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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

GINA PATTERMANN, Complainant, v. BOUGHTON TRUCKING AND MATERIALS, INC., Respondent.	)	PCB No. 99-187 (Citizens Enforcement)

NOTICE OF FILING

TO: See Attached Certificate of Service

Please take notice that on May 23, 2003, I filed with the Illinois Pollution Control Board this Notice of Filing, Motion for Discovery Sanctions and Affidavit of Attorney, copies of which are attached and hereby served upon you.

Dated: May 23, 2003

BOUGHTON TRUCKING AND MATERIALS, INC.

By: _____
One of its Attorneys

Mark R. Ter Molen, Esq.
Patricia F. Sharkey, Esq.
Kevin G. Desharnais, Esq.
MAYER, BROWN, ROWE & MAW
190 S. LaSalle Street
Chicago, Illinois 60603
(312) 782-0600

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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

GINA PATTERMANN,	)	
	)	
Complainant,	)	PCB 99-187
v.	)	(Noise, Air)
	)	
BOUGHTON TRUCKING AND MATERIALS, INC.,	)	
	)	
Respondent.	)	

MOTION FOR DISCOVERY SANCTIONS

NOW COMES Respondent, Boughton Trucking and Material, Inc. ("Boughton"), by its attorneys, Mayer, Brown, Rowe & Maw, pursuant to 35 Ill. Adm. Code Sections 101.800 and Supreme Court Rule 219(c), and moves the Board to sanction Complainant as is discussed below.

BACKGROUND

This case has been pending since 1999 and the discovery period agreed to by the parties and prescribed by Hearing Officer Order ended on May 2, 2003. Throughout the discovery process, the Complainant, an attorney representing herself, has engaged in a pattern of delay and obfuscation that has resulted in unnecessary costs for the Respondent and prevented Respondent from obtaining information necessary to its defense. This pattern of abuse belies either a strategy designed to wear down the Respondent with costs and attorneys fees or a negligent disregard for the rules governing fair discovery. Either way, Respondent's have incurred unnecessary expense and have been prejudiced in their ability to defend themselves in this lawsuit. The sanctions requested are the barring of Complainant's identified opinion witness, Mr. Greg Zak of Noise Solutions by Greg Zak, from testifying at trial, barring any other testimony, comment, pleadings

or documents on the issue which was identified as the subject of his testimony, and the awarding of costs and attorneys fees to the Respondent. These sanctions are warranted not only to protect the Respondent in this case, but also as a deterrent to the abusive litigation practices evidenced by Complainant in this case.

In support of this Motion, Respondent states the following:

1. Complainant represented in her witness disclosures and in status conferences with the Hearing Officer that she had retained Mr. Zak as an expert witness to testify at trial. She stated that Mr. Zak's testimony would pertain to "Respondent's noncompliance with Illinois Environmental Protection Agency regulations and possible modifications to the Respondent's facility." (See page 5 of Exhibit 1 hereto.) Based on this representation, Respondent issued Mr. Zak a subpoena and notice of deposition for April 23, 2003 and retained a court reporter for that deposition. (Exhibit 2 hereto.)

2. By letter dated March 26, 2003, Mr. Zak, apparently erroneously, sent the Respondent's attorneys a contract stating his fee for his services at the scheduled deposition. (Exhibit 3 hereto.) Respondents thereafter called Complainant and brought this erroneous billing by Mr. Zak to the attention of the Hearing Officer and the Complainant in the telephonic status conference held on March 27, 2003. In that call, Complainant indicated that she understood that it was her responsibility to retain her expert witness.

3. Having not heard anything from either Complainant or Mr. Zak confirming the deposition or requesting another deposition date, Respondent's attorney, following Respondent's deposition of Complainant herself on April 8, 2003, asked Complainant to verify that Mr. Zak would be attending his deposition. Complainant stated that she thought Mr. Zak would be there although she herself might not.

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4. Notwithstanding all of the above assurances, two weeks later on April 23, 2003, neither Complainant nor Mr. Zak appeared for Mr. Zak's scheduled deposition. After waiting an hour and being unable to contact Complainant at any of her three phone numbers, Respondent's attorney called Mr. Zak's office to determine if he would be attending the deposition. In that phone call, Mr. Zak stated that he had received the deposition notice, but he would not be attending the deposition because he had not been retained by Complainant. Respondent's attorney asked Mr. Zak to stay on the telephone line and together they made a conference call to the Hearing Officer. Upon getting the Hearing Officer's answering machine message, Mr. Zak left a voice mail message for the Hearing Officer explaining that he had not been retained by Complainant.

5. Mr. Zak's letter of March 26, 2003 and statement to the Hearing Officer on April 23, 2003 prove that he never anticipated offering his testimony without being paid. Thus, he is not an "Independent Expert Witness," as defined under Supreme Court Rule 213(f)(2). Rather he could only be a "Controlled Expert Witness," as defined under Rule 213(f)(3). His letter makes it clear that the only way that he expected to testify, if at all, was as a "Controlled Expert Witness," retained by someone (although he may have been confused as to who). Rule 213(f) requires that "...a party must furnish the identities and addresses of witnesses who *will testify* at trial..." Complainant, in identifying Mr. Zak as her expert witness without retaining him, falsely identified him as a witness she would call at trial. As such, she violated Supreme Court Rule 213(f) which is a serious and sanctionable violation of applicable discovery rules.[1]

---

[1] We note that Section 101.616 states "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." The Board's rules are silent on the identification of witnesses, but Supreme Court Rule 213, governing interrogatories and the identity and testimony of witnesses, provides applicable guidance on the identification of lay and expert witnesses and their testimony. The committee comments to these rules state that they were designed to "avoid surprise."

(cont'd)

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6. By failing to retain Mr. Zak prior to his deposition, Complainant knowingly misled both Respondent and the Hearing Officer. Section 101.616(g) makes it clear that sanctions are appropriate in this situation:

> "If any person serves any request for discovery for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, or knowingly gives a false answer to discovery questions, the Board, on its own motion or the motion of a party, may impose sanctions pursuant to Subpart H of this Part."

7. But whether Complainant knowingly falsely identified Mr. Zak as her expert witness or simply failed to take the deposition of her own expert witness seriously enough to ensure that he was paid and would appear, Respondents were forced to incur the unnecessary costs of a conference room, a court reporter, an attorney's time and travel, as well as the cost of having two of their own on-site managers take time away from work to attend this deposition. (See costs identified in Exhibit 4 hereto.) Moreover, by failing to retain her expert witness for deposition before the end of the deposition period, Complainant effectively prevented Respondent from learning the substance of his testimony. Re-noticing Mr. Zak's deposition would have been futile in this situation because Complainant had not and, to Respondent's knowledge, still has not retained him.

8. Complainant's failure to retain her identified "Controlled Expert Witness" prior to the deposition deadline, even after he had been noticed for deposition, whether willful or just negligent, has prevented Respondent from learning the substance of his opinions in this matter.

(... cont'd)

Rule 13(f) is designed to allow litigants to ascertain and rely upon the opinions of experts relied upon by their adversaries. To allow either side to ignore Rule 213's plain language without sanction defeats its purpose and encourages tactical gamesmanship. Department of Transportation v. Crull, 294 Ill. App. 3d 531, 690 NE2d 143 (1998) ("We believe on of the reasons for the new Rule 213 was the need to require stricter adherence to disclosure requirements. ")

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As a result, Respondent is unable to determine whether his opinions provide any evidence of the violations alleged, unable to prepare motions for summary judgment, unable to prepare cross-examination for trial, and otherwise unable to defend itself against the substance of his testimony.

9. The appropriate sanction for failure to make a witness available for deposition is the barring of that witnesses testimony at trial. Warrender v. Millsop, (App. 2 Dist.1999) 304 Ill. App. 3d 260, 710 NE2d 512 (Finding Court erred by failing to exclude expert witness testimony where defendant had failed to timely disclose identity, subject matter, and anticipated testimony of her expert.); Department of Transportation v. Crull, (App.4 Dist. 1998) 294 Ill. App.3d 531, 690 NE2d 143 (Admitting evidence of expert previously undisclosed opinions was error); Chicago & Illinois Midland Ry. Co. v. Crystal Lake, 225 Ill.Ap. 3d 653, 588 NE2d 337 (1992) (Trial court's admission of expert witness testimony that was inconsistent with expert's deposition was "egregious error.") If an expert cannot testify on issues not disclosed in or inconsistent with his deposition, it follows that an expert cannot be allowed to testify after Complainant has failed to produce him for a deposition altogether. The sanction of debarring the witness and the substance of his testimony is all the more appropriate in a situation in which *the* witness involved is an expert witness whose failure to be available for deposition is solely and directly attributable to Complainant's own willful or negligent omission.

10. Complainant's failure to retain Mr. Zak before the deposition deadline and assure his attendance at his deposition, while leading Complainant to believe the opposite, is only the *tip of the iceberg* of Complainant's discovery abuses. The history of abuse of the discovery process in this proceeding and its costs to the Respondent also support sanctions in this case:

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A. From the beginning of the discovery process, Complainant has demonstrated a lack of regard for the discovery rules. She filed only cursory responses to Respondent's Interrogatory requests and failed entirely to respond to certain interrogatory and document requests despite oral and written requests by Respondent. (See Exhibit 5 hereto.)

B. After identifying in her Interrogatory Responses a document pertaining to property values in the subdivision alleged to be impacted by Respondent's operations, Complainant refused to provide the document. In response to repeated requests by Respondent, (Exhibit 6 hereto), Complainant claimed the document was irrelevant and contained confidential business information. Finally, upon a Motion to Compel Production of the document (Exhibit 7 hereto), Complainant claimed in a status conference that the document was in the possession of her husband and that she could not provide it due to the fact that they had recently separated.

C. As a result of Complainant's delay and obfuscation regarding this document, Respondent was forced to issue a subpoena for the document and attempt to depose Complainant's husband, Steve Pattermann. (Exhibit 8 hereto.) Mr. Pattermann failed to appear for the deposition and never provided the subpoenaed document. As a result, Respondent unnecessarily incurred the costs of a conference room, a court reported, an attorney's fees and travel, as well as the time of two of Respondent's on-site managers.

D. Throughout the course of this proceeding, the Hearing Officer has scheduled telephonic status conferences. Complainant has failed to appear at at least 6 status conferences scheduled *pursuant to Hearing Officer order* at which Respondent was represented by its attorneys.[2] (The dates on which Hearing Officer Orders document that Complainant did not

[2] Section 101.616(f) of the Board's rules states that failure to comply with any order regarding discovery may subject the offending persons to sanctions pursuant to Subpart H (Section 101.800).

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appear are November 8, 2001, March 25, 2002, May 23, 2002, August 8, 2002, September 11, 2002, and November 21, 2002. Complainant also failed to appear at a status conference on March 5, 2003 and other status conferences not documented by a Hearing Officer order.) (See Group Exhibit 9 A, B, C, D, E, and F hereto.) As a result, this proceeding has been delayed, status conferences have had to be rescheduled and Respondents have been forced to pay unnecessary attorneys fees.

E. On July 25, 2001, Complainant filed interrogatory responses identifying three fact witnesses. (See pp. 4-5 of Exhibit 5 hereto.) For over a year and a half thereafter, Complainant failed to supplement her interrogatory responses with any additional witnesses.[3] Then, on February 10, 2003, the final date for the disclosure of opinion witnesses for trial, Complainant filed a list of 100 fact witnesses – all but three of whom were new. (See Exhibit 1 hereto.) For all of these 100 witnesses collectively, Complainant provided only the following one sentence statement as to the substance of their testimony: "The following persons shall testify as to how respondent's actions affect their daily lives."

F. As a result of Complainant's conduct, Respondent was forced to file a Motion to Strike Complainant's witness list. (Exhibit 10 hereto.) While Respondent ultimately obtained a ruling from the Hearing Officer limiting Complainant's witness list (Exhibit 11 hereto), the sheer number of names on this list and the lack of specificity and facial repetitiveness of the purported substance of their testimony is proof enough that the Complainant sought to do as little work as possible while "hiding the ball" and forcing Respondent to incur unnecessary expense to determine if any of these hundred witnesses actually had any pertinent information. Either this

[3] Section 101.616(h) of the Board's rules creates a duty on litigants to update any interrogatory responses if a party learns that it is incomplete or incorrect during the discovery process. Violation of this rule is sanctionable under Section 101.616 (g) and 101.800.

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false witness list was purposely harassing and designed to cause Respondent increased costs, a clear violation of Rule 101.616(g), or Complainant simply did not take her obligation to file a real witness list seriously. Either way, Respondent was forced to incur time and expense in attempting to decipher and respond to this extensive false witness list and in preparing and filing a Motion to Strike Complainant's witness list.

G. For the four fact witnesses that Complainant ultimately was allowed to list by Hearing Officer order, she failed to provide any more detailed statement of the substance of their testimony. Again, the only information had about these witnesses was that they would testify as to how Respondent's operations affect their lives. This is equivalent to saying nothing more than that these people would fact witnesses. For two of her witnesses, she even failed to provide addresses or phone numbers, despite repeated requests, in violation of Supreme Court Rule 213. As a result of these omissions, Respondent was hampered in its preparation for these depositions and was forced to guess at addresses. (Exhibit 12 hereto.)

H. Further demonstrating how altogether disinterested Complainant has been prosecuting her own lawsuit, Complainant failed to attend the depositions of *any* of her own witnesses, although she herself is both the attorney and the Complainant in this case and was separately noticed for each deposition.

11. Complainant's history of flippant responses, refusal to answer interrogatory and document requests, false identification of witnesses, delay, obfuscation, and disregard of Hearing Officer orders demonstrate a pattern of noncompliance with the rules of discovery which is sanctionable in itself. Modine Manufacturing v. Pollution Control Board, (App. 2 Dist. 1990) 192 Ill. App. 3d 511, 548 NE2d 1145 (Repeated nature of applicant's conduct could be taken into account in determining type of sanction to impose.); Illinois Environmental Protection

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Agency v. Celotex, (App. 3 Dist. 1988) 168 Ill. App. 3d 592, 522 NE 2d 888 (Complainant's pattern of dilatory responses to hearing officer orders, unjustifiable cancellation of depositions and intentional pattern of refusal to meet deadlines supported sanction of striking Complainant's claim pertaining thereto and barring any and all claims of the same nature.); Stevens v. International Farm Systems, Inc., (App. 2 Dist. 1978) 56 Ill. App.3d 717, 372 NE2d 424 (Conduct of attorney showed pronounced effort to prolong litigation and refusal to answer interrogatories was unreasonable noncompliance which, although not warranting a default judgment or debarring of a defense, warrants strong sanctions.) It also supports the specific sanctions requested in this Motion.

12. Section 101.800(b)(1) authorizes the Board to impose sanctions, including the barring of the "filing of any other pleadings or document relating to any issue to which the refusal or failure relates." Section 101.800(b)(6) authorizes the Board to bar a witness from testifying "concerning that issue." 135 Ill. Admin. Code 101.800(b). In this case, the "issue...to which the failure relates" is the whole of Mr. Zak's expert testimony and the subject matter thereof, which was stated by Complainant to be: "Respondent's noncompliance with Illinois Environmental Protection Agency regulations and possible modification to the Respondent's facility." Barring Mr. Zak as a witness *in toto* and barring any other witness, comment, pleading or document pertaining to that "issue" are both authorized and appropriate sanctions in this case.[4] It is necessary that both the witness himself be barred and that any eleventh hour effort to get the same testimony or information he would have provided into in the record by other means be

[4] Supreme Court Rule 219(c)(ii) and (iv) contains the same language as the Board's rule 101.800(b)(2) and(6), and also clearly allows barring an expert witness as one of the sanctions available for a discovery rule violation. Warrender v. Millsop, (App. 2 Dist 1999) 304 Ill. App. 3d 260, 710 NE2d 512 (Defendant's failure to timely disclose identity, subject matter, and anticipated testimony of her expert warranted exclusion of the expert's testimony as a discovery sanction.)

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barred. If Complainant is allowed to get this information into the record via other witnesses, pleadings, or documents she will have successfully evaded legitimate discovery and Respondent will be prejudiced in its defense.

13. Section 101.800 instructs the Board to consider four factors in determining what sanction to impose:

> "In deciding what sanction to impose the Board will consider factors including: the relative severity of the refusal or failure to comply; the past history of the proceeding; the degree to which the proceeding has been delayed or prejudiced; and the existence or absence of bad faith on the part of the offending party or person."

14. All of these factors are present in this case. As stated above, Complainant's failure to comply with the rules of discovery has been serious and pervasive throughout this proceeding, has caused Respondent to incur significant unnecessary expense, has delayed discovery and this proceeding as a whole, and has prevented Respondent from being able to prepare for trial or dispositive motions or otherwise defend itself against the substance of whatever Mr. Zak's testimony may be.

15. The element of bad faith here also clearly warrants the sanctions sought. The evidence cited above and attached hereto demonstrates that Complainant knew full well that she had not retained Mr. Zak at the time that she identified him as her expert witness. Even after reassuring the Hearing Officer and the Respondent that she would be pay Mr. Zak to attend the noticed deposition, she failed to retain him. This is willful conduct. But even if the Board does not find it to be willful, Complainant's conduct must be deemed to demonstrate bad faith. If not intentional, Complainant was so negligent about her responsibilities in a lawsuit she herself initiated as to allow Respondent to incur all of the expenses associated with the preparation and holding of an expert witness deposition without bothering to ensure that her witness would be

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there. An expert witness deposition is not like a fact witness deposition – it is expensive. In this case, Respondent's attorneys spent many hours preparing detailed expert deposition questions as well as three hours of attorney time traveling to and from Joliet and three hours allotted for Mr. Zak's deposition. (This doesn't include the time of Respondent's personnel in attendance at the failed deposition and the costs associated with the conference room and court reporter.) Furthermore, as stated previously, the availability of a "Controlled Expert Witness" is entirely within the control of the party employing him, absent illness or some calamity – none of which were present in this case. Cf. Lundregan v. Zidal, App. 1 Dist. 1977, 51 Ill. App. 3d 277, 366 NE2d 1002 (Failure to appear at deposition excused by illness of attorney where notice given the day before to opponent.) Also cf. Trapanier et al. v. University of Illinois, et al. , PCB 97-50 (Feb. 18, 1999) (Failure to appear at deposition excused because Respondent failed to properly notice deposition.)[5] In this case, neither Mr. Zak nor Plaintiff were ill, and the deposition was properly noticed and received by the deponent and Plaintiff. (See Exhibit 2 hereto.) Rather, Mr. Zak's failure to appear is directly attributable to Complainant's failure to retain him – a fact she knew, or should have known, and neglected to tell Respondent.

16. Finally, it is too late for Complainant to now avoid this sanction by finally retaining Mr. Zak and making him available for deposition. Nor should Complainant be allowed at this late date to put on some other witness or submit some other pleading or document on the same issue he would have testified to. The discovery period, which already took 2 ½ years, is over, and additional delay is simply unwarranted in light of nature of Complainant's willful or negligent conduct.

[5] The Board in Trapanier also stated that the Respondent in that case had not cited a Board rule that had been violated . That is not the case here. We note that Trapanier was decided prior to recent amendments to the Board's procedural rules on discovery. In contrast to Trapanier, in this case there is ample evidence that Section 101.616(g), 101.616(h), and Supreme Court Rule 213 have been violated.

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17. Based on all of the above, the sanctions requested -- particularly the barring of Mr. Zak as a witness and the barring of any additional witnesses, pleadings or documents pertaining to the subject matter of his testimony-- are both appropriate in this case and necessary to prevent prejudice to Respondent. The awarding of Respondent's attorneys fees (as shown in Exhibit 4 hereto) is also warranted and should be allowed within the Board's authority under the Act, the Board's new procedural rules and the Supreme Court Rules, which are expressly referenced in Section 101.100 as guidance for the Board's decisions.

WHEREFORE, Respondent moves the Board to bar the testimony of Greg Zak and to bar any other witnesses, pleadings, or documents pertaining to the subject matter of Mr. Zak's testimony, and for such other sanctions, including the awarding of attorneys fees, as the Board deems appropriate.

Respectfully submitted,

Boughton Trucking and Material, Inc.
By One of Its Attorneys

Patricia F. Sharkey
Mayer, Brown, Rowe & Maw
190 South LaSalle Street
Chicago, IL 60603
312-782-0600
Attorney Registration No. 6181113

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STATE OF ILLINOIS
Pollution Control Board

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

AFFIDAVIT OF ATTORNEY

The undersigned, Patricia F. Sharkey, being first duly sworn upon oath states that she is one of the attorneys for the Respondents in this action, Gina Pattermann v. Boughton Trucking and Materials, Inc., PCB 99-187, and that based upon her personal knowledge and investigation of the facts stated in the attached Motion for Sanctions, certifies her knowledge and belief that the allegations contained in this Motion for Discovery Sanctions are true in substance and in fact.

PATRICIA F. SHARKEY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

Signed and sworn to by Patricia F. Sharkey, who is personally known to me and appeared before me, a Notary Public, in and for the County of Cook, State of Illinois, on this 23rd day of May, 2003, in order to affix her signature as her free and voluntary act.

Donna M. Draper
Notary Public

Patricia F. Sharkey
Attorney for Respondents
Mayer, Brown, Rowe & Maw
190 South LaSalle Street
Chicago, Illinois 60603
312-782-0600

"OFFICIAL SEAL"
Donna M. Draper
Notary Public, State of Illinois
My Commission Exp. 03/25/2006

STATE OF ILLINOIS

BERORE THE ILLINOIS POLLUTION CONTROL BOARD

Gina Pattermann Complainant,	}	
v.	}	PCB 99-187
Boughton Trucking and Materials, Inc., Defendant.	}	

COMPLAINANT'S 213(f) WITNESS DISCLOSURES

NOW COMES Complainant, Gina Pattermann, in accordance with S.Ct.Rule 213(f), and serves this witness disclosure upon Respondent, Boughton Materials and Trucking by and through their attorney Mayer, Brown, Rowe and Maw.

The following persons shall testify as to how respondent's actions affect their daily lives. All live in Naperville, Illinois with a zip code of 60564.

Adams, Jeff and Karen
4211 Colton Circle

Andros, Greg and Anne
4440 Esquire Circle

Bailey, Stewart and Margaret
1704 Robert Lane

Blohm, Steve and Maureen
4204 Richwood Court

Bornanam, Theresa
Baybrook Lane

Burns, Tim and Sue
4223 Colton Circle

Chaffin, Gary and Susan
4415 Esquire Circle

Donahue, Kevin and Jane
1707 Baybrook Lane

Dudek, Rick and Lynn
1624 Vincent Court

Eastman, Jon and Kim
4212 Richwood Court

Fivizzani, Ken and Mary
4251 Colton Circle

Gibson, Andrew and Michelle
4424 Dublin Lane

Goodman, Ted and Alice
1636 Dublin Lane

Goss, Dave and Kayla
4455 Esquire Circle

Gronowski, Ray and Deb
4220 Colton Circle

Haviley, Jim and Corrine
1204 Milford Court

Howard, Lisa
4303 Ariel Court

Johnson, Pete and Sharon
4247 Colton Circle

Kalkofen, Scott and Linda
1215 Milford Court

Kasler, Tom and Susan
1208 Milford Court

Keckler, Ken and Terri
44217 Clearwater Lane

Kives, Dave and Cathy
1719 Baybrook Lane

Lamger, Fred and Cary
4204 Delaware Court

Lazaraus, Ron and Kathy

Clearwater Lane

Lerche, Tom and Linda
4407 Clearwater Circle

Loesher, Mike and Trish
4224 Colton Circle

McGann, Kevin and Stephanie
4220 Richwood Court

Merrill, Bob and Maureen
4823 Sebastian Court

Micchelli, Bob and Helen
4407 Esquire Circle

Miller, Ken and Janice
4320 Clearwater Lane

Molly, Tim and Kathy
4255 Colton Circle

Mondi, Jim and Michelle
4239 Colton Circle

Morgan, Tom and Marcia
4215 Richwood Court

Neeson, Phil and Karen
4235 Colton Circle

Nelson, Kris and Sara
4207 Falkner Drive

Palmer, John and Kris
4216 Richwood Court

Paolucci, Rudy and Judy
4340 Camelot Circle

Pavich, Tom and Linda
4447 Esquire Circle

Putney, Steve and Julie
1751 Baybrook Lane

Schlupp, Neil and Karen
4323 Esquire Circle

Schmidt, Steve and Connie
4443 Esquire Circle

Schmittgens, Dan and Judy
1716 Robert Lane

Sovik, Jim and Holly
1803 Baybrook Court

Stapleton, Mike and Barb
1748 Baybrook Lane

Stauffer, Mark and Nancy
4208 Colton Circle

Stelter, Bill and Gail
1223 Milford Court

Stewart, Sam and LuAnn
1632 Robert Lane

Udouj, Chris and Mary
4268 Colton Circle

Warbiany, Mike and Michele
4324 Camelot Circle

Wray, Ron and Debbie
4203 Halifax Court

Wright, Mark and Jill
4411 Esquire Circle

The following person shall testify regarding Respondent's non compliance with Illinois Environmental Protection Agency regulations and possible modifications to the Respondents facility.

Greg Zak
8269 Birch Drive
Chatham, IL 62629

Respectfully Submitted,

Gina L. Pattermann

Law Offices of Gina L. Pattermann, P.C. (29224)
608 S. Washington St., Suite 101
Naperville, Illinois 60540
(630) 369-3400

BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

GINA PATTERMANN.	)	
	)	
	)	
Complainants.	)	PCB 99-187
v.	)	(Citizen Enforcement
	)	-Noise, Air)
BOUGHTON TRUCKING AND MATERIALS, INC.,	)	
	)	
	)	
Respondent.	)	

NOTICE OF DEPOSITION

TO: Greg Zak
36 Birch Drive
Chatham, Illinois 62629

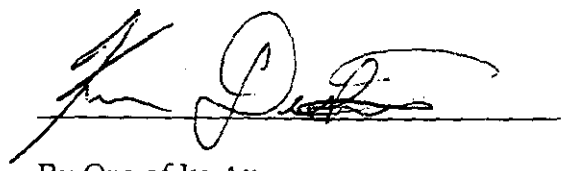
PLEASE TAKE NOTICE that Boughton Trucking and Materials, Inc. ("Boughton"), by its attorneys, Mayer, Brown, Rowe & Maw, will take the expert deposition of GREG ZAK, pursuant to 35 Ill. Admin. Code 101.100 et seq. and the Illinois Rules of Civil Procedure on Wednesday April 23, 2003 at 10:00 a.m., and to be continued as necessary, at the offices of Tracy, Johnson, Bertani & Wilson, 116 North Chicago Street, Suite 600, Joliet, Illinois 60432. The deposition will be taken upon oral examination pursuant to applicable rules of Illinois Civil Procedure.

Boughton seeks to depose expert Greg Zak ("Expert Deponent") on any conclusions and opinions he has formulated and/or will testify to pertaining to noise, dust, or any other emissions or effects or impacts on persons, property, or the environment which are believed or alleged to be used by or emanating from the Boughton Trucking and Materials, Inc. facility located at 22750 West 111th Street, Naperville, Illinois 60564; and any facts, observations, information, data,

samples, test results, reports, studies, actions, conversations, correspondence, documents or other tangible or intangible evidence upon which the Expert Deponent bases his conclusions and opinions, or which the Expert Deponent considered in the formulation of his conclusions and opinions.

Deponent shall bring to the deposition any materials relevant to the matter under consideration including, but not limited to, articles, books, treatises, studies, photographs, maps, blueprints, drawings, regulations, statutes, papers, reports, data, samples, test results, technical data, real estate appraisals, correspondence (including electronic correspondence and phone records) and any other documents, tangible or intangible evidence.

BOUGHTON TRUCKING AND MATERIALS, INC.



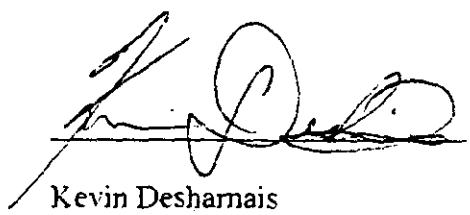
March 21, 2003

By One of Its Attorneys

Mark R.Ter Molen
Kevin Desharnais
Jaimy L. Hamburg
Patricia F. Sharkey
MAYER, BROWN, ROWE & MAW
190 South LaSalle Street
Chicago, Illinois 60603
(312) 782-0600

CERTIFICATE OF SERVICE

Kevin Desharnais, an attorney, certifies that a copy of the foregoing Notice of Deposition was sent for delivery via UPS (Saturday Delivery) to Gina Pattermann at 4439 Esquire Circle, Naperville, Illinois 60564, via UPS (Saturday Delivery) to Greg Zak at 36 Birch Drive, Chatham, Illinois 62629, and by first class United States mail to the Hearing Officer Bradley Halloran at the Illinois Pollution Control Board, Suite 11-500, 100 W. Randolph Street, Chicago 60601 on March 21, 2003.



Kevin Desharnais

Before the Illinois Pollution Control Board

Gina Pattermann,	)	
	)	
	)	
	)	
Complainant/Petitioner,	)	PCB 99-187
v.	)	
Boughton Trucking and	)	
Materials, Inc.,	)	
	)	
Respondent.	)	

SUBPOENA/SUBPOENA DUCES TECUM

TO: Greg Zak
36 Birch Drive
Chatham, Illinois 62629

Pursuant to Section 5(e) of the Environmental Protection Act (415 ILCS 5/5(e) (2002)) and 35 Ill. Adm. Code 101.622, you are ordered to attend and give testimony at the hearing/deposition in the above-captioned matter at 10:00 a.m. on April 23 20 03, at

Tracy, Johnson, Bertani & Wilson
116 North Chicago Street, Suite 600
Joliet, Illinois 60432.

You are also ordered to bring with you documents relevant to the matter under consideration and designated herein: See documents listed in notice.

Failure to comply with this subpoena will subject you to sanctions under 35 Ill. Adm. Code 101.622(g), 101.800, and 101.802.

ENTER:

Dorothy M. Gunn, Clerk
Pollution Control Board

Date: _____

CERTIFICATE OF SERVICE

I, KEVIN DONNENNIS, certify that on this 21ST day of MARCH 2003, I caused copies of the SUBPOENA/SUBPOENA DUCES TECUM to be served upon the following:

GINA PATTERMANN

BRADLEY HALLORAN, HEARING OFFICER

DOROTHY GUNN, CLERK IPCB

GREG ZAK

by depositing same in United States First Class Mail, postage prepaid.

(Signature)

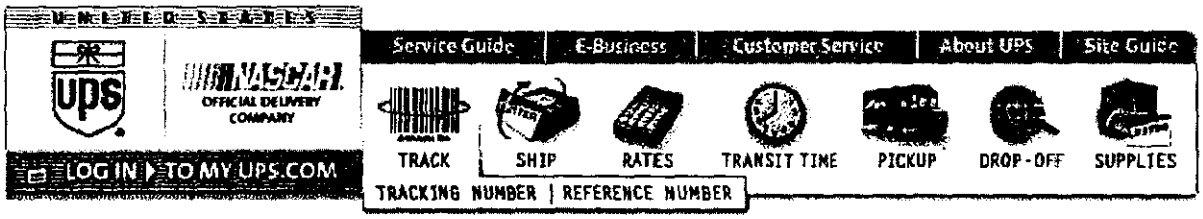
(Or, alternatively)

I, _____, served this SUBPOENA/SUBPOENA DUCES TECUM by hand delivering a copy to _____ on _____ 20_____.

_____
(Signature)

Subscribed and sworn to before me this _____ day of _____ 20_____.

_____
Notary Public



Tracking Detail

Status: **Delivered**
Delivered on: Mar 22, 2003 9:19 A.M.
Location: MC WOMAN
Delivered to: CHATHAM, IL, US
Shipped or Billed on: Mar 21, 2003

Tracking Number: 1Z 6E4 31E 44 3503 871 5
Service Type: NEXT DAY AIR

PACKAGE PROGRESS

Date	Time	Location	Activity
Mar 22, 2003	9:19 A.M.	SPRINGFIELD, IL, US	DELIVERY
	8:18 A.M.	SPRINGFIELD, IL, US	OUT FOR DELIVERY
	8:09 A.M.	SPRINGFIELD, IL, US	ARRIVAL SCAN
	7:25 A.M.	DECATUR, IL, US	DEPARTURE SCAN
	6:07 A.M.	DECATUR, IL, US	ARRIVAL SCAN
	5:28 A.M.	LOUISVILLE, KY, US	DEPARTURE SCAN
	12:41 A.M.	LOUISVILLE, KY, US	ARRIVAL SCAN
Mar 21, 2003	10:33 P.M.	CHICAGO, IL, US	DEPARTURE SCAN
	10:02 P.M.	US	BILLING INFORMATION RECEIVED
	9:38 P.M.	CHICAGO, IL, US	ORIGIN SCAN
	9:03 P.M.	CHICAGO, IL, US	PICKUP SCAN

Tracking results provided by UPS: Mar 27, 2003 1:50 P.M. Eastern Time (USA)

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NOISE SOLUTIONS BY GREG ZAK

36 BIRCH DRIVE
CHATHAM, ILLINOIS 62629
(217) 483-3507
(217) 483-5667-FAX
E-mail: gregzak@justice.com

By : Fax, E-mail, and First Class Mail

March 26, 2003

Mr. Kevin Desharnais, Attorney at Law
MAYER, BROWN, ROWE & MAW
190 South LaSalle Street
Chicago, Illinois 60603-3441
(312) 701-8079
(312) 706-9181 Fax
kdesharnais@mayerbrownrowe.com

Refer to: Gina Pattermann v. Boughton Trucking and Materials, Inc., PCB 99-187
(Citizen Enforcement – Noise, Air)
Deposition Scheduled for April 23, 2003, 10:00 AM, at 116 North Chicago Street, Suite 600, Joliet, Illinois 60432

Dear Mr. Desharnais:

Per your "**NOTICE OF DEPOSITION**" of March 21, 2003, enclosed you will find a contract for my deposition. Please sign and return the contract with a check for $1,584.00.

If you have any questions, please don't hesitate to call.

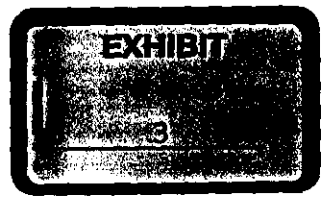
Sincerely,

Greg Zak, INCE

Enclosure

cc: Ms. Gina Pattermann
Mr. Brad Halloran

zak\Pattermann\Dep. Ltr. 3-26-03



NOISE SOLUTIONS BY GREG ZAK

36 BIRCH DRIVE
CHATHAM, ILLINOIS 62629
(217) 483-3507
(217) 483-5667-FAX
E-mail: gregzak@justice.com

CONTRACT FOR SERVICES

This is a contract between NOISE SOLUTIONS BY GREG ZAK and Mr. Kevin Desharnais and Boughton Trucking and Materials, Inc. Mr. Zak agrees to appear for a deposition and to give testimony. By doing so, other opportunities to perform compensable services will be forgone. Mr. Kevin Desharnais and Boughton Trucking and Materials, Inc. agree to compensate Mr. Zak for these lost opportunities in the amount of $198.00 per hour, plus travel, lodging and per diem expenses. This hourly rate is not prorated, but applies to a full hour or any part thereof, and does include travel time to and from the deposition. Payment for the first eight (8) hours must be received by Mr. Zak prior to the date upon which the deposition is scheduled, or he will not appear for the deposition (8 hrs. x $198 = $1584). Payment for time in excess of eight (8) hours and all travel expense is due at the conclusion of the deposition.

_____ _____

Greg Zak, for NOISE SOLUTIONS BY GREG ZAK Date

_____ _____

Mr. Kevin Desharnais and Boughton Trucking and Materials, Inc. Date

zak\Pattermann\Dep-Contract 3-26-03

ATTORNEY'S FEES ATTRIBUTABLE TO COMPLAINANT'S ABUSE OF DISCOVERY PROCESS IN PATTERMANN V. BOUGHTON, PCB 99-187

RESPONDING TO FALSE WITNESS LIST

February 20 – March 5, 2003 $ 3, 947.50

Includes reviewing 100 person list of alleged fact witnesses; discussing list and response with client and co-counsel; research and writing for Motion to Strike; Filing Motion to Strike; Preparing for and participating in Status Conference with Hearing Officer re Motion to Strike. Does not include Westlaw charges and other related legal costs.

EFFORTS TO OBTAIN ADDRESSES FOR COMPLAINANT'S WITNESSES LISA COLLINS AND DONALD BOUDREAU FOR DEPOSITION NOTICES

March 2003 $ 365.00

Includes calls and letter to obtain addresses for Complainant's witnesses.

PREPARATION FOR AND ATTENDANCE AT STEVE PATTERMANN DEPOSITION AND GREG ZAK EXPERT WITNESS DEPOSITIONS AT WHICH WITNESS DID NOT APPEAR

March 20, 2003 – April 23, 2003 $6,388.75*

Includes preparation and sending of deposition notices and subpoenas, research, document review and writing of deposition questions, travel to and attendance at depositions at which witnesses did not appear. Does not include other legal costs. Includes ½ travel time.

PREPARATION OF MOTION FOR SANCTIONS

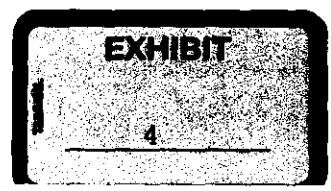
March 6, 2003 – May 23, 2003 $8,819.00

Research, draft and file Motion for Sanctions necessitated by Complainant's on-going abusive discovery practices. Does not include Westlaw charges and other legal costs.

Total Attorney's Fees **$19,520.25****

*Does not include Boughton personnel time. See attached.

** Does not include attorney's fees incurred prior to 2003, including fees related to insufficient and missing interrogatory responses.



Boughton Trucking & Materials, Inc.

11746 S. Naperville-Plainfield Road, Plainfield, IL 60544
Tel. 815-436-4555 and 630-759-4096 Fax. 630-904-1436

To: Pat Sharkey
From: Frank Maly
Date: May 22, 2003
Re: Cost Estimates for Lost Depositions

2 Deposition (Patterman & Zak)

Wayne Szepelak	4 hrs	Deposition	@$62.50/hr	$250.00
	2 hrs	Travel		125.00
	2 hrs	Preparation/ Review		125.00
	1 hr	Computer time		62.50
	1 hr	Research questions		62.50
Sub Total				$625.00
Frank Maly	4 hrs	Deposition	@192.30/hr	$769.20
	2 hrs	Travel		384.60
	2 hrs	Preparation/ Review		384.60
	1 hr	Research questions		192.30
	4 hrs	Computer Time		769.20
Sub Total				$2499.90
Copying Costs				$35.00
Telephone Charges				40.00
Sub Total				$75.00
Total Costs				**$3,199.90**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

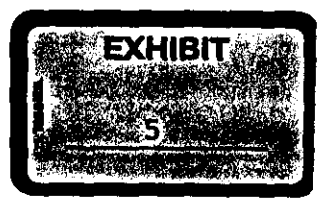
GINA PATTERMANN, LISA COLLINS, and DEEN COLLINS	)	
Complainants,	)	
v.	)	PCB No. 99-187
BOUGHTON TRUCKING AND MATERIALS, INC.	)	
Respondent.	)	

ANSWER TO BOUGHTON FIRST SET OF INTERROGATORIES

1. Respondent has polluted the air by releasing dust into the air on a regular basis in large quantities. This dust visible to the eye. This dust is also visible inside my home most days when Boughton is operating and I open my windows or doors. The dust accumulates on the furniture, kitchen and bathroom counters, tables etc. The dust also accumulates on the screens. I do not keep screens on my home any longer because the dust settles on the screens and it is not possible to see clearly outside. I rarely opens my windows when respondent is operating because of the dust.

2. Respondent continuously creates noise that unreasonably interferes with the enjoyment of life on my property on a regular and ongoing basis. Every morning between 5:30am and 6:30am, Monday through Saturday, the respondents begin operating their very noisy equipment waking me and my family. Respondent operates the equipment until late afternoon. The equipment is loud enough that it prevents me from using my back yard for normal purposes such as children playing and hosting parties. If the children are playing in the back yard while respondent is operating, on most days, they cannot hear me speaking to them from the deck attached to the rear of the home. I cannot open my windows or doors and hold normal conversations inside my home while respondent is operating their equipment. I cannot hold a conversation with her neighbors while standing in the driveway unless we shout. The respondent also uses blasting devices several times per week. This blasting wakes the children up from their naps on a regular basis. In the autumn, the respondent allows a local group of hunters to use their property to hunt. Sunday is the only day that respondent does not operate their quarrying equipment but I am awaken by the sound of rifle shots at the edge of my property line.

3. The respondent is violating the act for reasons stated in #2 above and in #4 and #5 below.



4. I have a sound meter that measures frequencies between 500 and 10,000Hz. I have measured sounds above 58dB on several occasions between 7:00am and 10:00pm.

5. I have a sound meter that measures frequencies between 500 and 10,000Hz. I have measured sounds above 47dB on several occasions between 10:00pm and 7:00am.

6. I do absolutely contend that both noise and dust emitted from respondents facility unreasonably interferes with the use and enjoyment of my property. These reasons are stated in #1 and #2.

7. My children are awakened from their sleep every morning and several times per week from their naps. When they play outside they are breathing in visible dust. They are covered with grit when they play outside.

8. The children cannot distinguish the noises emitted from the respondent's operations from thunder. They are afraid of thunder storms, as are most small children. They ask several times per day, "What was that?" They cry when they are awakened by blasting. They say " The quarry is scary" and "The quarry is loud" on a regular basis.

9. Respondent causes enormous stress in my life for several reasons. I cannot open my doors and windows. I rarely ever turned the air conditioner on in my previous houses. I love fresh air. Now I have no choice but to be closed in my house six days per week. I rarely get to enjoy my beautiful yard. For relaxation, I have always gardened in the past. I can no longer garden without listening to banging and crashing all day as well as getting covered in grit. When in law school, I could not study in my house. I had to leave my family to go to a quite place. I have a vacation home to get away from the cold. I have gone there several times in the summer when I would ordinarily not go just to get away from the noise and dust emitted from respondent's facility. I am awakened most mornings by the sound of back up beepers, boulders hitting metal, equipment being started, and trucks revving their engines as well as a host of other noises. One of the most stressful events resulting from respondent's operations is when I finally get my children down for a nap and a blast occurs or a load of boulders is dumped and it wakes them up. I have no tranquility in my life because of respondent's facility. This results in a very stressful existence.

10. The entire family began residing in the home on September 20, 1997 except Alex who was born October 27, 1998. We all reside in the home year round except for vacations.

Gina Pattermann, Age 38
Steve Pattermann, Age 48
Chris Pecora, Age 16
Nichole Pecora, Age 14
Michael Pecora, Age 9
Matthew Pattermann, Age 4
Alex Pattermann, Age 2

Chris Nichole Matthew and Alex have resided with me since their births. My addresses since college are as follows. Anything prior to that is irrelevant and I can not recall what the addresses were.

3524 Caine Drive, Naperville, IL 60564 1993-1997
17 Jamie Drive, Sewell, NJ 08080 1989-1993
1118 Daisy Lane, Naperville, IL 1984-1989

Steven Pattermann resided at
3524 Caine Drive, Naperville, IL 60564 1996-1997
509 Aurora Avenue, Naperville, IL 60540 1995-1996
1224 Iron Liege Ct, Naperville, IL 60540 1978-1995

11. Steven Pattermann owns and is president of Pattermann Builders
Home building
3 employees
I have no position at Pattermann Builders
Steven has been owner and president of Pattermann Builders since 1973

Steven has hundreds of thousands of documents regarding Pattermann Builders. Please specify what documents respondent wishes to be identified.

12. Mary Ann and Paul Guzzo
5730 Westview Lane
Lisle IL, 60532
630-969-1671
Retired
These are my parents and I complain to them about the situation on an ongoing basis.

Michele and Richard Francis
197 Montrose Ct
Naperville, IL 60565
630-527-9132
Owners Richard T. Francis and Associates
This is my sister and her husband, I complain to them also on a regular basis

Greg Zak
Illinois EPA
1021 North Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276
Greg Zak is the person who I initially contacted regarding my complaint. This was sometime in the fall of 1998. He works for the Illinois EPA in the noise division. He is familiar with all aspects of my complaint.

Edward Petka
501 North Division Street
Plainfield, IL 60544
Senator
I contacted Senator Petka initially before I filed a complaint on my own. This was in the spring of 1998. Mr. Petka had the Attorney General's office look into the situation. They still consider the case active although they will probably not go anywhere with it for the next fifty years.
I basically verbalized to Senator Petka my complaints about the dust and niose emitted by the respondent.

I am including the River Run directory. This lists all of the names and telephone numbers of everyone who resides in the subdivision. I have held several meetings about the situation with respondent and hundreds of people have attended over the years. I have no way of knowing who attended these meetings and who did not. Most residents are familiar with respondents operation and the impact that it has pertaining to noise and dust.

Bill Jene
Carlene Jenkins
Lisa Collins

These three people will be called as witnesses and they are described below.

13. I cannot identify each and every witness that I will call for trial until I assemble all written discovery materials. Here is a preliminary list of witnesses.

Bill Jene
1739 Baybrook Lane
Naperville, IL 60564
630-922-9232
Stockbroker
Bill and I discuss respondents operations on a regular basis
Bill will testify as to how noise and dust emitted from respondent affects his life.

Carlene Jenkins
4435 Esquire circle
Naperville, IL 60564
630-922-9564
Stay at home mom
Carlene and I discuss respondents operations on a regular basis
Carlene will testify as to how noise and dust emitted from respondent affects her life

Lisa Collins
Fairway Drive
St Charles, IL 60174
630-587-8050
Part owner and General Manager Gerald Auto Dealerships
Lisa and I discussed respondent's operations almost every day.
Lisa will testify that the noise and dust from the respondent's operation was unbearable and that she moved because of it.

14. We cannot identify each and every opinion witness until we have reviewed all written discovery.
Greg Zak
Illinois EPA Noise Consultant
1021 North Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276
217-785-7726
Mr. Zak will testify about solutions to the noise problem that I am experiencing. Mr. Zak has not yet compiled any data. He has visited the site but he plans to do a much more thorough evaluation. Once these evaluations are compiled we will forward them to respondent.

15. Same answer as #12

16. Same answer as # 12

17. See enclosed list of homes sold. All properties were purchased as vacant lots. All properties were developer financed. Harmony Grove, Clow Creek, and Ashbury were developed by Mid-America Developments. River Run was developed by Oliver Hoffman Corp. One additional lot was purchased in River Run at 1707 Baybrook. This lot backs up to respondent's property. This lot was released back to the developer after we moved into our home and realized what a huge negative impact that the respondent had on our lives. We did not want to place a family in the same situation that we were in. After we moved into our home we informed all buyers, who would be negatively affected by the respondents, of the respondents facility and the impacts it may have on their lives.

19. I object to this interrogatory on the basis that it is overbroad and irrelevant. This interrogatory includes everything from speeding tickets to child support enforcement actions that we have been involved in for the past 18 years. Please be more specific in identifying what type of actions that you are looking for. No one in my family, or any entity owner by my family, has ever brought a tort claim against anyone nor have we ever been before the pollution control board on any issue.

20. None

21. No

MAYER, BROWN & PLATT

190 SOUTH LA SALLE STREET

CHICAGO, ILLINOIS 60603-3441

KEVIN DESHARNAIS
DIRECT DIAL (312) 701-8079
DIRECT FAX (312) 706-9181
kdesharnais@mayerbrown.com

MAIN TELEPHONE
(312) 782-0600
MAIN FAX
(312) 701-7711

July 27, 2001

VIA FACSIMILE AND U.S. MAIL
Gina Pattermann
4439 Esquire Circle
Naperville, IL 60504

Re: Pattermann v. Boughton, PCB 99-187
Your Responses to Boughton's Discovery Requests

Dear Ms. Pattermann:

On July 25, 2001, we received a package of documents from you, postmarked July 23, 2001. The package did not contain any written responses to Boughton's First Set of Interrogatories, or written responses to Boughton's First Set of Document Requests. I contacted you by phone on the 25th, and you informed me that the interrogatories responses were unintentionally excluded from the materials, and that you would fax them to me, and follow up with a hard copy in the mail. I subsequently received your interrogatory responses by fax at approximately 5:30 p.m. on July 25th. In our telephone conversation, you also informed me that you did not prepare any written responses to our document requests.

We request that you provide written responses to our document requests immediately. A formal response is required by the rules, and without these responses, we do not know whether you have objected to providing any documents.

In addition, as outlined below, your interrogatories responses are deficient and unacceptable in numerous respects, and we request that you remedy the identified deficiencies.

First, where requested to do so, you have failed to identify documents relevant to the Interrogatories. This includes Interrogatories 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 14, 17, and 19. We request that you supplement your responses with this information and provide copies of the documents in response to our document requests.

Second, in several cases, where requested to do so, you have failed to identify persons with knowledge in response to Interrogatories, including Interrogatories 7 and 8. We request that you supplement your responses with this information.

EXHIBIT
6

Third, you failed to identify dates or records for sound meter readings identified in your responses to Interrogatories 4 and 5. We request that you supplement your responses with this information and provide copies of these documents in response to our document requests.

Fourth, with regard to Interrogatory 10, you failed to identify residences prior to 1984 for Gina Pattermann, and prior to 1978 for Steven Pattermann. We do not agree that this information is not relevant, and it is information which is available to you upon reasonable inquiry. We request that you supplement your response with this information.

Fifth, in your response to Interrogatory 11, you have failed to identify or provide any documentation with regard to Pattermann Builders. While you may believe that certain records held by Pattermann Builders are not relevant, any documents concerning properties in the vicinity of Boughton and the surrounding subdivisions would be relevant, including any documents concerning the purchase and sale and of such properties, disclosures respecting proximity to or concerns with Boughton or other quarries, records of any type regarding noise or dust concerns (from any source), any other records that refer to Boughton or its potential impact on the properties, or any correspondence which refers to any of these matters. These documents would be in addition to any documents required to be identified and produced in response to Interrogatory 17.

Sixth, in your response to Interrogatory 12, you failed to identify the dates and substance of the meetings with members of the subdivision regarding the Boughton facility, which meetings were identified in your Interrogatory response. Further, with regard to your contacts with Mary Ann and Paul Guzzo, Michele and Richard Francis, Greg Zak, Edward Petka, Bill Jene, Carlene Jenkins, and Lisa Collins, you failed to provide the dates and substance of your contacts, and we request that you supplement your responses with this information. We accept your response as conclusive with regard to persons contacted, and will oppose any attempt to introduce evidence of contacts with other persons.

Seventh, with regard to Interrogatory 13, concerning identification of witnesses, we understand that you will supplement your response with regard to Boughton employees after you have reviewed our discovery responses. However, with regard to anyone other than Boughton employees, we accept your responses as conclusive, and will object to any attempt to identify additional witnesses not disclosed in your response.

Eighth, in response to Interrogatory 14, you have identified only Greg Zak as an opinion witness, and further indicate that Mr. Zak intends to do a more thorough evaluation, at which point you will supplement your response. We will object to any subsequent identification of any previously consulted, non-disclosed expert or opinion witness, or the introduction of any

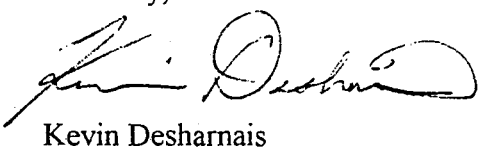
materials related thereto. Moreover, we will object to the use of any evaluation conducted by Mr. Zak after his deposition.

Ninth, with regard to Interrogatory 17, you refer to an "enclosed list of homes sold," but no such list was provided. I informed you in our July 25th phone conversation that the list was not included with the documents you had forwarded. Subsequently, when the list was not included with the Interrogatory responses you faxed on the evening of July 25th, I called you on July 26th and requested that the list be forwarded. To date, we have not received it. We request that you forward the list so that we can evaluate the adequacy of your response. Further, although requested to do so, you have not provided any documentation, including but not limited to, any bill of sale or contract of sale for each identified property. Your response also indicates that you "informed all buyers" of the respondents facility, but you failed to identify the information, including information regarding noise and dust, provided to each purchaser. We request that you supplement your response with this information.

Tenth, with regard to Interrogatory 19, we do not agree that the requested information is not relevant. We request that you provide a complete response to this interrogatory.

As you know, the discovery schedule in this matter is extremely tight, based on your request to the Hearing Officer that we expeditiously proceed to hearing in this matter. While we have jointly requested a modification to the discovery schedule (which has not yet been acted on by the Hearing Officer), even if granted the modification would not affect the due date for written discovery. The issues regarding your discovery responses reflected in this letter are prejudicing our ability to prepare our case in a timely manner.

Sincerely,



Kevin Desharnais

RECEIVED
CLERK'S OFFICE
JAN 24 2003
STATE OF ILLINOIS
Pollution Control Board

BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

GINA PATTERMANN, LISA COLLINS, and DEEN COLLINS,	)	
Complainants,	)	
v.	)	PCB No. 99-187
	)	(Citizens Enforcement - Noise, Air)
BOUGHTON TRUCKING AND MATERIALS, INC.	)	
Respondent.	)	

NOTICE OF FILING

To: **See Attached Certificate of Service**

Please take notice that on January 24, 2003 we filed with the Illinois Pollution Control Board an original and four copies of the attached Motion for Expedited Hearing Officer Order to Compel Production of Evidence, a copy of which is attached and herewith served upon you.

BOUGHTON TRUCKING AND
MATERIALS, INC.

By: _____
One of its Attorneys

Dated: January 24, 2003

Mark R. Ter Molen, Esq.
Kevin G. Desharnais, Esq.
Jaimy M. Levine, Esq.
Patricia F. Sharkey, Esq.
MAYER, BROWN, ROWE & MAW
190 South LaSalle Street
Chicago, Illinois 60603
(312) 782-0600

THIS FILING IS SUBMITTED ON RECYCLED PAPER

EXHIBIT
7

RECEIVED
CLERK'S OFFICE
JAN 24 2003
STATE OF ILLINOIS
Pollution Control Board

BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

GINA PATTERMANN, LISA COLLINS AND DEEN COLLINS, Complainants, v. BOUGHTON TRUCKING AND MATERIALS, INC., Respondent.	))))))	PCB 99-187 (Citizen Enforcement -Noise, Air)

MOTION FOR EXPEDITED HEARING OFFICER ORDER TO COMPEL PRODUCTION OF EVIDENCE

NOW COMES respondent, Boughton Trucking and Material, Inc. ("Boughton"), by its attorneys, Mayer, Brown, Rowe & Maw, pursuant to 35 Ill. Adm. Code Sections 101.614, and moves the Board Hearing Officer to issue an order compelling Complainants to produce complete responses to Boughton's June 22, 2001 First Set of Interrogatories and First Set of Document Requests to Complainant Gina Pattermann and to Complainants Lisa and Deen Collins.

In support thereof, Respondent states:

1. Section 101.620(b) of the Board's General Rules (35 Ill. Adm. Code 101.620(e)) establishes mandatory deadlines for the serving of complete, signed, and sworn answers to interrogatories filed in Board enforcement proceedings:

> "Within 28 days after service thereof, the party to whom the interrogatory is directed must serve the answers and objections, if any, upon the party submitting the interrogatories. Each interrogatory must be answered separately and fully in writing under oath, unless it is objected to. Answers must be signed by the person making them and objections must be signed by the attorney making them or, in the event of an individual representing himself or herself, the individual making them."

2. Section 101.614 of the Board's General Rules (35 Ill. Adm. Code 101.614) authorizes the Hearing Officer, on the motion of any party, to order the production of information that is relevant to the matter under consideration. Section 101.616(a) (35 Ill. Adm. Code 101.616(a)) provides that all relevant information and information calculated to lead to relevant information is discoverable.

3. On June 22, 2001, Respondent served its First Set of Interrogatories and First Set of Document Requests to Complainants Gina Pattermann, Lisa Collins, and Deen Collins ("Complainants") by first class U.S. Mail and UPS delivery, copies of which were also served on the Board by first class U.S. Mail.

4. On July 25, 2001, Gina Pattermann faxed an incomplete, unsigned and unsworn document to Respondent entitled "Answer to Boughton First Set of Interrogatories." (Attachment A hereto). No signed and sworn objections to the interrogatory requests accompanied this document; therefore, Complainant Gina Pattermann has waived any objections to these Interrogatories. 35 Ill. Adm. Code 101.620 Also on July 25, 2001, Respondent received an incomplete package of documents from Gina Pattermann via priority U.S. Mail. No cover letter, document list or written signed and sworn responses or objections accompanied the documents. Therefore, Complainant Gina Pattermann must also be deemed to have waived any objections to Respondents' document requests. Complainants Lisa Collins and Deen Collins have never responded to Respondent's written discovery requests.

5. As stated in the Hearing Officer's Orders of May 25, 2001 and December 4, 2002, all written discovery in this matter was required to be served and complete as of July 23, 2001. These orders preclude the introduction at trial of any information or documents that were subject to Respondent's timely written discovery requests and available to Complainants prior to the written discovery deadline which were not disclosed as of July 23, 2001.

6. Although Complainants failed to respond or object to numerous interrogatory and document requests, Respondent, with the one exception discussed below, accepts Complainants responses as final and will object to any expansion of those responses at this late date or at trial. Obviously, to the extent that new information or documents become available to either party there remains a duty to supplement that party's responses.

7. Respondent requests that Complainants be compelled to produce responsive information and documents pertaining to Interrogatory 17. Specifically, Respondent requests the following:

a. The "list of homes sold" which Complainants identified in response to Interrogatory 17 as "enclosed," but in fact did not include in Complainants' response.

b. Complete responses to Interrogatory 17 (a) –(e), which requested the identification of "all property within a one mile radius of respondent's facility, or within the River Run, Ashbury, Rosehill Farm, Wheatland South, Clow Creek Farm, Saddle Creek, Harmony Grove, High Meadows, Whispering Lakes, Hickory Oaks, River Bend or Cider Creek subdivisions, which [Complainants] or [Complainants'] husband or [Complainant's] family or any entity controlled by [Complainants], [Complainants'] husband, or [Complainants'] family, or any entity in which [Complainants], [Complainants'] husband, or [Complainants'] family have an economic interest, have owned, occupied, leased, developed, or otherwise had an economic interest since 1983. For each such property identify:

"(a) the date of purchase;

"(b) the purchase price paid;

"(c) any structures which existed on the property at the time of purchase;

"(d) any structures which were added to the property after purchase, including the dimensions, square footage, and number of rooms;

"(e) the means of financing for each purchase, and if relevant, the means of financing for construction at the property;

"(f) if sold, the sale price at which the property was sold;

"(g) if sold, all information provided to the purchaser regarding respondent's facility and its operations, including information regarding noise and dust emitted from respondent's facility.

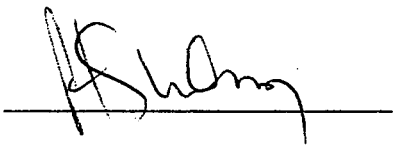
"Identify each document related to this interrogatory, including but not limited to any bill of sale or contract of sale for each identified property."

8. Complainants' failure to provide complete and timely signed and sworn responses to these requests is both a violation of the Board's discovery rules and a significant impediment to Respondent's ability to prepare for depositions and trial.

9. In light of the February 28, 2003 deadline for party depositions established in the December 4, 2002 Hearing Officer Order, Respondent requests that the Hearing Officer issue an order on an expedited basis compelling production of Complainants' complete responses to Boughton's pending discovery requests by no later than February 3, 2003, the date established for the next telephonic status conference.

WHEREFORE Respondent moves the Hearing Officer to order Complainants to serve respondent with complete, signed and sworn responses to the requests made in Interrogatory 17 and related documents , including the "list of homes sold," on or before February 3, 2003.

Respectfully submitted,



Boughton Trucking and Materials, Inc.
By One of Its Attorneys

Mark R. Ter Molen
Kevin Desharnais
Jaimy M. Levine, Esq.
Patricia F. Sharkey, Esq.
Mayer, Brown, Rowe & Maw
190 South LaSalle Street
Chicago, Illinois 60603
(312) 782-0600

THIS FILING IS SUBMITTED ON RECYCLED PAPER

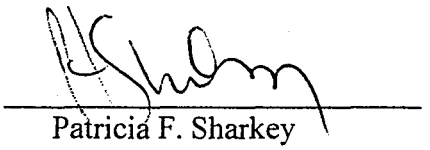
CERTIFICATE OF SERVICE

Patricia F Sharkey, an attorney, hereby certifies that she caused the foregoing Notice of Filing and Motion for Expedited Hearing Officer Order to Compel Production of Evidence to be served on the Hearing Officer, Bradley Halloran, via personal delivery to the Illinois Pollution Control Board offices at 100 West Randolph Street, Chicago, Illinois and on the parties listed below by depositing copies of same in the U. S. Mail, postage prepaid and by sending via UPS for Monday (January 27, 2003) delivery, on January 24, 2003.

Gina Pattermann
4439 Esquire Circle
Naperville, IL 60564

Lisa Collins
Deen Collins
4435 Esquire Circle
Naperville, IL 60564

Roger D. Rickmon
Tracy, Johnson, Bertani & Wilson
116 North Chicago Street
Sixth Floor, Two Rialto Square
Joliet, IL 60432



Patricia F. Sharkey

BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

GINA PATTERMANN,	)	
	)	
	)	
Complainants,	)	PCB 99-187
v.	)	(Citizen Enforcement
	)	-Noise, Air)
BOUGHTON TRUCKING AND MATERIALS, INC.,	)	
	)	
	)	
Respondent.	)	

NOTICE OF DEPOSITION

TO: Steve Pattermann
Pattermann Builders
3447 Redwing Drive
Naperville, Illinois 60564

PLEASE TAKE NOTICE that Boughton Trucking and Materials, Inc. ("Boughton"), by its attorneys, Mayer, Brown, Rowe & Maw, will take the deposition of STEVE PATTERMANN, pursuant to 35 Ill. Admin. Code 101.100 et seq. and the Illinois Rules of Civil Procedure on Tuesday April 8, 2003 at 10:00 a.m., and to be continued as necessary, at the offices of Tracy, Johnson, Bertani & Wilson, 116 North Chicago Street, Suite 600, Joliet, Illinois 60432. The deposition will be taken upon oral examination pursuant to applicable rules of Illinois Civil Procedure.

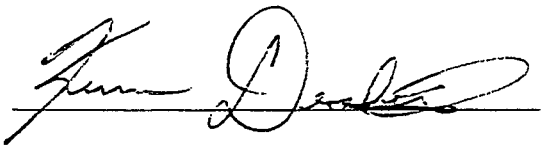
Boughton seeks to depose Steve Pattermann ("Deponent") on all matters relating to, but not limited to, any property, lot, or structure located within a one-mile radius of respondent's family, or within the River Run, Ashbury, Rosehill Farm, Wheatland South, Clow Creek Farm, Saddle Creek, Harmony Grove, High Meadows, Whispering Lakes, Hickory Oaks, River Bend, or Cider Creek subdivisions, in which the Deponent, his spouse, his family, or any entity

EXHIBIT
8

controlled by the Deponent, his spouse, his family, or any entity in which the Deponent, his spouse, or his family has an economic interest, have/has owned, occupied, leased, developed, or otherwise had an economic interest since 1983; and all matters relating to the impacts of noise, dust, or any other emissions alleged or believed to emanate from the Boughton Trucking and Materials, Inc. facility located at 22750 West 111th Street, Naperville, Illinois 60564, or such properties or persons occupying such properties.

Deponent shall bring to the deposition any materials relevant to this matter including, but not limited to, books, papers, articles, treatises, photographs, studies, reports, samples, medical reports, test results, data, videotapes, recordings, notices, lists, receipts, real estate appraisals, insurance estimates, property deeds, bills of sale, contracts of sale, purchase agreements, financing agreements, real estate closing documents, correspondence (including electronic correspondence and phone records), customer lists, lists of properties sold, and any other documents, tangible or intangible evidence.

BOUGHTON TRUCKING AND MATERIALS, INC.



March 21, 2003

By One of Its Attorneys

Mark R.Ter Molen
Kevin Desharnais
Jaimy L. Hamburg
Patricia F. Sharkey
MAYER, BROWN, ROWE & MAW
190 South LaSalle Street

Chicago, Illinois 60603
(312) 782-0600

CERTIFICATE OF SERVICE

Kevin Desharnais, an attorney, certifies that a copy of the foregoing Notice of Deposition was sent for delivery via UPS (Saturday Delivery) to Gina Pattermann at 4439 Esquire Circle, Naperville, Illinois 60564, via UPS (Saturday Delivery) to Steve Patterman care of Patterman Builders at 3447 Redwing Drive, Naperville, Illinois 60564, and by first class United States mail to the Hearing Officer Bradley Halloran at the Illinois Pollution Control Board, Suite 11-500, 100 W. Randolph Street, Chicago 60601 on March 21, 2003.

Kevin Desharnais

Before the Illinois Pollution Control Board

Gina Pattermann,	)	
Complainant/Petitioner,	)	PCB 99-187
v.	)	
Boughton Trucking and Materials, Inc.	)	
Respondent.	)	

SUBPOENA/SUBPOENA DUCES TECUM

TO: Steve Pattermann
Pattermann Builders
3447 Redwing Drive
Naperville, Illinois 60564

Pursuant to Section 5(e) of the Environmental Protection Act (415 ILCS 5/5(e) (2002)) and 35 Ill. Adm. Code 101.622, you are ordered to attend and give testimony at the hearing/deposition in the above-captioned matter at

10:00a.m. on April 8 2003, at

Tracy, Johnson, Bertani & Wilson
116 North Chicago Street, Suite 600
Joliet, Illinois 60432.

You are also ordered to bring with you documents relevant to the matter under consideration and designated herein: See documents listed in notice.

Failure to comply with this subpoena will subject you to sanctions under 35 Ill. Adm. Code 101.622(g), 101.800, and 101.802.

ENTER:

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Pollution Control Board

Date: _____

CERTIFICATE OF SERVICE

I, KEVIN DESHARNAIS, certify that on this 21ST day of MARCH 2003, I caused copies of the SUBPOENA/SUBPOENA DUCES TECUM to be served upon the following:

GINA PATTERMANN

BRADLEY HALLORAN, HEARING OFFICER

DOROTHY GUNN, CLERK, IPCB

STEVE PATTERMANN

by depositing same in United States First Class Mail, postage prepaid.

(Signature)

RECEIVED
CLERK'S OFFICE
NOV 1 3 2001
STATE OF ILLINOIS
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD
November 13, 2001

GINA PATTERMANN, LISA COLLINS and DEEN COLLINS,	)	
Complainants,	)	
v.	)	PCB 99-187 (Citizens Enforcement - Noise, Air)
BOUGHTON TRUCKING and MATERIALS,	)	
Respondent.	)	

HEARING OFFICER ORDER

A telephonic status conference was scheduled in this matter for November 8, 2001. Complainant did not appear. Respondent indicated that settlement discussions have again started due to complainant retaining counsel. Indeed, the joint motion to suspend the discovery schedule, filed October 29, 2001, indicates that settlement discussions will proceed with renewed vigor. The joint motion to suspend the discovery schedule is granted.

The parties are directed to participate in a telephonic status conference with the hearing officer on January 10, 2002, at 2:15 p.m. The status conference must be initiated by the complainants, but each party is nonetheless responsible for its own appearance. At the status conference, the parties must be prepared to discuss the status of the above-captioned matter and their readiness for hearing.

IT IS SO ORDERED.

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 W. Randolph Street
Chicago, Illinois 60601
312.814.8917

EXHIBIT
9A

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were mailed, first class, to each of the following on November 13, 2001:

Jaimy M. Levine
Kevin G. Desharnais
Mark R. TerMolen
Mayer, Brown & Platt
190 South LaSalle Street
Chicago, IL 60603

Kenneth A. Carlson
Roger D. Rickmon
Thomas R. Wilson
Tracy, Johnson, Bertani & Wilson
116 North Chicago Street
Suite 600
Joliet, IL 60432

Steven P. Kaiser, Esq.
The Law Office of Steven P. Kaiser
4711 Golf Road
Suite 700
Skokie, IL 60076

Deen Collins
Lisa Collins
4435 Esquire Circle
Naperville, IL 60564

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on November 13, 2001:

Dorothy M. Gunn
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Ste. 11-500
Chicago, Illinois 60601

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601
312.814.8917

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APR - 2 2002
STATE OF ILLINOIS
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD
April 2, 2002

GINA PATTERMANN, LISA COLLINS and DEEN COLLINS,	)	
Complainants,	)	
v.	)	PCB 99-187
	)	(Citizens Enforcement - Noise, Air,)
BOUGHTON TRUCKING AND MATERIALS,	)	
Respondent.	)	

HEARING OFFICER ORDER

A telephonic status conference was scheduled for March 25, 2002. Complainants did not appear. It is noted that Steven P. Kaiser entered his appearance on behalf of the complainant Gina Pattermann on October 23, 2002. Since October 23, 2002, Kaiser has failed to appear for two of the three scheduled telephonic status conferences.

The parties are directed to participate in a telephonic status conference with the hearing officer on April 29, 2002, at 11:15 a.m. The parties are to note the rescheduling of the status conference. The status conference shall be initiated by the complainants, but each party is nonetheless responsible for its own appearance. At the status conference, the parties must be prepared to discuss the status of the above-captioned matter and their readiness for hearing.

IT IS SO ORDERED.

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 West Randolph Street
Chicago, Illinois 60601
312.814.8914

EXHIBIT
9B

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were mailed, first class, to each of the following on April 2, 2002:

Jaimy M. Levine
Kevin G. Desharnais
Mark R. TerMolen
Mayer, Brown, Rowe & Maw
190 South LaSalle Street
Chicago, IL 60603

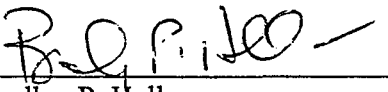
Kenneth A. Carlson
Roger D. Rickmon
Thomas R. Wilson
Tracy, Johnson, Bertani & Wilson
116 North Chicago Street
Suite 600
Joliet, IL 60432

Steven P. Kaiser, Esq.
The Law Office of Steven P. Kaiser
39 S. LaSalle Street
Suite 404
Chicago, IL 60603

Deen Collins
Lisa Collins
4435 Esquire Circle
Naperville, IL 60564

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on April 2, 2002:

Dorothy M. Gunn
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Ste. 11-500
Chicago, Illinois 60601



Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601
312.814.8917

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MAY 23 2002
STATE OF ILLINOIS
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD
May 23, 2002

GINA PATTERMANN, LISA COLLINS and DEEN COLLINS,	)	
Complainants,	)	
v.	)	PCB 99-187
	)	(Citizens Enforcement - Noise, Air,)
BOUGHTON TRUCKING AND MATERIALS,	)	
Respondent.	)	

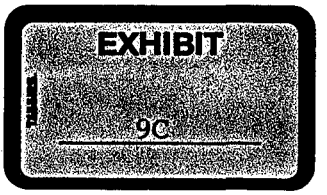
HEARING OFFICER ORDER

A telephonic status conference was scheduled for May 23, 2002. Complainants did not appear. Respondent represented that the complainants have failed to respond to its concerns regarding two conditions included in the complainants' site investigation report. Respondent, however, has requested that a discovery schedule not be set until after it discusses with the complainant its concerns. That request is granted.

The parties are directed to participate in a telephonic status conference with the hearing officer on June 3, 2002, at 11:00 a.m. The status conference shall be initiated by the complainants, but each party is nonetheless responsible for its own appearance. At the status conference, the parties must be prepared to discuss the status of the above-captioned matter and their readiness for hearing.

IT IS SO ORDERED.

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 West Randolph Street
Chicago, Illinois 60601
312.814.8914



CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were mailed, first class, to each of the following on May 23, 2002:

Jaimy M. Levine
Kevin G. Desharnais
Mark R. TerMolen
Mayer, Brown, Rowe & Maw
190 South LaSalle Street
Chicago, IL 60603

Kenneth A. Carlson
Roger D. Rickmon
Thomas R. Wilson
Tracy, Johnson, Bertani & Wilson
116 North Chicago Street
Suite 600
Joliet, IL 60432

Steven P. Kaiser, Esq.
Cohen & Kaiser
39 S. LaSalle Street
Chicago, IL 60603

Deen Collins
Lisa Collins
4435 Esquire Circle
Naperville, IL 60564

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on May 23, 2002:

Dorothy M. Gunn
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Ste. 11-500
Chicago, Illinois 60601

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601
312.814.8917

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AUG 15 2002
STATE OF ILLINOIS
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD
August 15, 2002

GINA PATTERMANN, LISA COLLINS and DEEN COLLINS,	)	
Complainants,	)	
v.	)	PCB 99-187
	)	(Citizens Enforcement - Noise, Air,)
BOUGHTON TRUCKING AND MATERIALS,	)	
Respondent.	)	

HEARING OFFICER ORDER

A telephonic status conference was scheduled for August 8, 2002. Complainants or their attorney did not appear. A telephonic status conference will be rescheduled as noted below. Additionally, the complainants attorney, Steven Kaiser, filed a motion to withdrawl as counsel on August 2, 2002. There was no objection by respondent. Kaiser's motion to withdrawl is granted.

The parties are directed to participate in a telephonic status conference with the hearing officer on September 11, 2002, at 2:15 p.m. The status conference must be initiated by the complainants, but each party is nonetheless responsible for its own appearance. At the status conference, the parties must be prepared to discuss the status of the above-captioned matter and their readiness for hearing. The parties are directed to submit a proposed discovery scheduled on or before September 18, 2002.

IT IS SO ORDERED.

Brad P. Halloran

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 West Randolph Street
Chicago, Illinois 60601
312.814.8914

EXHIBIT
9D

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were mailed, first class, to each of the following on August 15, 2002:

Jaimy M. Levine
Kevin G. Desharnais
Mark R. TerMolen
Mayer, Brown, Rowe & Maw
190 South LaSalle Street
Chicago, IL 60603

Kenneth A. Carlson
Roger D. Rickmon
Thomas R. Wilson
Tracy, Johnson, Bertani & Wilson
116 North Chicago Street
Suite 600
Joliet, IL 60432

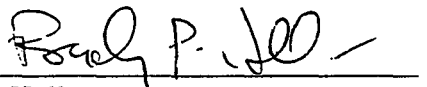
Steven P. Kaiser, Esq.
Cohen & Kaiser, P.C.
39 S. LaSalle Street
Suite 404
Chicago, IL 60603

Deen Collins
Lisa Collins
4435 Esquire Circle
Naperville, IL 60564

Gina Pattermann
4439 Esquire Circle
Naperville, IL 60564

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on August 15, 2002:

Dorothy M. Gunn
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Ste. 11-500
Chicago, Illinois 60601



Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601
312.814.8917

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SEP 18 2002
STATE OF ILLINOIS
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD
September 18, 2002

GINA PATTERMANN, LISA COLLINS and DEEN COLLINS,	)	
Complainants,	)	
v.	)	PCB 99-187
	)	(Citizens Enforcement - Noise, Air,)
BOUGHTON TRUCKING AND MATERIALS,	)	
Respondent.	)	

HEARING OFFICER ORDER

A telephonic status conference was scheduled for September 11, 2002. Complainants did not appear. On August 2, 2002, complainants' attorney, Steven Kaiser, filed a motion to withdraw. On August 15, the hearing officer granted Kaiser's motion. In any event, since November 8, 2001, complainants have failed to appear at five of the seven scheduled telephonic status conferences. Any further non-appearances will be referred to the Board for appropriate sanctions.

The parties are directed to participate in a telephonic status conference with the hearing officer on October 10, 2002, at 2:00 p.m. The status conference must be initiated by the complainants, but each party is nonetheless responsible for its own appearance. At the status conference, the parties must be prepared to discuss the status of the above-captioned matter and their readiness for hearing.

IT IS SO ORDERED.

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 West Randolph Street
Chicago, Illinois 60601
312.814.8914

EXHIBIT
9E

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were mailed, first class, to each of the following on September 18, 2002:

Jaimy M. Levine
Kevin G. Desharnais
Mark R. TerMolen
Mayer, Brown, Rowe & Maw
190 South LaSalle Street
Chicago, IL 60603

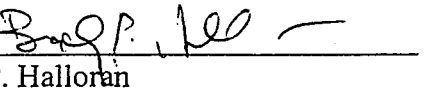
Kenneth A. Carlson
Roger D. Rickmon
Thomas R. Wilson
Tracy, Johnson, Bertani & Wilson
116 North Chicago Street
Suite 600
Joliet, IL 60432

Deen Collins
Lisa Collins
4435 Esquire Circle
Naperville, IL 60564

Gina Pattermann
4439 Esquire Circle
Naperville, IL 60564

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on September 18, 2002:

Dorothy M. Gunn
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Ste. 11-500
Chicago, Illinois 60601



Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601
312.814.8917

RECEIVED
CLERK'S OFFICE
DEC - 4 2002
STATE OF ILLINOIS
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD
December 4, 2002

GINA PATTERMANN, LISA COLLINS and DEEN COLLINS,	)	
Complainants,	)	
v.	)	PCB 99-187
	)	(Citizens Enforcement - Noise, Air)
BOUGHTON TRUCKING AND MATERIALS,	)	
Respondent.	)	

HEARING OFFICER ORDER

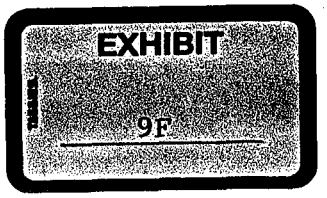
On November 21, 2002, a telephonic status conference was held. Complainants did not appear at that time but called the hearing officer later. A proposed discovery schedule was submitted by the respondent on November 12, 2002. Complainants represented that they are in agreement with the proposed discovery schedule. To that end, the proposed discovery schedule is accepted to the extent as follows: the parties must be deposed on or before February 28, 2003; all non-parties must be deposed on or before March 14, 2003; complainants' opinion witnesses disclosures must be completed on or before February 10, 2003; respondent's opinion witnesses disclosures must be completed on or before March 10, 2003; dispositve motions must be filed on or before April 11, 2003. The parties are reminded that all written discovery was completed on or before July 23, 2001.

The parties are directed to participate in a telephonic status conference with the hearing officer on February 3, 2003, at 11:30 a.m. The status conference must be initiated by the complainants, but each party is nonetheless responsible for its own appearance. At the status conference, the parties must be prepared to discuss the status of the above-captioned matter and their readiness for hearing.

IT IS SO ORDERED.

Brad P. Hall

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 West Randolph Street
Chicago, Illinois 60601
312.814.8914



CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were mailed, first class, to each of the following on December 4, 2002:

Jaimy M. Levine
Kevin G. Desharnais
Mark R. TerMolen
Mayer, Brown, Rowe & Maw
190 South LaSalle Street
Chicago, IL 60603

Kenneth A. Carlson
Roger D. Rickmon
Thomas R. Wilson
Tracy, Johnson, Bertani & Wilson
116 North Chicago Street
Suite 600
Joliet, IL 60432

Deen Collins
Lisa Collins
4435 Esquire Circle
Naperville, IL 60564

Gina Pattermann
4439 Esquire Circle
Naperville, IL 60564

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on December 4, 2002:

Dorothy M. Gunn
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Ste. 11-500
Chicago, Illinois 60601

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601
312.814.8917

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MAR 5 2003
STATE OF ILLINOIS
Pollution Control Board

BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

GINA PATTERMANN, Complainant, v. BOUGHTON TRUCKING AND MATERIALS, INC., Respondent.	)	PCB No. 99-187 (Citizens Enforcement)

NOTICE OF FILING

TO: See Attached Certificate of Service

Please take notice that on March 5, 2003, I filed with the Illinois Pollution Control Board this Notice of Filing and Motion for Expedited Hearing Officer Order Striking Complainant's Witness List, copies of which are attached and hereby served upon you.

Dated: March 5, 2003

BOUGHTON TRUCKING AND MATERIALS, INC.

By: _____
One of its Attorneys

Mark R. Ter Molen, Esq.
Patricia F. Sharkey, Esq.
Kevin G. Desharnais, Esq.
MAYER, BROWN & PLATT
190 S. LaSalle Street
Chicago, Illinois 60603
(312) 782-0600

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EXHIBIT
10

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STATE OF ILLINOIS
Pollution Control Board

CERTIFICATE OF SERVICE

Patricia F. Sharkey, an attorney, hereby certifies that a copy of the attached Notice of Filing and Motion for Expedited Hearing Officer Order Striking Complainant's Witness List was served on the persons listed below by First Class U.S. Mail, proper postage prepaid, on March 5, 2003.

Gina Pattermann
4439 Esquire Circle
Naperville, IL 60564

Roger D. Rickmon
Tracy, Johnson, Bertani & Wilson
116 North Chicago Street
Sixth Floor, Two Rialto Square
Joliet, IL 60432

Patricia F. Sharkey

BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

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MAR 5 2003
STATE OF ILLINOIS
Pollution Control Board

GINA PATTERMANN, Complainants, v. BOUGHTON TRUCKING AND MATERIALS, INC., Respondent.	)	PCB No. 99-187 (Enforcement - Noise, Air, Citizens)

MOTION FOR EXPEDITED HEARING OFFICER ORDER STRIKING COMPLAINANT'S WITNESS LIST

NOW COMES Respondent, Boughton Trucking and Materials, Inc. ("Boughton"), by its attorneys, Mayer, Brown, Rowe & Maw, and moves to strike the Complainant's witness list.

In support thereof, Respondent states:

1. **Complainant's purported witness list is not a witness list.**

The Complainant has tendered a one-hundred-person "witness list" that is vague, cumulative, and lacks sufficient information to allow Respondent to determine the nature of the testimony the witness would provide. (See Attachment 1 hereto.) In fact, the document Complainant has produced is not a "witness list." At most, it is a list of potential witnesses, leaving Respondent to guess which witnesses the Complainant will actually call at hearing.

Under the Federal Rules of Civil Procedure, exchanging witness lists is intended to "discourag[e] wasteful pretrial activities," "improv[e] the quality of the trial through more thorough preparation," and "facilitate[e] the settlement of the case." FED. R. CIV. P. 16(a). Managing a hearing through the exchange of witness lists serves to avoid prolonged proceedings

and the presentation of cumulative evidence. *Id.* The one hundred person "witness list" tendered by Complainant is designed to do just the opposite.

The Hearing Officer has the authority and duty to prevent this abusive discovery tactic and efficiently manage this proceeding. ILL. ADMIN. CODE tit. 35, § 101.610 (2003). In a case involving a similarly lengthy and unrealistic witness list, the Board Hearing Officer granted a motion to strike a complainant's witness list stating:

> "It is generally accepted that a witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. (See Federal Rules of Evidence, Rule 602). Due to the number of witnesses listed by Complainants and at least one instance where the witness on deposition does not appear to have any personal knowledge of the matter (Joanna Hoelscher), it is impossible to ascertain which witnesses actually have any personal knowledge of the matter and would be competent to testify on behalf of Complainants." International Union v. Caterpillar, Inc., PCB 94-240 (Hearing Officer Order, April 21, 1995). (Attachment 2 hereto.)

In this case, Respondent faces the same impossibility of ascertaining actual witnesses. The Hearing Officer should exercise his authority in this case by striking Complainant's witness list and limiting Complainant's witnesses to persons who can be demonstrated to have actual knowledge of the matters at issue and that have been or can be identified consistent with the discovery rules and schedule.

2. **Complainant cannot identify new witnesses that should have been identified in response to interrogatories.**

Complainant failed to identify ninety-seven of these purported witnesses in response to Respondent's interrogatories. Those interrogatories asked not only for witnesses but for the identification of persons with knowledge of the alleged impacts. See Respondent's First Set of Interrogatories to Complainants, Interrogatories 12 - 16. (See Attachment 3 hereto.) In response, Complainant identified only three witnesses she intended to call at trial: Bill Jene, Carlene Jenkins, and Lisa Collins. Answer to Boughton's First Set of Interrogatories, Answer

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Interrogatory 13. (See Attachment 4 hereto.) Complainant's statement in her response that she "cannot identify each and every witness that I will call for trial," does not excuse her from answering interrogatories fully based on a diligent investigation of the facts underlying her case at the time. A review of the October 2000 River Run Directory demonstrates that the disclosed witnesses are not individuals who have recently become known to the Complainant; rather, the great majority of these individuals were listed as residents of River Run in the 2000 river Run Directory and should have been known to the Complainant at that time. If Complainant failed to make a diligent inquiry to identify witnesses at the time that she filed her complaint and before filing her interrogatory responses, she cannot be allowed to pack her list with potential witnesses at this late date.

3. **Complainant failed to supplement her interrogatory responses and has made no demonstration that the ninety-seven newly identified witnesses will testify to information that was unavailable before this time.**

Complainant was also under a duty to seasonably supplement her responses, which she failed to do. FED. R. CIV. P. 26(e). The Federal Rules provide that "[a] party who has made a disclosure . . . or responded to a request for discovery . . . is under a duty to supplement or correct the disclosure or response to include information thereafter acquired . ..." FED. R. CIV. P. 26(e). This duty arises when a party "learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing." FED. R. CIV. P. 26(e)(2). Unless Complainant can demonstrate that the most recent witness disclosures are the result of new information or circumstances, Complainant's attempt to increase her witness list from three to one hundred potential witnesses at this late date must be barred.

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4. **Respondent is unable to prepare for hearing because the information contained in Complainant's purported witness list is vague, cumulative, and late.**

Finally, Complainant's single statement of what all one hundred witnesses will attest to ("how Respondent's actions affect their daily lives") is vague and suggests that the testimony will be repetitive. The extremely vague description of the purported witness testimony suggests that Complainant herself may not know what these individuals would attest to. To call one hundred of these purported witnesses would constitute "unnecessary proof and . . . cumulative evidence" and waste Respondent's – as well as this Tribunal's – time and resources. To put Respondent in the position of having to depose all one hundred potential witnesses, i.e. witnesses Complainant may or may not call, is an abusive discovery tactic which should not be allowed.

Complainant was also required to provide "the name and . . . the address and telephone number of each witness, separately identifying those whom the party expects to present and those whom the party may call if the need arises." FED. R. CIV. P. 26(a)(3)(A). In this case, the Complainant has only provided names and addresses and has not distinguished witnesses from potential witnesses.

Although the Board may allow citizens who are unrepresented by counsel more latitude in procedural matters, the Complainant in this case is an attorney and should be held to diligently comply with discovery deadlines and standards. After Complainant has dragged her feet for two years after the written discovery deadline, Respondent should not now be faced with the extremely expensive, if not impossible, task of preparing a defense based on a list of one hundred "potential" witnesses that is cumulative, is missing key information, and is submitted a month before the deposition deadline.

WHEREFORE, for the reasons stated in this motion, Respondent respectfully requests that the Hearing Officer expeditiously enter an order granting the following relief:

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(a) Limit Complainant's witness list to those individuals identified in her interrogatory responses and any additional witnesses whom she can demonstrate have actual knowledge and could not have been identified based upon a diligent inquiry before this date;

(b) Require Complainant to state with specificity what each witness will attest to;

(c) Limit the Complainant's witness list to non-repetitive testimony;

(d) Require the Complainant to identify those individuals she plans to call as witnesses in her case in chief and those she will call only if needed;

(e) Require Complainant to bear Respondent's costs in deposing any witnesses identified for her case in chief that she fails to call as a witness at trial; and

(f) Any other relief the Hearing Officer deems appropriate.

Dated: March 5, 2003

Respectfully submitted,

BOUGHTON TRUCKING AND MATERIALS, INC.

By: _____
One of Its Attorneys

Mark R. Ter Molen
Patricia F. Sharkey
Kevin Desharnais
MAYER, BROWN, ROWE & MAW
190 South LaSalle Street
Chicago, IL 60603-3441
(312) 782-0600

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STATE OF ILLINOIS
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD
April 2, 2003

GINA PATTERMANN,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 99-187
	)	(Citizens Enforcement - Noise, Air)
BOUGHTON TRUCKING AND MATERIALS,	)	
	)	
Respondent.	)	

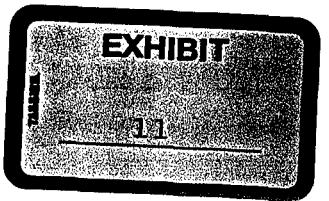
HEARING OFFICER ORDER

On March 17, 2003, and again on March 27, 2003, telephonic conferences were held in this matter. At the conferences, the status of the matter was discussed and the hearing officer made rulings on the outstanding motions.

On March 5, 2003, respondent filed a motion for expedited hearing officer order striking complainant's witness list. In the motion, respondent represents that complainant recently tendered a witness list to the respondent that included 100 witnesses that complainant intends to call at the hearing. Complainant orally responded to the motion at the March 17, 2003, telephonic conference.

In the motion, respondent argues that 97 of the witnesses recently disclosed were not included in the answers to respondent's interrogatories served on or before July 23, 2001. Respondent also argues that the witness list is vague, cumulative and lacks sufficient information to allow respondent to determine the nature of the testimony the witnesses would provide. At the March 17, 2003, conference, complainant orally argued that she did not know of any additional witnesses at the time she answered the interrogatories and that she seasonably supplemented the answer with the recent disclosure of the additional 97 witnesses.

Respondent represented that the "great majority" of the recently disclosed witnesses were listed in the local directory in the year 2000 and could have been disclosed in complainant's answers to respondent's interrogatories served on or before July 23, 2001. The hearing officer agreed. By waiting over a year and a half to disclose 97 additional witnesses, the hearing officer found that complainant's disclosure was not reasonable nor was it seasonable. The hearing officer also found that the subject of their testimony was vague. Complainant did not indicate that these witnesses had personal knowledge of the contested matter only that "the following persons shall testify as to how respondent's actions affect their daily lives." The hearing officer, however, allowed complainant to select one witness from the disclosure list to testify as complainant's witness at the hearing. Complainant represented that she intends to call Donald



Boudreau as her additional witness. To that end, respondent's motion was granted in part and denied in part.

Also at the March 17, 2003, conference, the hearing officer stated that pursuant to Section 101.628 of the Board's procedural rules, written statements may be submitted at the hearing by the recently disclosed witnesses as participants subject to cross-examination. Should the participant decline to be cross-examined, or if the participant is unavailable, it will be treated as public comment. Respondent objected. The respondent represented that it would file a written objection on or before March 21, 2003. Complainant was directed to file a response on or before March 25, 2003.

Additionally, complainant represented that she would file a stipulation stating that there will be no evidence presented at hearing regarding the loss of valuation allegation on any house built by Patterson Builders other than the house she presently lives in. Finally, it was agreed that notices of the witnesses to be disposed must be served on or before March 21, 2003, and that all depositions be completed on or before May 2, 2003.

At the March 27, 2003, conference, the hearing officer addressed respondent's written motion to limit statements by excluded witnesses. Complainant filed her response on March 27, 2003. Respondent argues in its motion that to allow the previously excluded witnesses to file written statements as participants pursuant to Section 101. 628 of the Board's procedural rules would circumvent modern rules of discovery. Complainant responded that the Act permits such written statements.

The hearing officer found that the plain language of Section 101.628 clearly allows for statements from participants regardless of intervening actions or events. Respondent's motion was denied.

The hearing officer also directed that complainant serve on the respondent any additional reports that her expert may have generated on or before April 3, 2003. Reports not turned over on or before April 3, 2003, either from the complainant or the respondent, will not be allowed without good cause.

Finally, in light of the April 3, 2003, cut-off date for the parties' disclosure of their respective experts reports, all dispositive motions must be filed on or before May 30, 2003.

The parties are directed to participate in a telephonic status conference with the hearing officer on April 16, 2003, at 2:00 p.m. The status conference must be initiated by the complainant, but each party is nonetheless responsible for its own appearance. At the status conference, the parties must be prepared to discuss the status of the above-captioned matter and their readiness for hearing.

IT IS SO ORDERED.

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 West Randolph Street
Chicago, Illinois 60601
312.814.8914

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were mailed, first class, to each of the following on April 2, 2003:

Jaimy M. Levine
Kevin G. Desharnais
Mark R. TerMolen
Patricia Sharkey
Mayer, Brown, Rowe & Maw
190 South LaSalle Street
Chicago, IL 60603

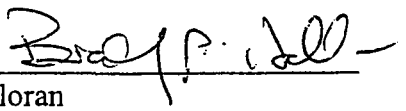
Kenneth A. Carlson
Roger D. Rickmon
Thomas R. Wilson
Tracy, Johnson, Bertani & Wilson
116 North Chicago Street
Suite 600
Joliet, IL 60432

Deen Collins
Lisa Collins
4435 Esquire Circle
Naperville, IL 60564

Gina Pattermann
4439 Esquire Circle
Naperville, IL 60564

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on April 2, 2003:

Dorothy M. Gunn
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Ste. 11-500
Chicago, Illinois 60601



Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601
312.814.8917

MAYER, BROWN, ROWE & MAW

190 SOUTH LA SALLE STREET

CHICAGO, ILLINOIS 60603-3441

PATRICIA F. SHARKEY
DIRECT DIAL (312) 701-7952
DIRECT FAX (312) 706-9113
PSharkey@mayerbrownrowe.com

MAIN TELEPHONE
(312) 782-0600
MAIN FAX
(312) 701-7711

March 21, 2003

Gina Pattermann
4439 Esquire Circle
Naperville, Illinois 60564

Re: Witness Disclosures

Dear Ms. Pattermann:

As of 5:00 p.m. today, we have not received a disclosure of the names, addresses, or phone numbers of your witnesses in this matter or the scope of their testimony. In particular, you never provided the address of Lisa Collins, who we have been unable to reach by mail in the past due to the fact that she moved. We also were not provided with an address for Mr. Boudreau, your newly named witness.

As the Hearing Officer in our March 17th status conference ordered that all depositions be noticed today, we have made an attempt to notify your witnesses at the addresses that may or may not be correct. Copies of these notices are included herein. We must assume that you will assure your witnesses receive copies of these notices. We again request that you provide full written disclosure as to these witnesses.

Sincerely,

Patricia F. Sharkey

cc: Bradley Halloran, Hearing Officer

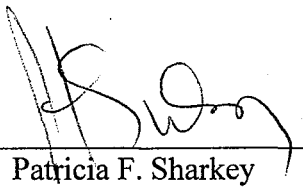
EXHIBIT
12

CERTIFICATE OF SERVICE

Patricia F. Sharkey, an attorney, hereby certifies that a copy of the attached Notice of Filing, Motion for Discovery Sanctions and Affidavit of Attorney was served on the persons listed below by First Class U.S. Mail, proper postage prepaid, on May 23, 2003.

Gina Pattermann
4439 Esquire Circle
Naperville, IL 60564

Roger D. Rickmon
Tracy, Johnson, Bertani & Wilson
116 North Chicago Street
Sixth Floor, Two Rialto Square
Joliet, IL 60432



Patricia F. Sharkey

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