

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF )  
ILLINOIS, )  
 )  
Complainant, )  
 )  
v. )  
 )  
MIDWEST GRAIN PRODUCTS OF )  
ILLINOIS, INC., an Illinois corporation, )  
 )  
Respondent. )

**RECEIVED**  
CLERK'S OFFICE

SEP 09 2005

STATE OF ILLINOIS  
Pollution Control Board

PCB NO. 97-179  
(Enforcement)

NOTICE OF FILING

To: Dorothy M. Gunn  
Clerk of the Board  
Illinois Pollution Control Board  
100 West Randolph Street  
Suite 11-500  
Chicago, IL 60601

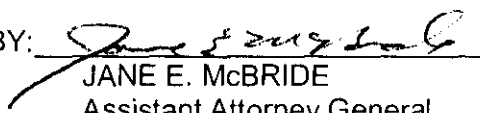
Carol Webb  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
Springfield, IL 62794

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, MOTION TO STRIKE RESPONDENT'S AMENDED FIRST SET OF INTERROGATORIES, OR, IN THE ALTERNATIVE, MOTION FOR PROTECTIVE ORDER LIMITING INTERROGATORIES TO PREVENT UNDUE EXPENSE AND HARASSMENT, a copy of which is attached hereto and herewith served upon you.

Respectfully submitted,

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

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

BY:   
JANE E. McBRIDE  
Assistant Attorney General  
Environmental Bureau

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: September 6, 2005

## CERTIFICATE OF SERVICE

I hereby certify that I did on September 6, 2005, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING and MOTION TO STRIKE RESPONDENT'S AMENDED FIRST SET OF INTERROGATORIES, OR, IN THE ALTERNATIVE, MOTION FOR PROTECTIVE ORDER LIMITING INTERROGATORIES TO PREVENT UNDUE EXPENSE AND HARASSMENT

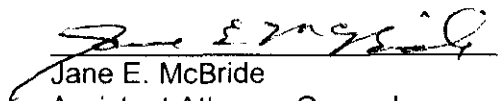
To: Patrick M. Flachs  
Amy Wachs  
Husch & Eppenberger LLC  
160 Carondelet Plaza, Ste. 600  
St. Louis, MO 63105

and the original and four copies was sent by First Class Mail with postage thereon fully prepaid

To: Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
State of Illinois Center  
Suite 11-500  
100 West Randolph  
Chicago, IL 60601

A copy was also sent by First Class Mail with postage thereon fully prepaid

To: Carol Webb  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
Springfield, IL 62794

  
Jane E. McBride  
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

**RECEIVED**  
CLERK'S OFFICE

SEP 09 2005

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

v.

MIDWEST GRAIN PRODUCTS OF  
ILLINOIS, INC.

Respondent.

PCB 97-179  
(Enforcement)

STATE OF ILLINOIS  
Pollution Control Board

**MOTION TO STRIKE RESPONDENT'S AMENDED FIRST SET OF INTERROGATIVES,**  
**OR, IN THE ALTERNATIVE,**  
**MOTION FOR PROTECTIVE ORDER LIMITING INTERROGATORIES TO PREVENT**  
**UNDUE EXPENSE AND HARASSMENT**

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, *ex rel* Lisa Madigan, Attorney General of Illinois, and moves the Hearing Officer, pursuant to Section 101.616 of the Illinois Pollution Control Board's Rules, 35 Ill. Adm. Code 101.616, to strike Respondent's Amended First Set of Interrogatories, or, in the alternative enter a protective order limiting Respondent to 30 interrogatories, including subparts, consistent with Section 101.620 of the Board's Rules, 35 Ill. Adm. Code 101.620, and Illinois Supreme Court Rule 213 (c). In support of its motion, Plaintiff states as follows:

1. On July 11, 2005, Complainant received Respondent's First Set of Interrogatories to Complainant, as well as other discovery requests. Respondent's First Set of Interrogatories is attached hereto as Exhibit 1.

2. Subsequent to receiving Respondent's First Set of Interrogatories, counsel for Complainant called counsel for Respondent to discuss the number of interrogatories included in this first set. Counsel inquired as to whether the Respondent was aware of the Board's rule limiting the number of interrogatories, and was told counsel was not. Respondent offered to revise its interrogatories.

3. On July 19, 2005, Complainant received Respondent's First Amended Set of Interrogatories to Complainant. Respondent's Amended Set of Interrogatories is attached hereto as Exhibit 2.

4. On August 16, 2005, counsel for the Complainant was alerted by the Illinois EPA to the fact that the agency had received a Freedom of Information Act ("FOIA") request from Respondent for information identical, in part, to the information requested in discovery.

5. On approximately August 19, 2005, the parties discussed the pending FOIA request. At that time, Respondent agreed to withdraw the FOIA request until after such time as Respondent was in receipt of the Complainant's responses to pending written discovery. The FOIA request and subsequent temporary withdrawal is attached hereto as Group Exhibit 3.

6. On August 25, 2005, at the time of the scheduled status hearing with the Hearing Officer, Complainant communicated to Respondent that it desired additional clarification regarding terms contained in the discovery requests, and that other issues had been raised by the Illinois EPA. The parties scheduled a conference call on August 29, 2005 to discuss pending discovery issues.

7. At the time of the call, Complainant asked for clarification regarding terms in three interrogatories, and also objected to the number of interrogatories. Complainant communicated to counsel for Respondent that, with subparts, the first 14 interrogatories posed by Respondent actually numbered 30. In addition, Complainant has determined that Respondent's interrogatory numbers 7, 8, 11 and 19, with subparts, actually number 23 interrogatories. Respondent expressed agitation with Complainant's request for clarification and request to narrow the interrogatories consistent with the Board's Rule limiting the number of interrogatories to 30. This limit includes subparts. Respondent indicated it would review two of the interrogatories for which Complainant asked clarification, and that it would take another

look at narrowing the interrogatories but felt that it was not under an obligation to do so.

8. On August 31, 2005, Complainant sent a letter to Respondent, re-iterating its requests to clarify and limit Respondent's interrogatories, and, in part, identified specific areas of ambiguity, overlap and duplication among the interrogatories. Complainant's August 31, 2005 letter to Respondent is attached hereto as Exhibit 4.

9. On September 1, 2005, Complainant received two letters from Respondent in response to Complainant's August 31, 2005 letter. Respondent's letters of September 1, 2005 are attached hereton as Group Exhibit 5. As exhibited by comments set forth within the September 1, 2005 letter, rather than affording Complainant's objection's careful consideration consistent with the Board's and Supreme Court's rules relative to discovery, counsel for Respondent, without cause, rejected Complainant's requests to clarify and limit Respondent's interrogatories in a confrontational and argumentative manner choosing to turn the issues into a personal affront. In its response, Respondent plainly assumes a vindictive and hostile posture stating that in response Respondent will now object to Complainant's interrogatories and also revoke its temporary withdrawl of its FOIA request and also insist upon the statutory seven day timeframe for agency response to the FOIA request. Significantly, Respondent voiced no objection to Complainant's interrogatories prior to September 1, 2005. It is clear from Respondent's hostile response that its objection to Complainant's interrogatories and threatened renewal of its FOIA request are vindictive and made simply to penalize Complainant during the discovery process. Complainant's First Set of Interrogatories, which Respondent now finds objectionable, are attached hereto as Exhibit 6.

10. Respondent's Amended First Set of Interrogatories are, in part, overly broad, ambiguous, and repetitive. Based upon a plain reading of Respondent's interrogatories, the Board should conclude the interrogatories are an abuse of the discovery process and intended,

in part, simply as a fishing expedition. For the Complainant to genuinely attempt to respond to each interrogatory, and in many cases, the many subparts to the interrogatory, involves reviewing a very large amount of information in the specific context of each question. Many of the questions actually ask for the same information. However, to ensure that the Complainant responds to the specific question, it will take an inordinate amount time and effort to review the two decades of information sought in Respondent's requests.

11. In general, Complainant's objection at this juncture is that the interrogatories, with subparts, and in some instances, subparts to the subparts, are too numerous, greatly exceeding the allowable limit, duplicitous in that many ask for the same information with a slightly different emphasis, request information that is not relevant and beyond the time period alleged within the complaint, or are so ambiguous as to prevent the Complainant from responding. The Respondent's rephrasing of its requests with a different emphasis is not merited, and is a form of harassment. It is apparent that the interrogatories are truly a very broad fishing expedition, without consideration for the amount of work and expense they place upon the Complainant. Complainant truly believes Respondent's interrogatories have not been carefully drafted so as to even come close to meeting the 30 limit requirement. As such, they represent harassment of the Complainant, and will cause undue expense in time and effort. Complainants specific objections follow. These specific objections were provided to the Respondent in Complainant's letter dated August 31, 2005.

12. Respondent's Interrogatory Number 19 first requests all communications relative to modeling, then requests separately that the State identify all data relative to emissions testing, and then more broadly requests all "emissions data" relative to the "site". Interrogatory number 7 contains subparts to subparts that in part seek the same data as that sought in interrogatory number 19, but in greater detail.

13. The number of interrogatories presented, when one includes subparts, just in the first 14 items exceeds 30. Numbers 7, 8, 11 and 19 alone total 23 interrogatories. Some of these include subparts to subparts.

14. In the parties' phone conversations, attempting to resolve these discovery issues, Respondent indicated the subparts have been included to provide guidance as to exactly what Respondent is looking for. Complainant agreed, to some extent, that the subparts may do that, however, pursuant to the Board rules, subparts are counted as an interrogatory. Beyond that, Complainant indicated that some subparts went beyond merely clarifying the nature of documents sought, and specifically requested information separate and apart from preceding subparts.

15. In many of its interrogatories, Respondent asked that the Complainant "describe any and all communications." Respondent's definition of "describe" would intend that Complainant provide information regarding the subject matter of the communication and the identity of individuals involved as well as other information. Such a request makes any of these interrogatories overly broad and burdensome. Complainant will respond by identifying communication, or producing it, but the request to describe communications is overly burdensome.

16. Respondent's Interrogatory 7 is an excellent example of subparts that go beyond the subject matter of the original interrogatory. Interrogatory 7 states: "With respect to the allegations contained in Paragraph 20 of the Complaint that the MGP facility is a "major stationary source," please identify all equipment, processes, operations and fugitive emissions, which alone or in combination, emitted or had the potential to emit more than 25 tons of particulate matter per year for the time period after January 1, 1989 to the present time." That question asks Complainant to identify equipment, processes, operations and fugitive emissions

for a time period and equipment that is unrelated to the subject of the enforcement action alleging the construction of a “major modification”. The State’s complaint specifically alleges MGP constructed two feed dryers resulting in a major modification causing a significant net emissions increase in PM emissions in excess of 25 tons per year. A determination that any other emission source has or may cause PM emissions in excess of 25 tons per year is simply not relevant to PM emissions generated during the operation of feed dryers 561 and 661. The applicable thresholds relative to PSD relate to a facility’s major source status (ie., 100 or 250 tons per year) and whether a major modification for PM exists (ie. a significant net emission increase of 25 tons per year).

17. In addition, the first subpart, 7(a), asks for emission factors, emission tests and any calculations or formulas, relied upon in the determining the actual and potential emissions of particulate matter for each piece of equipment, each process, or each operation. This subpart goes above and beyond the request to identify the equipment, processes and operations. Respondent, with this subpart, asks for a whole separate set of information.

18. Respondent then moves to a completely separate topic in the subpart to the subpart 7(a). Respondent asks that the State describe how the shutdown of the MGP fluidized bed coal boiler in 1994 factored into IEPA’s determination that MGP was a “major stationary source”. Again, this goes beyond the mere identification of equipment, process, operations and fugitive emissions. Respondent asks for an analysis pertinent to a specific piece of equipment. Such is a separate interrogatory.

19. Subpart 7(b) asks for all rules, regulations, policies or guidance relied upon in determining the potential to emit. Again, such goes beyond the identification of the processes, equipment and operations. Whereas in the body of the interrogatory Respondent asks for a list identifying that which the State considered to be emitting or having the potential to emit 25 tons



of particulate matter per year, Respondent in this subpart asks for an additional set of information that may be related to the original question, but entails a whole additional body of information.

20. In Subpart 7(c), asks for the names of individuals involved in not the identification of the equipment, processes and operations, but individuals involved in the determination of emissions or potential to emit for the equipment, process or operation.

21. In the subpart to subpart (c), Respondent asks for all communications by any individual identified in (c) relating to the determination that the MGP facility was a major stationary source for particulate matter in 1992. Respondent has gone from asking the State to identify components, to asking Complainant to provide all communications relative to the major source determination. Also, within this one interrogatory, Number 7, Respondent asked the State to provide information in three different time frames. The original question cites January 1, 1989. The subpart to subpart (a) cites 1994. The subpart to subpart (c) cites 1992.

22. Subpart (d) asks for the maximum capacity of each piece of equipment, process or operation to emit particulate matter under its physical and operational design. Again, this goes above and beyond the original request. This is a completely different set of information. In addition, the request is overly broad and not intended to result in the production of probative admissible evidence given information Respondent seeks relates to unrelated emissions sources operated by Respondent at its facility for a time period other than alleged within the State's complaint.

23. Subpart (e) asks the State to provide any physical or operational limitations on the maximum capacity to emit particulate matter, including production limitations and air pollution control equipment, for each piece of equipment. Again, this goes beyond the original request to identify equipment, process and operations, and is overly broad and not intended to

result in the production of probative admissible evidence given information Respondent seeks relates to unrelated emissions sources operated by Respondent at its facility for a time period other than alleged within the State's complaint.

24. Subpart (f), with its two subparts, seeks two additional sets of information above and beyond what was requested in the original request. These include all information, including emission factors, tests, calculations or guidance relied upon in determining actual and potential emissions of particulate matter for each fugitive source, and the second subpart requests identification of the individuals involved. The request, again, is overly broad and not intended to result in the production of probative admissible evidence given information Respondent seeks relates to unrelated emissions sources operated by Respondent at its facility for a time period other than alleged within the State's complaint..

25. Comparing certain subparts of Interrogatory 7 with Interrogatory 19, Interrogatory 19, among other things, asks the State to identify all data relating to air emission tests conducted at the MGP site and emission data associated with the MGP facility. From Complainant's reading of this interrogatory, this request for data relating to air emission tests and emission data associated with the facility is not relative to other parts of the question regarding modeling data. It appears very clear from the question that Interrogatory 19 includes a general request for the State to identify all data relating to air emission tests conducted at the facility and emission data associated with the facility. In Interrogatory Number 7, in subparts a, a(i), b, d, e and f you are asking for data relating to air emission tests conducted at the facility and emission data associated with the facility.

26. Similar to Interrogatory 7, in Interrogatory 8 Respondent characterized its request as emphasizing information pertinent to a determination of "major modification", and again asks for the identification and description of communication and information regarding

emission factors, emission tests, calculations and formulas, as well as physical or operational limitations on the maximum capacity to emit particulate matter from such “major modification”. Respondent did not even mention the topic of major modification in the original request, however it is included in each subpart. There are 4 subparts to this single interrogatory.

27. In Interrogatory No. 1, Respondent asks:

1. For the identity of the individuals answering the interrogatories.
2. For the relationship each such person has to the Complainant.
3. The duration of the relationship with the Complainant.
4. For the identify of each person who has provide information for or assisted in the preparation of answers to the interrogatories.
5. For the nature of the consultation or assistance that constitutes such participation.
6. Whether the individual’s participation was due to personal knowledge.
7. If the individuals’ participation was not due to personal knowledge, on what basis was the individual participating in the preparation of answer.
8. For each individual identified, the interrogatories for which each participated in the preparation of the answers.

Obviously, Respondent is making eight interrogatory requests but identifying the request as only one.

28. With regard to Interrogatories No. 2 and 5, Rule 213(f) states, upon written interrogatory, a party must furnish the identities and addresses of witnesses who will testify at trial. Rule 213(g) concerns limitations on testimony and freedom to cross-examine. It is no longer directly relevant to disclosure upon interrogatory. Rule 213(f) specifies what information can be requested of each witness. For a lay witness, this includes the subject of the testimony. For independent experts, a party can request the subject matter of the testimony and any opinions that will be elicited. For controlled experts, the rule identifies the following information that can be requested: (1) subject matter of testimony, (2) conclusions and opinions, (3) qualifications of experts, (4) any reports prepared about the case.

29. Respondent has asked for disclosures pertinent to witnesses in Interrogatories 2, 3, 4, 5, A good portion of these requests go beyond the information specifically identified in

Rule 213(f). Interrogatories 2, 3 and 5 are duplicitous. Complainant asked the Respondent rephrase its requests consistent with Rule 213(f).

30. In Interrogatory 2, subpart (b), Respondent asks for a summary of the relevant facts within the knowledge of, or which said witnesses will testify to. The first portion of the question is not consistent to Rule 213(f), and is overly broad. Complainant has asked Respondent for clarification as to the purpose of the first portion of the question.

31. Complainant has requested clarification as to the difference between Interrogatory 9 and 10. Is 10 meant to concern permit modifications only? Complainant asked what is meant by "air particulate permit application modification", and "air particulate permits". Permits issued by the Illinois EPA Bureau of Air consistent with Pollution Control Board permitting requirements are in two forms, construction and operating permits. Accordingly, Complainant indicated to Respondent that the terms it chose to use are indiscernible and technically inaccurate. Complainant asked if Respondent meant an application to revise an existing permit? In addition, the phrase "air particulate emission issues" contained within Interrogatory Number 9 is undefined and over broad to the extent that the State is unable to respond.

32. With regard to Interrogatory 11, Respondent again included subparts. Complainant does not agree that the subparts as drafted provide guidance regarding the information sought in the first request. Rather, the subparts clearly solely ask for additional information. These are the requests included in your Interrogatory 11:

1. Itemize the penalties
2. Identify the manner or means and any assumptions used to determine penalty, including the manner in which statutory criteria, policy or guidance (these are three different items in themselves), were employed to determine penalty.
3. Describe any and all internal IEPA communications, or communications between IEPA and USEPA related to any penalty determination
4. Identify the relevant facts considered in making the penalty determination

- and in employing statutory criteria, policy or guidance (again, potentially three analysis).
5. Identify and explain the manner or method employed in attributing any economic benefit accruing.

Items 2 through 5 are clearly requests for information above and beyond the information sought in the first request.

33. Interrogatory Number 14 constitutes two requests. One is for the identification of all communications regarding IEPA's consideration of economic and technological feasibility. The second is a request for, Complainant believes, IEPA's determination of technological feasibility and economically reasonable technology for MGP. With regard to BACT, Respondent properly framed identical requests separately (Interrogatories 12 and 13). In Interrogatory 14, Respondent asked for the identity of all communications and the determination as one interrogatory.

34. In Interrogatory 16, Respondent asks for the identification of communications regarding IEPA's use of "top down" analysis for BACT. Even though more specific, this request mirrors information requested by Interrogatory numbers 8 and 12.

35. In Interrogatory Number 7, Respondent asks for specific information relevant to the fluidized bed combustion boiler. In Interrogatory 18, Respondent asks for three sets of information relevant to the fluidized bed combustion boiler: describe any and all communication regarding the (1) permitting, (2) operation, and (3) shutdown of the fluidized bed combustion boiler. There is overlap between Interrogatories 7 and 18 and Respondent is making three separate requests pertinent to the fluidized bed combustion boiler in Interrogatory 18. Then, within the same single interrogatory, Interrogatory 18, Respondent asks that the State describe any and all communications regarding the (1) permitting, (2) operation, and (3) shutdown of any dryers at the MGP facility from January 1, 1987 to present. There are at least two other dryers, and a Swiss Combi has been installed. How many other dryers are there at MGP? The scope

and a Swiss Combi has been installed. How many other dryers are there at MGP? The scope of this question goes way beyond a single interrogatory, and specifies a time period that is not relevant.

36. In Interrogatory 19, Respondent presents four very broad, general requests: (1) describe any and all communications regarding particulate air emission modeling related to the MGP facility, (2) the identify of all data relating to air emission tests conducted at MGP, (3) the identity of emission data associate with MGP, (4) and/or the identity of air particulate modeling related to the MGP facility. How do item (1) and (4) differ? In (1) is Respondent asking for communications, and in the second asking the State to identify all air particulate modeling? There are 4 interrogatories contained in what has been labeled a single interrogatory. This request is duplicitous, vague, overly broad and general.

37. With regard to Interrogatory 20, Complainant asked that Respondent define and cite to the regulation or case law that will provide context for the term "look back" period. Absent information mentioned above, the interrogatory lacks sufficient specificity to enable the State to respond. To the extent Respondent's interrogatory seeks information relative to the construction and operation of a major modification or whether a major stationary source exists, such information is requested by Interrogatory numbers 7, 8, and 17.

38. Complainant asked that Respondent clarify its use of the term "exemptions" in Interrogatory 21. Complainant asked for a context for the use of the term "exemption" other than the broad reference to the Clean Air Act and the Illinois Environmental Protection Act. Which exemptions does Respondent believe are applicable? Which exemption does it feel the IEPA should have considered? Complainant is willing to address exemptions identified by Respondent, but does not feel it must address every exemption provided for in the Clean Air Act and the Illinois Environmental Protect Act that might be applicable to MGP's plant, whether

relevant or not.

39. Complainant asked Respondent if it is not the case that information sought in Interrogatory 22 included within the requests that constitute Interrogatories 9 and 10? In Interrogatory 22, Respondent is asking for any and all communications relating to PSD permitting for the facility, which clearly is covered in Interrogatories 9, 10, and 17. Then Respondent goes on to specify that the response should include air emission evaluations and effects on attainment and/or nonattainment classification of the vicinity surrounding the site. So, in this interrogatory, Respondent is asking for all information relevant to PSD permitting, and specifically (1) air emission evaluations and (2) effects on attainment and/or nonattainment classification. This is an extremely broad request, and it is duplicative of other requests.

40. With regard to Respondent's Interrogatory Number 24, this interrogatory asks for IEPA's analysis of the "monetary losses" suffered by MGP as applied to three different analysis: (1) the penalty demand extended in settlement discussions, which is now irrelevant; (2) BACT determination, (3) determination of economic reasonableness. Complainant requests clarification of the term "monetary loss" and, further points out that this one interrogatory actually constitutes three.

41. Interrogatory 26 asks that the State identify and describe IEPA's analysis of MGP's good faith efforts to control particulate matter emissions. Respondent has not defined what it considers MGP's good faith efforts, and by the nature of this interrogatory, requests that the State make a legal determination relative to what constitutes good faith. This interrogatory is over broad, it is vague and it is ambiguous. Respondent then asks, within the same interrogatory, that the State identify and describe IEPA's analysis of MGP's attempt to hold the dryer manufacturer's supplier accountable. There are two interrogatories posed in Interrogatory Number 26, not one.

42. Interrogatory No. 28 asks that the State identify and describe IEPA's analysis of (1) the severity of the particulate matter emissions, (2) plant location, (3) economic loss due to unemployment, (4) economic impact of a shut down of the MGP facility. This interrogatory is duplicative of other requests, and actually sets forth four requests rather than one.

43. As stated above, Respondent has renewed its FOIA request that, in fact, mirrors its discovery request. This FOIA request was plainly renewed in a vindictive manner solely due to Complainant's request that Respondent limit itself to discovery requests consistent to the Board's rules. See Group Exhibit 4. Further, Respondent vindictively states it will not be willing to agree to an extension of the statutory seven day deadline for a response to a FOIA request. Complainant does not have the ability to FOIA Defendant's files and information. Respondent is taking advantage of the fact that Complainant is a government agency subject to FOIA to unduly harass the Complainant, when Respondent itself is not subject to the requirements of FOIA and thus not likewise accessible to the Complainant. Respondent's vindictive and hostile behavior relevant to its FOIA request to the Illinois EPA, is significant additional justification, beyond the scope of the Respondent's overly broad discovery request itself, for Complainant's request for a protective order or, in the alternative, an order issued by the Board striking Respondent's interrogatories.

WHEREFORE, on the foregoing grounds and for the foregoing reasons, Complainant respectfully requests that the Hearing Officer strike Respondents Amended First Set of Interrogatories to Complainant. In the alternative, Complainant seeks a protective order, pursuant to 35 Ill. Adm. Code 101.616(d), limiting Respondent's interrogatories to a number



and breadth within the required allowable limit, thereby protecting Complainant from and preventing harrassment and undue expense in time and effort.


Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,  
Attorney General  
of the State of Illinois

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

BY:

  
JANE E. MCBRIDE

Assistant Attorney General

500 South Second Street  
Springfield, Illinois 62706  
(217) 782-9031  
Dated: September 6, 2005

STATE OF ILLINOIS        )  
                                      ) ss  
COUNTY OF SANGAMON    )

**AFFIDAVIT**

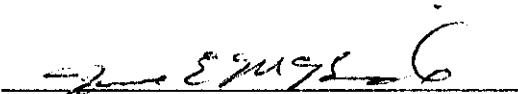
I, JANE E. MCBRIDE, after being duly sworn and upon oath, state as follows:

1.       I am the Assistant Attorney General assigned to the matter of *People v. Midwest Grain Products of Illinois, Inc.*, PCB 97-179.

2.       I am executing this Affidavit to accompany Complainant's Motion to Strike Respondent's Amended First Set of Interrogatives, or, in the alternative, Motion for Protective Order Limiting Interrogatories to Prevent Undue Expense and Harassment.

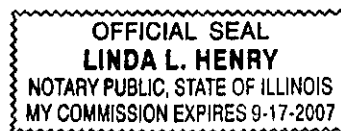
3.       The assertions set forth in Complainant's Motion regarding the progression of this matter are correct and accurate, to the best of Affiant's knowledge and belief.

Further, Affiant sayeth not.

  
\_\_\_\_\_  
JANE E. MCBRIDE

Subscribed and sworn to before me  
this 6<sup>th</sup> day of September, 2005.

  
\_\_\_\_\_  
NOTARY PUBLIC



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD


PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 97-179
	)	(Enforcement- Air)
MGP INGREDIENTS OF ILLINOIS, INC.,	)	
	)	
	)	
Respondent.	)	

**RESPONDENT'S FIRST SET OF INTERROGATORIES TO COMPLAINANT**

COMES NOW Respondent MGP Ingredients of Illinois, Inc., ("MGP"), by its attorneys, Husch & Eppenger, LLC pursuant to Section 101.616 of the Board's Procedural Regulations, Hearing Officer Order dated April 21, 2005 and Illinois Supreme Court Rule 213, requests that Complainant, People of the State of Illinois, answer in writing, under oath, the following interrogatories.

**I. INSTRUCTIONS FOR INTERROGATORIES**

1. Complainant is required, in answering these interrogatories to furnish all information available to Complainant or its employees, agents, contractors, experts, or consultants, or which is ascertainable by reasonable inquiry whether or not the requested information might be available from another entity.
2. If an interrogatory has subparts, Complainant is required to answer each part separately and in full.
3. If Complainant cannot answer an interrogatory in full, they are required to answer all parts of the interrogatory to the extent possible and specify the reason for its inability to provide additional information.

—  —  
Exhibit 1

4. As to each interrogatory, or portion thereof, identify in the answer every oral communication, document or writing which relates to the interrogatory or response, whether or not such identification is specifically requested by the interrogatory.

5. In answering each interrogatory, identify each document, person, communication or meeting, which relates to, corroborates, or in any way forms the basis for the answer given.

6. Pursuant to Illinois Supreme Court Rule 213(3), Complainant is requested to serve upon Respondent corrected, supplemented or augmented answers hereto, documents or other forms of information from whatever source, which arguably tends to show that Complainant's prior answers are, might be, were or might have been in a sense incorrect, incomplete, potentially misleading or less than fully responsive or truthful.

7. Complainant shall supplement its answers and responses as new information and documents become available.

8. If dates are requested, the exact date should be given, if possible. However, if the exact date cannot be determined due to absence or inadequacy of records, the best estimate should be given to the interrogatory and labeled as such.

9. In construing these interrogatories:

- a. the singular shall include the plural and the plural shall include the singular; and
- b. a masculine or feminine pronoun shall not exclude the other gender.

10. If you encounter any ambiguity in construing any interrogatory or any definition or instruction pertaining to any interrogatory, set forth the matter deemed "ambiguous" and the construction chosen or used in responding to the interrogatory.

11. In producing documents in response to an interrogatory (See Illinois Supreme Court Rule 213(e)), you are requested to furnish all documents or things in your actual or constructive possession, custody, control, or known or available to you, regardless of whether such documents or things are possessed directly by you or by your attorneys, agents, employees, representatives or investigators.

12. This discovery is deemed continuing, necessitating supplemental answers by Complainant, or anyone acting on its behalf, when or if they obtain additional information, which supplements or alters the answers now provided.

## **II. CLAIMS OF PRIVILEGE**

1. With respect to any interrogatory which Complainant refuses to answer on a claim of privilege, provide a statement signed by an attorney representing Complainant, setting forth each such assertion of privilege. The statement should include:

- a. the name and job title of every person involved in the conversation or communication;
- b. the nature of the information disclosed;
- c. all facts relied upon in support of the claim of privilege;
- d. all documents related to the claim of privilege;
- e. all events, transactions or occurrences related to the claim of privilege; and
- f. the statute, rule or decision which is claimed to give rise to the privilege or the reason for its unavailability.

2. If the objection relates to only part of an interrogatory, the balance of the interrogatory should be answered in full.

3. If you claim the attorney-client privilege or any other privilege is applicable to any document, with respect to that document:

- a. state the date of the document;
- b. identify each and every author of the document;
- c. identify each and every other person who prepared or participated in the preparation of the document;
- d. identify each and every person who received the document;
- e. state the present location of the document and all copies thereof;

- f. identify each and every person having custody or control of the document and all copies thereof; and
- g. provide sufficient further information concerning the document to explain the claim or privilege and to permit adjudication of the property of that claim.

### **III. DEFINITIONS**

1. "Complainant" shall mean PEOPLE OF THE STATE OF ILLINOIS and the ATTORNEY GENERAL OF THE STATE OF ILLINOIS, and any of Complainant's employees, agents, representatives, successors or assigns, or any other person acting or believed by Complainant to have acted on their behalf.

2. "Document" shall be construed in its customary broad sense and shall include, but is not limited to, the original and non-identical copy, whether different from the original because of notes made on said copy or otherwise, or any agreement, bank record or statement; book of account, including any ledger, sub-ledger, journal or sub-journal; brochure; calendar; chart; check; circular; communication (intra- or inter-company or governmental entity or agency or agencies); contract; copy; correspondence; diary; draft of any document; graph; index; instruction; instruction manual or sheet; invoice; job requisition; letter; license; manifest; memorandum; minutes; newspaper or other clipping; note; notebook; opinion; pamphlet; paper; periodical or other publication; photograph; print; receipt; record; recording report; statement; study; summary including any memorandum, minutes, note, record or summary of any (a) telephone, videophone or intercom conversation or message; (b) personal conversation or interview; or (c) meeting or conference; telegram; telephone log; travel or expense record; voucher; worksheet or working paper; writing; any other handwritten, printed, reproduced, recorded, typewritten, or otherwise produced graphic material from which the information inquired of may be obtained, or any other documentary material of any nature, including electronic mail, in the possession, custody or control of Complainant.

3. "Communication" shall mean, without limitation, any and all forms of transferring information, including discussions, conversations, meetings, conferences, interviews, negotiations, agreements, understandings, inquiries, correspondence, documents, or other transfers of information whether written or oral or by any other means, and includes any document which abstracts, digests, transcribes or records any communication.

4. "Facility" and/or "Site" shall mean the property located at South Front Street and Distillery in Pekin, Tazewell County, Illinois, as reference in paragraph 5, Count I of the Complaint.

5. "Person" shall include, but is not limited to, any natural person; business or corporation, whether for profit or not; firm, partnership, or other non-corporate business organization; charitable, religious, education, governmental, or other non-profit institution, foundation, body, or other organization; or employee, agent or representative of any of the foregoing.

6. "Describe" when used with respect to a communication, means to provide the following information:

- a. the date of the communication;
- b. the type of communication (telephone, electronic mail, facsimile, letter, etc.);
- c. the identity of all individuals involved in the communication;
- d. the identity of all individuals who witnessed the communication; and
- e. the subject matter of the communication.
- f. a description of any documents generated relating to these communications.

7. "Identify" when used with respect to a person, means that you are to state the full name, present residence and business addresses, present residence and business telephone numbers, present and last-known position and business of such person and, if different, the business and position of the person at the time to which the interrogatory has reference.

8. "Identify" when used with respect to a document, means:

- a. to specify the nature of the document (For example a letter or memorandum);
  - b. to state the date, if any, appearing on the document or, if none, the date on which the document was prepared and/or received; and
  - c. to describe the substance of each document for which no privilege is claimed, or to specify the nature and extent of any claimed privilege.
  - d. If the document is not in your possession, identify the person who has actual or constructive possession or control of the document.
9. "Or" shall mean and/or wherever appropriate.
10. "Related to" or "relating to" or "in relation to" shall mean anything which directly or indirectly, concerns, consists of, pertains to, reflects, evidences, describes, sets forth, constitutes, contains, shows, underlies, supports, refers to in any way, is or was used in the preparation of, is appended to, or tends to prove or disprove.
11. "Relied upon" shall mean being or having been depended upon or referred to or being or having been arguably appropriate for such reliance.
12. "Constructive Possession" means documents not in actual possession, but to which you have power to inspect, a right to control, review or otherwise access.
13. "Knowledge" means first-hand information and/or information derived from any other source, including hearsay.
14. "IEPA" means the Illinois Environmental Protection Agency.
15. "Board" shall mean the Illinois Pollution Control Board.
16. "Current" or "Present" means the filing date of these Interrogatories.
17. All terms not specifically defined herein shall have their logical ordinary meaning, unless such terms are defined in the Act or the regulations promulgated thereunder, in which case the appropriate or regulatory definitions will apply.

#### **IV. INTERROGATORIES**

1. Please identify:



- a. the individual(s) answering these interrogatories on behalf of the Complainant, including his or her relationship to Complainant, and how long he or she has been associated with Complainant.
- b. Each person who provided information or who otherwise consulted, participated or assisted in connection with providing answers to these interrogatories, the nature of any such consultation or assistance, whether the information was based on personal knowledge, and if not on the basis of personal knowledge, on what basis it was provided.
- c. For each person identified in the proceeding section 1(b), specify the particular interrogatories to which each such person contributed.

**ANSWER:**

2. Pursuant to Illinois Supreme Court Rule 213(f), with respect to any hearing witnesses, please state the following:

- a. the name, address and employer of each witness;
- b. a summary of the relevant facts within the knowledge of, or which said witnesses will testify to; and
- c. a listing of any documents or photographs, which any such witness has relied upon, will use or which may be introduced into evidence in connection with the testimony of said witness.

**ANSWER:**

3. Furnish the identity and addresses of all expert witnesses who will testify at hearing for Complainant, together with the subject matter on which each expert witness is expected to testify; the conclusions and opinions of each expert witness and the basis therefore; and the qualifications of each expert witness and a copy of all reports of such witnesses.

**ANSWER:**

4. With respect to any witness(es) interviewed by Complainant who Complainant does not intend to call to testify at hearing, state the name and address of any such witness, state whether a transcript of any interview with said witness was prepared, or a memorandum prepared in connection with any such interview, and provide a summary of the facts and opinions relevant to this proceeding which were secured from said witness.

**ANSWER:**

5. Pursuant to Illinois Supreme Court Rule 213(g), identify any and all opinion witnesses that Complainant has interviewed and/or expects to call at hearing. Specify:

- a. The subject matter on which the opinion witness is expected to testify as well as the conclusions, opinion and/or expected testimony of any such witness;
- b. The qualifications, including, but not limited to, the opinion witness' educational background, practical experience in the area he or she is expected to testify in, any articles and papers he or she has written, any and all seminars and post-graduate training he has received, his experience, if any, as a teacher or lecturer and his or her professional appointments and associations;
- c. The identity of each document examined, considered, or relied upon by him or her to form his or her opinions;
- d. All proceedings in which each opinion witness has previously testified as an opinion witness; and
- e. Any and all reports of the opinion witness.

**ANSWER:**

6. Furnish the identity and addresses of all persons that communicated with Complainant regarding the facts alleged in Complainant's Complaint; and identify all persons known by you to have knowledge of the facts alleged in the Complaint or in the Answers to these Interrogatories.

**ANSWER:**

7. Identify all dates on which the owner or operator of the MGP facility was required to submit an application or request for, obtain or have in its possession a permit, approval or other governmental authorization to construct or install any structure, process, equipment, operation or activity at the MGP facility and for each such date, identify all such required permits, approvals, or other governmental authorizations, for all relevant time periods.

**ANSWER:**

8. With respect to the allegations contained in Paragraph 20 of the Complaint that the MGP facility is a "major stationary source," please identify all equipment, processes, operations and fugitive emissions, which alone or in combination, emitted or had the potential to emit more than 25 tons of particulate matter per year for the time period after January 1, 1989 to the present time. For each piece of equipment, process or operation identified, provide the following:

- a. All information, including emission factors, emission tests, and any calculations or formulas, relied upon in determining the actual and potential emissions of particulate matter for each piece of equipment, each process, or each operation;
- b. All rules, regulations, policies or guidance relied upon in determining the potential to emit;
- c. All persons in the employ or retained by Complainant who determined or assisted in the determination of the emissions or potential to emit for the equipment, process or operation;

- d. The maximum capacity of each piece of equipment, process or operation to emit particulate matter under its physical and operational design;
- e. Any physical or operational limitations on the maximum capacity to emit particulate matter, including production limitations and air pollution control equipment, for each piece of equipment.
- f. For all fugitive emissions identified, provide the following:
  - i. All information, including emission factors, tests, calculations, or guidance relied upon in determining the actual and potential emissions of particulate matter for each fugitive source;
  - ii. All persons in the employ or retained by Complainant who determined or assisted in the determination of the emissions or potential to emit from fugitive particulate matter sources.

**ANSWER:**

9. With respect to the allegations contained in the Complaint and the subject matter thereof, please state or identify the following:
- a. Identify all information, including emission factors, emission tests, and any calculations or formulas, relied upon in determining that a “major modification” occurred at any time at the MGP facility;
  - b. Identify the date such “major modification” occurred at the MGP facility, and as of that date, what Complainant maintains would have been the “best available control technology” applicable to such “major modification;”
  - c. Identify each person on behalf of Complainant with factual information concerning the “major modification” or known to have been involved in the assessment and/or determination that a “major modification” occurred at any time at the MGP facility.

- d. Any physical or operational limitation on the maximum capacity to emit particulate matter from such "major modification."

**ANSWER:**

10. Describe any and all communications between IEPA and August Mack Environmental, Inc., ("August Mack") and/or any other consultants relating to air permit or air emission issues at MGP. Dates of relevant phone conversations include, but are not limited to, 8/13/96, 8/16/96, 8/28/96, 9/4/96, 9/16/96, 9/17/96, 9/20/96, 9/24/96, 10/15/96, 11/1/96, 11/14/96, 12/11/96, 1/28/97, 1/30/97, 3/19/97, 3/25/96, 3/27/97, 4/9/97, and 4/23/97.

**ANSWER:**

11. Describe any and all communications between IEPA and MGP relating to air permit or air emission issues at MGP. Dates of relevant phone conversations include, but are not limited to, 8/13/96, 8/16/96, 8/28/96, 9/4/96, 9/16/96, 9/17/96, 9/20/96, 9/24/96, 10/15/96, 11/1/96, 11/14/96, 12/11/96, 1/28/97, 1/30/97, 3/19/97, 3/25/96, 3/27/97, 4/9/97, and 4/23/97.

**ANSWER:**

12. Describe any and all internal IEPA communications relating to air permit or air emission issues at MGP. Dates of relevant phone conversations include, but are not limited to, 8/13/96, 8/16/96, 8/28/96, 9/4/96, 9/16/96, 9/17/96, 9/20/96, 9/24/96, 10/15/96, 11/1/96, 11/14/96, 12/11/96, 1/28/97, 1/30/97, 3/19/97, 3/25/96, 3/27/97, 4/9/97, and 4/23/97

**ANSWER:**

13. Describe any and all communications between IEPA and the United States Environmental Protection Agency relating to air permit or air emission issues at MGP. Dates of relevant phone conversations include, but are not limited to, 8/13/96, 8/16/96, 8/28/96, 9/4/96,

9/16/96, 9/17/96, 9/20/96, 9/24/96, 10/15/96, 11/1/96, 11/14/96, 12/11/96, 1/28/97, 1/30/97, 3/19/97, 3/25/96, 3/27/97, 4/9/97, and 4/23/97

**ANSWER:**

14. Describe any and all communications between IEPA and August Mack, any other consultants, MGP and/or the United States Environmental Protection Agency ("USEPA") and internal IEPA communication relating to air permit or air emission issues at MGP from 1992 to the present.

**ANSWER:**

15. Describe any and all communications between IEPA and August Mack, any other consultants, MGP and/or the USEPA and internal IEPA communication relating to air permit modifications or air permit application modifications at MGP.

**ANSWER:**

16. Itemize the penalties which Complainant seeks to recover for each violation asserted in the Complaint; identify the manner or means by which Complainant determined the penalty amounts to be sought (including but not limited to, the manner in which any statutory criteria, policy or guidance was employed in determining the penalty amounts); identify the relevant facts considered in making the penalty determinations and in employing such statutory criteria, policy or guidance; and identify and explain the manner or method employed in attributing any economic benefit accruing to Respondent by reason of the violations asserted.

**ANSWER:**

17. Identify and describe any and all internal IEPA communications, IEPA communications with MGP and/or communications between IEPA and any third-party relating to a BACT determination for the MGP facility since January 1, 1990.

**ANSWER:**

18. Describe the analysis conducted and methodology used by IEPA to determine the BACT for emissions from feed dryers at the MGP facility, including but not limited to, emission limitations and reductions.

**ANSWER:**

19. Identify and describe the technically feasible and economically reasonable technology available to control the particulate matter emissions at the MGP facility as described in the Complaint.

**ANSWER:**

20. Describe any and all communications related to IEPA's consideration of economic and technological feasibility as they relate to the alleged violations described in the Complaint.

**ANSWER:**

21. Describe any and all communications related to IEPA's consideration of potential energy, environmental and economic impacts in determining the level of emission control that the MGP facility could achieve pursuant to 42 U.S.C. § 7479(3).

**ANSWER:**

22. Describe any and all communications related to IEPA's use of "top down" analysis to select the BACT for the MGP facility.

**ANSWER:**

23. Describe any and all communications relied upon in preparation of Donald E. Sutton's 10/9/97 and 7/9/97 correspondences to MGP.

**ANSWER:**

24. Describe any and all communications relating to emission limits established for MGP, including, but not limited to, construction permits 82110006, 93020061 and 93080045 and emission limits in any and all construction and/or operating permits relating to the MGP facility.

**ANSWER:**

25. Describe any and all communications relating to the permitting, operation and shutdown of the fluidized bed combustion boiler or any dryers at the MGP facility from January 1, 1987 to present.

**ANSWER:**

26. Describe any and all communications among IEPA personnel and/or MGP personnel relating to the start of construction, start of operations, and shutdown of boilers, dryers and other emission sources at the MGP facility.

**ANSWER:**

27. Identify any and all data relating to air emission tests conducted at the MGP site, emission data associated with the MGP facility, and/or air modeling related to the MGP facility.

**ANSWER:**



28. Describe any and all communications within IEPA and/or between IEPA and MGP, USEPA, August Mack or any third party regarding particulate air emission modeling related to the MGP facility.

**ANSWER:**

29. Identify the “look back” period used by IEPA to determine emission limits for the project which is the subject of the Complaint for the MGP facility, including but not limited to the analysis employed and methodology used to determine the appropriate “look back” period.

**ANSWER:**

30. Identify any and all documents that relate to the inspection of air emissions at the MGP facility.

**ANSWER:**

31. Identify any and all US Clean Air Act or Illinois Environmental Protection Act exemptions that were considered by IEPA related to particulate matter emissions at the MGP facility and the base or bases for the denial of such exemptions.

**ANSWER:**

32. Describe any and all communications relating to the determination that the MGP facility was a major stationary source for particulate matter in 1992.

**ANSWER:**

33. Describe any and all communications relating to IEPA determinations that the MGP facility is a major stationary source, a change in the MPG facility was a major modification or that the MGP facility experienced a significant net emission increase for any pollutant.

**ANSWER:**

34. Describe any and all communications related to MGP construction and operating permit emission applications, and/or proposed and issued permits.

**ANSWER:**

35. Describe any and all communications relating to any PSD permitting for the MGP facility including, but not limited to, air emission evaluations and effects on attainment and/or nonattainment classification of the vicinity surrounding the MGP site.

**ANSWER:**

36. Describe any and all communications related to IEPA's contention that all agency modeling of particulates at the MGP facility and its environs must be complete before IEPA would consider MGP's proposal to install a regenerative thermal oxidizer.

**ANSWER:**

37. Describe any and all communications related to any penalty calculations or proposed penalties concerning a resolution of the allegations in the Complaint including, but not limited to, calculations, supporting documents, policies and procedures used in the application of calculations, any assumptions used in the calculations and any internal IEPA communications or communications with USEPA related to MGP penalties or penalty calculations.

**ANSWER:**

38. Describe IEPA's analysis of the monetary losses suffered by MGP as applied to the following:

- a. The penalty of \$1,062,580;

- b. The BACT determination; and
- c. The determination of economic reasonable technology.

**ANSWER:**

39. Describe any communications related to IEPA's 1999 decision to not assess an economic benefit penalty beyond that date.

**ANSWER:**

40. Identify and describe IEPA's analysis of MGP's good faith efforts to control particulate matter emissions including but not limited to, IEPA's analysis of MGP's attempts to hold the dryer manufacturer's supplier accountable for MGP's expensive corrective actions when the dryer and scrubber failed to properly control particulate matter emissions.

**ANSWER:**

41. Describe any and all communications related to IEPA's denial of a construction permit application for a wet electrostatic precipitator in and around 1997.

**ANSWER:**

42. Describe any and all communications with Mr. Charlie Merrill or Mr. Brian Cahill relating to the determination that no penalty or fines would be assessed if MGP cooperated in completing the air modeling.

**ANSWER:**

43. Describe how the shutdown of the MGP fluidized bed coal boiler in 1994 factored into IEPA's determination that MGP was a "major stationary source."

**ANSWER:**

44. Identify and describe IEPA's analysis of the severity of the particulate matter emissions, plant location and economic loss due to unemployment, as well as, the economic impact of a shut down of the MGP facility.

**ANSWER:**

45. Identify the date by which IEPA completed the air emission modeling necessary to fully analyze an air emissions construction permit application for feed dryer pollution control equipment submitted by MGP.

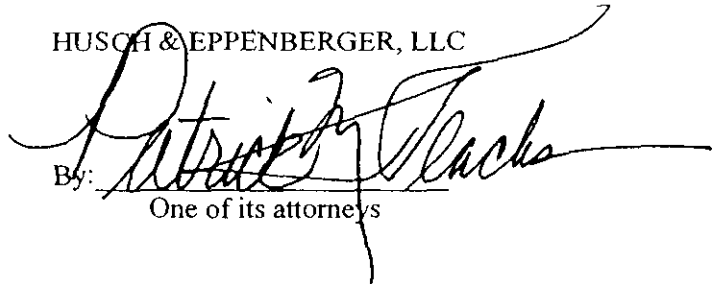
**ANSWER:**

46. Identify the date when IEPA communicated to MGP the completed the air emission modeling necessary to fully analyze an air emissions construction permit application for feed dryer pollution control equipment submitted by MGP.

**ANSWER:**

Respectfully submitted,

HUSCH & EPPENBERGER, LLC

By:   
One of its attorneys

Husch & Eppenberger, LLC  
190 Carondelet Plaza, Suite 600  
St. Louis, Missouri 63105  
(314) 480-1500

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**


PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 97-179
	)	(Enforcement- Air)
MGP INGREDIENTS OF ILLINOIS, INC.,	)	
	)	
	)	
Respondent.	)	

**RESPONDENT'S AMENDED FIRST SET OF  
INTERROGATORIES TO COMPLAINANT**

COMES NOW Respondent MGP Ingredients of Illinois, Inc., ("MGP"), by its attorneys, Husch & Eppenger, LLC pursuant to Section 101.616 of the Board's Procedural Regulations, Hearing Officer Order dated April 21, 2005 and Illinois Supreme Court Rule 213, requests that Complainant, People of the State of Illinois, answer in writing, under oath, the following interrogatories.

**I. INSTRUCTIONS FOR INTERROGATORIES**

1. Complainant is required, in answering these interrogatories to furnish all information available to Complainant or its employees, agents, contractors, experts, or consultants, or which is ascertainable by reasonable inquiry whether or not the requested information might be available from another entity.
2. If an interrogatory has subparts, Complainant is required to answer each part separately and in full.
3. If Complainant cannot answer an interrogatory in full, they are required to answer all parts of the interrogatory to the extent possible and specify the reason for its inability to provide additional information.

—  —  
Exhibit 2

4. As to each interrogatory, or portion thereof, identify in the answer every oral communication, document or writing which relates to the interrogatory or response, whether or not such identification is specifically requested by the interrogatory.

5. In answering each interrogatory, identify each document, person, communication or meeting, which relates to, corroborates, or in any way forms the basis for the answer given.

6. Pursuant to Illinois Supreme Court Rule 213(3), Complainant is requested to serve upon Respondent corrected, supplemented or augmented answers hereto, documents or other forms of information from whatever source, which arguably tends to show that Complainant's prior answers are, might be, were or might have been in a sense incorrect, incomplete, potentially misleading or less than fully responsive or truthful.

7. Complainant shall supplement its answers and responses as new information and documents become available.

8. If dates are requested, the exact date should be given, if possible. However, if the exact date cannot be determined due to absence or inadequacy of records, the best estimate should be given to the interrogatory and labeled as such.

9. In construing these interrogatories:

- a. the singular shall include the plural and the plural shall include the singular; and
- b. a masculine or feminine pronoun shall not exclude the other gender.

10. If you encounter any ambiguity in construing any interrogatory or any definition or instruction pertaining to any interrogatory, set forth the matter deemed "ambiguous" and the construction chosen or used in responding to the interrogatory.

11. In producing documents in response to an interrogatory (See Illinois Supreme Court Rule 213(e)), you are requested to furnish all documents or things in your actual or constructive possession, custody, control, or known or available to you, regardless of whether such documents or things are possessed directly by you or by your attorneys, agents, employees, representatives or investigators.

12. This discovery is deemed continuing, necessitating supplemental answers by Complainant, or anyone acting on its behalf, when or if they obtain additional information, which supplements or alters the answers now provided.

## **II. CLAIMS OF PRIVILEGE**

1. With respect to any interrogatory which Complainant refuses to answer on a claim of privilege, provide a statement signed by an attorney representing Complainant, setting forth each such assertion of privilege. The statement should include:

- a. the name and job title of every person involved in the conversation or communication;
- b. the nature of the information disclosed;
- c. all facts relied upon in support of the claim of privilege;
- d. all documents related to the claim of privilege;
- e. all events, transactions or occurrences related to the claim of privilege; and
- f. the statute, rule or decision which is claimed to give rise to the privilege or the reason for its unavailability.

2. If the objection relates to only part of an interrogatory, the balance of the interrogatory should be answered in full.

3. If you claim the attorney-client privilege or any other privilege is applicable to any document, with respect to that document:

- a. state the date of the document;
- b. identify each and every author of the document;
- c. identify each and every other person who prepared or participated in the preparation of the document;
- d. identify each and every person who received the document;
- e. state the present location of the document and all copies thereof;

- f. identify each and every person having custody or control of the document and all copies thereof; and
- g. provide sufficient further information concerning the document to explain the claim or privilege and to permit adjudication of the property of that claim.

### **III. DEFINITIONS**

1. "Complainant" shall mean PEOPLE OF THE STATE OF ILLINOIS and the ATTORNEY GENERAL OF THE STATE OF ILLINOIS, and any of Complainant's employees, agents, representatives, successors or assigns, or any other person acting or believed by Complainant to have acted on their behalf.

2. "Document" shall be construed in its customary broad sense and shall include, but is not limited to, the original and non-identical copy, whether different from the original because of notes made on said copy or otherwise, or any agreement, bank record or statement; book of account, including any ledger, sub-ledger, journal or sub-journal; brochure; calendar; chart; check; circular; communication (intra- or inter-company or governmental entity or agency or agencies); contract; copy; correspondence; diary; draft of any document; graph; index; instruction; instruction manual or sheet; invoice; job requisition; letter; license; manifest; memorandum; minutes; newspaper or other clipping; note; notebook; opinion; pamphlet; paper; periodical or other publication; photograph; print; receipt; record; recording report; statement; study; summary including any memorandum, minutes, note, record or summary of any (a) telephone, videophone or intercom conversation or message; (b) personal conversation or interview; or (c) meeting or conference; telegram; telephone log; travel or expense record; voucher; worksheet or working paper; writing; any other handwritten, printed, reproduced, recorded, typewritten, or otherwise produced graphic material from which the information inquired of may be obtained, or any other documentary material of any nature, including electronic mail, in the possession, custody or control of Complainant.



3. "Communication" shall mean, without limitation, any and all forms of transferring information, including discussions, conversations, meetings, conferences, interviews, negotiations, agreements, understandings, inquiries, correspondence, documents, or other transfers of information whether written or oral or by any other means, and includes any document which abstracts, digests, transcribes or records any communication.

4. "Facility" and/or "Site" shall mean the property located at South Front Street and Distillery in Pekin, Tazewell County, Illinois, as reference in paragraph 5, Count I of the Complaint.

5. "Person" shall include, but is not limited to, any natural person; business or corporation, whether for profit or not; firm, partnership, or other non-corporate business organization; charitable, religious, education, governmental, or other non-profit institution, foundation, body, or other organization; or employee, agent or representative of any of the foregoing.

6. "Describe" when used with respect to a communication, means to provide the following information:

- a. the date of the communication;
- b. the type of communication (telephone, electronic mail, facsimile, letter, etc.);
- c. the identity of all individuals involved in the communication;
- d. the identity of all individuals who witnessed the communication; and
- e. the subject matter of the communication.
- f. a description of any documents generated relating to these communications.

7. "Identify" when used with respect to a person, means that you are to state the full name, present residence and business addresses, present residence and business telephone numbers, present and last-known position and business of such person and, if different, the business and position of the person at the time to which the interrogatory has reference.

8. "Identify" when used with respect to a document, means:

- a. to specify the nature of the document (For example a letter or memorandum);
  - b. to state the date, if any, appearing on the document or, if none, the date on which the document was prepared and/or received; and
  - c. to describe the substance of each document for which no privilege is claimed, or to specify the nature and extent of any claimed privilege.
  - d. If the document is not in your possession, identify the person who has actual or constructive possession or control of the document.
9. "Or" shall mean and/or wherever appropriate.
10. "Related to" or "relating to" or "in relation to" shall mean anything which directly or indirectly, concerns, consists of, pertains to, reflects, evidences, describes, sets forth, constitutes, contains, shows, underlies, supports, refers to in any way, is or was used in the preparation of, is appended to, or tends to prove or disprove.
11. "Relied upon" shall mean being or having been depended upon or referred to or being or having been arguably appropriate for such reliance.
12. "Constructive Possession" means documents not in actual possession, but to which you have power to inspect, a right to control, review or otherwise access.
13. "Knowledge" means first-hand information and/or information derived from any other source, including hearsay.
14. "IEPA" means the Illinois Environmental Protection Agency.
15. "Board" shall mean the Illinois Pollution Control Board.
16. "Current" or "Present" means the filing date of these Interrogatories.
17. All terms not specifically defined herein shall have their logical ordinary meaning, unless such terms are defined in the Act or the regulations promulgated thereunder, in which case the appropriate or regulatory definitions will apply.

#### **IV. INTERROGATORIES**

1. Please identify:
  - a. the individual(s) answering these interrogatories on behalf of the Complainant, including his or her relationship to Complainant, and how long he or she has been associated with Complainant.
  - b. Each person who provided information or who otherwise consulted, participated or assisted in connection with providing answers to these interrogatories, the nature of any such consultation or assistance, whether the information was based on personal knowledge, and if not on the basis of personal knowledge, on what basis it was provided.
  - c. For each person identified in the proceeding section 1(b), specify the particular interrogatories to which each such person contributed.

#### **ANSWER:**

2. Pursuant to Illinois Supreme Court Rule 213(f), with respect to any hearing witnesses, please state the following:
  - a. the name, address and employer of each witness;
  - b. a summary of the relevant facts within the knowledge of, or which said witnesses will testify to; and
  - c. a listing of any documents or photographs, which any such witness has relied upon, will use or which may be introduced into evidence in connection with the testimony of said witness.

#### **ANSWER:**

3. Furnish the identity and addresses of all expert witnesses who will testify at hearing for Complainant, together with the subject matter on which each expert witness is expected to testify; the conclusions and opinions of each expert witness and the basis therefore; and the qualifications of each expert witness and a copy of all reports of such witnesses.

**ANSWER:**

4. With respect to any witness(es) interviewed by Complainant who Complainant does not intend to call to testify at hearing, state the name and address of any such witness, state whether a transcript of any interview with said witness was prepared, or a memorandum prepared in connection with any such interview, and provide a summary of the facts and opinions relevant to this proceeding which were secured from said witness.

**ANSWER:**

5. Pursuant to Illinois Supreme Court Rule 213(g), identify any and all opinion witnesses that Complainant has interviewed and/or expects to call at hearing. Specify:

- a. The subject matter on which the opinion witness is expected to testify as well as the conclusions, opinion and/or expected testimony of any such witness;
- b. The qualifications, including, but not limited to, the opinion witness' educational background, practical experience in the area he or she is expected to testify in, any articles and papers he or she has written, any and all seminars and post-graduate training he has received, his experience, if any, as a teacher or lecturer and his or her professional appointments and associations;
- c. The identity of each document examined, considered, or relied upon by him or her to form his or her opinions;
- d. All proceedings in which each opinion witness has previously testified as an opinion witness; and

- e. Any and all reports of the opinion witness.

**ANSWER:**

6. Furnish the identity and addresses of all persons that communicated with Complainant regarding the facts alleged in Complainant's Complaint; and identify all persons known by you to have knowledge of the facts alleged in the Complaint or in the Answers to these Interrogatories.

**ANSWER:**

7. With respect to the allegations contained in Paragraph 20 of the Complaint that the MGP facility is a "major stationary source," please identify all equipment, processes, operations and fugitive emissions, which alone or in combination, emitted or had the potential to emit more than 25 tons of particulate matter per year for the time period after January 1, 1989 to the present time. For each piece of equipment, process or operation identified, provide the following:

- a. All information, including emission factors, emission tests, and any calculations or formulas, relied upon in determining the actual and potential emissions of particulate matter for each piece of equipment, each process, or each operation;
  - i. In particular, describe how the shutdown of the MGP fluidized bed coal boiler in 1994 factored into IEPA's determination that MGP was a "major stationary source."
- b. All rules, regulations, policies or guidance relied upon in determining the potential to emit;
- c. All persons in the employ or retained by Complainant who determined or assisted in the determination of the emissions or potential to emit for the equipment, process or operation;

- i. Describe all communications by any individual identified in part 7(c) relating to the determination that the MGP facility was a major stationary source for particulate matter in 1992.
- d. The maximum capacity of each piece of equipment, process or operation to emit particulate matter under its physical and operational design;
- e. Any physical or operational limitations on the maximum capacity to emit particulate matter, including production limitations and air pollution control equipment, for each piece of equipment.
- f. For all fugitive emissions identified, provide the following:
  - i. All information, including emission factors, tests, calculations, or guidance relied upon in determining the actual and potential emissions of particulate matter for each fugitive source;
  - ii. All persons in the employ or retained by Complainant who determined or assisted in the determination of the emissions or potential to emit from fugitive particulate matter sources.

**ANSWER:**

8. With respect to the allegations contained in the Complaint and the subject matter thereof, please state or identify the following:
- a. Identify and describe all communications, information, including emission factors, emission tests, and any calculations or formulas, relied upon in determining that a “major modification” occurred at any time at the MGP facility;
  - b. Identify the date such “major modification” occurred at the MGP facility, and as of that date, what Complainant maintains would have been the “best available control technology” applicable to such “major modification;”

- c. Identify each person on behalf of Complainant with factual information concerning the “major modification” or known to have been involved in the assessment and/or determination that a “major modification” occurred at any time at the MGP facility.
- d. Any physical or operational limitation on the maximum capacity to emit particulate matter from such “major modification.”

**ANSWER:**

9. Describe any and all communications, between the parties listed below, relating to air particulate permits or air particulate emission issues at MGP from 1992 to the present. Dates of relevant phone conversations include, but are not limited to, 8/13/96, 8/16/96, 8/28/96, 9/4/96, 9/16/96, 9/17/96, 9/20/96, 9/24/96, 10/15/96, 11/1/96, 11/14/96, 12/11/96, 1/28/97, 1/30/97, 3/19/97, 3/25/96, 3/27/97, 4/9/97, and 4/23/97.

- a. IEPA and August Mack Environmental, Inc., (“August Mack”) and/or any other consultants;
- b. IEPA and MGP;
- c. Internal IEPA communications;
- d. IEPA and the United States Environmental Protection Agency

**ANSWER:**

10. Describe any and all communications between IEPA and August Mack, any other consultants, MGP and/or the USEPA and internal IEPA communication relating to air particulate emission permit modifications or air particulate permit application modifications at MGP.

**ANSWER:**

11. Itemize the penalties which Complainant seeks to recover for each violation asserted in the Complaint; identify the manner or means and any assumptions used by which Complainant determined the penalty amounts to be sought (including but not limited to, the manner in which any statutory criteria, policy or guidance was employed in determining the penalty amounts); describe any and all internal IEPA communications or communications between IEPA and USEPA related to any penalty determination addressed above; identify the relevant facts considered in making the penalty determinations and in employing such statutory criteria, policy or guidance; and identify and explain the manner or method employed in attributing any economic benefit accruing to Respondent by reason of the violations asserted.

**ANSWER:**

12. Identify and describe any and all internal IEPA communications, IEPA communications with MGP and/or communications between IEPA and any third-party relating to a BACT determination for the MGP facility since January 1, 1990.

**ANSWER:**

13. Describe the analysis conducted and methodology used by IEPA to determine the BACT for emissions from feed dryers at the MGP facility, including but not limited to, emission limitations and reductions.

**ANSWER:**

14. Identify all communications related to IEPA's consideration of economic and technological feasibility at the MGP facility and describe the technically feasible and economically reasonable technology available to control the particulate matter emissions at the MGP facility as described in the Complaint.

**ANSWER:**



15. Describe any and all communications related to IEPA's consideration of potential energy, environmental and economic impacts in determining the level of emission control that the MGP facility could achieve pursuant to 42 U.S.C. § 7479(3).

**ANSWER:**

16. Describe any and all communications related to IEPA's use of "top down" analysis to select the BACT for the MGP facility.

**ANSWER:**

17. Describe any and all communications relating to emission limits established for MGP, including, but not limited to, construction permits 82110006, 93020061 and 93080045 and emission limits in any and all construction and/or operating permits relating to the MGP facility.

**ANSWER:**

18. Describe any and all communications among IEPA personnel and/or MGP personnel relating to the permitting, operation and shutdown of the fluidized bed combustion boiler or any dryers at the MGP facility from January 1, 1987 to present.

**ANSWER:**

19. Describe any and all communications within IEPA and/or between IEPA and MGP, USEPA, August Mack or any third party regarding particulate air emission modeling related to the MGP facility and identify all data relating to air emission tests conducted at the MGP site, emission data associated with the MGP facility, and/or air particulate modeling related to the MGP facility.

**ANSWER:**

20. Identify the time period used by IEPA to determine emission limits for the project which is the subject of the Complaint for the MGP facility, including but not limited to the analysis employed and methodology used to determine the appropriate “look back” period.

**ANSWER:**

21. Identify any and all US Clean Air Act or Illinois Environmental Protection Act exemptions that were considered by IEPA related to particulate matter emissions at the MGP facility and the base or bases for the denial of such exemptions.

**ANSWER:**

22. Describe any and all communications relating to any PSD permitting for the MGP facility including, but not limited to, air emission evaluations and effects on attainment and/or nonattainment classification of the vicinity surrounding the MGP site.

**ANSWER:**

23. Describe any and all communications related to IEPA’s contention that all agency modeling of particulates at the MGP facility and its environs must be complete before IEPA would consider MGP’s proposal to install a regenerative thermal oxidizer.

**ANSWER:**

24. Describe IEPA’s analysis of the monetary losses suffered by MGP as applied to the following:

- a. The penalty of \$1,062,580;
- b. The BACT determination; and
- c. The determination of economic reasonable technology.

**ANSWER:**

25. Describe any communications related to IEPA's 1999 decision to not assess an economic benefit penalty beyond that date.

**ANSWER:**

26. Identify and describe IEPA's analysis of MGP's good faith efforts to control particulate matter emissions including but not limited to, IEPA's analysis of MGP's attempts to hold the dryer manufacturer's supplier accountable for MGP's expensive corrective actions when the dryer and scrubber failed to properly control particulate matter emissions.

**ANSWER:**

27. Describe any and all communications related to IEPA's denial of a construction permit application for a wet electrostatic precipitator in and around 1997.

**ANSWER:**

28. Identify and describe IEPA's analysis of the severity of the particulate matter emissions, plant location and economic loss due to unemployment, as well as, the economic impact of a shut down of the MGP facility.

**ANSWER:**

29. Identify the date by which IEPA completed the air emission modeling necessary to fully analyze an air emissions construction permit application for feed dryer pollution control equipment submitted by MGP.

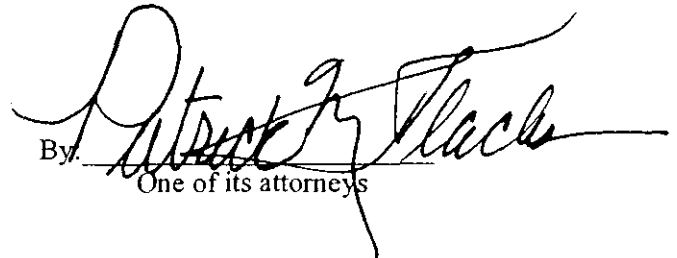
**ANSWER:**

30. Identify the date when IEPA communicated to MGP the completed the air emission modeling necessary to fully analyze an air emissions construction permit application for feed dryer pollution control equipment submitted by MGP.

ANSWER:

Respectfully submitted,

HUSCH & EPPENBERGER, LLC

By:   
One of its attorneys

Husch & Eppenberger, LLC  
190 Carondelet Plaza, Suite 600  
St. Louis, Missouri 63105  
(314) 480-1500

**Husch &  
Eppenger, LLC**

*Attorneys and Counselors at Law*

314.480.1844 direct dial  
John.Collins@Husch.com

*Crown*

190 Carondelet Plaza, Suite 600  
St. Louis, Missouri 63105-3141  
314.480.1500  
Fax 314.480.1605  
www.husch.com

August 15, 2005

Via Facsimile 217-524-5023

Marilyn Clardy  
IEPA, Bureau of Air, #11  
1340 North Ninth Street  
P. O. Box 19506  
Springfield, IL 62794-9506

**RECEIVED**

AUG 15 2005

Re: *Illinois Freedom of Information Act Request*  
*MGP Ingredients of Illinois, Inc.*

IEPA - DAPC - SPFLD

Dear Ms. Clardy:

This is a request for information under the Illinois Freedom of Information Act, 5 ILCS 140. I am hereby requesting any and all information deemed of public record and not otherwise exempt from disclosure in the Illinois Environmental Protection Agency's files regarding the following:

1. Any and all records reflecting, referring or relating to the January 10, 1996 Illinois EPA stack testing performed at MGP Ingredients of Illinois, Inc. ("MGP") (f/k/a Midwest Grain Products of Illinois, Inc.), address 1301 South Front Street, Pekin, Illinois, 61555.
2. Any and all records reflecting, referring or relating to the September 21, 1995 Illinois EPA inspection at the MGP facility.
3. Any and all records reflecting, referring or relating to meetings between Illinois EPA representatives and MGP representatives taking place between January 1993 and the present, and concerning air particulate emission issues, feed dryers, scrubbers, fluidized bed combustion boiler, regenerative thermal oxidizers and/or electrostatic precipitators. In particular, the meeting dates of:
  - a. January 11, 1993; between MGP representatives and Illinois EPA representatives Chris Romaine, Don Hanko and possibly others.
  - b. August 1995; between MGP representatives and Illinois EPA representatives.
  - c. November 29, 1995; between MGP representatives and Illinois EPA representatives.

212416601

ST. LOUIS • DOWNTOWN ST. LOUIS • KANSAS CITY • JEFFERSON  
CHATTANOOGA • DOWNTOWN MEMPHIS • EAS

Group Exhibit 3

# Husch & Eppenberger, LLC

Marilyn Clardy  
IEPA, Bureau of Air, #11  
August 15, 2005  
Page: 2

- d. July 29, 1996; between MGP representatives and Illinois EPA representatives.
  - e. February 28, 1997; between MGP representatives and Illinois EPA representatives.
  - f. March 6, 1998; between MGP representatives and Illinois EPA representatives.
  - g. April 6, 1999; between MGP representatives and Illinois EPA representatives Chris Romaine, Jason Schnepp and possibly others.
  - h. December 17, 1999; between MGP representatives and Illinois EPA representatives.
- 4. Any and all records reflecting, referring or relating to any other meetings involving Illinois EPA representatives concerning MGP air particulate emission regulatory or enforcement matters.
  - 5. Any and all records reflecting, referring or relating to correspondence between MGP representatives and Illinois EPA representatives concerning air particulate emission issues. In particular, correspondence related to a November 6, 1995 Midwest Grain Products of Illinois letter from Mr. David A. Sanborn to Mr. Richard L. Jennings, P.E., of the Illinois EPA.

I understand that the Act permits a public body to charge a reasonable copying fee not to exceed the actual cost of reproduction and not including the costs of any search or review of the records. 5 ILCS 140/6. We are willing to pay fees for this request up to a maximum of \$200. If you estimate that the fees will exceed this limit, please inform me first.

I request that a list or log be provided for any documents withheld for privilege or for any other reason. I look forward to hearing from you in writing within seven working days,

# Husch & Eppenger, LLC

Marilyn Clardy


ITPA, Bureau of Air, #11

August 15, 2005

Page: 3

as required by the Act. 5 ILCS 140(3). If you have any questions regarding this request,  
please call me at (314) 480-1644.

Very truly yours,

By   
John E. Collins

# Husch & Eppenberger, LLC

*Attorneys and Counselors at Law*

314.480.1544 direct dial  
John.Collins@Husch.com

190 Carondelet Plaza, Suite 600  
St. Louis, Missouri 63105-3441  
314.480.1500  
Fax 314.480.1505  
www.husch.com

August 22, 2005

RECEIVED

Via Facsimile 217-524-5023

AUG 22 2005

Ms. Marilyn Clardy  
IEPA, Bureau of Air, #11  
1340 North Ninth Street  
P.O. Box 19506  
Springfield, IL 62794-9506

IEPA - DAPC - SPFLD

Re: *Illinois Freedom of Information Act Request  
MGP Ingredients of Illinois, Inc.*

Dear Ms. Clardy:

On August 15, 2005, I submitted a FOIA request to your office regarding information related to MGP Ingredients of Illinois, Inc. This letter serves to inform you that I am suspending the August 15, 2005 FOIA request. I apologize for any inconvenience the FOIA request may have caused. If you have any questions, please feel free to contact me.

Very truly yours,

HUSCH & EPPENBERGER, LLC

By:   
John E. Collins

JEC/lla





## ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19506, SPRINGFIELD, ILLINOIS 62794-9506 - (217) 782-2113

ROD R. BLAGOJEVICH, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

(217) 782-2113

August 23, 2005

Husch & Eppenberger, LLC  
Attn: John Collins  
190 Carondelet Plaza, Suite 600  
St. Louis, MO 63105

Re: FOIA Withdrawal Request Received 08/15/2005

Dear Mr. Collins:

The Agency hereby acknowledge the receipt of your above referenced letter and confirms the withdrawal of your FOIA request.

If you have any questions please feel free to contact the FOIA Coordinator at the number indicated above.

Sincerely,

A handwritten signature in black ink that reads "Donald E. Sutton".

Donald E. Sutton, P.E.  
Manager, Permit Section  
Division of Air Pollution Control



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

August 31, 2005

Mr. Patrick Flachs  
Husch & Eppenger, LLC  
190 Carondelet Plaza  
Suite 600  
St. Louis, Missouri 63105-3441

Via facsimile: (314) 480-1505

Re: *People v. Midwest Grain Products*  
PCB No. 97-179

Dear Pat:

I am writing in regard to Monday's conversation concerning discovery issues.

We find your amended set of interrogatories to exceed the allowable number of interrogatories. Many of the interrogatories ask for the same information, distinguished only by rephrasing of each interrogatory or placing a different emphasis on the material sought. In many cases the overlap between the requests is substantial. The requests as presented have not been drafted appropriately in a manner reasonably calculated to lead to the discovery of admissible evidence within the allowable limit. Rather, it is apparent they are meant to harass and be punitive in nature.

I understand the difficulties in limiting yourself to 30 interrogatories. But with careful drafting, you can do it. If you absolutely cannot contain your requests to 30 interrogatories, you can petition the hearing officer for leave to exceed the limit.

If we cannot get this worked out, I will petition the hearing officer for a protective order or move to strike the interrogatories. You indicated in our conversation that you would take another look at what you have submitted and attempt to narrow the interrogatories. I would ask that you provide us with a date certain as to when you will get back to us. We will not start work on preparing our specific responses until we are in receipt of your response. I would hope to hear from you by Monday, September 5.

Exhibit 4

Mr. Patrick Flachs, Esq.  
August 31, 2005  
Page 2

As you are aware, in a phone conversation on Monday, August 29, 2005, we alerted you to examples of duplicate and overlapping questions within the set of amended interrogatories you have submitted to us. Illustrative of our concern is the example that I gave you over the phone relative to interrogatory numbers 19 and number 7. Number 19 first requests all communications relative to modeling, then requests separately that the State identify all data relative to emissions testing, and then more broadly requests all "emissions data" relative to the "site". Interrogatory number 7 contains subparts to subparts that in part seek the same data as that sought in interrogatory number 19, but in greater detail.

Further, the number of interrogatories presented, when one includes subparts, just in the first 14 items exceeds 30. Numbers 7, 8, 11 and 19 alone total 23 interrogatories. Some of these include subparts to subparts. You indicated in our conversation, the subparts have been included to provide guidance as to exactly what you are looking for. I agree that to some extent the subparts may do that, however, pursuant to the Board rules, subparts are counted as an interrogatory. Beyond that Pat, I do believe language set forth within some subparts is beyond merely clarifying the nature of documents sought, and specifically requests information separate and apart from preceding subparts.

Also, in many of your interrogatories, you ask that we "describe any and all communications." I see by your definition of "describe" that you would intend that we provide information regarding the subject matter of the communication and the identity of individuals involved as well as other information. Such a request makes any of these interrogatories overly broad and burdensome. We may identify the communication, or produce it, but we are not going to describe it.

Interrogatory 7 is an excellent example of subparts that go beyond the subject matter of the original interrogatory.

Interrogatory 7 states: "With respect to the allegations contained in Paragraph 20 of the Complaint that the MGP facility is a "major stationary source," please identify all equipment, processes, operations and fugitive emissions, which alone or in combination, emitted or had the potential to emit more than 25 tons of particulate matter per year for the time period after January 1, 1989 to the present time." That question asks us to identify equipment, processes, operations and fugitive emissions for a clearly unrelated time period and equipment that is unrelated to the subject of the enforcement action alleging the construction of a "major modification". As you are aware, the State's complaint specifically alleges MGP constructed two feed dryers resulting in a major modification causing a significant net emissions increase in PM emissions in excess of 25 tons per year. A determination that any other emission source has or may cause PM emissions in excess of simply 25 tons per year is not relevant to PM emission generated during the operation

of feed dryers 561 and 661. As you may know, the applicable thresholds relative to PSD relate to a facility's major source status (ie., 100 or 250 tons per year) and whether a major modification for PM exists (ie. a significant net emission increase of 25 tons per year).

In addition, the first subpart, (a), asks for emission factors, emission tests and any calculations or formulas, relied upon in the determining the actual and potential emissions of particulate matter for each piece of equipment, each process, or each operation. This subpart goes above and beyond the request to identify the equipment, processes and operations. You have now asked for a whole separate set of information.

Then you go to a completely separate topic in the subpart to the subpart. You ask that the State describe how the shutdown of the MGP fluidized bed coal boiler in 1994 factored into IEPA's determination that MGP was a "major stationary source". Again, this goes beyond the mere identification of equipment, process, operations and fugitive emissions. You are now asking for an analysis pertinent to a specific piece of equipment. Such is a separate interrogatory.

Subpart (b) asks for all rules, regulations, policies or guidance relied upon in determining the potential to emit. Again, that goes beyond the identification of the processes, equipment and operations. Whereas in the body of the interrogatory you are asking for a list identifying that which the State considered to be emitting or having the potential to emit 25 tons of particulate matter per year, you are now asking for an additional set of information that may be related to the original question, but entails a whole additional body of information.

In Subpart (c), you ask for the names of individuals involved in not the identification of the equipment, processes and operations, but individuals involved in the determination of emissions or potential to emit for the equipment, process or operation.

In the subpart to subpart (c), you ask for all communications by any individual identified in (c) relating to the determination that the MGP facility was a major stationary source for particulate matter in 1992. How can you justify this subpart, when your original question was to identify the equipment, processes, and operations. You have gone from identifying components, to asking us to provide all communications relative to the major source determination. Also, within this one interrogatory, at this point, you have now asked the State to provide information in three different time frames. The original question cites January 1, 1989. The subpart to subpart (a) cites 1994. The subpart to subpart (c) cites 1992.

Subpart (d) asks for the maximum capacity of each piece of equipment, process or operation to emit particulate matter under its physical and operational design. Again, this goes above and beyond the original request. This is a completely different set of information.

Subpart (e) asks the State to provide any physical or operational limitations on the maximum capacity to emit particulate matter, including production limitations and air pollution control equipment, for each piece of equipment. Again, this goes beyond the original request to identify equipment, process and operations.

Subpart (f), with its two subparts, seeks two additional sets of information above and beyond what was requested in the original request. These include all information, including emission factors, tests, calculations or guidance relied upon in determining actual and potential emissions of particulate matter for each fugitive source, and the second subpart requests identification of the individuals involved.

Let's compare certain subparts of Interrogatory 7 with Interrogatory 19.

Interrogatory 19, among other things, asks the State to identify all data relating to air emission tests conducted at the MGP site and emission data associated with the MGP facility. From my reading of this interrogatory, this request for data relating to air emission tests and emission data associated with the facility is not relative to other parts of the question regarding modeling data. It appears very clear from the question that Interrogatory 19 includes a general request for the State to identify all data relating to air emission tests conducted at the facility and emission data associated with the facility.

In Interrogatory Number 7, in subparts a, a(i), b, d, e and f you are asking for data relating to air emission tests conducted at the facility and emission data associated with the facility.

Similar to Interrogatory 7, in Interrogatory 8 you have characterized your request as emphasizing information pertinent to a determination of "major modification", and again ask for the identification and description of communication and information regarding emission factors, emission tests, calculations and formulas, as well as physical or operational limitations on the maximum capacity to emit particulate matter from such "major modification". You did not even mention the topic of major modification in the original request, however it is included in each subpart. There are 4 subparts to this single interrogatory.

In Interrogatory No. 1, you are asking:

1. For the identity of the individuals answering the interrogatories.
2. For the relationship each such person has to the Complainant.
3. The duration of the relationship with the Complainant.
4. For the identify of each person who has provide information for or assisted in the preparation of answers to the interrogatories.
5. For the nature of the consultation or assistance that constitutes such

- participation.
6. Whether the individual's participation was due to personal knowledge.
  7. If the individuals' participation was not due to personal knowledge, on what basis was the individual participating in the preparation of answer.
  8. For each individual identified, the interrogatories for which each participated in the preparation of the answers.

Obviously, you are asking 8 interrogatories but identifying the request as only one.

With regard to Interrogatories No. 2 and 5, Rule 213(f) states, upon written interrogatory, a party must furnish the identities and addresses of witnesses who will testify at trial. Rule 213(g) concerns limitations on testimony and freedom to cross-examine. It is no longer directly relevant to disclosure upon interrogatory. Rule 213(f) specifies what information can be requested of each witness. For a lay witness, this includes the subject of the testimony. For independent experts, a party can request the subject matter of the testimony and any opinions that will be elicited. For controlled experts, the rule identifies the following information that can be requested: (1) subject matter of testimony, (2) conclusions and opinions, (3) qualifications of experts, (4) any reports prepared about the case.

You have asked for disclosures pertinent to witnesses in Interrogatories 2, 3, 4, 5. A good portion of these requests go beyond the information specifically identified in Rule 213(f). Interrogatories 2, 3 and 5 are duplicitous. I request that you rephrase your requests consistent with Rule 213(f).

In Interrogatory 2, subpart (b), you ask for a summary of the relevant facts within the knowledge of, or which said witnesses will testify to. The first portion of the question is not consistent to Rule 213(f), and is overly broad. I do not understand the purpose of the first portion of the question.

We request clarification as to the difference between Interrogatory 9 and 10. Is 10 meant to concern permit modifications only? I ask what is meant by "air particulate permit application modification", and "air particulate permits". As you may know, permits issued by the Illinois EPA Bureau of Air consistent with Pollution Control Board permitting requirements are in two forms, construction and operating permits. Accordingly, the terms mentioned above are indiscernible and technically inaccurate. Do you mean an application to revise an existing permit? In addition, the phrase "air particulate emission issues" contained within Interrogatory number 9 is undefined and over broad to the extent that the State is unable to respond.

With regard to Interrogatory 11, you again include subparts. I don't see that the subparts provide guidance regarding the information sought in the first request. Rather, the subparts

clearly solely ask for additional information. These are the requests included in your Interrogatory 11:

1. Itemize the penalties
2. Identify the manner or means and any assumptions used to determine penalty, including the manner in which statutory criteria, policy or guidance (these are three different items in themselves), were employed to determine penalty.
3. Describe any and all internal IEPA communications, or communications between IEPA and USEPA related to any penalty determination
4. Identify the relevant facts considered in making the penalty determination and in employing statutory criteria, policy or guidance (again, potentially three analysis).
5. Identify and explain the manner or method employed in attributing any economic benefit accruing

Items 2 through 5 are clearly requests for information above and beyond the information sought in the first request.

Interrogatory Number 14 constitutes two requests. One is for the identification of all communications regarding IEPA's consideration of economic and technological feasibility. The second is a request for, I believe, IEPA's determination of technological feasibility and economically reasonable technology for MGP. With regard to BACT, you properly framed identical requests separately (Interrogatories 12 and 13). In Interrogatory 14, you asked for the identity of all communications and the determination as one interrogatory.

In Interrogatory 16, you ask for the identification of communications regarding IEPA's use of "top down" analysis for BACT. Even though more specific, this request mirrors information requested by Interrogatory 12.

In Interrogatory Number 7, you ask for specific information relevant to the fluidized bed combustion boiler. In Interrogatory 18, you are asking for three sets of information relevant to the fluidized bed combustion boiler: describe any and all communication regarding the (1) permitting, (2) operation, and (3) shutdown of the fluidized bed combustion boiler. There is overlap between Interrogatories 7 and 18 and you are making three separate requests pertinent to the fluidized bed combustion boiler in Interrogatory 18. Then, within the same single interrogatory, Interrogatory 18, you ask that we describe any and all communications regarding the (1) permitting, (2) operation, and (3) shutdown of any dryers at the MGP facility from January 1, 1987 to present. There are at least two other dryers, and a Swiss Combi has been installed. How many other dryers are there at MGP? The scope of this question goes way beyond a single interrogatory, and specifies a time period that is not relevant.

In Interrogatory 19, you present four very broad, general requests: (1) describe any and all communications regarding particulate air emission modeling related to the MGP facility, (2) the identify of all data relating to air emission tests conducted at MGP, (3) the identity of emission data associate with MGP, (4) and/or the identity of air particulate modeling related to the MGP facility. How do item (1) and (4) differ? In (1) are you asking for communications, and in the second you are asking us to identify all air particulate modeling? There are 4 interrogatories contained in what has been labeled a single interrogatory. This request is duplicitous, vague, overly broad and general.

With regard to Interrogatory 20, we have asked that you define and cite to the regulation or case law that will provide context for the term "look back" period. Absent information mentioned above, the interrogatory lacks sufficient specificity to enable the State to respond

I will reiterate my request that you clarify your use of the term "exemptions" in Interrogatory 21. We need a context for the use of the term "exemption" other than the broad reference to the Clean Air Act and the Illinois Environmental Protection Act. Which exemptions do you believe are applicable? Which exemption do you feel the IEPA should have considered? We will address that. We are not going to address every exemption provided for in the Clean Air Act and the Illinois Environmental Protect Act that might be applicable to MGP's plant, whether relevant or not.

Is not the information sought in Interrogatory 22 included within the requests that constitute Interrogatories 9 and 10? In Interrogatory 22, you are asking for any and all communications relating to PSD permitting for the facility, which clearly is covered in Interrogatories 9 and 10. Then you go on to specify that the response should include air emission evaluations and effects on attainment and/or nonattainment classification of the vicinity surrounding the site. So, in this interrogatory, you want all information relevant to PSD permitting, and specifically you want (1) air emission evaluations and (2) effects on attainment and/or nonattainment classification. This is an extremely broad request, and it is duplicative of other requests.

In our phone conversation Monday, we discussed Interrogatory 24. This interrogatory asks for IEPA's analysis of the "monetary losses" suffered by MGP as applied to three different analysis: (1) the penalty demand extended in settlement discussions, which is now irrelevant; (2) BACT determination, (3) determination of economic reasonableness. We reiterate our request for clarification of the term "monetary loss" and now, further point out, that this one interrogatory actually constitutes three.



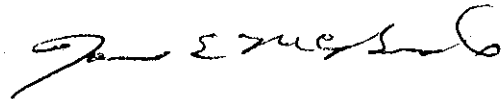
Mr. Patrick Flachs, Esq.  
August 31, 2005  
Page 8

Interrogatory 26 asks that we identify and describe IEPA's analysis of MGP's good faith efforts to control particulate matter emissions. You have not defined what you consider MGP's good faith efforts, and request that the State make a legal determination relative to what constitutes good faith. This interrogatory is over broad, it is vague and it is ambiguous. You next ask that we identify and describe IEPA's analysis of MGP's attempt to hold the dryer manufacturer's supplier accountable. There are two interrogatories posed here, not one.

Interrogatory No. 28 asks that we identify and describe IEPA's analysis of (1) the severity of the particulate matter emissions, (2) plant location, (3) economic loss due to unemployment, (4) economic impact of a shut down of the MGP facility. This interrogatory is duplicative of other requests, and actually sets forth four requests rather than one.

We look forward to your response on or before Monday, September 5, 2005.

Sincerely,

A handwritten signature in black ink, appearing to read "Jane E. McBride", with a stylized flourish at the end.

Jane E. McBride  
Assistant Attorney General  
(217) 782-9033

cc: Dennis Brown, Esq., IEPA

September 1, 2005

Jane McBride  
Assistant Attorney General  
Office of the Attorney General  
500 South Second St.  
Springfield, IL 62706

Re: *People v. MGP Ingredients of Illinois, Inc.* PCB No. 97-179

Dear Ms. McBride:

I am, to put it mildly, shocked by your eight page letter putatively addressing "discovery issues".

Attached is the letter we originally planned to send you today in response to our Monday conversation. Take it for what you will. It was designed as a serious attempt to respond to your specific questions and resolve true discovery issues.

Quite obviously, we will not be responding to your eight page, mostly single-spaced paternalistic, "demand" letter sent within two working days of the "deadline" you gave us; a "deadline", coincidentally, preceding a Holiday Weekend. We certainly will not respond on the Labor Day Holiday you set out (September 5, 2005) as that "deadline".

It, therefore, appears that you will have no alternative but to make good on your threat to petition the Hearing Officer for a Protective Order or move to Strike the Interrogatories. Conversely, you leave us no alternative but to consider following a similar course of action. By my quick calculations, your Interrogatories and Request for Production follow a similar pattern to ours and consist of 44 total Interrogatories, counting sub-parts (compared to our 53).

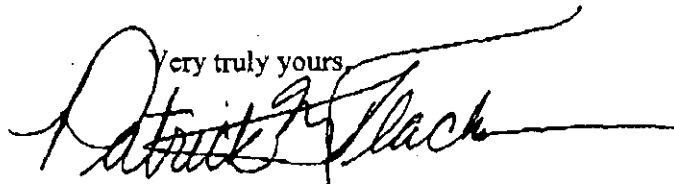
Rather than engage in such counterproductive conduct, we have exhorted our client - who has been spending overtime and weekend hours - to attempt to comply with your 44 requests. I dare say, if you and your client had spent your time and effort

# Husch & Eppenberger, LLC

Jane McBride  
Assistant Attorney General  
August 31, 2005  
Page: 2

similarly, we might be prepared to discuss actual, meaningful discovery issues with the Hearing Officer next Wednesday. That was, is and shall remain our focus.

One final note, you leave us no alternative but to withdraw our agreement to suspend our pending "FOIA" Request to the Illinois Environmental Protection Agency. Unfortunately, you apparently misinformed your client that our agreed suspension of our FOIA Request was a withdrawal. Not so. We will however, resend that request and expect compliance within the statutory time period, minus our agreed upon "suspended" time.

Very truly yours,  
  
Patrick M. Flachs

**Husch &  
Eppenger, LLC**  
*Attorneys and Counselors at Law*

314.480.1524 direct dial  
Patrick.Flachs@Husch.com

100 Carondelet Plaza, Suite 600  
St. Louis, Missouri 63105-3441  
314.480.1500  
Fax 314.480.1505  
www.husch.com

September 1, 2005

Jane McBride  
Assistant Attorney General  
Office of the Attorney General  
500 South Second St.  
Springfield, IL 62706

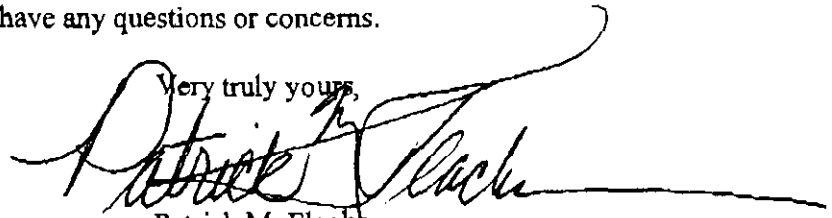
Re: *People v. MGP Ingredients of Illinois, Inc.* PCB No. 97-179

Dear Ms. McBride:

Thank you for the opportunity to discuss with you the various discovery issues during our teleconference on August 30. It is unfortunate that the conference could not have been more productive than it seemed to be. We remain, however, open to any suggestions you have regarding the "narrowing" of the various matters we discussed.

We have one item of particular concern which was your assertion that our requests, as crafted, exceeded the mandated number of interrogatories. We have revisited the rules and suggest that the sub-part issue accounts as "separate" requests is not as clear as you made it seem. Again, our purpose for those sub-parts was to clarify, not expand, the requested information. I think that even the casual observer will see that this was both the purpose and effect of our sub-parts.

We did agree during our conversation that we would address your concerns about interrogatory numbers 20 and 24. Regarding interrogatory 20 and the "look back" period, please see 40 CFR § 52.21(b)(48)(ii). Also see, *New York v. US EPA*, 413 F3d 3 (D.C. Cir. 2005). We are analyzing interrogatory 24 and will provide you with a response prior to the scheduled teleconference with the Hearing Officer on September 7, 2005. Please contact me if you have any questions or concerns.

Very truly yours,  
  
Patrick M. Flachs

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

TAZEWELL COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	PCB No. 97-179
	)	
v.	)	
	)	
MIDWEST GRAIN PRODUCTS OF	)	
ILLINOIS, INC., an Illinois corporation,	)	
	)	
Respondent.	)	

**COMPLAINANT'S FIRST SET OF INTERROGATORIES TO  
RESPONDENT MIDWEST GRAIN PRODUCTS OF ILLINOIS, INC.**

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, ex rel. Lisa Madigan, Attorney General of the State of Illinois, and propounds the following interrogatories on Respondent, MIDWEST GRAIN PRODUCTS OF ILLINOIS, INC. ("Respondent"), to be answered in accordance with the Illinois Code of Civil Procedure and the Illinois Supreme Court Rules on Civil Proceedings in the Trial Court, and the following instructions and definitions, within 28 days of the date of service hereof.

**INSTRUCTIONS**

- (a) With respect to each Interrogatory, in addition to supplying the information requested and identifying the specific documents referred to, please identify all documents or other evidence to which you referred in preparing your answer thereto.
- (b) If any document identified in an answer to an Interrogatory was, but is no longer, in your possession or subject to your custody or control, or was known to you, but is no longer in existence, please state what disposition was made of it or what became of it.
- (c) If any document or statement is withheld from production hereunder on the basis of a claim of privilege or otherwise, please identify each such document and the grounds upon which its production is being withheld.

(d) You are reminded of your duty under Illinois Supreme Court Rule 213(l) to seasonably supplement or amend any answers or responses to these Interrogatories whenever new or additional information becomes known to you subsequent to your answer or response.

(e) You are further reminded of your duty under Illinois Supreme Court Rule 213(d) to serve a sworn answer or an objection to each Interrogatory.

(f) If you are unable or refuse to answer any Interrogatory completely for any reason including, but not limited to, because of a claim of privilege, please so state, answer the Interrogatory to the extent possible, stating whatever knowledge or information you have concerning the portion of the Interrogatory which you do answer, and set forth the reason for your inability to answer more fully.

#### **DEFINITIONS**

As used in these Interrogatories, the terms listed below are defined as follows:

(a) "Document" or "documents" means any of the following of which you have knowledge or which are now or were formerly in your actual or constructive possession, custody or control: any writing of any kind, including originals and all nonidentical copies (whether different from the originals by reason of any notation made on such copies or otherwise), including without limitation maps, drawings, sketches, blueprints, aerial photographs, log books, lab reports, chain-of-custody forms, weather forecasts, correspondence, memoranda, notes, desk calendars, diaries, statistics, checks, invoices, statements, receipts, returns, warranties, guarantees, summaries, pamphlets, books, prospectuses, interoffice and intraoffice communications, offers, notations of any sort of conversations, telephone calls, meetings or other communications, bulletins, magazines, publications, printed matter, photographs, computer printouts, teletypes, telefax, invoices, worksheets and all drafts, alterations, modifications, changes and amendments to any of the foregoing; any spreadsheets, database,

correspondence, e-mail messages, or other information of any kind contained in any computer or other electronic information storage system; and any audiotapes, videotapes, tape recordings, transcripts, or graphic or oral records or representations of any kind.

(b) "Possession, custody or control" includes the joint or several possession, custody or control not only by the person to whom these Interrogatories are addressed, but also the joint or several possession, custody or control by each or any other person acting or purporting to act on behalf of the person, whether as employee, contractor, attorney, accountant, agent, sponsor, spokesman, or otherwise.

(c) "Relates to" means supports, evidences, describes, mentions, refers to, contradicts or comprises.

(d) "Person" means any natural person, firm, corporation, partnership, proprietorship, joint venture, organization, group of natural persons, or other association separately identifiable whether or not such association has a separate juristic existence in its own right.

(e) "Identify", "identity" and "identification," when used to refer to any entity other than a natural person, mean to state its full name, the present or last known address of its principal office or place of doing business, and the type of entity (e.g., corporation, partnership, unincorporated association).

(f) "Identify", "identity", and "identification", when used to refer to a natural person, mean to state the following:

1. The person's full name and present or last known home address, home telephone number, business address and business telephone number;

2. The person's present title and employer or other business affirmation;

and

3. The person's employer and title at the time of the actions at which each Interrogatory is directed.

(g) "Identify," "identity" and "identification," when used to refer to a document, mean to state the following:

1. The subject of the document;
2. The title of the document;
3. The type of document (e.g., letter, memorandum, telegram, chart);
4. The date of the document or, if the specific date thereof is unknown, the month and year or other best approximation of such date;
5. The identity of the person or persons who wrote, contributed to, prepared or originated such document; and
6. The present or last known location and custodian of the document.

(h) "You", "Respondent Midwest Grain", or "Midwest Grain" means Respondent Midwest Grains Products of Illinois, Inc., including, but not limited to, any employees, attorneys, independent contractors, or other agents of any kind of Respondent Midwest Grain or any agency, branch, division, or other department thereof.

(i) "Complaint" means Complainant's Complaint filed on April 7, 1997.

(j) "Swiss-Combi systems" refers to the Swiss-Combi currently in operation at the Midwest facility, and the new Swiss-Combi to be constructed.

(k) "Feed dryer systems 651 and 661" are the feed dryers installed at Respondent Midwest Grain's facility under Illinois EPA Construction Permits #93020061 and #93080045.

### **INTERROGATORIES**

1. Please indicate the source of financing for and methods and procedures utilized



to procure services and equipment relative to the purchase, installation and/or modification of feed dryer systems 651 and 661, including cyclones and scrubbers utilized to control particulate matter ("PM"), and the Swiss Combi systems.

ANSWER

2. Please indicate the date(s) upon which construction of feed dryer system 651 and feed dryer system 661 commenced.

ANSWER

3. Identify each representative, agent, or employee of Respondent Midwest Grain and anyone outside of the control of Respondent Midwest Grain, having knowledge or information relating to the purchase, construction, operation, maintenance, or modification of feed dryer system 651 and 661, including cyclones and scrubbers, and Swiss-Combi systems Midwest Grain has or will construct.

ANSWER

4. Please provide all costs entailed in the purchase, installation, modification, maintenance and operation of the feed dryer systems 651 and 661, and the Swiss Combi systems, as well as the dates upon which each such cost was incurred and the date upon which it was paid, or the installment schedule upon which it was paid..

ANSWER

5. Please provide all information known to the Respondent and/or in the Respondent's possession and control regarding all emissions generated during the operation of

feed dryers 651 and 661 and the Swiss-Combi system currently in operation at Midwest Grain.

ANSWER

6. Please provide all information known to the Respondent and/or in its possession and control regarding, relating to or relevant to the actual and estimated emissions resulting from fluidized bed boiler operations during the period 1992 through 1994; and from operations of the three gas broilers and gluten dryer referenced in item 4 on the first page of a letter dated November 6, 1995 addressed to Richard Jennings of the Illinois EPA and authored by David Sanborn of Midwest Grain.

ANSWER

7. Please provide the actual date upon which Respondent ceased operations of the fluidized bed boiler.

ANSWER

8. Please provide all information known to the Respondent and/or in its possession and control regarding the actual PM emissions generated during the operation of feed dryer 651 and 661 during the period 1994 through the present

ANSWER

9. Please provide all information known to the Respondent and/or in its possession and control regarding the date(s) of operation of the feed dryer systems 651 and 661 and the Swiss-Combi system already in operation at Midwest Grain, beginning 1994 through the present.

ANSWER

10. Please provide all information known to the Respondent and/or in its possession and control regarding any consideration given to or any analysis or evaluation of wet electrostatic precipitator(s) or regenerative thermal oxidizer(s) to control PM emissions generated by feed dryer systems 651 and 661 including, but not limited to, best available control technology ("BACT") analysis and modeling data consistent with federal Prevention of Significant Deterioration ("PSD") program requirements, actual and/or estimated PM emissions data and calculations, and draft and/or final construction and operating permit applications.

ANSWER

11. Please provide all information known to the Respondent and/or in its possession and control regarding the construction and operation of feed dryer systems 651 and 661 and the Swiss-Combi systems, including emissions testing of said equipment; the construction and operation of air pollution control equipment to control PM emissions generated during operation of feed dryer systems 651 and 661; and modeling prescribed by federal Prevention of Significant Deterioration ("PSD") requirements.

ANSWER

12. Please provide all information known to the Respondent and/or in its possession and control regarding all factual issues pertinent to Complainant's allegation that Respondent constructed feed dryer systems 651 and 661 causing a significant net emission increase in PM in excess of 25 tons per year resulting in a major modification as defined by federal PSD requirements without first applying for and obtaining a construction permit granting PSD

approval to construct feed dryer systems 651 and 661, conducting a pre-construction review, and implementing best available control technology ("BACT").

ANSWER

13. Please provide all information known to the Respondent and/or in its possession and control regarding all factual issues pertinent to Complainant's allegation that Respondent caused or allowed the emission of PM generated during the operation of feed dryers 651 and 661 in excess of 1.1 pounds per hour and 3.2 pounds per hour limits set forth within construction permit numbers 93020061 and 93080045, respectively, beginning 1994 through the present.

ANSWER

14. Pursuant to Illinois Supreme Court Rule 213(f), please provide the name, address and phone number of each fact witness who will testify at trial and describe in detail the subject of each witness's testimony. With regard to each witness, please provide the following information:

- a. His or her full name, place of employment, job title, current address and telephone number

ANSWER

- b. A detailed statement regarding the subject matter on which each witness is expected to testify.

ANSWER

- c. State the dates on which you met or consulted with the witness.

ANSWER

- d. Describe in detail the substance of all facts, assumptions, opinions, and conclusions about which the witness is expected to testify.

ANSWER

- e. Identify each document which support the substance of the facts or opinions about which the witness is expected to testify.

ANSWER

- f. Identify the information and documents provided to the witness for use in this matter.

ANSWER

- g. Identify each document the witness has prepared and which summarizes the facts or opinions about which the witness is expected to testify and provide all reports of the witness.

ANSWER

15. Please identify documentation and/or written material of any kind known to the Respondent and/or in the possession and control of the Respondent, generated by or relied upon by witnesses identified in response to Complainant's interrogatory 14 submitted pursuant to Supreme Court Rule 213(f) pertinent to the subject matter of the witness' testimony

ANSWER

16. Identify each and every opinion witness or expert opinion witness with whom the Respondent has communicated or consulted or whom Respondent expects to testify at hearing in this matter. Pursuant to Illinois Supreme Court Rule 213(f), please provide the name, job title, address and phone number of each opinion witness who will offer any testimony and state:

- a. describe in detail the anticipated subject matter of the opinion witness's testimony;

ANSWER

- b. describe in detail the conclusions and opinions of the opinion witness and the basis for such conclusions and opinions;

ANSWER

- c. describe in detail the substance of all facts and assumptions that serve as the basis of, or taken into account in, the witness' conclusions and/or opinions.

ANSWER

- d. describe in detail the qualifications of each opinion witness to provide the anticipated testimony;

ANSWER

- e. identify all documents and other things that provide the basis for the person's opinions, or on which the person relied in developing his or her opinions;

ANSWER

- f. identify each document the expert has prepared and which states in full or summarizes the facts or opinions about which the witness is expected to testify and provide all reports of the expert.

ANSWER

- g. identify any and all occasions on which the person has given opinion testimony in a deposition, trial, arbitration, mediation, or other evidentiary proceeding;

ANSWER

- h. identify all occasions on which the Respondent has retained the person in the past,

ANSWER

- i. identify all documents that constitute, contain, report, or otherwise relate to the person's opinions.

ANSWER

- j. identify the information and documents that were provided to the expert for use in this matter.

ANSWER

- 17. Identify all documents including, but not limited to, treatises, articles, publications

or journals containing the opinions or conclusions of any expert witness expected to be utilized by the Respondent at hearing, or otherwise disclosed, relative to the calculation of civil penalties, illegal profits, or economic benefit derived from non-compliance with federal or state laws and regulations.

ANSWER

18. Identify all documents utilized or relied upon in responding to Complainant's first set of interrogatories.

ANSWER

19. Please provide all information known to the Respondent and/or in its possession and control regarding applicable business/financial standards employed within your industry and utilized by the Respondent at the time of the selection of dryer systems 651 and 661 for installation at Midwest Grain in its evaluation and analysis of the reasonableness of the vendor selection and the reasonableness of and justification for the technology selection.

ANSWER

20. Please provide all information known to the Respondent and/or in its possession and control regarding any and all analyses or evaluations conducted by the Respondent at the time of the selection of dryer systems 651 and 661 for installation at Midwest Grain regarding the reasonableness of the selection of the vendor who supplied dryer systems 651 and 661 and the reasonableness of and justification for the selection of the technology represented by dryer systems 651 and 661.

ANSWER