

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

NACME Steel Processing, L.L.C.,	)	
	)	
<i>Petitioner,</i>	)	
	)	
v.	)	PCB <u>13-7</u> (Permit Appeal)
	)	
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
<i>Respondent.</i>	)	

**NACME STEEL PROCESSING, L.L.C.'s RESPONSE TO IEPA'S MOTION FOR LEAVE TO FILE REPLY**

Petitioner NACME Steel Processing, L.L.C. ("NACME"), by its attorneys, Reed Smith, LLP., in response to the Illinois Environmental Protection Agency's (the "Agency") Motion for Leave to File Reply states as follows:

**Introduction**

NACME filed a petition for review of an Agency permit decision and the Agency filed first a Motion to Dismiss ("Motion") and then an Amended Motion to Dismiss. NACME filed a Response and the Agency now says it needs to file a Reply in order to avoid "prejudice". The Agency cites in support the Board's Procedural Rule 35 Ill. Adm. Code 101.500(e). However the rule states in relevant part:

The moving person will not have the right to reply, except as permitted by the Board or the hearing officer to prevent *material* prejudice. (emphasis supplied)

**Legal Argument**

The State fails to cite any case law authority supporting its position that it should be allowed to file a Reply under the circumstances. In fact the Agency fails to explain at all the circumstances that might justify its need to file another brief here. The Agency merely says that it needs to file the Reply in order to avoid "prejudice", but does not say what prejudice it seeks to

avoid. Moreover the standard set forth in the Board's rules is "material prejudice", which the Agency fails to assert. The Agency argues that NACME's Response contains "factual and legal mischaracterizations", but wholly fails to identify any. Moreover it fails to explain how a characterization by NACME of facts or law at this stage of the proceedings could result in material prejudice to the State. It fails to assert that any problem it has with the way that NACME has characterized the relevant facts and law could not be rebutted at hearing instead of through a third bite of the apple by the Agency, in addition to its two motions to dismiss.

**Conclusion**

The Agency fails to justify its request to file a Reply under the "material prejudice" standard set forth in the Board's rules. As such, NACME requests that the Agency's Motion for Leave to File Reply should be denied.

Dated: October 16, 2012

Respectfully submitted,

**NACME STEEL PROCESSING, L.L.C.,**  
Petitioner

By:  \_\_\_\_\_  
One of Its Attorneys

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

**CERTIFICATE OF SERVICE**

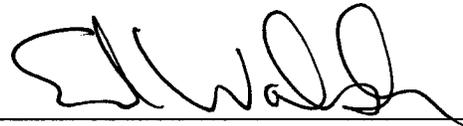
I, the undersigned, certify that I have served the attached **NACME STEEL PROCESSING, LLC'S RESPONSE TO IEPA'S MOTION TO FILE REPLY**, by U.S. Regular Mail, upon the following persons:

Nancy J. Tikalsky  
Assistant Attorney General  
Office of the Illinois Attorney General  
Environmental Bureau  
69 West Washington Street, Suite 1800  
Chicago, Illinois 60602

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

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

By:



Edward V. Walsh, III