

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.)	

NOTICE OF ELECTRONIC FILING

To: See Attached Service List.

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following, the PEOPLE'S REPLY TO RESPONDENT'S SECOND AND THIRD AMENDED AFFIRMATIVE DEFENSES FOR WAIVER AND LACHES a true and correct copy of which is attached and hereby served upon you.

Respectfully submitted,



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Date: September 10, 2013

THIS FILING IS SUBMITTED ON RECYCLED PAPER
SERVICE LIST

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On November 2, 2012, the People received service from Nacme its Answer and Affirmative Defenses to the Complaint, which had been filed with the Board on November 1, 2012 ("Answer"). On November 30, 2013, the People filed with the Board its Motion to Strike and Dismiss Respondent's Amended Affirmative Defenses. On January 8, 2013, the Board issued an Order to grant the parties an agreed motion to allow Respondent to withdraw its Affirmative Defenses and refile Amended Affirmative Defenses to the Complaint.

On January 16, 2013, the People received service by Nacme of its Amended Affirmative Defenses to the Complaint, which had been filed with the Board on January 15, 2013 ("Amended Affirmative Defenses"). On February 8, 2013, the People filed its Motion to Strike and Dismiss Respondent's Amended Affirmative Defenses. On February 12, 2013, the People received service of Nacme Steel Processing L.L.C.'s Response to People's Motion to Dismiss Amended Affirmative Defenses filed with the Board on February 11, 2013 ("Nacme's Response"). On March 25, 2013, the People filed its Motion for Leave to File Reply Instantly and Reply Brief in Support of Motion to Strike and Dismiss Respondent's Amended Affirmative Defenses. ("People's Reply")

On June 6, 2013, the Board granted the People's motion to strike NACME's first affirmative defense of a valid federally enforceable state operating permit and denied the People's motion to strike NACME's second and third defenses of laches and waiver.

Accordingly, the People Answer Nacme's second and third affirmative defenses as follows:

REPLY TO RESPONDENT'S SECOND AFFIRMATIVE DEFENSE - LACHES

12. The State was aware, or should have been aware, of its alleged claim many years before it issued its violation notice ("NOV") in March 2011. In fact the State was aware or

should have been aware of NACME's alleged potential to emit as a "major source" since at least 2001 when the State first tried, and failed to designate Nacme as a "major" source. The unreasonable and unjustified delay in issuing the NOV prejudiced NACME by subjecting it to greater penalty amounts -- \$10,000 per day of violation according to the State's NOV.

ANSWER: The People state that the [remaining] allegations in paragraph 12 are legal conclusions for which no answer is required. To the extent an answer is required the People deny the allegations of paragraph 12.

REPLY TO RESPONDENT'S THIRD AFFIRMATIVE DEFENSE - WAIVER

13. The State was aware, or should have been aware, of its alleged claim many years before it issued its violation notice ("NOV") in March 2011. In fact the State was aware or should have been aware of NACME's alleged potential to emit as a "major source" since at least 2001 when the State first tried, and failed to designate Nacme as a "major" source. The unreasonable delay warrants an inference that the State intended to waive its claim. Accordingly, the State's claim is barred by the doctrine of waiver.

ANSWER: People state that the [remaining] allegations in paragraph 13 are legal conclusions for which no answer is required. To the extent an answer is required the People deny the allegations of paragraph 13.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, respectfully requests that this Court enter judgment in its favor and a permanent injunction against Defendant, NACME STEEL PROCESSING, LLC, a Delaware limited liability corporation, as prayed for in the Complaint.

Respectfully submitted,

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

BY: 

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