use a containment area with negative air during the asbestos removal project that is the subject of the Complaint? If yes, explain in detail all the process used, including but not limited to the exact location of the containment area, the specific technology used (include the type of air filter used), the identity of each person who set up the containment area, the date that the containment area was set up, the date that the containment area was removed, and the owner of the technology used in the containment area.

ANSWER TO NO. 11

Area wet and froze immediately. Negative air machine was in boiler room, but not on because we were only pre-cleanup by chipping up frozen debris and hepa vacuuming the floor.

INTERROGATORY NO. 12

Did EH&S use a decontamination unit during the asbestos removal project that is the subject of the Complaint? If yes, explain in detail the process used, including but not limited to the exact location of the decontamination unit, the specific technology used (include make and model), the identity of each person who set up the decontamination unit, the date that the decontamination unit was set up, the date that the decontamination unit was removed, and the owner of the technology used for the decontamination unit.

ANSWER TO NO. 12

Negative air in boiler room. Hepa vac running to clean debris. Debris on floor was chipped up and bagged in double bulk bags.

INTERROGATORY NO. 13

Did EH&S use a bagout area during the asbestos removal project that is the subject of the Complaint? If yes, explain in detail the process used, including but not limited to the exact location of the bagout area, the specific technology used (include make and model), the identity of each person who set up the bagout area, the date that the bagout area was set up, the date that the bagout area was removed, and the owner of the bagout area.

ANSWER TO NO. 13

No bags were removed because inspector halted project and told us not to touch them for almost one month.

INTERROGATORY NO. 14

Did EH&S use water spray to control asbestos emissions at the Site during the removal of ACM? If yes, describe in detail the process used to apply the water spray, including but not limited to the identity of each person who applied the water spray, the duration of the application of the water spray, the areas to which the water spray was applied, the technology used to apply the water spray, and the source of the water.

ANSWER TO NO. 14

Water was mixed with antifreeze and sprayed on debris. It turns to ice, making the area extremely slippery and unsafe. Applied by Volodymr Popaduyk.

INTERROGATORY NO. 15

Did EH&S wet all ACM prior to ACM removal activities during the asbestos removal project that is the subject of the Complaint? If yes, include a detailed description of the length of time that EH&S allowed the water to sit on the ACM prior to removal, what method EH&S used to wet the material, and the identity of each person who ensured that all of the ACM was adequately wet.

ANSWER TO NO. 15

Sprayed all over boiler room floor, let sit overnight. Next morning it was frozen solid. Volodymr Popaduyk.

INTERROGATORY NO. 16

Did EH&S keep all of the removed ACM wet until it was collected for disposal? Include a detailed description of the method EH&S used to wet

the material, and the identity of each person who ensured that all of the ACM was kept wet.

ANSWER TO NO. 16

We had put junk mixed with ACM into six 6 mil bags, when inspector arrived. Debris was picked up during preclean.

INTERROGATORY NO. 17

Identify each EH&S employee present during the Illinois EPA inspection of the facility on January 7, 2003.

ANSWER TO NO. 17

Same as in Answer to No. 3.

INTERROGATORY NO. 18

Describe in detail the ACM that EH&S removed during the asbestos removal project that is the subject of the Complaint. Include a description of whether the ACM could be easily crumbled by hand pressure.

ANSWER TO NO. 18

We precleaned the massive amount of junk to separate it. This was done by Heppa Vac. Frozen chunks of debris mixed with ACM were chopped into pieces and placed in double 6 mil bags.

INTERROGATORY NO. 19

Did EH&S containerize all of the ACM at the Facility after the ACM was removed from the Facility? If yes, describe in detail the containerization process, including but not limited to the number of containers used, the type of container used, the method used to close the containers, each employee responsible for placing the ACM into the containers, and where the containers were stored prior to disposal.

ANSWER TO NO. 19

Double 6 mil bags, labeled and manifest in dumpster after start of compliance agreement started.

INTERROGATORY NO. 20

Did EH&S label all of the ACM at the Facility after the ACM was removed

from the Facility? If yes, describe in detail the labeling process, including but not limited to the number of labels used, the information contained on the label, and each employee responsible for labeling the ACM.

ANSWER TO NO. 20

Yes.

INTERROGATORY NO. 21

Identify each entity that EH&S retained to transport asbestos waste from the Site following the removal of the ACM, and identify each permit issued to each such entity to transport said asbestos waste.

ANSWER TO NO. 21

Dumpster - see Project Manager Report.

INTERROGATORY NO. 22

Identify each site or facility at which EH&S disposed of the ACM following its removal, and identify each permit issued to/held by each such entity to dispose of said ACM.

ANSWER TO NO. 22

Listed on notice.

ENVIRONMENTAL HEALTH & SAFETY
SERVICES, INC.
BY: RANDY OLDENBURGER

RANDY OLDENBURGER

Bryan G. Selander #316
SCHLUETER ECKLUND
4023 Charles Street
Rockford, IL 61108
(815) 229-5333

Schlueter Ecklund

Attorneys

GARY L. ECKLUND
CHARLES D. SCHLUETER
DAVID E. MAYFIELD
DAVID L. DAVITT
BRYAN G. SELANDER, Of Counsel

4023 CHARLES STREET
ROCKFORD, ILLINOIS 61108-6189

PHONE 815-229-5333
FAX 815-229-0733

MELVIN L. SCHLUETER, Retired
JOHN L. OLSON, Retired

fax

To: Katherine Hausrath

Fax #: 312-814-3806

From: Attorney Bryan G. Selander

Date: May 26, 2006

Subject: Ennvironmental Health and Safety Services, Inc.

Pages: 9 (Including this page).

Message: Mr. Oldenburger is in Geneva, Illinois today and has committed to come and sign the original answers to interrogatories on Tuesday, May 30th, and that we will send a signed set of interrogatories to you at that time.

Please call us at (815) 229-5333 if the copy you received was incomplete or illegible. This message is intended only for the use of the person or entity to whom it is directed and may contain information that is privileged, confidential and exempt from disclosure. If the reader is not the intended recipient, you are prohibited from distributing or copying this communication. If you have received this communication in error, please notify us promptly by telephone and destroy this communication. Thank you.

EXHIBIT B



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 2, 2006

Bryan G. Selander
Schlueter, Ecklund, Olson, Barrett & May
4023 Charles Street
Rockford, IL 61108

Re: **People of the State of Illinois v. Environmental Health & Safety Services, Inc. PCB 05-51**: Attempt to resolve discovery dispute pursuant to Rule 201(k)

Dear Mr. Selander:

On April 7, 2006, the State served upon you its First Set of Interrogatories and First Request for Production of Documents to defendant Environmental Health & Safety Services, Inc. ("EH&S") in the above-referenced case. According to our agreed order entered April 5, 2006, the defendant's responses to those discovery requests were due May 15, 2006. To date, I have not received responses to any of my production requests, and the responses to the interrogatories are inadequate.

On May 18, 2006, you assured me and the hearing officer, Mr. Halloran, that you would get the interrogatories and productions requests to me by May 25, 2006. If you were not able to do this, we were directed to call Mr. Halloran. When I called you on May 25, you assured me that you would get the responses to my production requests by the middle of the week of May 29, 2006. In reliance on this statement, I did not call Mr. Halloran.

I called you on May 30, 2006 to request the responses to my discovery requests. I then e-mailed you a further request for the responses to my request for production on June 1, 2006. To date, I have not received any documents in response to my request for production.

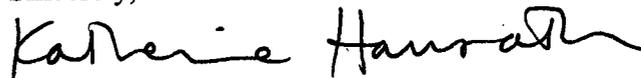
Additionally, you did not respond to Interrogatory 4(c), and the responses to Interrogatories 2(b), 3(b), 4(a), 4(b), 4(d), 5, 6, 8, 9, 10, 12, 14, 16, 18, 20, 21, and 22 are inadequate.

- **2(b)**: Should "identify" Volodymr Popadyuk, the Supervisor. Please see the definition of "identify" in the Interrogatories.
- **3(b)**: Should identify Miroslav Vaclavick, the worker.

- 4(a): Should identify Lindstrom.
- 4(b): "Cash" is *not* a type of fiscal year, nor is it a method of accounting.
- 4(d): Should identify Riverside Bank.
- 5: Incomplete—you do not state what role EH&S played in the removal, but simply claim that EH&S never removed anything from the site. However, you later state that EH&S removed 6 bags worth of ACM. Please clarify.
- 6: Should list the *specific date* that EH&S began asbestos removal at the site, and the *specific date* that EH&S stopped asbestos removal at the site.
- 8: Requires a yes or no answer. It should also state the *specific date* that EH&S informed the IEPA of this fact (if applicable).
- 9: Requires a yes or no answer. It also requires a *specific date* that EH&S submitted the revised notification (if applicable).
- 10: Incomplete. You do not state the method used to remove the ACM, even though later interrogatory responses state that EH&S containerized 6 bags worth of ACM.
- 12: Requires a yes or no answer. Did EH&S use a decontamination unit during the asbestos removal or not?
- 14: Incomplete. It should state the source of the water, the duration of the water application, and where the water was applied.
- 16: Requires a yes or no answer. Did EH&S keep the ACM wet until it was collected for disposal, or not? It also requires the identity of the employee who kept the ACM wet (if applicable).
- 18: Should state whether or not the ACM could be crumbled by hand pressure.
- 20: Should state how many labels were used, the employee responsible for the labeling, and what the label said.
- 21: Incomplete. It should identify each entity retained to transport asbestos waste from the Site, and the permits issued to each entity.
- 22: Incomplete. Should identify each site at which EH&S disposed of the ACM, and the permit held by each such entity.

Accordingly, I am requesting, pursuant to Illinois Supreme Court Rule 201(k), that by **June 15, 2006**, you furnish to this Office the defendant's responses to my requests for production and *complete* responses to Interrogatories 2(b), 3(b), 4(a), 4(b), 4(d), 5, 6, 8, 9, 10, 12, 14, 16, 18, 20, 21, and 22. Thank you for your anticipated compliance.

Sincerely,



KATHERINE M. HAUSRATH
 Assistant Attorney General
 Environmental Bureau
 188 W. Randolph St., 20th Fl.
 Chicago, Illinois 60601
 (312) 814-0660
 khausrath@atg.state.il.us

CERTIFICATE OF SERVICE

I, KATHERINE M. HAUSRATH, an Assistant Attorney General, do certify that I caused to be mailed this 22 day of June, 2006 Complainant's Motion to Compel Answers or Responses to Written Discovery by certified mail to Mr. Selander, and first class mail to Mr. Halloran and depositing same with the United States Postal Service located at 188 West Randolph Street, Chicago, Illinois, 60601.

It is hereby certified that a true copy of the foregoing Notice was electronically filed with the following on June 22, 2006:

Dorothy M. Gunn
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, IL 60601


KATHERINE M. HAUSRATH
Assistant Attorney General
Environmental Bureau
188 West Randolph, 20th Floor
Chicago, IL 60601
312-814-0660