

SERVICE LIST

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

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE PEOPLE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB No. 13 - 12
)	(Enforcement - Air)
NACME STEEL PROCESSING, LLC,)	
a Delaware limited liability corporation,)	
)	
Respondent.)	

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on May 7, 2013, I served true and correct copies of Complainant's PEOPLE'S MOTION TO COMPEL ANSWER AND RESPONSES TO WRITTEN DISCOVERY AND FOR PROTECTIVE ORDER AND/OR BOARD'S SUPERVISION OF DISCOVERY, upon the persons and by the methods as follows:

[First Class U.S. Mail]

[email attachment]

Edward V. Walsh, III
ReedSmith LLP
10 South Wacker Drive
Chicago, Illinois 60606-7507

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



Nancy J. Tikalsky
Assistant Attorney General
Office of the Illinois Attorney General
Environmental Bureau
69 West Washington Street, Suite 1800
Chicago, IL 60602
(312) 814-8567

Date: May 7, 2013

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE PEOPLE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB No. 2013 - 12
)	(Enforcement – Air)
NACME STEEL PROCESSING, LLC,)	
a Delaware limited liability corporation,)	
)	
Respondent.)	

**PEOPLE'S MOTION TO COMPEL ANSWER AND RESPONSES TO WRITTEN
DISCOVERY AND FOR PROTECTIVE ORDER AND/OR
BOARD'S SUPERVISION OF DISCOVERY**

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

I. Respondent has placed the People at a disadvantage by failing to comply with the Hearing Officer's orders dated November 27, 2012 and April 23, 2013 and the Board's procedural rules, which entitles Complainant to a Protective Order and/or the Board's Supervision of Discovery

a. Respondent has failed to provide complete responses to the People's First Set of Interrogatories and First Request for Production of Documents

1. On February 28, 2013, the Complainant served Complainant's First Set of Interrogatories and First Request for Production of Documents on the Respondent ("People's Written Discovery Requests") pursuant to the hearing officer's Order dated November 27, 2012; answers to those filings were due on March 29, 2013. See copy of the Board's order dated November 27, 2012 hereto attached as Exhibit A.

2. To date, Respondent has failed to submit complete responses to the People's Written Discovery Requests.

3. Pursuant to guidance from Supreme Court Rule 201(k), Complainant has made attempts to resolve this discovery dispute informally.¹

4. On or about March 12, 2013 and March 22, 2013, Complainant received letters from Respondent refusing to Answer all of the twenty (20) Interrogatories as Respondent believed there to be subparts equaling more than thirty (30) Interrogatories. ("Nacme's 201k Interrogatory letters"); Respondent requested Complainant to provide a list of priorities for the twenty (20) Interrogatories. In a telephone conversation on March 12, 2013, in an attempt to address this contention, Complainant responded that the lists provided with the questions

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

narrowed the scope of the requests and were, therefore, not subparts but clarifications of the information sought, and that Complainant expected Respondent to answer all of the twenty (20) Interrogatories. See Respondent's Nacme's 201k Interrogatory letters hereto attached as Exhibit B.

5. On May 3, 2013, after Respondent failed to provide description of the testimony expected from some of Respondent's fact witnesses, Complainant requested in a 201k letter to Respondent that Respondent provide responses or complete responses to Interrogatories No.'s 3, 4, 12, 13, 14, 16, 19 and 20 and produce documents pursuant to document production requests No.'s 10, 11, 12, 13, and 14 ("People's 201k letter"). See People's 201k letter hereto attached as Exhibit C.

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

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

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

101.616 Discovery

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

101.100 (b) Applicability

b) The provisions of the Code of Civil Procedure [735 ILCS 5] and the Supreme Court Rules [Ill. S. Ct. Rules] do not expressly

apply to proceedings before the Board. However, the Board may look to the Code of Civil Procedure and the Supreme Court Rules for guidance where the Board's procedural rules are silent.

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

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

9. Clearly, Complainant's document requests outlined in its letter dated May 3, 2013, are relevant to the subject matter of the Complainant's Complaint that NACME operated at the Facility as a major air pollution source without a permit under the Clean Air Act Permit Program, including the decision-making and knowledge of its corporate officers and employees on NACME's operations at the facility, Nacme's financial status and corporate policies during the period in question that may have effected decisions on operations and permitting for air pollution control.

10. As of the date of the filing of this Motion to Compel, Complainant has not received responses to interrogatories No.'s 3, 4, 12, 13, 14, 16, 19 and 20 and document production requests No.'s 10, 11, 12, 13, and 14. Complainant, after reasonable attempts at personal consultation and attempts to resolve the above discovery differences, has been unable to reach an accord with Respondent.

11. The Board's order dated April 23, 2013 requires all oral fact discovery to be completed by May 31, 2013, which is 30 days after the Parties were ordered to disclose fact

witnesses. Since the Respondent's responses to Written Discovery are incomplete and therefore, more than 30 days overdue, the Complainant has been and will continue to be put in a position of disadvantage by Respondent's failure to comply with the Board's order, as Complainant cannot adequately prepare for oral fact discovery until Respondent's complete responses are provided. See copy of the Board's order dated April 23, 2013 hereto attached as Exhibit D.

12. Accordingly, Respondent has placed Complainant at a disadvantage by failing to comply with the Hearing Officer's orders dated November 27, 2012 and the Board's procedural rules. Therefore, Complainant is entitled to a Protective Order and/or the Board's Supervision of Discovery.

b. Respondent has failed to provide complete Witness Disclosures pursuant to guidance from Supreme Court rule 213(f)(1)

13. On February 1, 2013, the People served its responses to NACME's interrogatories on Respondent, including a list and description of fact witnesses pursuant to the interrogatory requests.

14. On or about March 31, 2013, the People received Respondent's initial response to its Production of Documents Request, including over 450 copies of documents Respondent had received from the Illinois Environmental Protection Agency ("Illinois EPA") relevant to this matter pursuant to a Freedom of Information Act ("FOIA") request it had made upon Illinois EPA.

15. On May 1, 2013, the People received Respondent's Witness Disclosure for Hearing ("Nacme's Witness Disclosure"). Nacme's Witness Disclosure consisted of a list of six (6) names with no descriptions.

16. On May 1, 2013, 3:55 pm, Complainant emailed Respondent to request descriptions of the topics witnesses will testify on for all witnesses on the list of Nacme's Witness Disclosure. On the same date at 4:19 pm, Nacme emailed a response agreeing to supplement the third Nacme witness description but refused to provide descriptions of the remaining three (3) Illinois EPA witnesses stating that the State would know better the topics for which the three (3) Illinois EPA witnesses would testify on. See email correspondence dated May 1, 2013 hereto attached as Exhibit E.

17. As guidance, Supreme Court rule 213(f)(1) reads as follows:

(1) Lay Witnesses. A "lay witness" is a person giving only fact or lay opinion testimony. For each lay witness, the party must identify the subjects on which the witness will testify. An answer is sufficient if it gives reasonable notice of the testimony, taking into account the limitations on the party's knowledge of the facts known by and opinions held by the witness.

18. Complainant's request for descriptions of topics each witness disclosed by Respondent would testify on given Respondent's extensive information of the involvement of its environmental consultant and the information and material it obtained from its Illinois EPA FOIA records of the Illinois EPA personnel it disclosed.

19. As of the date of filing of this Motion to Compel, the Respondent has failed to provide supplemental descriptions for named witnesses in its Witness Disclosure. Complainant, after reasonable attempts at personal consultation and attempts to resolve the above discovery differences, has been unable to reach an accord with Respondent.

20. The Board's order dated April 23, 2013 requires all oral fact discovery to be completed by May 31, 2013, which is 30 days after the Parties were ordered to disclose fact witnesses. Since the Respondent's Witness Disclosures are incomplete and therefore, overdue,

the Complainant has been and will continue to be put in a position of disadvantage by Respondent's failure to comply with the Board's order, as Complainant cannot adequately prepare for fact depositions until Respondent's complete responses are provided.

21. Accordingly, Respondent has placed the People at a disadvantage by failing to comply with the Hearing Officer's order dated April 23, 2013 to provide adequate witness disclosures in preparation for oral discovery. Therefore, the People are entitled to a Protective Order and/or the Board's Supervision of Discovery.

II. Respondent has placed the People at a disadvantage by refusing to conduct depositions in accordance with Board procedural rules and the People are, therefore, entitled to a Protective Order and/or the Board's Supervision of Discovery.

22. On May 1, 2013, 1:14u pm, Respondent emailed Complainant for its first request for mid- to late- May dates for the depositions of three (3) named Illinois EPA employees on Nacme's Witness Disclosure to be held in Chicago. On May 1, 2013, 5:07 pm, the People responded that pursuant to the Board procedural rule, witnesses are to be deposed in the county where maintain an office address. All named Illinois EPA witnesses in Nacme's Witness Disclosure have an employment address in Springfield, IL. See email correspondence hereto attached as Exhibit F.

23. On May 2, 2013, Complainant received a 201k letter from Respondent regarding discovery disputes on place and notice of depositions ("Nacme's Deposition 201k letter"). In Nacme's Deposition 201k letter, Respondent declared that Illinois EPA witnesses to be party witnesses and as such that the Board procedural rules on subpoenaing witnesses and notice requirements. See Nacme's Deposition 201k letter hereto attached as Exhibit G.

24. On May 3, 2013, the People sent a 201k letter by email attachment at 11:52 am, which responded to Complainant's Nacme's Deposition 201k letter. Complainant that all witnesses in a Board enforcement matter are subject to the Board's procedural rules for subpoenas and depositions or, if agreement between the parties on place and time, a Notice of Deposition was acceptable to Complainant. In addition, the People explained that neither state agencies nor their employees are Complainant's in matters before the Board or Plaintiff's in Court and that the People of the State of Illinois is the Complainant in this matter. See People's 201k letter hereto attached as Exhibit C.

25. On May 3, 2013, 2:27 pm, Respondent issued Notice of Depositions of Illinois EPA witnesses set for May 10, 2013, pursuant to Supreme Court Rule 203 instead of Board Procedural Rule 101.612 that applies to depositions in Board hearings without an agreement on date and place made between Complainant and Respondent. Complainant responded by email that a subpoena and 10 days notice is required by the Board's procedural rules. Respondent response refuses to comply with the Board's procedural rules on depositions. See May 3, 2013, email correspondence hereto attached as Exhibit G.

26. The Board's Procedural Rules 101.616 (a), (b), and (f), 35 Ill. Admin. Code 101.616 (a), (b), and (f) read, in pertinent part, as follows:

a) Upon request by any party to a contested proceeding, the Clerk will issue subpoenas for the attendance of witnesses at a hearing or deposition. Subpoena forms are available at the Board's Chicago office. The person requesting the subpoena is responsible for completing the subpoena and serving it upon the witness.

b) Service of the subpoena on the witness must be completed no later than 10 days before the date of the required appearance. A copy of the subpoena must be filed with the Clerk and served upon the hearing officer within 7 days after service upon the witness. Failure to serve both the Clerk and the hearing

officer will render the subpoena null and void. Service and filing must be in accordance with Subpart C of this Part.

* * *

f) Unless the hearing officer orders otherwise, any witness subpoenaed for a deposition may be required to attend only in the county in which he resides or maintains an office address. ...

27. It is clear that these Board procedural rules directly address how Respondent is to request the attendance of any witness at a deposition, the notice requirements for serving a subpoena, and the place of the taking of a deposition of witnesses. Nowhere in these rules does the Board distinguish between party or non-party witnesses but, rather, these Board procedural rules speak to all witnesses in a Board enforcement action.

28. As of the date of filing of this Motion, Respondent is issuing Notices of Depositions of Illinois EPA employees without adequate notice or subpoena in direct contravention to the Board's procedural rules 101.616 (a) and (b), 35 Ill. Admin. Code 101.616 (a) and (b).

29. As of the date of filing this Motion, Respondent has stated it will file a Motion to Compel the deposition of other Illinois EPA employees who have an office address in Springfield, Illinois to be deposed in Chicago in direct contravention to the Board's procedural rule 101.616 (f), 35 Ill. Admin. Code 101.616 (f).

30. As of the date of filing of this Motion, Respondent continues to refuse to comply with the Board's procedural rules. Complainant, after reasonable attempts at personal consultation and attempts to resolve the above discovery differences in the short period of time Respondent has allowed for discussion, has been unable to reach an accord with Respondent.

31. The Board's order dated April 23, 2013 requires all oral fact discovery to be completed by May 31, 2013. Since Respondent is issuing Notices of Deposition with very short notice, the People have been and will continue to be put in a position of disadvantage by Respondent's refusal to comply with the Board's procedural rules regarding depositions and the Respondent's rush to depose Illinois EPA employees without subpoena and adequate notice, or in lieu of, agreement, as Complainant cannot adequately prepare witnesses for fact depositions with such short notice.

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

III. Complainant has been placed at a disadvantage by the outstanding decision by the Board on the People's Motion to Strike or Dismiss Defendant's Amended Affirmative Defenses.

33. On November 1, 2012, Respondent served its Answer and Affirmative Defenses upon Complainant.

34. On November 30, 2012, Complainant filed a Motion to Strike or Dismiss Respondent's Affirmative Defenses.

35. On January 4, 2013, Respondent requested of Complainant to file an Agreed Motion to withdraw Respondent's Affirmative Defenses and to file Amended Affirmative Defenses. In the spirit of cooperation, Complainant agreed.

36. On January 15, 2013, Respondent filed its Amended Affirmative Defenses.

37. On February 8, 2013, Complainant filed its Motion to Strike and Dismiss Respondent's Amended Affirmative Defenses.

38. On February 22, 2013, Respondent requested of Complainant to file an Agreed Motion to extend time for it to respond to People's Motion to Strike and Dismiss Respondent's Amended Affirmative Defenses. In the spirit of cooperation, Complainant agreed.

39. On March 11, 2013, Respondent filed its Response to People's Motion to Strike and Dismiss Respondent's Amended Affirmative Defenses.

40. On March 25, 2013, Complainant filed People's Motion for Leave to File Reply Instanter and Reply Brief in Support of Motion to Strike and Dismiss Respondent's Amended Affirmative Defenses.

41. On April 14, 2013, Respondent filed Nacme's Objection to State's Request to File Reply Brief in Support of Motion to Strike Affirmative Defenses.

42. As of the date of the filing of this Motion, the Board has not issued a decision on the People's Motion to Strike and Dismiss Respondent's Amended Affirmative Defenses.

43. In light of this unknown possible defense preparation, the People are greatly prejudiced in preparing for deposing witnesses on the Amended Affirmative Defenses that may or may not be relevant in a final hearing by the lack of decision on its Motion to Strike and Dismiss Respondent's Amended Affirmative Defenses. Accordingly, the People are

IV. Complainant requests a Protective Order be entered until all written discovery is completed and until a decision by the Board on the People's Motion to Strike or Dismiss Respondent's Amended Affirmative Defenses is issued.

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

d) The hearing officer may, on his or her own motion or on the motion of any party or witness, issue protective orders that deny, limit, condition or regulate discovery to prevent unreasonable expense, or harassment, to expedite resolution of the proceeding,

(Emphasis added.) ILCS S. Ct. Rule 216(c).

45. Complainant moves for a Protective Order and/or the Board's Supervision of Discovery, pursuant to Board's Procedural Rules 101.616(d), 35 Ill. Admin. Code 101.616(d) wherein the Board extends the date for Complainant to complete its fact and expert depositions and the time for filing its supplemental requests to admit, 60 days from the date that Respondent provides complete responses to the Complainant's interrogatories and document requests, completes witness disclosures and the Board issues a decision on the People's Motion to Strike or Dimiss Respondent's Amended Affirmative Defenses.

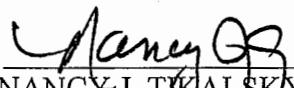
WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully prays that this Board enter an order containing the following:

- a) finding that Respondent has failed to comply with the Hearing Officer's orders dated November 23, 2012 and April 23, 2013;
- b) that Respondent be debarred from filing any other pleading relating to any issue to which its refusal or failure relates;
- c) that any portion of the Respondent's pleadings relating to Respondent's overdue responses to Complainant's discovery be stricken; and
- d) the entry of an order compelling Respondent to answer the People's outstanding discovery requests;

- e) extending the date for the completion of all oral discovery, including fact and expert depositions and the time for filing its supplemental requests to admit, 60 days from the date that Respondent provides complete responses to the Complainant's interrogatories and document requests, completes witness disclosures and the Board issues a decision on the People's Motion to Strike or Dismiss Respondent's Amended Affirmative Defenses; and
- f) granting such other and further relief as the Board deems appropriate and just.

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

By:



NANCY J. TIKALSKY
Assistant Attorneys General
Environmental Bureau
69 W. Washington, Suite 1800
Chicago, Illinois 60602
(312) 814-8567

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CLERK'S OFFICE

NOV 27 2012

ILLINOIS POLLUTION CONTROL BOARD

November 27, 2012

STATE OF ILLINOIS
Pollution Control Board

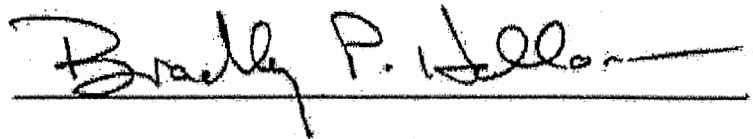
PEOPLE OF THE STATE OF ILLINOIS,)	
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Complainant,)	
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v.)	PCB 13-12
)	(Enforcement - Air)
NACME STEEL PROCESSING, LLC, a)	
Delaware limited liability corporation,)	
)	
Respondent.)	

HEARING OFFICER ORDER

On November 26, 2012, the parties submitted a proposed discovery schedule. The discovery schedule is accepted to the extent as follows. All written discovery requests to be served on or before February 28, 2013. All responses to the written discovery requests must be served on or before March 29, 2013. Disclosure of all witnesses, including expert witnesses and opinions, who will testify at the hearing, on or before April 30, 2013. All depositions must be completed on or before May 31, 2013.

The parties or their legal representatives are directed to appear at a telephonic status conference with the hearing officer on January 10, 2013, at 11:00 a.m. The telephonic status conference must be initiated by the complainant, but each party is nonetheless responsible for its own appearance. At the 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

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ATTORNEY GENERAL

NOV 29 2012

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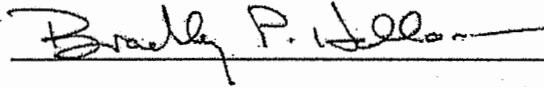


CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were mailed, first class, on November 27, 2012, to each of the persons on the service list below.

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on November 27, 2012:

John T. Therriault
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
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Chicago, Illinois

SERVICE LIST

PCB 2013-012
Edward V. Walsh III
ReedSmith LLP
10 S. Wacker Drive
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PCB 2013-012
Nancy J. Tikalsky
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ReedSmith

From: Edward V. Walsh III
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March 11, 2013

VIA EMAIL/U.S. MAIL

Nancy J. Tikalsky
Assistant Attorney General
Environmental Bureau
69 W. Washington St., Suite 1800
Chicago, IL 60602

Re: State v NACME

Dear Nancy:

As you probably know, the Pollution Control Board's rules with regard to interrogatories provides for a maximum of 30 interrogatories, including subparts, unless otherwise ordered by the hearing officer. (35 IAC §101.620) The interrogatories that you served on NACME in the captioned litigation exceed 30, including sub-parts.

Please let me know if you want NACME to answer only the first 30 interrogatories or whether you want to designate which 30 you would like NACME to answer. If it helps in your designation, NACME will object to, and will not answer in their current form, interrogatories 3a, 4a,b, and 11. Among other things these interrogatories are overly broad, unduly burdensome and seek information that is neither relevant to the subject matter of this lawsuit nor reasonably calculated to lead to admissible evidence.

In addition, your interrogatories about the identity of witnesses for trial, to the extent that NACME has identified or retained any, is covered by the hearing officer's scheduling order regarding the timing of the disclosure of such witnesses.

The above is not intended to foreclose either general or specific objections that NACME may have with regard to the balance of your interrogatories.

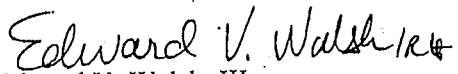


ReedSmith

Nancy J. Tikalsky
March 11, 2013
Page 2

I am available to discuss these or other matters in connection with the case, at your convenience.

Sincerely,


Edward V. Walsh, III

EVW:rh

RECEIVED
ATTORNEY GENERAL

MAR 22 2013

ENVIRONMENTAL

ReedSmith

From: Edward V. Walsh III
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Email: ewalsh@reedsmith.com

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reedsmith.com

March 21, 2013

Nancy J. Tikalsky
Assistant Attorney General
Environmental Bureau
69 W. Washington St., Suite 1800
Chicago, IL 60602

Re: State v NACME

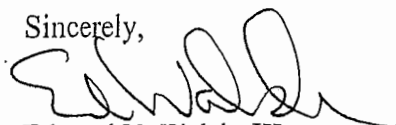
Dear Nancy:

By letter dated March 11, 2013 I advised you that the interrogatories you had sent to me exceeded the maximum number as provided by Board rules. (copy attached). On March 13, 2013 you called me to disagree. You argued that designations "a,b,c..." are not subparts but are for my convenience. We did not reach agreement in the call. For our part, we continue to maintain that your interrogatories far exceed 30. Even where you do not use designated subparts such as "a,b,c..." some of the interrogatories are compound. For example interrogatories 1 and 2 actually comprise 6 areas of inquiry.

You declined in our call to designate 30 interrogatories for answer, as I had offered in my earlier letter. As such, we will answer the first 30 interrogatories, subject to objections.

We are completing the process of getting information from people with knowledge to answer the interrogatories. In addition we have gathered a fair number of documents for production per your request. I anticipate having the responses and production to you sometime next week.

Sincerely,



Edward V. Walsh, III

EVW:rh



**OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS**

Lisa Madigan
ATTORNEY GENERAL

May 3, 2013

Edward V. Walsh, III
ReedSmith, LLP
10 South Wacker Drive
Chicago, IL 60606-7507

Sent via email attachment

**RE: People v. Nacme Steel Processing, LLC
PCB No. 2013-12 (Enforcement-Air)**

Dear Ed:

I am writing in response to your letter dated May 2, 2013 regarding an apparent discovery dispute about the place for deposition of Illinois Environmental Protection Agency (Illinois EPA) employees whose place of employment is in Springfield, and your request to depose Julie Armitage, an attorney with the Illinois EPA.

I agree that Section 101.100(b) and 101.616 of the Illinois Pollution Control Board (Board) rules state that the Board may look to the Supreme Court Rules for guidance where the Board's procedural rules are silent. But under Section 101.622(a) of the Board's rules speak to this issue wherein the rule requires a subpoena to be issued by the Board's clerk for all deposition and hearing testimony witnesses. Therefore, all witnesses are subpoena witnesses, unlike circuit court civil actions. Nonetheless, if Supreme Court rule 203 did apply, the IEPA is not the Plaintiff-witness under a matter brought by the People of the State of Illinois, who is the named Plaintiff in circuit court matters.

Thank you for providing a description of the subjects that you intend to question Ms. Armitage about in a deposition that was missing in your Witness Disclosure. It is my understanding that Ms. Armitage has no direct factual knowledge of the Facility and its operations and Nacme's permit applications. Ms. Armitage reviewed facts presented to her by IEPA personnel and derived legal opinions through legal analysis of the facts presented. I have not seen Ms. Armitage author any documents after the stack test performed in April 2002, for which Nacme's 2005 CAAPP/FESOP PTE calculations and application was based on and for which this matter is based on and any documents with her initials were reviewed in light of her



position as an attorney, which is privileged information. Additionally, I have not seen Ms. Armitage author any document Respondent previously produced. Please provide the documents you claim Ms. Armitage authored pursuant to the Witness Disclosure rule 213 (f)(1) and the People's First Set of Interrogatories and Production of Documents.

As for the People's Witness Disclosure, the incomplete interrogatory questions provided by Respondent left me no choice but to add various undisclosed persons who represented Nacme in correspondence and documents related to the stack testing and permitting of the Nacme facility from April 2002 through January 2012. In that light, please provide the People with a complete answers to Interrogatories No.'s 3 (in documents corporate officers had discussions and correspondence with Illinois EPA regarding permitting and stack testing), 4, 12, 13, 14, 16, 19 and 20, which are well within the 30 interrogatory limit allowed under Section 101.620 of the Board's rules, which are the applicable rules applied to this Board matter.

Finally, please produce documents requested for the following Production Request No.'s:

- 10 – complaints of Nacme's operations can lead to evidence that air pollution occurred as a result of the improper permit and applicable regulations for the operations at the Facility.
- 11 - Nacme's financial interests can lead to evidence regarding its behavior in permitting choices at the Facility
- 12, 13 and 14 – Nacme's financial health which can lead to its decisions regarding permitting choices at the Facility.

If you have any further questions or concerns, please feel free to contact me.

Sincerely,

Nancy J. Tikalsky
Assistant Attorney General
Office of the Illinois Attorney General
69 West Washington Street, Suite 1800
Chicago, Illinois 60602
(312) 814-8567

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APR 23 2013

ILLINOIS POLLUTION CONTROL BOARD

April 23, 2013

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 13-12
)	(Enforcement - Air)
NACME STEEL PROCESSING, LLC, a)	
Delaware limited liability corporation,)	
)	
Respondent.)	

HEARING OFFICER ORDER

On April 18, 2013, the parties filed an agreed motion to revise the existing discovery schedule. The motion is accepted to the extent as follows.

The parties must disclose all lay witnesses who may testify on or before April 30, 2013. The parties must complete all lay witness depositions on or before May 31, 2013. The parties must disclose all expert witnesses who may testify on or before June 28, 2013. The parties must file rebuttal reports of expert witnesses on or before July 31, 2013. The parties must complete all depositions of expert witnesses on or before August 30, 2013. Discovery closes on August 30, 2013.

The parties or their legal representatives are directed to appear at a telephonic status conference with the hearing officer on May 16, 2013, at 9:30 a.m. The telephonic status conference must be initiated by the complainant, but each party is nonetheless responsible for its own appearance. At the conference, the parties must be prepared to discuss the status of the above-captioned matter and their readiness for hearing.

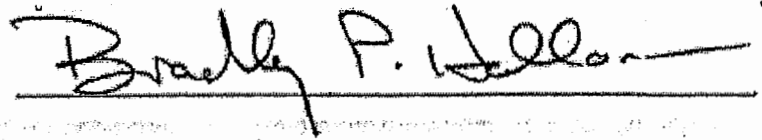
IT IS SO ORDERED.

RECEIVED
ATTORNEY GENERAL

APR 24 2013

ENVIRONMENTAL



A handwritten signature in black ink that reads "Bradley P. Halloran". The signature is written in a cursive style and is positioned above a solid horizontal line.

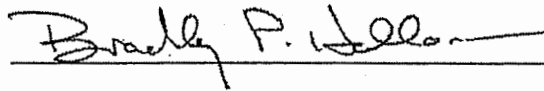
Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 W. Randolph Street
Chicago, Illinois 60601
312.814.8917
Brad.Halloran@illinois.gov

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were mailed, first class, on April 23, 2013, to each of the persons on the service list below.

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on April 23, 2013:

John T. Therriault
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

SERVICE LIST

PCB 2013-012
Edward V. Walsh III
ReedSmith LLP
10 S. Wacker Drive
Suite 4000
Chicago, IL 60606

PCB 2013-012
Nancy J. Tikalsky
Office of the Attorney General
69 W. Washington Street
Suite 1800
Chicago, IL 60602

Tikalsky, Nancy

From: Tikalsky, Nancy
Sent: Wednesday, May 01, 2013 3:55 PM
To: 'Walsh III, Edward V.'
Cc: 'David Susler'
Subject: RE: State v NACME

Ed,

I received your Witness Disclosure and it gives no description of what you expect them to testify on as required by S.Ct. rule 213 (f)(1). Could you please provide me some description?

Also, I believe that witnesses are to be deposed in the county where they reside or are employed unless there is agreement between parties otherwise. I'm afraid IEPA won't agree to depositions in Chicago. Julie and Valeriy are employed in Springfield, so depositions will have to take place in Springfield (S.Ct. rule 203).

I'll forward your inquiry to Julie but I'm not sure what the permitting history has to do whether or not you were a major source as early as 2002 and if so, did not apply for a CAAPP/FESOP instead of an SOP. I guess it depends on how the Board rules on our Motion to Strike or Dismiss Affirmative Defenses.

Warm regards,

Nancy J. Tikalsky

Nancy J. Tikalsky
Assistant Attorney General
Office of the Illinois Attorney General
Environmental Bureau
69 West Washington Street, Suite 1800
Chicago, Illinois 60699
312.814.8567

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From: Walsh III, Edward V. [<mailto:EWalsh@ReedSmith.com>]
Sent: Wednesday, May 01, 2013 1:14 PM
To: Tikalsky, Nancy
Cc: 'David Susler'
Subject: State v NACME



Tikalsky, Nancy

From: Walsh III, Edward V. <EWalsh@ReedSmith.com>
Sent: Wednesday, May 01, 2013 4:19 PM
To: Tikalsky, Nancy
Cc: 'David Susler'
Subject: RE: State v NACME

Nancy, I will supplement interrogatory answers to provide expected testimony for Britt Wenzel. Answers to interrogatories 1 and 2 provide the expected subject matter for DuBrock and Hendriksen. The balance of witnesses are adverse (i.e. IEPA employees) and their expected testimony would be better known to you.

Supreme Court rule 203 requires in the case of a Plaintiff deponent that they appear in the county where the action is pending. Please let me know ASAP whether you intend to abide by the rule or whether I will have to file a motion.

I disagree that the hearing officer's ruling on the motion will have any impact on my ability to probe the permitting history of the facility with a representative deponent nor, of course, do I have to accept your unilateral framing of what the issues are in the case.

I am available to discuss any of this at your convenience.

Ed Walsh
ewalsh@reedsmith.com
ReedSmith
312.207.3898

Reed Smith LLP
10 South Wacker Drive
Chicago, IL 60606-7507
312.207.1000
Fax 312.207.6400

From: Tikalsky, Nancy [<mailto:ntikalsky@atg.state.il.us>]
Sent: Wednesday, May 01, 2013 3:55 PM
To: Walsh III, Edward V.
Cc: 'David Susler'
Subject: RE: State v NACME

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Tikalsky, Nancy

From: Walsh III, Edward V. <EWalsh@ReedSmith.com>
Sent: Wednesday, May 01, 2013 1:14 PM
To: Tikalsky, Nancy
Cc: 'David Susler'
Subject: State v NACME

Nancy, can you give me a few alternative dates in the middle to end of the month for the availability of Valery Brodsky and Julie Armitage for deposition at my office.

In addition, in lieu of my sending out a notice, can you identify a representative deponent for the IEPA on the subject matter of the lawsuit, and particularly the permitting history of the facility? (if its not Valery or Julie)

If you want to identify persons whose depositions you want to take on our side, I can likewise get some alternative dates. Regards, EVW.

Ed Walsh
ewalsh@reedsmith.com
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312.207.3898

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10 South Wacker Drive
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312.207.1000
Fax 312.207.6400

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Tikalsky, Nancy

From: Tikalsky, Nancy
Sent: Wednesday, May 01, 2013 5:07 PM
To: 'Walsh III, Edward V.'
Subject: RE: State v NACME

Ed,

True, if this matter were file in Cook County circuit court, but this matter is filed with the Illinois Pollution Control Board and under IPCB rule Section 101.622 (f) witnesses to be deposed may be required to attend only in the county in which they reside or maintain an office address. None of the witnesses you named maintains an office address in Chicago.

By the way, as a policy the Attorney's General Office will not agree to the deposition of an attorney. So, I will not produce Julie Armitage for deposition.

Will let you know when I hear from IEPA on the availability for depositions in Springfield in mid-late May.

Warm regards,

Nancy J. Tikalsky

Nancy J. Tikalsky
Assistant Attorney General
Office of the Illinois Attorney General
Environmental Bureau
69 West Washington Street, Suite 1800
Chicago, Illinois 60099
312.814.8567

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From: Walsh III, Edward V. [mailto:EWalsh@ReedSmith.com]
Sent: Wednesday, May 01, 2013 4:19 PM
To: Tikalsky, Nancy
Cc: 'David Susler'
Subject: RE: State v NACME

ReedSmith

Edward V. Walsh III
Direct Phone: +1 312 207 3898
Email: ewalsh@reedsmith.com

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+1 312 207 1000
Fax +1 312 207 6400
reedsmith.com

May 2, 2013

VIA EMAIL

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

Re: People of the State of Illinois v. NACME Steel Processing

Dear Nancy,

This letter is written in an attempt to resolve a discovery dispute about the proper place for depositions of Illinois Environmental Protection Agency ("IEPA") employees. It also involves your refusal to produce for deposition Julie Armitage, an IEPA attorney.

Place for Depositions

By e-mail dated May 1, 2013 I had inquired about alternative dates for the deposition of IEPA permit engineer Valery Brodsky and for Ms. Armitage at my office in Chicago. You responded that these witnesses need not be produced in Chicago under Illinois Supreme Court Rule 203. (and later that Ms. Armitage need not be produced at all, addressed below) I responded that, indeed, Rule 203 requires plaintiff deponents to be produced in the county in which the matter is pending, here Cook County. You then shifted ground and argued that Illinois Pollution Control Board rule 35 IAC Section 101.622 (f) is actually controlling and that witnesses to be deposed may be required to attend only in the county in which they reside or maintain an office address. You stated that none of the witnesses you named maintains an office address in Chicago.

In fact Board rule 101.622 (f) has no applicability here as it pertains to subpoenaed witnesses. The witnesses in question are party witnesses for whom no subpoena is required. The Board's rules do not directly address the location of depositions for party witnesses, but Supreme Court Rule 203, which you originally advanced in your argument, does. Under Board rule 101.100 (b) the Board is to look to the Supreme Court rules for guidance where the Board's procedural rules are silent. As such, Supreme Court rule 203 which requires plaintiff deponents to be produced in the county in which the matter is pending, applies here. Moreover, the IEPA



Nancy J. Tikalsky
May 2, 2013
Page 2

ReedSmith

chose to file this matter in Cook County and it should be willing to live with that choice. Unless you agree promptly to produce IEPA witnesses for deposition in Cook County we will file a motion to compel with the Board.

Refusal to Produce Julie Armitage for Deposition

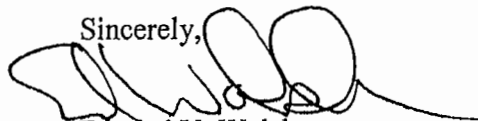
With respect to Ms. Armitage you informed me following our initial discussion about the proper place for deposition, that Ms. Armitage would not be produced at all because it was IEPA's "policy" not to produce attorneys for deposition. You did not identify the policy, or whether it is written or informal or whether it has the force of law. As you know, Ms. Armitage has a long history with the subject site, including decisions made on permitting the site and whether or not the site was or was not a major source for purposes of applicability of Title V requirements. Numerous non-privileged documents have been produced through an IEPA FOIA either authored by or directed to Ms. Armitage on matters bearing on this litigation.

Unless you can justify your refusal to produce Ms. Armitage with statutory or case law support stating that IEPA attorneys are exempt from deposition regarding non-privileged matters within their knowledge, we will file a motion to compel and ask for appropriate relief under Supreme Court Rule 219 (c).

Please advise me of your decision as soon as possible. As you know depositions are to be completed this month and this morning I received your witness list consisting of 19 names. We will be hard pressed to complete depositions of these witnesses in the time allotted unless we have agreement right away on the above issues. (I will likely want to depose the 6 IEPA witnesses you disclosed, two of whom are based in Cook County, and I suppose you will depose all or some of the 13 remaining names on your list.)

Finally, I am available to discuss resolution of these issues.

Sincerely,



Edward V. Walsh

EVW/rh

Tikalsky, Nancy

From: Walsh III, Edward V. <EWalsh@ReedSmith.com>
Sent: Friday, May 03, 2013 2:27 PM
To: Tikalsky, Nancy
Subject: State v Nacme
Attachments: Ordija Notice of Deposition.pdf; Narayen Notice of Deposition.pdf; IEPA Notice of Deposition.pdf

Nancy, please see the attached.

Ed Walsh
ewalsh@reedsmith.com
ReedSmith
312.207.3898

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10 South Wacker Drive
Chicago, IL 60606-7507
312.207.1000
Fax 312.207.6400

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Tikalsky, Nancy

From: Tikalsky, Nancy
Sent: Monday, May 06, 2013 10:52 AM
To: 'Walsh III, Edward V.'
Subject: RE: State v Nacme

By board rules you need to give 10 days notice of deposition. Please revisit your dates. Thanks!

From: Walsh III, Edward V. [<mailto:EWalsh@ReedSmith.com>]
Sent: Friday, May 03, 2013 2:27 PM
To: Tikalsky, Nancy
Subject: State v Nacme

Nancy, please see the attached.

Ed Walsh
ewalsh@reedsmith.com
ReedSmith
312.207.3898

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Chicago, IL 60606-7507
312.207.1000
Fax 312.207.6400

* * *

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* * *

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Tikalsky, Nancy

From: Walsh III, Edward V. <EWalsh@ReedSmith.com>
Sent: Monday, May 06, 2013 11:42 AM
To: Tikalsky, Nancy
Subject: RE: State v Nacme

Nancy, you are again citing the rule for subpoenaed witnesses. I note that you did not object to the notices (not subpoenas) themselves, only the timing.

Ill. S.Ct. Rule 206 prescribes a "reasonable time" for notice of a deposition. The notices of deposition for Mr. Ordija and Mr. Narayen were for a week in advance, which is reasonable amount of time particularly given that depositions must be concluded by months end.

If you are telling me that those dates are not convenient, please let me have alternative dates. Because there is a limited amount of time to complete depositions pursuant to the hearing officer's scheduling order, please let me have alternative dates as soon as possible. If you do not intend to provide alternative dates, I will have no choice but to file a motion to compel.

Please let me know.

Ed Walsh
ewalsh@reedsmith.com
ReedSmith
312.207.3898

Reed Smith LLP
10 South Wacker Drive
Chicago, IL 60606-7507
312.207.1000
Fax 312.207.6400

From: Tikalsky, Nancy [<mailto:ntikalsky@atg.state.il.us>]
Sent: Monday, May 06, 2013 10:52 AM
To: Walsh III, Edward V.
Subject: RE: State v Nacme

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Sent: Friday, May 03, 2013 2:27 PM
To: Tikalsky, Nancy
Subject: State v Nacme

Nancy, please see the attached.

Ed Walsh
ewalsh@reedsmith.com
ReedSmith
312.207.3898

Tikalsky, Nancy

From: Tikalsky, Nancy
Sent: Monday, May 06, 2013 11:43 AM
To: 'Walsh III, Edward V.'
Subject: RE: State v Nacme

I object to the Notice of Depositions as it was not by agreed date. Please provide a subpoena with 10 days notice as required by the Board rules.

From: Walsh III, Edward V. [<mailto:EWalsh@ReedSmith.com>]
Sent: Monday, May 06, 2013 11:42 AM
To: Tikalsky, Nancy
Subject: RE: State v Nacme

Nancy, you are again citing the rule for subpoenaed witnesses. I note that you did not object to the notices (not subpoenas) themselves, only the timing.

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Reed Smith LLP
10 South Wacker Drive
Chicago, IL 60606-7507
312.207.1000
Fax 312.207.6400

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Sent: Monday, May 06, 2013 10:52 AM
To: Walsh III, Edward V.
Subject: RE: State v Nacme

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