

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY)	
)	
Complainant,)	
)	
v.	)	AC 2012-051
	)	(IEPA No. 87-12-AC)
NORTHERN ILLINOIS	)	(Administrative Citation)
SERVICE COMPANY,)	
)	
Respondent.)	

MOTION TO COMPEL

NOW COMES the Complainant, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), by and through its counsel, Special Assistant Attorney General Scott B. Sievers, and, pursuant to 35 Ill. Adm. Code 101.500, 101.614, 101.616, 101.620, moves this honorable Board to compel the Respondent, Northern Illinois Service Company ("Northern"), to comply with the Complainant's written discovery requests. In support, the Complainant states the following:

1. Northern served requests to produce upon Illinois EPA in August 2012. (Ex. A.)
2. Following a change in counsel, Illinois EPA responded to Northern's requests to produce on November 15, 2012 by producing 162 pages of responsive records. (Ex. B at 2.)
3. On December 18, 2012, Illinois EPA served interrogatories and requests to produce upon Northern. (Ex. C.)
4. On January 10, 2013, Illinois EPA supplemented its prior response to Northern's requests to produce with an additional 27 pages of responsive records, for a total production of 189 pages of responsive records provided in both hardcopy and electronic formats. (Ex. B.).
5. On January 15, 2013, counsel for Northern left a voicemail for the undersigned stating

that he did not want to answer Illinois EPA's discovery while Illinois EPA's Motion for Leave to File an Amended Administrative Citation remained pending. (Ex. D.) That motion sought to amend in light of the fact that Northern previously was adjudicated as having violated the Environmental Protection Act, yet that fact apparently had been overlooked in drafting the penalty provisions in the original administrative citation. (*Id.*) Because the outcome of the motion likely would have no bearing upon the substance of this action, Illinois EPA wrote Northern on January 18, 2013 pursuant to Illinois Supreme Court Rule 201(k) that it disagreed with Northern's request to stay compliance with Illinois EPA's discovery requests pending the outcome of the motion. (*Id.*) Illinois EPA requested Northern's discovery responses by February 1, 2013. (*Id.*)

6. On March 21, 2013, the Illinois Pollution Control Board denied Illinois EPA's motion for leave as unnecessary.

7. On April 1, 2013, counsel for Northern responded to Illinois EPA's interrogatories and requests to produce. (Ex. E.)

8. On April 23, 2013, counsel for Illinois EPA wrote a second Rule 201(k) letter to Northern's counsel. (Ex. F.) In the eight-page, single-spaced letter, the undersigned detailed how Northern's discovery responses were deeply flawed and called for Northern to remedy the deficiencies and provide full and complete discovery responses by May 2, 2013. (*Id.*) Northern's counsel requested additional time to respond, and the undersigned agreed to an extension to May 6, 2013.

9. On May 6, 2013, counsel for Northern responded to Illinois EPA's second 201(k) letter. (Ex. G.) Northern's counsel disagreed with Illinois EPA's position, but did so without citation to legal authority. (*Id.*) Northern's counsel attached what he characterized as draft

supplemental interrogatory answers and draft supplemental responses. (*Id.*) The draft responses were unsigned and unverified.

10. On May 22, 2013, counsel for Illinois EPA and counsel for Northern conferred by telephone concerning Northern's disputed responses to Illinois EPA's discovery requests. Counsel for Northern agreed to reconsider some of Northern's disputed responses but not all of them. Counsel for Northern stated that he would provide counsel for Illinois EPA with revised discovery responses by May 28 or 29.

11. When Illinois EPA had yet to receive Northern's revised discovery responses by June 4, 2013, counsel for Illinois EPA contacted counsel for Northern inquired upon their status. (Ex. H.) Northern's counsel responded the next morning that he thought he would e-mail them, with signed and attested versions to be mailed in a few days when he received them from his client. (*Id.*)

12. On June 6, 2013, counsel for Northern e-mailed revised interrogatory and request to produce responses to counsel for Illinois EPA and stating, "I will get the signed documents to you within a week. Thank you." (Ex. I.)

13. Counsel for Northern did not serve its signed and sworn revised discovery responses until two weeks later, on June 20, 2013. (Ex. J.)

14. With its revised discovery responses, Northern continues asserting improper objections and refusing and failing to fully and completely comply with Illinois EPA's discovery requests.

15. As Illinois EPA has produced 189 pages of documents responsive to Northern's discovery requests while Northern has failed to fully comply with Illinois EPA's discovery requests, Illinois EPA moves this honorable Board to overrule Northern's objections and compel

Northern to fully and completely answer Illinois EPA's interrogatories and respond to Illinois EPA's requests to produce as further addressed in the attached memorandum of law that is incorporated here.

16. Counsel responsible for trial of this case after personal consultation and reasonable attempts to resolve differences have been unable to reach an accord.

17. A proposed Order is enclosed.

WHEREFORE, the Complainant, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, moves this honorable Board to FIND that the Respondent's objections and refusal and failure to fully respond to the aforementioned discovery requests lacked substantial justification; to OVERRULE the Respondent's objections to the discovery requests; and to COMPEL the Respondent to fully and completely answer the Complainant's interrogatories and respond to the Complainant's production requests.

Dated: July 23, 2013

Scott B. Sievers
Attorney Registration No. 6275924
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Respondent,

BY:



Scott B. Sievers
Special Assistant Attorney General

Illinois Environmental Protection Agency v. Northern Illinois Service Company
Pollution Control Board No. AC 2012-051

CERTIFICATE OF SERVICE

Scott B. Sievers, Special Assistant Attorney General, herein certifies that he has served a copy of the foregoing **MOTION TO COMPEL** upon:

John Therriault
Assistant Clerk
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601-3218

Peter DeBruyne
Peter DeBruyne, P.C.
838 North Main Street
Rockford, IL 61103

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601-3218

by mailing true copies thereof to the addresses referred to above in envelopes duly addressed bearing proper first class postage and deposited in the United States mail at Springfield, Illinois, on July 23, 2013.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Dated: July 23, 2013

Scott B. Sievers
Attorney Registration No. 6275924
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

Respondent,

BY:



Scott B. Sievers
Special Assistant Attorney General

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

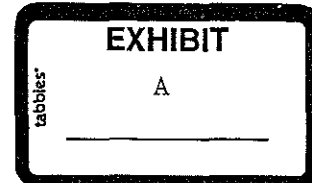
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,) AC 12-51
)
Complainant,) (IEPA No. 87-12-AC)
) Administrative Citation
v.)
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NORTHERN ILLINOIS)
SERVICE COMPANY,)
)
Respondent.)

**RESPONDENT NORTHERN ILLINOIS SERVICE COMPANY'S FIRST
REQUEST FOR PRODUCTION OF DOCUMENTS FROM COMPLAINANT
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**

Respondent NORTHERN ILLINOIS SERVICE COMPANY ("NISC") requests that Complainant produce the following documents within twenty-five (25) days.

DEFINITIONS

1. "Complainant" refers to the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("EPA") and its agents, assigns, employees, attorneys and all other persons acting or purporting to act on its behalf.
2. "Respondent" refers to NISC and its agents, assigns, employees, attorneys and all other persons acting or purporting to act on its behalf.
3. "Document(s)" shall mean or refer to all written or graphic matter of every kind or description, however produced or reproduced, whether draft or final, original or reproduction, and all tangible things specifically including, but not limited to: writings, drawings, graphs, charts, photographs, phone records, data compilation (from which information can be obtained, translated, if necessary, through devices into reasonably usable form), letters, correspondence, e-mail, internal e-mail, memoranda, minutes, notes, contracts, agreements, memoranda of conversations, microfilm, desk calendars, periodicals, bulletins, circulars, notices, rules, regulations, prospectii, directions, teletype messages, inter-office communications, reports, business worksheets, computer tapes, disks and/or similar electro-magnetic data recording devices, tape recordings (both audio and video), credit files, evidences of indebtedness, negotiable instruments, or materials similar to any of the foregoing, however denominated, which are in the possession,



custody or control of the party upon whom the interrogatory is served or to which said party can obtain access.

4. "Communication(s)" shall mean or refer to all inquiries, discussions, conversations, negotiations, agreements, understandings, meetings, telephone conversations, letters, e-mail, notes, telegrams, advertisements or other form of verbal exchange, whether oral or written.

5. "Relate to," including its various forms such as "relating to" shall mean: consist of, refer to, reflect or be in any way logically or factually connected with the matter discussed.

6. With respect to the production of any documents which are claimed to be privileged, a statement shall be provided by the attorney for defendant, setting forth as to each document:

- a. the name of the sender, if any, of the document;
- b. the name of the author of the document;
- c. the name of the person, if any, to whom copies are/were sent;
- d. the date of the document;
- e. the date on which the document was received by those having possession, custody or control of the document;
- f. a brief description of the nature and the subject matter of the document; and
- g. the statute, rule or decision which is claimed to give rise to the privilege.

7. "Person" means or refers to any individual, corporation, partnership, association, organization and any and all other entities of all types and natures.

8. The period of time encompassed by this request shall be from September 1, 2009 through the present, unless otherwise specified.

9. "You" or "Your" means or refers to Complainant.

10. "Describe (ing)", when used with respect to an agreement or event, means to identify all documents relating to or referring thereto; to identify all persons present or having knowledge thereof, stating the subject matter of their knowledge and the manner in which such knowledge was acquired (e.g., "John Doe; knows terms of oral agreement; present at meeting, party to conversation, etc.") and to state what acts were done by each person who in any way participated in an agreement or was present at any event being described.

11. "Identify (ing, ied)", when used with respect to a communication means to state the name and present address of each person present at the communication and to state the subject matter of the communication. If the communication was in writing, identify all documents that relate to the communication in the manner provided above.

12. "Identify (ing, ied)", when used with respect to an individual, means to state the person's full name, race, present business affiliation and position, if known, and the present home address, past position and business affiliation, if any, with any of the parties herein.

13. "Identify (ing, ied)", when used with respect to a document, means to state the date, author, addressee, recipient, document type (e.g. "letter, contract, minutes, memoranda, etc.") and to identify its last known custodian and location.

14. "Expert witness" shall have the same meaning as in Rule 26 of the Federal Rules of Civil Procedure, and shall include, but not be limited to a party, an employee of a party, former employees or an independent contractor.

DOCUMENTS REQUESTED

1. All documents relating to paragraph two of the allegation of "FACTS" in the Administrative Citation.

2. All documents relating to paragraphs (1)-(3) of "VIOLATIONS" of the Administrative Citation.

3. All documents consisting of or relating to communications between, on the one hand, Donna Shehane, and, on the other hand, other employees of the Complainant and Respondent, which communications relate to the allegations of facts or violations contained in the Administrative Citation.

4. All documents consisting of or relating to the education and/or training of Donna Shehane regarding her position as a field inspector for the Land Pollution Control Division of the Complainant.

5. The original photographs, copies of which are attached as Exhibits to Donna Shehane's Affidavit attached to the Administrative Citation.

6. All documents consisting of or relating to the alleged inspection of Respondent's facility occurring on December 7, 2011.

7. All documents consisting of or relating to the inspection of Respondent's facility allegedly occurring on September 15, 2009.

8. All documents consisting of or relating to inspections conducted by Donna Shehane between March 14, 2010 and March 14, 2012 in which she cited a violation of 415 ILCS 55(k)(1) or other Sections of the Illinois Environmental Protection Act related

to used or waste tires.

NORTHERN ILLINOIS SERVICE
COMPANY, Respondent

BY: PETER DeBRUYNE, P.C.


BY: 
Peter DeBruyne, Its Attorney

Peter DeBruyne
Peter DeBruyne, P.C.
838 North Main Street
Rockford, IL 61103
Telephone (815) 964-3810
Fax (815) 964-3813
Email: pdebruyne@sbcglobal.net

CERTIFICATE OF SERVICE

I hereby certify that I did on the 6th day August, 2012, by regular mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the foregoing Respondent Northern Illinois Service Company's First Request for Production of Document from Complainant Illinois Environmental Protection Agency on the following:

Michelle M. Ryan
Special Assistant Attorney General
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276



Peter DeBruyne

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY)	
)	
Complainant,)	
)	
v.	)	AC 12-51
	)	(IEPA No. 87-12-AC)
NORTHERN ILLINOIS	)	(Administrative Citation)
SERVICE COMPANY,)	
)	
Respondent.)	

COMPLAINANT'S RESPONSE TO RESPONDENT'S REQUEST FOR PRODUCTION

NOW COMES the Complainant, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, by and through its counsel, Special Assistant Attorney General Scott B. Sievers, and for its response to Respondent Northern Illinois Service Company's First Request for Production of Documents from Complainant Illinois Environmental Protection Agency ("Respondent's Request to Produce" or "Request to Produce") states the following:

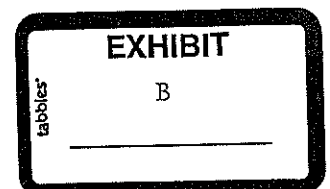
OBJECTION TO DEFINITION

The Complainant objects to Definition No. 6 of the Respondent's Request to Produce as unduly burdensome and improper, as no grounds exist under the rules of the Pollution Control Board, the Supreme Court of Illinois, or under the Illinois Code of Civil Procedure for such interrogatory answers to be provided in response to requests to produce.

DOCUMENTS REQUESTED

1. All documents relating to paragraph two of the allegations of "FACTS" in the Administrative Citation.

RESPONSE: The Complainant objects to Request to Produce No. 1 as vague and overly



broad. Notwithstanding said objection, copies of documents responsive to this request (1) were produced to the Respondent by e-mail and DVD on November 15, 2012 and Bates-stamped pages 003 to 162 and (2) are enclosed and Bates-stamped page numbers 182 to 189.

2. All documents relating to paragraphs (1)-(3) of "VIOLATIONS" of the Administrative Citation.

RESPONSE: The Complainant objects to Request to Produce No. 2 as vague and overly broad. Notwithstanding said objection, copies of documents responsive to this request (1) were produced to the Respondent by e-mail and DVD on November 15, 2012 and Bates-stamped pages 001 to 162 and (2) are enclosed and Bates-stamped page numbers 181 to 189.

3. All documents consisting of or relating to communications between, on the one hand, Donna Shehane, and, on the other hand, other employees of the Complainant and Respondent, which communications relate to the allegations of facts or violations contained in the Administrative Citation.

RESPONSE: The Complainant objects to Request to Produce No. 3 as confusing and vague. Notwithstanding said objections, copies of documents responsive to this request were produced to the Respondent by e-mail and DVD on November 15, 2012 and Bates-stamped pages 003 to 011, 126 to 127, and 137 to 145.

4. All documents consisting of or relating to the education and/or training of Donna Shehane regarding her position as a field inspector for the Land Pollution Control Division of the Complainant.

RESPONSE: The Complainant objects to Request to Produce No. 4 as vague. Notwithstanding said objection, copies of documents responsive to this request are enclosed and Bates-stamped page numbers 163 to 180.

5. The original photographs, copies of which are attached as Exhibits to Donna Shehane's Affidavit attached to the Administrative Citation.

RESPONSE: All photographs were taken using a digital camera, so the original photographs are digital files. Copies of those digital files were sent by e-mail and on DVD to counsel for the Respondent on November 15, 2012. Said files were sent both as JPEG files in a ZIP file and as PDF files in which they were Bates-stamped pages 137-162.

6. All documents consisting of or relating to the alleged inspection of Respondent's facility occurring on December 7, 2011.

RESPONSE: The Claimant objects to Request to Produce No. 6 as confusing, as the Claimant does not know how documents could "consist of" an inspection. The Claimant further objects to Request to Produce No. 6 as overly broad for use of the phrase "relating to." Notwithstanding said objections, copies of documents responsive to this request were produced to the Respondent by e-mail and DVD on November 15, 2012 and Bates-stamped pages 015 to 024 and 146 to 156.

7. All documents consisting of or relating to the inspection of Respondent's facility allegedly occurring on September 15, 2009.

RESPONSE: The Claimant objects to Request to Produce No. 7 as confusing, as the Claimant does not know how documents could "consist of" an inspection. The Claimant further objects to Request to Produce No. 7 as overly broad for use of the phrase "relating to." Notwithstanding said objections, copies of documents responsive to this request were produced to the Respondent by e-mail and DVD on November 15, 2012 and Bates-stamped pages 032 to 085.

8. All documents consisting of or relating to inspections conducted by Donna Shehane between March 14, 2010 and March 14, 2012 in which she cited a violation of 415 *ILCS* 55(k)(1) or other Sections of the Illinois Environmental Protection Act related to used or waste tires.

RESPONSE: The Complainant objects to Request to Produce No. 8 as confusing, as the Claimant does not know how documents could "consist of" an inspection. Notwithstanding said objection, copies of documents responsive to this request that concerned the March 14, 2012 inspection that is the subject of the instant action were produced to the Respondent by e-mail and DVD on November 15, 2012 and Bates-stamped pages 003 to 011, 126 to 127, 134 to 145, and 187 to 189.

The Complainant objects to Request to Produce No. 8 as irrelevant to the extent that it seeks documents other than those concerning the March 14, 2012 inspection of the Respondent's facility conducted by Donna Shehane that is the subject of the instant action. The Respondent has not plead disparate treatment, equal protection, selective prosecution, or any affirmative defense

or theory recognized by the Pollution Control Board under which the requested documents would be reasonably calculated to lead to, or would themselves constitute, evidence having the tendency to make the existence of any fact that is of consequence to the determination of the instant action more probable or less probable than it would be without it.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Dated: January 10, 2013

Scott B. Sievers
Attorney Registration No. 6275924
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

Complainant,

BY:



Scott B. Sievers
Special Assistant Attorney General

STATE OF ILLINOIS	)	Illinois EPA v. Northern Illinois Service Co.
	) SS.	Illinois Pollution Control Board
COUNTY OF WINNEBAGO	)	AC No. 12-51

AFFIDAVIT

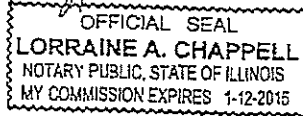
I, Donna Shehane, an Inspector for the Illinois Environmental Protection Agency, being first duly sworn on oath, depose and state that I am a duly authorized officer and agent of the Complainant in the above-captioned matter and that production of the enclosed documents, objects, or tangible things is complete in accordance with the Respondent Northern Illinois Service Company's First Request for Production of Documents from Complainant Illinois Environmental Protection Agency to the best of my knowledge and belief.

Donna Shehane
SIGNATURE

SUBSCRIBED and SWORN to before me this

10th day of January, 2013.

Lorraine A. Chappell
NOTARY PUBLIC



Illinois EPA v. Northern Illinois Service Company
Pollution Control Board No. AC 12-51

CERTIFICATE OF SERVICE

Scott B. Sievers, Special Assistant Attorney General, herein certifies that he has served a copy of the foregoing COMPLAINANT'S RESPONSE TO RESPONDENT'S REQUEST FOR PRODUCTION upon:

Peter DeBruyne
Peter DeBruyne, P.C.
838 North Main Street
Rockford, IL 61103

by mailing a true copy thereof to the address referred to above in an envelope duly addressed bearing proper first class postage and deposited in the United States mail at Springfield, Illinois, on January 10, 2013.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Dated: January 10, 2013

Scott B. Sievers
Attorney Registration No. 6275924
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

Complainant,

BY:



Scott B. Sievers
Special Assistant Attorney General

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY)	
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Complainant,)	
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v.)	AC 2012-051
)	(IEPA No. 87-12-AC)
NORTHERN ILLINOIS)	(Administrative Citation)
SERVICE COMPANY,)	
)	
Respondent.)	

COMPLAINANT'S FIRST INTERROGATORIES TO RESPONDENT

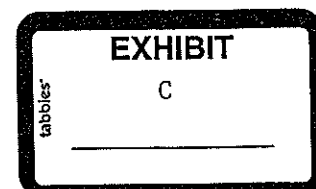
NOW COMES the Complainant, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, by and through its counsel, Special Assistant Attorney General Scott B. Sievers, and, pursuant to 35 Ill. Adm. Code 101.620, does serve its first interrogatories upon the Respondent, Northern Illinois Service Company.

DEFINITIONS

"Administrative Citation" means the administrative citation filed on May 7, 2012 by the Complainant, Illinois Environmental Protection Agency, with the Pollution Control Board in the action styled *Illinois Environmental Protection Agency v. Northern Illinois Service Company*, (PCB No. AC 2012-051).

"Petition for Review" means the Petition for Review filed on June 11, 2012 by the Respondent, Northern Illinois Service Company, with the Pollution Control Board in the action styled *Illinois Environmental Protection Agency v. Northern Illinois Service Company*, (PCB No. AC 2012-051).

"Records" means all correspondence, documents, e-mails, invoices, letters, memoranda, notes,



notices, papers, photographs, receipts, recordings, reports, statements, writings, and other documentary materials, including—but in no way limited to—those materials in paper and electronic form.

“Site” means the Respondent’s facility at 4781 Sandy Hollow Road, Rockford, Winnebago County, Illinois.

“You” means the Respondent, Northern Illinois Service Company.

INTERROGATORIES

1. State the full name, title, current residence address, and telephone number of each individual who participated in answering Complainant’s First Interrogatories to Respondent, and describe the nature of each individual’s participation.

2. Describe in detail the Respondent’s business, including its operations, legal structure, and its owners.

3. Identify the owner(s) of all real property at the Site, stating which owners own which property.

4. In paragraph (1) of your Response to Violations within your Petition for Review, you state that the Respondent “denies the allegations of the violations set forth as ‘(1)’ because Respondent did not cause or allow ‘open dumping,’ did not dump ‘waste,’ and its activities did not result in ‘litter’ as alleged in ‘(1).’” State all facts upon which you base your assertion that the Respondent did not cause or allow open dumping.

5. In paragraph (1) of your Response to Violations within your Petition for Review, you state that the Respondent “denies the allegations of the violations set forth as ‘(1)’ because Respondent did not cause or allow ‘open dumping,’ did not dump ‘waste,’ and its activities did

not result in 'litter' as alleged in '(1).'" State all facts upon which you base your assertion that the Respondent did not dump waste.

6. In paragraph (1) of your Response to Violations within your Petition for Review, you state that the Respondent "denies the allegations of the violations set forth as '(1)' because Respondent did not cause or allow 'open dumping,' did not dump 'waste,' and its activities did not result in 'litter' as alleged in '(1).'" State all facts upon which you base your assertion that the Respondent's activities did not result in litter.

7. In paragraph (2) of your Response to Violations within your Petition for Review, you state that the Respondent "denies the allegations of the violations set forth as "(2)" because Respondent did not cause or allow "open dumping," and did not dump "waste." State all facts upon which you base your assertion that the Respondent did not cause or allow open dumping.

8. In paragraph (2) of your Response to Violations within your Petition for Review, you state that the Respondent "denies the allegations of the violations set forth as "(2)" because Respondent did not cause or allow "open dumping," and did not dump "waste." State all facts upon which you base your assertion that the Respondent did not dump waste.

9. Identify in detail the source of the lumber, plastic, fabric, metal, white pipe, and other miscellaneous materials piled together at your site on March 14, 2012, including how long those materials had been so piled together as of that date.

10. Identify in detail the source of the off-rim tires present at your site on March 14, 2012, including how long those tires had been so present as of that date.

11. Do you contend that individuals and/or entities other than you were responsible for placing at your site the lumber, plastic, fabric, metal, white pipe, and other miscellaneous materials

piled together on March 14, 2012? If your answer is anything other than an unequivocal "No," state all facts upon which you base your contention.

12. Do you contend that individuals and/or entities other than you were responsible for placing at your site the off-rim tires that were present on March 14, 2012? If your answer is anything other than an unequivocal "No," state all facts upon which you base your contention.

13. If your answer to either Interrogatory No. 11 or No. 12 above was anything other than an unequivocal "No," identify all steps you have taken to restrict access to your site from unauthorized individuals or entities.

14. If your answer to either Interrogatory No. 11 or No. 12 above was anything other than an unequivocal "No," identify all steps you have taken to determine the responsible individuals and/or entities as well as the names and addresses of each individual or entity you determined to be so responsible.

15. Identify in detail all U.S. Environmental Protection Agency, Illinois Environmental Protection Agency, and Winnebago County permits you had as of March 14, 2012 concerning solid waste or used tires.

16. Do you contend that, as of March 14, 2012, your site fulfilled the requirements for a sanitary landfill in Illinois? If so, state all facts upon which you base your contention.

17. State the full name, address, and telephone number of each person who has knowledge of the matters alleged in your Petition for Review, and specify the knowledge each person possesses.

18. Pursuant to Illinois Supreme Court Rule 213(f) and 35 Ill. Adm. Code 101.616, provide the name and address of each witness who will testify at trial and all other information required for each witness.

19. Has any person identified in your answers to Interrogatories Nos. 17 and 18 above been convicted of a misdemeanor involving dishonesty, false statement or a felony? If so, state the nature thereof, the date of the conviction, and the court and the caption in which the conviction occurred. For the purpose of this interrogatory, a plea of guilty shall be considered as a conviction.

20. Have you (or has anyone acting on your behalf) had any conversations with any person at any time regarding the alleged conduct that is the subject of the violations set forth against you in the Administration Citation, or have you overheard any statements made by any person at any time regarding the alleged conduct that is the subject of the violations set forth against you in the Administration Citation? If the answer to this interrogatory is in the affirmative, state the following:

- (a) The date or dates of such conversations and/or statements;
- (b) The place of such conversations and/or statements;
- (c) All persons present for the conversations and/or statements;
- (d) The matters and things stated by the person in the conversations and/or statements;
- (e) Whether the conversation was oral, written and/or recorded; and
- (f) Who has possession of the statement if written and/or recorded.

21. Do you know of any statements made by any individual or entity relating to the alleged conduct that is the subject of the violations set forth against you in the Administrative

Citation? If so, give the name and address of each such individual or entity, the date of the statement, and state whether such statement was written and/or oral.

22. Identify all records documenting any of the facts asserted in your answers to the previous interrogatories, describing each record with specificity, including its subject, date, author, and addressee, where applicable, and state the full name and address of the individual or entity having possession, custody, or control of each record.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY



Scott B. Sievers
Special Assistant Attorney General

Dated: December 18, 2012
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on December 18, 2012, I served true and correct copies of COMPLAINANT'S FIRST INTERROGATORIES TO RESPONDENT by first class mail of the United States Postal Service upon the following persons:

Peter DeBruyne
Peter DeBruyne, P.C.
838 North Main Street
Rockford, IL 61103

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY



Scott B. Sievers
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544
(217) 782-9143 (TDD)

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY)	
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Complainant,)	
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v.)	AC 2012-051
)	(IEPA No. 87-12-AC)
NORTHERN ILLINOIS)	(Administrative Citation)
SERVICE COMPANY,)	
)	
Respondent.)	

COMPLAINANT'S FIRST REQUESTS TO PRODUCE TO RESPONDENT

NOW COMES the Complainant, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, by and through its counsel, Special Assistant Attorney General Scott B. Sievers, and, pursuant to 35 Ill. Adm. Code 101.616, does serve its first requests to produce upon the Respondent, Northern Illinois Service Company.

DEFINITIONS

"Petition for Review" means the Petition for Review filed on June 11, 2012 by the Respondent, Northern Illinois Service Company, with the Pollution Control Board in the action styled *Illinois Environmental Protection Agency v. Northern Illinois Service Company*, (PCB No. AC 2012-051).

"Records" means all correspondence, documents, e-mails, invoices, letters, memoranda, notes, notices, papers, photographs, receipts, recordings, reports, statements, writings, and other documentary materials, including—but in no way limited to—those materials in paper and electronic form.

"You" means the Respondent, Northern Illinois Service Company.

REQUESTS TO PRODUCE

1. A true and accurate copy of the Respondent's state and federal tax returns for the years 2007, 2008, 2009, 2010, and 2011.
2. True and accurate copies of all U.S. Environmental Protection Agency, Illinois Environmental Protection Agency, and Winnebago County permits you had as of March 14, 2012 concerning solid waste or used tires.
3. True and accurate copies of all records identified in your answer to Interrogatory No. 22 of the Complainant's First Interrogatories to Respondent.
4. True and accurate copies of all records referenced in your answers to Complainant's First Interrogatories to Respondent.
5. True and accurate copies of all records documenting the facts set forth in your Petition for Review.
6. True and accurate copies of all records documenting the facts set forth in your answers to Complainant's First Interrogatories to Respondent.
7. An affidavit attesting whether your production is complete in accordance with the Complainant's First Requests to Produce.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY



Scott B. Sievers
Special Assistant Attorney General

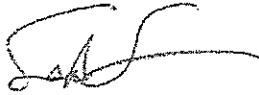
Dated: December 18, 2012
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on December 18, 2012, I served true and correct copies of COMPLAINANT'S FIRST REQUESTS TO PRODUCE TO RESPONDENT by first class mail of the United States Postal Service upon the following persons:

Peter DeBruyne
Peter DeBruyne, P.C.
838 North Main Street
Rockford, IL 61103

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY



Scott B. Sievers
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544
(217) 782-9143 (TDD)



Electronic Filing - Received, Clerk's Office : 07/23/2013
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217) 782-3397

PAT QUINN, GOVERNOR

JOHN J. KIM, DIRECTOR

(217) 782-5544

TDD (217) 782-9143

January 18, 2013

Mr. Peter DeBruyne
Peter DeBruyne, P.C.
838 North Main Street
Rockford, IL 61103

Re: *Illinois EPA v. Northern Illinois Service Co.*
Pollution Control Board Case No. AC 2012-051

Dear Mr. DeBruyne:

On December 18, 2012, Complainant's First Interrogatories to Respondent and Complainant's First Requests to Produce to Respondent were served through the U.S. Mail upon the Respondent in the above-identified action. To date, our office has not received your client's interrogatory answers or production responses.

You left a voicemail on January 15, 2013 stating that you did not want to answer this discovery while my Motion for Leave to File An Amended Administrative Citation remained pending. That motion sought to amend in light of the fact that your client previously was adjudicated as having violated the Environmental Protection Act, yet that fact apparently was overlooked in drafting the penalty provisions in the original citation. Nowhere in that motion did it indicate the Complainant sought a wholesale rewrite of its administrative citation to drastically alter the plead facts and expand the scope of the pleading or this action. Consequently, the pending motion provides no basis for delaying your client's discovery responses.

Further, Illinois EPA has provided a sworn response to Respondent Northern Illinois Service Company's First Request for Production of Documents that included 189 Bates-stamped pages of documents which were delivered to you in both electronic and hardcopy formats.

In light of the fact that the outcome of the pending motion should have no bearing upon the substance of this action, coupled with the fact that Illinois EPA has produced to Respondent the discovery it sought, Illinois EPA cannot agree to your request to stay compliance with its discovery requests. Consequently, please consider this a formal request for you to provide the Respondent's responses to the aforementioned discovery requests to me by February 1, 2013.

EXHIBIT

D

Mr. Peter DeBruyne
January 18, 2013
Page 2 of 2

Finally, please consider this a reasonable attempt by counsel responsible for trial of this case to resolve differences over discovery pursuant to Illinois Supreme Court Rule 201(k) as applied through 35 Ill. Adm. Code 101.616.

Sincerely,

A handwritten signature in black ink, appearing to read 'Scott B. Sievers', with a long horizontal flourish extending to the right.

Scott B. Sievers
Special Assistant Attorney General

LAW OFFICES
PETER DeBRUYNE, P.C.
A PROFESSIONAL CORPORATION
838 NORTH MAIN STREET
ROCKFORD, ILLINOIS 61103

TELEPHONE
(815) 964-3810

FACSIMILE
(815) 964-3813

April 1, 2013

EMAILED AND MAILED

Mr. Scott B. Sievers
Special Assistant Attorney General
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

RE: ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
VS. NORTHERN ILLINOIS SERVICE COMPANY
IEPA FILE NO. 87-12-AC

Dear Mr. Sievers:

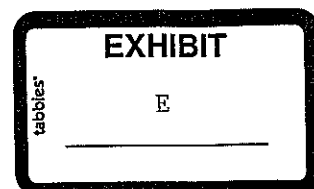
Enclosed please find Respondent's Answers to Complainant's First Interrogatories to Respondent and Respondent's Response to Complainant's First Requests to Produce to Respondent. Also enclosed please find the document responding to No. 2 in your document requests.

Very truly yours,

PETER DeBRUYNE, P.C.


Peter DeBruyne

PD:lmh
Enclosures



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,	) AC 12-51
)
Complainant,	) (IEPA No. 87-12-AC)
	) Administrative Citation
v.)
)
NORTHERN ILLINOIS)
SERVICE COMPANY,)
)
Respondent.)

**RESPONDENT'S ANSWERS TO COMPLAINANT'S FIRST
INTERROGATORIES TO RESPONDENT**

NOW COMES respondent, NORTHERN ILLINOIS SERVICE COMPANY, and
in answer to complainant's interrogatories, states as follows:

GENERAL OBJECTIONS

Respondent objects to each and every answer to the extent that it exceeds the scope of discovery permitted by the Illinois Supreme Court Rules or the Rules of Civil Procedure or requires respondent to do more than is required by the Illinois Supreme Court Rules or the Rules of Civil Procedure. This objection shall apply to, and is hereby incorporated by reference in, each and every answer to Complainant's First Interrogatories to Respondent.

INTERROGATORIES

1. State the full name, title, current residence address, and telephone number of each individual who participated in answering Complainant's First Interrogatories to Respondent, and describe the nature of each individual's participation.

ANSWER: Objection; attorney/client privilege; without waiving the foregoing objection, Paul Munson.

2. Describe in detail the respondent's business, including its operations, legal structure, and its owners.

ANSWER: Northern Illinois Service Co. is an Illinois corporation, owned by Wayne Klinger. The company is engaged in heavy construction work.

3. Identify the owner(s) of all real property at the Site, stating which owners own which property.

ANSWER: Northern Illinois Service Company.

4. In paragraph (1) of your Response to Violations within your Petition for Review, you state that the respondent "denies the allegations of the violations set forth as '(1)' because respondent did not cause or allow 'open dumping,' did not dump 'waste,' and its activities did not result in 'litter' as alleged in '(1).'" State all facts upon which you base your assertion that the respondent did not cause or allow open dumping.

ANSWER: Objection inasmuch as the interrogatory requests legal conclusion; without waiving the foregoing objection, intent of respondent, equipment of respondent and nature of material photographed; investigation continuing.

5. In paragraph (1) of your Response to Violations within your Petition for Review, you state that the Respondent "denies the allegations of the violations set forth as '(1)' because Respondent did not cause or allow 'open dumping,' did not dump 'waste' and its activities did not result in 'litter' as alleged in '(1).'" State all facts upon which you base your assertion that the respondent did not dump waste.

ANSWER: Objection inasmuch as the interrogatory requests legal conclusion; without waiving the foregoing objection, intent of respondent, equipment of respondent and nature of material photographed; investigation continuing.

6. In paragraph (1) of your Response to Violations within your Petition for Review, you state that the respondent "denies the allegations of the violations set forth as '(1)' because respondent did not cause or allow 'open dumping,' did not dump 'waste,' and its activities did not result in 'litter' as alleged in '(1).'" State all facts upon which you base your assertion that the respondent's activities did not result in litter.

ANSWER: Objection inasmuch as the interrogatory requests legal conclusion; without waiving the foregoing objection, intent of respondent, equipment of respondent and nature of material photographed; investigation continuing.

7. In paragraph (2) of your Response to Violations within your Petition for Review, you state that the respondent "denies the allegations of the violations set forth as "(2)" because respondent did not cause or allow "open dumping," and did not dump "waste." State all facts upon which you base your assertion that the respondent did not cause or allow open dumping.

ANSWER: Objection inasmuch as the interrogatory requests legal conclusion; without waiving the foregoing objection, intent of respondent, equipment of respondent and nature of material photographed; investigation continuing.

8. In paragraph (2) of your Response to Violations within your Petition for Review, you state that the respondent "denies the allegations of the violations set forth as "(2)" because respondent did not cause or allow "open dumping," and did not dump

"waste." State all facts upon which you base your assertion that the Respondent did not dump waste.

ANSWER: Objection inasmuch as the interrogatory requests legal conclusion; without waiving the foregoing objection, intent of respondent, equipment of respondent and nature of material photographed; investigation continuing.

9. Identify in detail the source of the lumber, plastic, fabric, metal, white pipe, and other miscellaneous materials piled together at your site on March 14, 2012, including how long those materials had been so piled together as of that date.

ANSWER: Objection inasmuch as the interrogatory does not define with particularity the "lumber, plastic, fabric, metal, white pipe, and other miscellaneous materials" referenced; without waiving the foregoing objection, and assuming solely for the purposes of responding to these interrogatory but without admitting the veracity thereof, that the material referred to is that referenced in the photograph attached to the Administrative Citation, the source is Northern Illinois Service Company and the materials had been so collected for approximately one to two weeks; investigation continuing.

10. Identify in detail the source of the off-rim tires present at your site on March 14, 2012, including how long those tires had been so present as of that date.

ANSWER: Objection inasmuch as the interrogatory does not define with particularity the "off-rim" tires referenced; without waiving the foregoing objection, and assuming solely for the purposes of responding to these interrogatory but without admitting the veracity thereof, that the material referred to is that referenced in the photograph attached to the Administrative Citation, the tire with designated file name

2010301120-031412-001-006, page 1 of 3, had its source as a Northern Illinois Service Company vehicle from which it had been removed; regarding file name 2010301120-031412-001-006, page 2 of 3, attached to the Administrative Citation, the source is Northern Illinois Service Company and the tires in both cases are part of equipment used by Northern Illinois Service Company.

11. Do you contend that individuals and/or entities other than you were responsible for placing at your site the lumber, plastic, fabric, metal, white pipe, and other miscellaneous materials piled together on March 14, 2012? If your answer is anything other than an unequivocal "No," state all facts upon which you base your contention.

ANSWER: Objection; interrogatory asks for a legal opinion and not facts.

12. Do you contend that individuals and/or entities other than you were responsible for placing at your site the off-rim tires that were present on March 14, 2012? If your answer is anything other than an unequivocal "No," state all facts upon which you base your contention.

ANSWER: Objection; interrogatory asks for legal opinion and not facts.

13. If your answer to either interrogatory No. 11 or No. 12 above was anything other than an unequivocal "No," identify all steps you have taken to restrict access to your site from unauthorized individuals or entities.

ANSWER: See answers to interrogatory Nos. 11 and 12.

14. If your answer to either interrogatory No. 11 or No. 12 above was anything other than an unequivocal "No," identify all steps you have taken to determine the

responsible individuals and/or entities as well as the names and addresses of each individual or entity you determined to be so responsible.

ANSWER: See answers to interrogatory Nos. 11 and 12.

15. Identify in detail all U. S. Environmental Protection Agency, Illinois Environmental Protection Agency, and Winnebago County permits you had as of March 14, 2012 concerning solid waste or used tires.

ANSWER: See response to request to produce No. 2.

16. Do you contend that, as of March 14, 2012, your site fulfilled the requirements for a sanitary landfill in Illinois? If so, state all facts upon which you base your contention.

ANSWER: Objection; interrogatory asks for a legal opinion and not facts.

17. State the full name, address, and telephone number of each person who has knowledge of the matters alleged in your Petition for Review, and specify the knowledge each person possesses.

ANSWER: Objection, burdensome and oppressive as a number of people would have some, perhaps minute, knowledge of the matters alleged in the Petition for Review; without waiving the foregoing objection, Paul Munson.

18. Pursuant to Illinois Supreme Court Rule 213(f) and 35 Ill. Adm. Code 101.616, provide the name and address of each witness who will testify at trial and all other information required for each witness.

ANSWER: None identified as yet other than Paul Munson; investigation continuing.

19. Has any person identified in your answers to interrogatories Nos. 17 and 18 above been convicted of a misdemeanor involving dishonesty, false statement or a felony? If so, state the nature thereof, the date of the conviction, and the court and the caption in which the conviction occurred. For the purpose of this interrogatory, a plea of guilty shall be considered as a conviction.

ANSWER: No.

20. Have you (or has anyone acting on your behalf) had any conversations with any person at any time regarding the alleged conduct that is the subject of the violations set forth against you in the Administration Citation, or have you overheard any statements made by any person at any time regarding the alleged conduct that is the subject of the violations set forth against you in the Administration Citation? If the answer to this interrogatory is in the affirmative, state the following:

- (a) The date or dates of such conversations and/or statements;
- (b) The place of such conversations and/or statements;
- (c) All persons present for the conversations and/or statements;
- (d) The matters and things stated by the person in the conversations and/or statements;
- (e) Whether the conversation was oral, written and/or recorded; and
- (f) Who has possession of the statement if written and/or recorded.

ANSWER: Objection; irrelevant and immaterial; also burdensome and oppressive.

21. Do you know of any statements made by any individual or entity relating to the alleged conduct that is the subject of the violations set forth against you in the

Administrative Citation? If so, give the name and address of each such individual or entity, the date of the statement, and state whether such statement was written and/or oral.

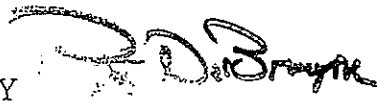
ANSWER: Objection; irrelevant and immaterial; also burdensome and oppressive.

22. Identify all records documenting any of the facts asserted in your answers to the previous interrogatories, describing each record with specificity, including its subject, date, author, and addressee, where applicable, and state the full name and address of the individual or entity having possession, custody, or control of each record.

ANSWER: Objection; burdensome and oppressive; see responses to document requests.

NORTHERN ILLINOIS SERVICE
COMPANY, Respondent

BY: PETER DeBRUYNE, P.C.

BY 

Peter DeBruyne, Its Attorney

ATTESTATION

STATE OF ILLINOIS)
) SS.
COUNTY OF WINNEBAGO)

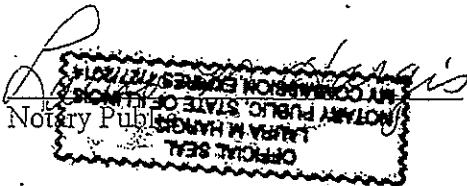
Peter DeBruyne, being first duly sworn on oath, deposes and states that he is the attorney for the respondent in the above-captioned matter, that he has read the foregoing document and that the answers made herein are true, correct and complete to the best of his knowledge and belief.



Peter DeBruyne

SUBSCRIBED and SWORN to before

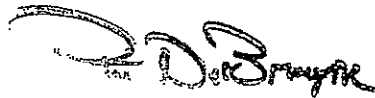
me this 1st day of April, 2013.



CERTIFICATE OF SERVICE

I hereby certify that I did on the 1st day of April, 2013, by regular mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the foregoing Respondent's Answers to Complainant's First Interrogatories to Respondent on the following:

Scott B. Sievers
Special Assistant Attorney General
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

A handwritten signature in black ink, appearing to read "DeBruyne", is written over a horizontal line.

Peter DeBruyne

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,	) AC 12-51
)
Complainant,	) (IEPA No. 87-12-AC)
	) Administrative Citation
v.)
)
NORTHERN ILLINOIS)
SERVICE COMPANY,)
)
Respondent.)

**RESPONDENT'S RESPONSE TO COMPLAINANT'S FIRST
REQUESTS TO PRODUCE TO RESPONDENT**

Respondent, NORTHERN ILLINOIS SERVICE COMPANY, states as follows
for its Response to Complainant's First Requests to Produce to Respondent.

GENERAL OBJECTIONS

Respondent objects to each and every Request to the extent that it exceeds the scope of discovery permitted by the Illinois Supreme Court Rules or the Rules of Civil Procedure or requires respondent to do more than is required by the Illinois Supreme Court Rules or the Rules of Civil Procedure. This objection shall apply to, and is hereby incorporated by reference in, each and every Response to Complainant's First Requests to Produce to Respondent.

REQUESTS TO PRODUCE

1. A true and accurate copy of the respondent's state and federal tax returns for the years 2007, 2008, 2009, 2010 and 2011.

RESPONSE: Objection; immaterial and irrelevant to any issue in the case; further, respondent's state and federal tax returns are confidential and proprietary.

2. True and accurate copies of all U.S. Environmental Protection Agency, Illinois Environmental Protection Agency, and Winnebago County permits you had as of March 14, 2012 concerning solid waste or used tires.

RESPONSE: Will produce if available; investigation continuing; in addition complainant is in possession of all permits concerning solid waste or used tires as of March 14, 2012 issued to respondent.

3. True and accurate copies of all records identified in your answer to Interrogatory No. 22 of the Complainant's First Interrogatories to Respondent.

RESPONSE: Objection; burdensome and oppressive.

4. True and accurate copies of all records referenced in your answers to Complainant's Complainant's First Interrogatories to Respondent.

RESPONSE: Objection; burdensome and oppressive.

5. True and accurate copies of all records documenting the facts set forth in your Petition for Review.

RESPONSE: Objection; burdensome and oppressive.

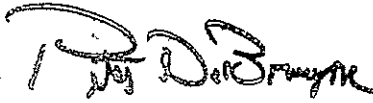
6. True and accurate copies of all records documenting the facts set forth in your answers to Complainant's First Interrogatories to Respondent.

RESPONSE: Objection; burdensome and oppressive.

7. An affidavit attesting whether your production is complete in accordance with the Complainant's First Requests to Produce.

NORTHERN ILLINOIS SERVICE
COMPANY, Respondent

BY: PETER DeBRUYNE, P.C.

BY 

Peter DeBruyne, Its Attorney

Peter DeBruyne
Peter DeBruyne, P.C.
838 North Main Street
Rockford, IL 61103
Telephone (815) 964-3810
Fax (815) 964-3813
Email: pdebruyne@sbcglobal.net

AFFIDAVIT

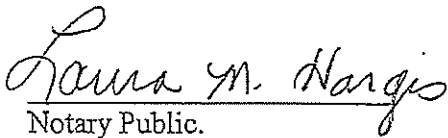
STATE OF ILLINOIS)
) SS.
COUNTY OF WINNEBAGO)

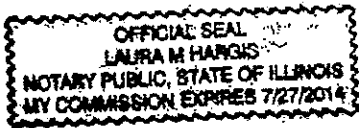
Peter DeBruyne. being first duly sworn on oath deposes and says that he is one the attorney for the respondent in the above-entitled cause; that the production of information and data made pursuant to Respondent's Response to Complainant's First Requests to Produce to Complainant is to the best of his knowledge, information and belief complete to the date and time furnished to wit: April 1, 2013.



Peter DeBruyne

Subscribed and sworn to
before me this 1st day of
April, 2013.


Notary Public.



CERTIFICATE OF SERVICE

I hereby certify that I did on the 1st day of April, 2013, by regular mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the foregoing Respondent Northern Illinois Service Company's First Request for Production of Document from Complainant Illinois Environmental Protection Agency on the following:

Scott B. Sievers
Special Assistant Attorney General
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

A handwritten signature in dark ink, appearing to read "Peter DeBruyne", is written over a horizontal line.

Peter DeBruyne



Electronic Filing - Received, Clerk's Office : 07/23/2013
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217) 782-2829

PAT QUINN, GOVERNOR

LISA BONNETT, DIRECTOR

(217) 782-5544
TDD (217) 782-9143

April 23, 2013

Mr. Peter DeBruyne
Peter DeBruyne, P.C.
838 North Main Street
Rockford, IL 61103

Re: *Illinois EPA v. Northern Illinois Service Co.*
Pollution Control Board Case No. AC 2012-051

Dear Mr. DeBruyne:

On April 2, 2013, I received Respondent's Answers to Complainant's First Interrogatories to Respondent as well as Respondent's Response to Complainant's First Requests to Produce to Respondent. Despite the months that have passed since the discovery requests were served upon you, these answers and responses are deeply flawed, as set forth below.

INTERROGATORIES

Interrogatory Answer No. 1

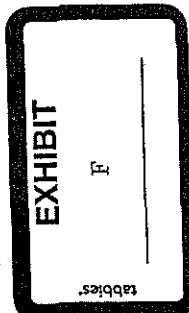
This interrogatory stated, "State the full name, title, current residence address, and telephone number of each individual who participated in answering Complainant's First Interrogatories to Respondent, and describe the nature of each individual's participation." You answered "Objection; attorney/client privilege; without waiving the foregoing objection, Paul Munson." Your objection to this interrogatory and to several others on this basis indicates that you might misunderstand the scope of the attorney-client privilege.

The Supreme Court of Illinois has explained that the attorney-client privilege "is to be strictly confined within its narrowest limits and limited solely to those communications which the claimant either expressly made confidential or which he could reasonably believe under the circumstances would be understood by the attorney as such. *Center Partners, Ltd. v. Growth Head GP, LLC*, 2012 IL 113107, ¶ 32. For example, the privilege does not extend to the identity of an attorney's client, *People v. Doe*, 55 Ill. App. 3d 811, 814 (2d Dist. 1977); to acts such as the investigation of a claim, *Hernandez v. Williams*, 258 Ill. App. 3d 318, 322 (3d Dist. 1994); to factual communications by a lawyer to his client concerning logistical matters, *People v. Brown*, 275 Ill. App. 3d 1105, 1110 (1st Dist. 1995); or to the fact that communication occurred between a client and his attorney. *Williams*. (holding that privilege is not violated when existence but not content of communications is disclosed).

Interrogatory No. 1 did not request the content of any communication you might have had with your client. It sought the identity and contact information of those participating in answering Petitioner's interrogatories. Please withdraw your objection and have your client fully

4302 N. Main St., Rockford, IL 61103 (815) 987-7760
595 S. State, Elgin, IL 60123 (847) 608-3131
2125 S. First St., Champaign, IL 61820 (217) 278-5800
2009 Mall St., Collinsville, IL 62234 (618) 346-5120

9511 Harrison St., Des Plaines, IL 60016 (847) 294-4000
5407 N. University St., Arbor 113, Peoria, IL 61614 (309) 693-5462
2309 W. Main St., Suite 116, Marion, IL 62959 (618) 993-7200
100 W. Randolph, Suite 10-300, Chicago, IL 60601 (312) 814-6026



Mr. Peter DeBruyne
April 23, 2013
Page 2 of 8

respond to this interrogatory, including by providing Paul Munson's full name, title, current residence address, and telephone number, as requested.

Interrogatory Answers Nos. 4 through 8

Each of these interrogatories referenced specific assertions your client made in its Response to Violations within its Petition for Review, then asked your client to state all facts upon which it based its assertion. For example, Interrogatory No. 4 stated as follows:

4. In paragraph (1) of your Response to Violations within your Petition for Review, you state that the respondent "denies the allegations of the violations set forth as '(1)' because respondent did not cause or allow 'open dumping,' did not dump 'waste,' and its activities did not result in 'litter' as alleged in '(1).'" State all facts upon which you base your assertion that the respondent did not cause or allow open dumping.

In response to each interrogatory, you answered, "Objection inasmuch as the interrogatory requests legal conclusion; without waiving the foregoing objection, intent of respondent, equipment of respondent and nature of material photographed; investigation continuing."

These interrogatories did not request a legal conclusion in any way; they specifically requested that your client "[s]tate all facts upon which you base your assertion." (emphasis added). The Supreme Court of Illinois has made clear that discovery concerning the factual basis for a party's claim or defense is appropriate. "[A] party may obtain by discovery full disclosure regarding any matter relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking disclosure or of any other party." Ill. S. Ct. R. 201(b)(1); *see also* Ill. S. Ct. R. 222(d)(1) ("[E]ach party shall disclose in writing to every other party: (1) The factual basis for the claim or defense.").

Further, these interrogatories called for your client to "[s]tate all facts upon which you base" your respective assertion. Your curt answer of "intent of respondent, equipment of respondent and nature of material photographed; investigation continuing" does not fully respond to these interrogatories so as to provide full disclosure as required by Rule 201.

Please withdraw your objections and have your client fully respond to these interrogatories.

Interrogatory Answers Nos. 11 through 14 and 16

Interrogatories Nos. 11, 12, and 16 asked your client whether it contends various things and, if so, to state all facts upon which those contentions are based. To each of these, you have responded, "Objection; interrogatory asks for a legal opinion and not facts." Your response suggests that you are unfamiliar with this type of interrogatory.

Interrogatories seeking a party's contentions are known as "contention interrogatories." 10 Ill. Prac., Civil Discovery § 13:12 (2012 ed.) "Typically, 'contention' interrogatories ask a

Mr. Peter DeBruyne
April 23, 2013
Page 3 of 8

party to identify all facts or evidence that supports a specific allegation in a complaint or a defense." [REDACTED] (attached).

Just as you have done, the plaintiff in [REDACTED] objected to interrogatories calling for him to state all facts supporting his various contentions by claiming the interrogatories sought disclosure of opinions and legal theories. [REDACTED] The trial court overruled the objections, but the plaintiff repeatedly resisted answering the interrogatories. [REDACTED] As a result, the trial court dismissed the plaintiff's case with prejudice, and the [REDACTED] affirmed [REDACTED]. The U.S. District Court for the Central District of Illinois likewise has overruled objections to contention interrogatories regarding work product and legal conclusions. *Stevens v. DeWitt County, Ill.*, 2013 WL 819372 (C.D. Ill. 2013).

Please withdraw your objections and have your client fully respond to these interrogatories. Further, once your client has fully responded to these interrogatories, please have your client fully respond to the related interrogatories Nos. 13 and 14.

Interrogatory Answer No. 17

This interrogatory asked your client to "[s]tate the full name, address, and telephone number of each person who has knowledge of the matters alleged in your Petition for Review, and specify the knowledge each person possesses."

You answered, "Objection, burdensome and oppressive as a number of people would have some, perhaps minute, knowledge of the matters alleged in the Petition for Review; without waiving the foregoing objection, Paul Munson."

The Illinois Supreme Court clearly views discovery of the identities of individuals who possess knowledge of relevant facts as appropriate, as it has promulgated standard interrogatories that seek such information. *See, e.g.*, Standard Interrogatories Under Supreme Court Rule 213(j) Motor Vehicle Interrogatories to Plaintiffs No. 25 ("State the names and addresses of all persons who have knowledge of the purpose for which the vehicle was being used at the time of the occurrence.") The Appellate Court of Illinois has specifically ruled that the following interrogatory was proper: "What are the names and addresses of all persons in the possession of the plaintiff having knowledge of the facts concerning the matters and issues in this cause?" *O'Brien v. Stefaniak*, 130 Ill. App. 2d 398, 405 (1st Dist. 1970). An interrogatory that further requests what knowledge persons possess also clearly is proper, as Illinois Supreme Court Rule 222 provides for disclosure of "[t]he names, addresses, and telephone numbers of all persons whom the party believes may have knowledge or information relevant to the events, transactions, or occurrences that gave rise to the action, and the nature of the knowledge or information each such individual is believed to possess." Ill. S. Ct. R. 222(d)(4).

Please withdraw your objection and have your client fully respond to this interrogatory.

Interrogatory Answer No. 18

Interrogatory No. 18 stated, "Pursuant to Illinois Supreme Court Rule 213(f) and 35 Ill. Adm. Code 101.616, provide the name and address of each witness who will testify at trial and

Mr. Peter DeBruyne
April 23, 2013
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all other information required for each witness.” You responded, “None identified as yet other than Paul Munson; investigation continuing.”

Interrogatory No. 18 owes its form to the Illinois Supreme Court’s own Standard Interrogatories Under Supreme Court Rule 213(j). *See* Ill. S.Ct. Rule 213(j); *e.g.*, Motor Vehicle Interrogatories to Plaintiffs No. 26. Despite this fact, your answer to Interrogatory No. 18 fails to comply with Illinois Supreme Court Rule 213(f), which provides as follows:

Upon written interrogatory, a party must furnish the identities and addresses of witnesses who will testify at trial and must provide the following information:

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

(2) *Independent Expert Witnesses*. An “independent expert witness” is a person giving expert testimony who is not the party, the party’s current employee, or the party’s retained expert. For each independent expert witness, the party must identify the subjects on which the witness will testify and the opinions the party expects to elicit. An answer is sufficient if it gives reasonable notice of the testimony, taking into account the limitations on the party’s knowledge of the facts known by and opinions held by the witness.

(3) *Controlled Expert Witnesses*. A “controlled expert witness” is a person giving expert testimony who is the party, the party’s current employee, or the party’s retained expert. For each controlled expert witness, the party must identify: (i) the subject matter on which the witness will testify; (ii) the conclusions and opinions of the witness and the bases therefor; (iii) the qualifications of the witness; and (iv) any reports prepared by the witness about the case.

Ill. S. Ct. Rule 213(f) (2013) (emphasis added). Your answer to Interrogatory No. 18 does not provide the address of Mr. Munson. Your answer also does not indicate whether Mr. Munson will testify as a lay witness, an independent expert witness, or a controlled expert witness. Further, your answer does not provide the other information Interrogatory No. 18 and Rule 213(f) require, such as “the subjects on which the witness will testify” if a lay witness; the “subjects on which the witness will testify and the opinions the party expects to elicit” if an independent expert witness”; and, if a controlled expert witness, “(i) the subject matter on which the witness will testify; (ii) the conclusions and opinions of the witness and the bases therefor; (iii) the qualifications of the witness; and (iv) any reports prepared by the witness about the case.” Your answer does not give the Complainant reasonable notice of the testimony of your

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witness, as required by Rule 213(f). Consequently, please have your client provide me with an answer that fully responds to Interrogatory No. 18 and complies with Illinois Supreme Court Rule 213(f) to which it expressly refers.

Interrogatory Answer No. 20

Interrogatory No. 20 essentially asked whether your client had any conversations or overheard any conversations regarding the subject of the violations set forth in the administrative citation and, if so, to provide details regarding those conversations. You responded, "Objection; irrelevant and immaterial; also burdensome and oppressive."

Interrogatory No. 20 owes its form to another of the Illinois Supreme Court's own Standard Interrogatories Under Supreme Court Rule 213(j). In fact, Interrogatory No. 20 is nearly identical to an Illinois Supreme Court-approved interrogatory. *See* Motor Vehicle Interrogatories to Plaintiffs No. 16; Motor Vehicle Interrogatories to Defendants No. 9; Medical Malpractice Interrogatories to Plaintiffs No. 22; Medical Malpractice Interrogatories to Defendant Doctor No. 17; and Medical Malpractice Interrogatories to Defendant Hospital No. 12.

In light of the fact that the Illinois Supreme Court has approved nearly identical interrogatories for use in such varying situations such as motor vehicle accident and medical malpractice cases, your objection to Interrogatory No. 20 as irrelevant, immaterial, burdensome, and oppressive lacks any legal support. Consequently, please withdraw your objection and have your client fully respond to this interrogatory.

Interrogatory Answer No. 21

Interrogatory No. 21 asked, "Do you know of any statements made by any individual or entity relating to the alleged conduct that is the subject of the violations set forth against you in the Administrative Citation? If so, give the name and address of each such individual or entity, the date of the statement, and state whether such statement was written and/or oral." You responded, "Objection; irrelevant and immaterial; also burdensome and oppressive."

As with the interrogatory before it, Interrogatory No. 21 owes its form to yet another of the Illinois Supreme Court's own Standard Interrogatories Under Supreme Court Rule 213(f). *See* Motor Vehicle Interrogatories to Plaintiffs No. 17; Motor Vehicle Interrogatories to Defendants No. 10; Medical Malpractice Interrogatories to Plaintiffs No. 5; Medical Malpractice Interrogatories to Defendant Doctor No. 15; and Medical Malpractice Interrogatories to Defendant Hospital No. 2.

Again, in light of the fact that the Illinois Supreme Court has approved highly similar interrogatories for use in varying situations, your objection to Interrogatory No. 21 as irrelevant, immaterial, burdensome, and oppressive lacks legal support. Consequently, please withdraw your objection and have your client fully respond to this interrogatory.

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Interrogatory Answer No. 22

Interrogatory No. 22 asked your client to identify and describe each record documenting the facts asserted in your client's answers to the previous interrogatories. You answered, "Objection; burdensome and oppressive; see responses to document requests."

According to the Illinois Supreme Court, "discovery presupposes a range of relevance and materiality which includes not only what is admissible at trial, but also that which leads to what is admissible at the trial." *Fawcett v. Reinertsen*, 131 Ill. 2d 380, 385 (1989) (internal quotations omitted).

The interrogatories prior to Interrogatory No. 22 sought information that is clearly relevant in this action, such as the factual basis for your client's Response to Violations within its Petition for Review. Therefore, if records exist documenting the facts asserted in your client's interrogatory answers, they necessarily are also relevant or at least reasonably calculated to lead to relevant evidence so as to require disclosure. Consequently, please withdraw your objection and have your client fully respond to this interrogatory.

Sworn Signature

Illinois Supreme Court Rule 213 provides, in pertinent part, that within 28 days of service of interrogatories, "the party shall serve a sworn answer or an objection to each interrogatory, with proof of service upon all other parties entitled to notice." Ill. S. Ct. R. 213(d). Rule 213 further provides that "[s]worn answers to interrogatories directed to a public or private corporation ... shall be made by an officer, partner, or agent, who shall furnish such information as is available to the party." *Id.* Section 101.620 of the Pollution Control Board rules provides that interrogatory "[a]nswers must be signed by the person making them and objections must be signed by the attorney making them." 35 Ill. Adm. Code 101.620.

Despite these provisions, your client's interrogatory answers are not sworn by your client, but are rubber-stamped by you as the attorney. Please provide interrogatory answers that are sworn by your client, with any objections signed by you.

REQUESTS TO PRODUCE

Response to Request to Produce No. 1

Request to Produce No. 1 sought "[a] true and accurate copy of the respondent's state and federal tax returns for the years 2007, 2008, 2009, 2010, and 2011." You responded, "Objection; immaterial and irrelevant to any issue in the case; further, respondent's state and federal tax returns are confidential and proprietary."

In defending against alleged Environmental Protection Act violations, respondents sometimes claim financial hardship. *See Illinois EPA v. Hughes Tire & Battery Co.*, 2012 WL 5883703 at *1-2 (PCB No. AC 13-10); *Illinois EPA v. Terry L. Young*, 2012 WL 458555 at *1 (PCB No. AC 12-22). Tax returns obviously would be relevant to such a claim. The Pollution Control Board has found tax returns to be relevant to whether a respondent can contribute to financial assurance. *People v. ESG Watts, Inc.*, 1998 WL 54020 at *11 (PCB No. 96-107). The Appellate Court has found tax returns relevant to whether a defendant constitutes an operator of

Mr. Peter DeBruyne
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a landfill under the Act. *People v. Bishop*, 315 Ill. App. 3d 976 (5th Dist. 2000). Hearing Officer Halloran has himself found tax returns to be relevant or lead to relevant information and ordered that they be produced in discovery. See *People v. Packaging Personified, Inc.* 2012 WL 5883724 at *1-2 (PCB 04-16).

Based upon the pleadings and disclosures to date, the Complainant does not intend to pursue production responsive to Request to Produce No. 1, but reserves the right to do so in the event that available information changes.

Response to Request to Produce No. 2

Request to Produce No. 2 sought “[t]rue and accurate copies of all U.S. Environmental Protection Agency, Illinois Environmental Protection Agency, and Winnebago County permits [NISC] had as of March 14, 2012 concerning solid waste or used tires.” You responded, “Will produce if available; investigation continuing; in addition complainant is in possession of all permits concerning solid waste or used tires as of March 14, 2012 issued to respondent.”

That the requested documents may already be possessed by the requestor is not a proper response to discovery. See *Stickler v. McCarthy*, 64 Ill. App. 2d 1, 15-16 (1st Dist. 1965). Further, your response that you “[w]ill produce if available” indicates that you do not know whether the documents are available. With your client, please determine whether the requested documents exist to its knowledge or in its possession or control. If they do, please produce true and accurate copies of them; if they do not exist, please have your client indicate that in its response.

Responses to Requests to Produce Nos. 3 through 6.

Requests to Produce Nos. 3 and 4 seek production of copies of records identified or referenced in your client’s interrogatory answers, whereas Requests to Produce Nos. 5 and 6 seek production of copies of records documenting the facts alleged by your client in its Petition for Review and interrogatory answers. To each of these production requests, you responded, “Objection; burdensome and oppressive.”

Your response does not identify how producing such records would be “burdensome and oppressive,” which appears to be a baseless assertion. If your client identified or referenced documents in its interrogatory answers, those documents likely are themselves relevant or are likely to lead to relevant evidence. Further, if records exist within your client’s knowledge, possession or control documenting the facts alleged in your client’s Petition for Review and interrogatory answers, they too are relevant or are likely to lead to relevant evidence. How producing them would be so burdensome and oppressive as to escape the normal obligations required of discovery is inscrutable. Please withdraw your objection and have your client produce all records responsive to these requests.

Affidavit

Illinois Supreme Court Rule 214 provides that, in responding to production requests, “[t]he party producing documents shall furnish an affidavit stating whether the production is

Mr. Peter DeBruyne
April 23, 2013
Page 8 of 8

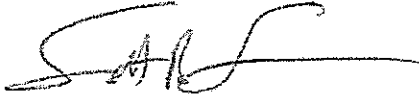
complete in accordance with the request.” Despite this language, your client’s production responses are not accompanied by an affidavit sworn by your client, but an affidavit rubber-stamped by you as the attorney. Pursuant to Rule 214, please provide an affidavit from your client swearing that its production response is complete in accordance with the request.

REMEDY

Please remedy the aforementioned deficiencies in your client’s interrogatory answers and production responses and provide me with supplemental answers and responses that fully respond to these discovery requests and comply with all applicable rules by 5:00 p.m. on Thursday, May 2, 2013. If I have not received these materials by that time, I have been authorized to file a motion to compel your client’s compliance.

Finally, please consider this a reasonable attempt by counsel responsible for trial of this case to resolve differences over discovery pursuant to Illinois Supreme Court Rule 201(k) as applied through 35 Ill. Adm. Code 101.616.

Sincerely,

A handwritten signature in black ink, appearing to read 'SBS', with a long horizontal flourish extending to the right.

Scott B. Sievers
Special Assistant Attorney General

LAW OFFICES
PETER DEBRUYNE, P.C.
A PROFESSIONAL CORPORATION
838 NORTH MAIN STREET
ROCKFORD, ILLINOIS 61103

TELEPHONE
(815) 964-3810

FACSIMILE
(815) 964-3813

May 6, 2013

EMAILED

Mr. Scott B. Sievers
Special Assistant Attorney General
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

RE: ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
VS. NORTHERN ILLINOIS SERVICE COMPANY
IEPA FILE NO. 87-12-AC

Dear Mr. Sievers:

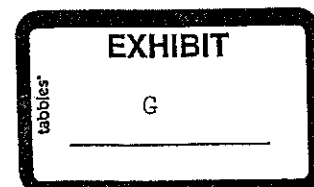
I am in receipt of your letter of April 23, 2013. I am attaching draft supplemental interrogatory answers and draft supplemental responses to your request for production. Please note that some of your objections are not well taken.

Regarding interrogatory answers Nos. 4 through 8 I have provided facts to you. While there may be more facts which you can obtain upon deposition, it is likely that you will want to obtain these additional facts by deposition and not by interrogatory answer. Interrogatories are not intended to obtain voluminous narrative responses. You are not entitled to legal argument or legal conclusions. Beyond what I have said there may be a narrow zone where additional facts could be cited but there will always be a tug of war between us as to whether I have provided sufficient facts to you. I would suggest that you obtain any further information from depositions. If you do not agree with this, let me know and we can discuss.

Regarding your objections to interrogatory answers No. 11 through 14 and 16, you have cited the [REDACTED] case which provides:

"NOTICE: This Order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances under Rule 23(e)(1)."

Your citing of this case does not meet the limited circumstances cited in the Rule. Furthermore, your citation of it to any tribunal would be sanctionable. Furthermore, the [REDACTED] facts involved contention interrogatories directed against paragraphs in a



Mr. Scott B. Sievers

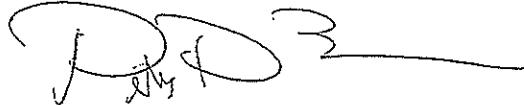
Page - 2 -

May 6, 2013

Complaint. Your contention interrogatories are directed against unrelated hypotheticals. Thus [REDACTED] is not support for you. Finally, your citation of a federal court case is inapposite inasmuch as federal court discovery operates under different rules from Illinois discovery.

Very truly yours,

PETER DeBRUYNE, P.C.

A handwritten signature in black ink, appearing to read 'Peter DeBruyne', with a long horizontal flourish extending to the right.

Peter DeBruyne

PD:lmh

Enclosure

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Complainant,

v.

NORTHERN ILLINOIS
SERVICE COMPANY,

Respondent.

)

) AC 12-51

)

) (IEPA No. 87-12-AC)

) Administrative Citation

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DRAFT

**RESPONDENT'S SUPPLEMENTAL ANSWERS TO COMPLAINANT'S FIRST
INTERROGATORIES TO RESPONDENT**

NOW COMES respondent, NORTHERN ILLINOIS SERVICE COMPANY, and
for its supplemental answers to complainant's interrogatories, states as follows:

GENERAL OBJECTIONS

Respondent objects to each and every answer to the extent that it exceeds the
scope of discovery permitted by the Illinois Supreme Court Rules or the Rules of Civil
Procedure or requires respondent to do more than is required by the Illinois Supreme
Court Rules or the Rules of Civil Procedure. This objection shall apply to, and is hereby
incorporated by reference in, each and every answer to Complainant's First
Interrogatories to Respondent.

INTERROGATORIES

1. State the full name, title, current residence address, and telephone number of
each individual who participated in answering Complainant's First Interrogatories to
Respondent, and describe the nature of each individual's participation.

ANSWER: Objection; attorney/client privilege; without waiving the foregoing objection, Paul Munson, P.O. Box 471, 438 Perley Avenue, Pecatonica, IL 61063; telephone No.: 815-239-9200; William Hoff, 16735 Comly Road, Pecatonica, IL 61063; telephone No.: 815-509-5247.

2. Describe in detail the respondent's business, including its operations, legal structure, and its owners.

ANSWER: Northern Illinois Service Co. is an Illinois corporation, owned by Wayne Klinger. The company is engaged in heavy construction work.

3. Identify the owner(s) of all real property at the Site, stating which owners own which property.

ANSWER: Northern Illinois Service Company.

4. In paragraph (1) of your Response to Violations within your Petition for Review, you state that the respondent "denies the allegations of the violations set forth as '(I)' because respondent did not cause or allow 'open dumping,' did not dump 'waste,' and its activities did not result in 'litter' as alleged in '(1).'" State all facts upon which you base your assertion that the respondent did not cause or allow open dumping.

ANSWER: Objection inasmuch as the interrogatory requests legal conclusion; without waiving the foregoing objection, intent of respondent, equipment and supplies of respondent, nature of material photographed; investigation continuing.

5. In paragraph (1) of your Response to Violations within your Petition for Review, you state that the Respondent "denies the allegations of the violations set forth as '(1)' because Respondent did not cause or allow 'open dumping,' did not dump 'waste' and

its activities did not result in 'litter' as alleged in '(1)'. State all facts upon which you base your assertion that the respondent did not dump waste.

ANSWER: Objection inasmuch as the interrogatory requests legal conclusion; without waiving the foregoing objection, intent of respondent, equipment and supplies of respondent, nature of material photographed; investigation continuing.

6. In paragraph (1) of your Response to Violations within your Petition for Review, you state that the respondent "denies the allegations of the violations set forth as '(1)' because respondent did not cause or allow 'open dumping,' did not dump 'waste,' and its activities did not result in 'litter' as alleged in '(1).'" State all facts upon which you base your assertion that the respondent's activities did not result in litter.

ANSWER: Objection inasmuch as the interrogatory requests legal conclusion; without waiving the foregoing objection, intent of respondent, equipment and supplies of respondent, nature of material photographed; investigation continuing.

7. In paragraph (2) of your Response to Violations within your Petition for Review, you state that the respondent "denies the allegations of the violations set forth as "(2)" because respondent did not cause or allow "open dumping," and did not dump "waste." State all facts upon which you base your assertion that the respondent did not cause or allow open dumping.

ANSWER: Objection inasmuch as the interrogatory requests legal conclusion; without waiving the foregoing objection, intent of respondent, equipment and supplies of respondent, nature of material photographed; investigation continuing.

8. In paragraph (2) of your Response to Violations within your Petition for Review, you state that the respondent "denies the allegations of the violations set forth as

"(2)" because respondent did not cause or allow "open dumping," and did not dump "waste." State all facts upon which you base your assertion that the Respondent did not dump waste.

ANSWER: Objection inasmuch as the interrogatory requests legal conclusion; without waiving the foregoing objection, intent of respondent, equipment and supplies of respondent, nature of material photographed; investigation continuing.

9. Identify in detail the source of the lumber, plastic, fabric, metal, white pipe, and other miscellaneous materials piled together at your site on March 14, 2012, including how long those materials had been so piled together as of that date.

ANSWER: Objection inasmuch as the interrogatory does not define with particularity the "lumber, plastic, fabric, metal, white pipe, and other miscellaneous materials" referenced; without waiving the foregoing objection, and assuming solely for the purposes of responding to these interrogatory but without admitting the veracity thereof, that the material referred to is that referenced in the photograph attached to the Administrative Citation, the source is Northern Illinois Service Company and its various customers and the materials had been so collected for a matter of weeks; investigation continuing.

10. Identify in detail the source of the off-rim tires present at your site on March 14, 2012, including how long those tires had been so present as of that date.

ANSWER: Objection inasmuch as the interrogatory does not define with particularity the "off-rim" tires referenced; without waiving the foregoing objection, and assuming solely for the purposes of responding to these interrogatory but without admitting the veracity thereof, that the material referred to is that referenced in the

photograph attached to the Administrative Citation, the tire with designated file name 2010301120-031412-001-006, page 1 of 3, had its source as a Northern Illinois Service Company vehicle from which it had been removed; regarding file name 2010301120-031412-001-006, page 2 of 3, attached to the Administrative Citation, the source is Northern Illinois Service Company and the tires in both cases are part of equipment used by Northern Illinois Service Company.

11. Do you contend that individuals and/or entities other than you were responsible for placing at your site the lumber, plastic, fabric, metal, white pipe, and other miscellaneous materials piled together on March 14, 2012? If your answer is anything other than an unequivocal "No," state all facts upon which you base your contention.

ANSWER: Objection; interrogatory asks for a legal opinion and not facts.

12. Do you contend that individuals and/or entities other than you were responsible for placing at your site the off-rim tires that were present on March 14, 2012? If your answer is anything other than an unequivocal "No," state all facts upon which you base your contention.

ANSWER: Objection; interrogatory asks for legal opinion and not facts.

13. If your answer to either interrogatory No. 11 or No. 12 above was anything other than an unequivocal "No," identify all steps you have taken to restrict access to your site from unauthorized individuals or entities.

ANSWER: See answers to interrogatory Nos. 11 and 12.

14. If your answer to either interrogatory No. 11 or No. 12 above was anything other than an unequivocal "No," identify all steps you have taken to determine the

responsible individuals and/or entities as well as the names and addresses of each individual or entity you determined to be so responsible.

ANSWER: See answers to interrogatory Nos. 11 and 12.

15. Identify in detail all U. S. Environmental Protection Agency, Illinois Environmental Protection Agency, and Winnebago County permits you had as of March 14, 2012 concerning solid waste or used tires.

ANSWER: See response to request to produce No. 2.

16. Do you contend that, as of March 14, 2012, your site fulfilled the requirements for a sanitary landfill in Illinois? If so, state all facts upon which you base your contention.

ANSWER: Objection; interrogatory asks for a legal opinion and not facts.

17. State the full name, address, and telephone number of each person who has knowledge of the matters alleged in your Petition for Review, and specify the knowledge each person possesses.

ANSWER: Objection, burdensome and oppressive as a number of people would have some, perhaps minute, knowledge of the matters alleged in the Petition for Review; without waiving the foregoing objection, Paul Munson, P.O. Box 471, 438 Perley Avenue, Pecatonica, IL 61063; telephone No.: 815-239-9200; William Hoff, 16735 Comly Road, Pecatonica, IL 61063; telephone No.: 815-509-5247.

Paul Munson encountered the inspector. He knows the nature of the materials shown in the photographs; he is aware of the procedures employed by respondent with respect to the allegations of the Petition.

William Hoff manages the field operations for respondent. He also is aware of the nature of the material contained in the photographs attached to the Petition; he also is aware of the procedures employed by Northern in connection with the production and disposition of the material shown in the photographs attached to the Petition.

18. Pursuant to Illinois Supreme Court Rule 213(f) and 35 Ill. Adm. Code 101.616, provide the name and address of each witness who will testify at trial and all other information required for each witness.

ANSWER: None identified as yet other than Paul Munson and William Hoff; at his time respondent identifies Mr. Munson and Mr. Hoff only as lay witnesses. These witnesses will testify as to the nature of the material shown in the photographs attached to the Petition, the intent of respondent, the collection, retention and disposition of the material shown in the photographs as well as general background information with respect to respondent.

Respondent reserves the right to designate either Mr. Munson or Mr. Hoff as an expert witness as well as the right to designate other independent expert witnesses or controlled expert witness; investigation continuing.

19. Has any person identified in your answers to interrogatories Nos. 17 and 18 above been convicted of a misdemeanor involving dishonesty, false statement or a felony? If so, state the nature thereof, the date of the conviction, and the court and the caption in which the conviction occurred. For the purpose of this interrogatory, a plea of guilty shall be considered as a conviction.

ANSWER: No.

20. Have you (or has anyone acting on your behalf) had any conversations with any person at any time regarding the alleged conduct that is the subject of the violations set forth against you in the Administration Citation, or have you overheard any statements made by any person at any time regarding the alleged conduct that is the subject of the violations set forth against you in the Administration Citation? If the answer to this interrogatory is in the affirmative, state the following:

- (a) The date or dates of such conversations and/or statements;
- (b) The place of such conversations and/or statements;
- (c) All persons present for the conversations and/or statements;
- (d) The matters and things stated by the person in the conversations and/or statements;
- (e) Whether the conversation was oral, written and/or recorded; and
- (f) Who has possession of the statement if written and/or recorded.

ANSWER: Objection; irrelevant and immaterial; also burdensome and oppressive; none other than conversation between Paul Munson and Donna Shehane, the contents of which can be more appropriately obtained by deposition.

21. Do you know of any statements made by any individual or entity relating to the alleged conduct that is the subject of the violations set forth against you in the Administrative Citation? If so, give the name and address of each such individual or entity, the date of the statement, and state whether such statement was written and/or oral.

ANSWER: Objection; irrelevant and immaterial; also burdensome and oppressive; without waiving the foregoing objection, respondent is not aware of any statements at this time; investigation continuing.

22. Identify all records documenting any of the facts asserted in your answers to the previous interrogatories, describing each record with specificity, including its subject, date, author, and addressee, where applicable, and state the full name and address of the individual or entity having possession, custody, or control of each record.

ANSWER: Objection; burdensome and oppressive; see responses to document requests.

NORTHERN ILLINOIS SERVICE
COMPANY, Respondent

BY: PETER DeBRUYNE, P.C.

BY

Peter DeBruyne, Its Attorney

ATTESTATION

STATE OF ILLINOIS)
) SS.
COUNTY OF WINNEBAGO)

PAUL MUNSON, being first duly sworn on oath, deposes and states that he is a management employee of respondent in the above-captioned matter, that he has read the foregoing document and that the answers made herein are true, correct and complete to the best of his knowledge and belief.

PAUL MUNSON

SUBSCRIBED and SWORN to before
me this ____ day of May, 2013.

Notary Public

CERTIFICATE OF SERVICE

I hereby certify that I did on the ____ day of May, 2013 by regular mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the foregoing Respondent's Supplemental Answers to Complainant's First Interrogatories to Respondent on the following:

Scott B. Sievers
Special Assistant Attorney General
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Peter DeBruyne

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Complainant,

v.

NORTHERN ILLINOIS
SERVICE COMPANY,

Respondent.

)

) AC 12-51

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) (IEPA No. 87-12-AC)

) Administrative Citation

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DRAFT

**RESPONDENT'S SUPPLEMENTAL RESPONSE TO COMPLAINANT'S FIRST
REQUESTS TO PRODUCE TO RESPONDENT**

Respondent, NORTHERN ILLINOIS SERVICE COMPANY, states as follows
for its Supplement Response to Complainant's First Requests to Produce to Respondent.

GENERAL OBJECTIONS

Respondent objects to each and every Request to the extent that it exceeds the scope of discovery permitted by the Illinois Supreme Court Rules or the Rules of Civil Procedure or requires respondent to do more than is required by the Illinois Supreme Court Rules or the Rules of Civil Procedure. This objection shall apply to, and is hereby incorporated by reference in, each and every Response to Complainant's First Requests to Produce to Respondent.

REQUESTS TO PRODUCE

1. A true and accurate copy of the respondent's state and federal tax returns for the years 2007, 2008, 2009, 2010 and 2011.

RESPONSE: Objection; immaterial and irrelevant to any issue in the case; further, respondent's state and federal tax returns are confidential and proprietary.

2. True and accurate copies of all U.S. Environmental Protection Agency, Illinois Environmental Protection Agency, and Winnebago County permits you had as of March 14, 2012 concerning solid waste or used tires.

RESPONSE: Will produce if available; investigation continuing; in addition complainant is in possession of all permits concerning solid waste or used tires as of March 14, 2012 issued to respondent.

3. True and accurate copies of all records identified in your answer to Interrogatory No. 22 of the Complainant's First Interrogatories to Respondent.

RESPONSE: Objection; burdensome and oppressive; there may be voluminous documents which have some relation to interrogatory answers but which have no practical relevance to the issues in the case; for example, there may be a packing slip buried in a warehouse somewhere relating to the production of a pallet which appears in the photographs attached to the Petition. This document quite clearly would not be relevant to the issues raised in the Petition and it would be burdensome upon respondent to require it to track down every such piece of paper. Further examples could be given; there may be documents which respondent intends to introduce at trial and when respondent determines what those documents are, it will provide them to petitioner; investigation continuing.

4. True and accurate copies of all records referenced in your answers to Complainant's Complainant's First Interrogatories to Respondent.

RESPONSE: Objection; burdensome and oppressive; there may be voluminous documents which have some relation to interrogatory answers but which have no practical relevance to the issues in the case; for example, there may be a packing slip buried in a warehouse somewhere relating to the production of a pallet which appears in the photographs attached to the Petition. This document quite clearly would not be relevant to the issues raised in the Petition and it would be burdensome upon respondent to require it to track down every such piece of paper. Further examples could be given; there may be documents which respondent intends to introduce at trial and when respondent determines what those documents are, it will provide them to petitioner; investigation continuing.

5. True and accurate copies of all records documenting the facts set forth in your Petition for Review.

RESPONSE: Objection; burdensome and oppressive; there may be voluminous documents which have some relation to interrogatory answers but which have no practical relevance to the issues in the case; for example, there may be a packing slip buried in a warehouse somewhere relating to the production of a pallet which appears in the photographs attached to the Petition. This document quite clearly would not be relevant to the issues raised in the Petition and it would be burdensome upon respondent to require it to track down every such piece of paper. Further examples could be given; there may be documents which respondent intends to introduce at trial and when respondent determines what those documents are, it will provide them to petitioner; investigation continuing.

6. True and accurate copies of all records documenting the facts set forth in your answers to Complainant's First Interrogatories to Respondent.

RESPONSE: Objection; burdensome and oppressive; there may be voluminous documents which have some relation to interrogatory answers but which have no practical relevance to the issues in the case; for example, there may be a packing slip buried in a warehouse somewhere relating to the production of a pallet which appears in the photographs attached to the Petition. This document quite clearly would not be relevant to the issues raised in the Petition and it would be burdensome upon respondent to require it to track down every such piece of paper. Further examples could be given; there may be documents which respondent intends to introduce at trial and when respondent determines what those documents are, it will provide them to petitioner; investigation continuing.

7. An affidavit attesting whether your production is complete in accordance with the Complainant's First Requests to Produce.

NORTHERN ILLINOIS SERVICE
COMPANY, Respondent

BY: PETER DeBRUYNE, P.C.

BY

Peter DeBruyne, Its Attorney

Peter DeBruyne
Peter DeBruyne, P.C.
838 North Main Street
Rockford, IL 61103
Telephone (815) 964-3810
Fax (815) 964-3813
Email: pdebruyne@sbcglobal.net

AFFIDAVIT

STATE OF ILLINOIS)
) SS.
COUNTY OF WINNEBAGO)

Peter DeBruyne, being first duly sworn on oath deposes and says that he is one the attorney for the respondent in the above-entitled cause; that the production of information and data made pursuant to Respondent's Supplemental Response to Complainant's First Requests to Produce to Respondent is to the best of his knowledge, information and belief complete to the date and time furnished to wit: May 6, 2013.

Peter DeBruyne

Subscribed and sworn to
before me this 6th day of
May, 2013.

Notary Public.

CERTIFICATE OF SERVICE

I hereby certify that I did on the 6th day of May, 2013, by regular mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the foregoing Respondent's Supplement Response to Complainant's First Requests to Produce to Respondent on the following:

Scott B. Sievers
Special Assistant Attorney General
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Peter DeBruyne

Sievers, Scott

From: Peter DeBruyne [pdebruyne@sbcglobal.net]
Sent: Wednesday, June 05, 2013 9:48 AM
To: Sievers, Scott
Subject: RE: Illinois EPA v. Northern Illinois Service Company (PCB AC 12-51)
Attachments: image001.jpg; image002.gif

Mr. Sievers,

I think I will email to you this afternoon the responses. The signed and attested responses will be mailed in a few days when I get them back from the client.

Peter DeBruyne

From: Sievers, Scott [mailto:Scott.Sievers@Illinois.gov]
Sent: Tuesday, June 04, 2013 2:57 PM
To: Peter DeBruyne
Subject: Illinois EPA v. Northern Illinois Service Company (PCB AC 12-51)

Mr. DeBruyne:

When we last spoke, you indicated that you would provide me with your client's revised interrogatory answers and production responses by the end of last week or Monday of this week. As of this moment, I have not received them. Where do things stand on providing those revised discovery responses to me? Thanks,

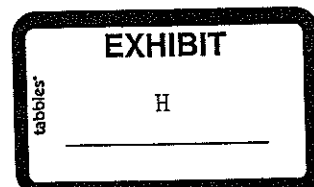
Scott



Scott B. Sievers
Assistant Counsel
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
Scott.Sievers@Illinois.gov
Office: (217) 782-5544 | Fax: (217) 782-9807



Please consider the environment before printing this email.



Sievers, Scott

From: Peter DeBruyne [pdebruyne@sbcglobal.net]
Sent: Thursday, June 06, 2013 10:47 AM
To: Sievers, Scott
Subject: FW: NISC - EPA II
Attachments: Final supplementalresponseRequestforProduction6-6-2012.doc;
finalsupplementalinterrogatories6-6-2013.doc

Follow Up Flag: Follow up
Flag Status: Flagged

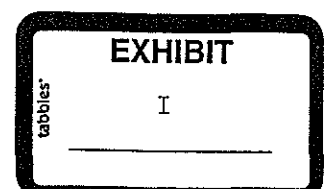
Categories: ASSIGNMENTS/MEETINGS

Dear Mr. Sievers,

I will get the signed documents to you within a week. Thank you.

Peter DeBruyne

From: Smarie93@aol.com [mailto:Smarie93@aol.com]
Sent: Thursday, June 06, 2013 10:26 AM
To: pdebruyne@sbcglobal.net
Subject: NISC - EPA II



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,	) AC 12-51
)
Complainant,	) (IEPA No. 87-12-AC)
	) Administrative Citation
v.)
)
NORTHERN ILLINOIS)
SERVICE COMPANY,)
)
Respondent.)

RESPONDENT'S SUPPLEMENTAL RESPONSE TO COMPLAINANT'S FIRST REQUESTS TO PRODUCE TO RESPONDENT

Respondent, NORTHERN ILLINOIS SERVICE COMPANY, states as follows for its Supplement Response to Complainant's First Requests to Produce to Respondent.

GENERAL OBJECTIONS

Respondent objects to each and every Request to the extent that it exceeds the scope of discovery permitted by the Illinois Supreme Court Rules or the Rules of Civil Procedure or requires respondent to do more than is required by the Illinois Supreme Court Rules or the Rules of Civil Procedure. This objection shall apply to, and is hereby incorporated by reference in, each and every Response to Complainant's First Requests to Produce to Respondent.

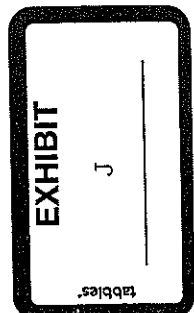
REQUESTS TO PRODUCE

1. A true and accurate copy of the respondent's state and federal tax returns for the years 2007, 2008, 2009, 2010 and 2011.

RECEIVED
Division of Legal Counsel

JUN 24 2013

**Environmental Protection
Agency**



RESPONSE: Objection; immaterial and irrelevant to any issue in the case; further, respondent's state and federal tax returns are confidential and proprietary.

2. True and accurate copies of all U.S. Environmental Protection Agency, Illinois Environmental Protection Agency, and Winnebago County permits you had as of March 14, 2012 concerning solid waste or used tires.

RESPONSE: Will produce if available; investigation continuing; in addition complainant is in possession of all permits concerning solid waste or used tires as of March 14, 2012 issued to respondent.

3. True and accurate copies of all records identified in your answer to Interrogatory No. 22 of the Complainant's First Interrogatories to Respondent.

RESPONSE: Objection; burdensome and oppressive; there may be voluminous documents which have some relation to interrogatory answers but which have no practical relevance to the issues in the case; for example, there may be a packing slip buried in a warehouse somewhere relating to the production of a pallet which appears in the photographs attached to the Petition. This document quite clearly would not be relevant to the issues raised in the Petition and it would be burdensome upon respondent to require it to track down every such piece of paper. Further examples could be given; there may be documents which respondent intends to introduce at trial and when respondent determines what those documents are, it will provide them to petitioner; investigation continuing.

4. True and accurate copies of all records referenced in your answers to Complainant's Complainant's First Interrogatories to Respondent.

RESPONSE: Objection; burdensome and oppressive; there may be voluminous documents which have some relation to interrogatory answers but which have no practical relevance to the issues in the case; for example, there may be a packing slip buried in a warehouse somewhere relating to the production of a pallet which appears in the photographs attached to the Petition. This document quite clearly would not be relevant to the issues raised in the Petition and it would be burdensome upon respondent to require it to track down every such piece of paper. Further examples could be given; there may be documents which respondent intends to introduce at trial and when respondent determines what those documents are, it will provide them to petitioner; investigation continuing.

5. True and accurate copies of all records documenting the facts set forth in your Petition for Review.

RESPONSE: Objection; burdensome and oppressive; there may be voluminous documents which have some relation to interrogatory answers but which have no practical relevance to the issues in the case; for example, there may be a packing slip buried in a warehouse somewhere relating to the production of a pallet which appears in the photographs attached to the Petition. This document quite clearly would not be relevant to the issues raised in the Petition and it would be burdensome upon respondent to require it to track down every such piece of paper. Further examples could be given; there may be documents which respondent intends to introduce at trial and when respondent determines what those documents are, it will provide them to petitioner; without waiving the foregoing objection, see the copy of the permit attached hereto; investigation continuing.

6. True and accurate copies of all records documenting the facts set forth in your answers to Complainant's First Interrogatories to Respondent.

RESPONSE: Objection; burdensome and oppressive; there may be voluminous documents which have some relation to interrogatory answers but which have no practical relevance to the issues in the case; for example, there may be a packing slip buried in a warehouse somewhere relating to the production of a pallet which appears in the photographs attached to the Petition. This document quite clearly would not be relevant to the issues raised in the Petition and it would be burdensome upon respondent to require it to track down every such piece of paper. Further examples could be given; there may be documents which respondent intends to introduce at trial and when respondent determines what those documents are, it will provide them to petitioner; investigation continuing.

7. An affidavit attesting whether your production is complete in accordance with the Complainant's First Requests to Produce.

NORTHERN ILLINOIS SERVICE
COMPANY, Respondent

BY: PETER DeBRUYNE, P.C.

BY 

Peter DeBruyne, Its Attorney

Peter DeBruyne
Peter DeBruyne, P.C.
838 North Main Street
Rockford, IL 61103
Telephone (815) 964-3810
Fax (815) 964-3813
Email: pdebruyne@sbcglobal.net

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,	) AC 12-51
)
Complainant,	) (IEPA No. 87-12-AC)
	) Administrative Citation
v.)
)
NORTHERN ILLINOIS)
SERVICE COMPANY,)
)
Respondent.)

RESPONDENT'S SUPPLEMENTAL ANSWERS TO COMPLAINANT'S FIRST INTERROGATORIES TO RESPONDENT

NOW COMES respondent, NORTHERN ILLINOIS SERVICE COMPANY, and for its supplemental answers to complainant's interrogatories, states as follows:

GENERAL OBJECTIONS

Respondent objects to each and every answer to the extent that it exceeds the scope of discovery permitted by the Illinois Supreme Court Rules or the Rules of Civil Procedure or requires respondent to do more than is required by the Illinois Supreme Court Rules or the Rules of Civil Procedure. This objection shall apply to, and is hereby incorporated by reference in, each and every answer to Complainant's First Interrogatories to Respondent.

INTERROGATORIES

1. State the full name, title, current residence address, and telephone number of each individual who participated in answering Complainant's First Interrogatories to Respondent, and describe the nature of each individual's participation.

ANSWER: Objection; attorney/client privilege; without waiving the foregoing objection, Paul Munson, P.O. Box 471, 438 Perley Avenue, Pecatonica, IL 61063; telephone No.: 815-239-9200; William Hoff, 16735 Comly Road, Pecatonica, IL 61063; telephone No.: 815-509-5247.

2. Describe in detail the respondent's business, including its operations, legal structure, and its owners.

ANSWER: Northern Illinois Service Co. is an Illinois corporation, owned by Wayne Klinger. The company is engaged in heavy construction work.

3. Identify the owner(s) of all real property at the Site, stating which owners own which property.

ANSWER: Northern Illinois Service Company.

4. In paragraph (1) of your Response to Violations within your Petition for Review, you state that the respondent "denies the allegations of the violations set forth as '(l)' because respondent did not cause or allow 'open dumping,' did not dump 'waste,' and its activities did not result in 'litter' as alleged in '(1).'" State all facts upon which you base your assertion that the respondent did not cause or allow open dumping.

ANSWER: Objection inasmuch as the interrogatory requests legal conclusions; without waiving the foregoing objection, the site alleged in the Citation was not a disposal site; further, the material depicted in exposures 001, 002 and 003 attached to the Citation is respondent's equipment; further, the material pictured in exposure 006 attached to the Citation are respondent's supplies; investigation continuing.

5. In paragraph (1) of your Response to Violations within your Petition for Review, you state that the Respondent "denies the allegations of the violations set forth as

'(1)' because Respondent did not cause or allow 'open dumping,' did not dump 'waste' and its activities did not result in 'litter' as alleged in '(1)." State all facts upon which you base your assertion that the respondent did not dump waste.

ANSWER: Objection inasmuch as the interrogatory requests legal conclusions; without waiving the foregoing objection, the site alleged in the Citation was not a disposal site; further, the material depicted in exposures 001, 002 and 003 attached to the Citation is respondent's equipment; further, the material pictured in exposure 006 attached to the Citation are respondent's supplies; further most, if not all, of the material depicted in the exposures attached to the Citation were generated from respondent's site; investigation continuing.

6. In paragraph (1) of your Response to Violations within your Petition for Review, you state that the respondent "denies the allegations of the violations set forth as '(1)' because respondent did not cause or allow 'open dumping,' did not dump 'waste,' and its activities did not result in 'litter' as alleged in '(1).'" State all facts upon which you base your assertion that the respondent's activities did not result in litter.

ANSWER: Objection inasmuch as the interrogatory requests legal conclusions; without waiving the foregoing objection, the site alleged in the Citation was not a disposal site; further, the material depicted in exposures 001, 002 and 003 attached to the Citation is respondent's equipment; further, the material pictured in exposure 006 attached to the Citation are respondent's supplies; further most, if not all, of the material depicted in the exposures attached to the Citation were generated from respondent's site; further the material depicted in the exposures and referenced in the Citation were not discarded and respondent is the owner of the site in question; further, the material

depicted in the exposures attached to the Citation did not constitute a public nuisance nor was there any chance of the material being transported by natural elements on to the real property of any other person; investigation continuing.

7. In paragraph (2) of your Response to Violations within your Petition for Review, you state that the respondent "denies the allegations of the violations set forth as "(2)" because respondent did not cause or allow "open dumping," and did not dump "waste." State all facts upon which you base your assertion that the respondent did not cause or allow open dumping.

ANSWER: Objection inasmuch as the interrogatory requests legal conclusions; without waiving the foregoing objection, the site alleged in the Citation was not a disposal site; further, the material depicted in exposures 001, 002 and 003 attached to the Citation is respondent's equipment; further, the material pictured in exposure 006 attached to the Citation are respondent's supplies; investigation continuing.

8. In paragraph (2) of your Response to Violations within your Petition for Review, you state that the respondent "denies the allegations of the violations set forth as "(2)" because respondent did not cause or allow "open dumping," and did not dump "waste." State all facts upon which you base your assertion that the Respondent did not dump waste.

ANSWER: Objection inasmuch as the interrogatory requests legal conclusions; without waiving the foregoing objection, the site alleged in the Citation was not a disposal site; further, the material depicted in exposures 001, 002 and 003 attached to the Citation is respondent's equipment; further, the material pictured in exposure 006 attached to the Citation are respondent's supplies; further most, if not all, of the material

depicted in the exposure attached to the Citation were generated from respondent's site; investigation continuing.

9. Identify in detail the source of the lumber, plastic, fabric, metal, white pipe, and other miscellaneous materials piled together at your site on March 14, 2012, including how long those materials had been so piled together as of that date.

ANSWER: Objection inasmuch as the interrogatory does not define with particularity the "lumber, plastic, fabric, metal, white pipe, and other miscellaneous materials" referenced; without waiving the foregoing objection, and assuming solely for the purposes of responding to these interrogatory but without admitting the veracity thereof, that the material referred to is that referenced in the photograph attached to the Administrative Citation, the source is Northern Illinois Service Company and the materials had been so collected for a matter of weeks; investigation continuing.

10. Identify in detail the source of the off-rim tires present at your site on March 14, 2012, including how long those tires had been so present as of that date.

ANSWER: Objection inasmuch as the interrogatory does not define with particularity the "off-rim" tires referenced; without waiving the foregoing objection, and assuming solely for the purposes of responding to these interrogatory but without admitting the veracity thereof, that the material referred to is that referenced in the photograph attached to the Administrative Citation, the tire with designated file name 2010301120-031412-001-006, page 1 of 3, had its source as a Northern Illinois Service Company vehicle from which it had been removed; regarding file name 2010301120-031412-001-006, page 2 of 3, attached to the Administrative Citation, the source is

Northern Illinois Service Company and the tires in both cases are part of equipment used by Northern Illinois Service Company.

11. Do you contend that individuals and/or entities other than you were responsible for placing at your site the lumber, plastic, fabric, metal, white pipe, and other miscellaneous materials piled together on March 14, 2012? If your answer is anything other than an unequivocal "No," state all facts upon which you base your contention.

ANSWER: Objection; interrogatory asks for a legal opinion and not facts.

12. Do you contend that individuals and/or entities other than you were responsible for placing at your site the off-rim tires that were present on March 14, 2012? If your answer is anything other than an unequivocal "No," state all facts upon which you base your contention.

ANSWER: Objection; interrogatory asks for legal opinion and not facts.

13. If your answer to either interrogatory No. 11 or No. 12 above was anything other than an unequivocal "No," identify all steps you have taken to restrict access to your site from unauthorized individuals or entities.

ANSWER: See answers to interrogatory Nos. 11 and 12.

14. If your answer to either interrogatory No. 11 or No. 12 above was anything other than an unequivocal "No," identify all steps you have taken to determine the responsible individuals and/or entities as well as the names and addresses of each individual or entity you determined to be so responsible.

ANSWER: See answers to interrogatory Nos. 11 and 12.

15. Identify in detail all U. S. Environmental Protection Agency, Illinois Environmental Protection Agency, and Winnebago County permits you had as of March 14, 2012 concerning solid waste or used tires.

ANSWER: See response to request to produce No. 2.

16. Do you contend that, as of March 14, 2012, your site fulfilled the requirements for a sanitary landfill in Illinois? If so, state all facts upon which you base your contention.

ANSWER: Objection; interrogatory asks for a legal opinion and not facts.

17. State the full name, address, and telephone number of each person who has knowledge of the matters alleged in your Petition for Review, and specify the knowledge each person possesses.

ANSWER: Objection, burdensome and oppressive as a number of people would have some, perhaps minute, knowledge of the matters alleged in the Petition for Review; without waiving the foregoing objection, Paul Munson, P.O. Box 471, 438 Perley Avenue, Pecatonica, IL 61063; telephone No.: 815-239-9200; William Hoff, 16735 Comly Road, Pecatonica, IL 61063; telephone No.: 815-509-5247.

Paul Munson encountered the inspector. He knows the nature of the materials shown in the photographs; he is aware of the procedures employed by respondent with respect to the allegations of the Petition.

William Hoff manages the field operations for respondent. He also is aware of the nature of the material contained in the photographs attached to the Petition; he also is aware of the procedures employed by Northern in connection with the production and disposition of the material shown in the photographs attached to the Petition.

18. Pursuant to Illinois Supreme Court Rule 213(f) and 35 Ill. Adm. Code 101.616, provide the name and address of each witness who will testify at trial and all other information required for each witness.

ANSWER: None identified as yet other than Paul Munson and William Hoff; at his time respondent identifies Mr. Munson and Mr. Hoff only as lay witnesses. These witnesses will testify as to the nature of the material shown in the photographs attached to the Petition, the intent of respondent, the collection, retention and disposition of the material shown in the photographs as well as general background information with respect to respondent.

Respondent reserves the right to designate either Mr. Munson or Mr. Hoff as an expert witness as well as the right to designate other independent expert witnesses or controlled expert witness; investigation continuing.

19. Has any person identified in your answers to interrogatories Nos. 17 and 18 above been convicted of a misdemeanor involving dishonesty, false statement or a felony? If so, state the nature thereof, the date of the conviction, and the court and the caption in which the conviction occurred. For the purpose of this interrogatory, a plea of guilty shall be considered as a conviction.

ANSWER: No.

20. Have you (or has anyone acting on your behalf) had any conversations with any person at any time regarding the alleged conduct that is the subject of the violations set forth against you in the Administration Citation, or have you overheard any statements made by any person at any time regarding the alleged conduct that is the

subject of the violations set forth against you in the Administration Citation? If the answer to this interrogatory is in the affirmative, state the following:

- (a) The date or dates of such conversations and/or statements;
- (b) The place of such conversations and/or statements;
- (c) All persons present for the conversations and/or statements;
- (d) The matters and things stated by the person in the conversations and/or statements;
- (e) Whether the conversation was oral, written and/or recorded; and
- (f) Who has possession of the statement if written and/or recorded.

ANSWER: Objection; irrelevant and immaterial; also burdensome and oppressive; without waiving the foregoing objections, none other than general conversations of extremely brief duration at respondent noting the existence of a Citation and a brief conversation between Paul Munson and Donna Shehane, on March 14, 2012, involving Paul Munson's repetition to Donna Shehane of an instruction he had given to respondent's employees in reference to a comment made by Shehane about what she had observed on respondent's property which, at the time of the conversation, had not been observed by Mr. Munson.

21. Do you know of any statements made by any individual or entity relating to the alleged conduct that is the subject of the violations set forth against you in the Administrative Citation? If so, give the name and address of each such individual or entity, the date of the statement, and state whether such statement was written and/or oral.

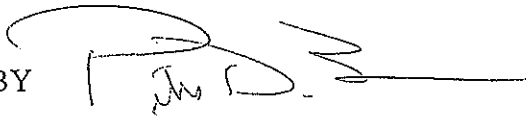
ANSWER: Objection; irrelevant and immaterial; also burdensome and oppressive; without waiving the foregoing objection, respondent is not aware of any statements at this time; investigation continuing.

22. Identify all records documenting any of the facts asserted in your answers to the previous interrogatories, describing each record with specificity, including its subject, date, author, and addressee, where applicable, and state the full name and address of the individual or entity having possession, custody, or control of each record.

ANSWER: Objection; burdensome and oppressive; see responses to document requests.

NORTHERN ILLINOIS SERVICE
COMPANY, Respondent

BY: PETER DeBRUYNE, P.C.

BY 

Peter DeBruyne, Its Attorney

ATTESTATION

STATE OF ILLINOIS)
) SS.
COUNTY OF WINNEBAGO)

PAUL MUNSON, being first duly sworn on oath, deposes and states that he is a management employee of respondent in the above-captioned matter, that he has read the foregoing document and, except as respondent has objected to the interrogatories, the answers made herein are true, correct and complete to the best of his knowledge and belief.

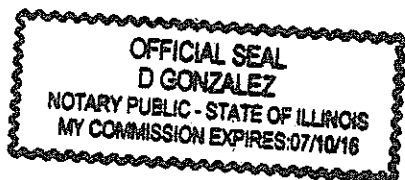


PAUL MUNSON

SUBSCRIBED and SWORN to before
me this 18 day of June, 2013.




Notary Public



CERTIFICATE OF SERVICE

I hereby certify that I did on the 20th day of June, 2013 by regular mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the foregoing Respondent's Supplemental Answers to Complainant's First Interrogatories to Respondent on the following:

Scott B. Sievers
Special Assistant Attorney General
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276



Peter DeBruyne

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY)	
)	
Complainant,)	
)	
v.	)	AC 2012-051
	)	(IEPA No. 87-12-AC)
NORTHERN ILLINOIS	)	(Administrative Citation)
SERVICE COMPANY,)	
)	
Respondent.)	

ORDER

CAUSE COMING ON for hearing on the Motion to Compel and supporting Memorandum of Law brought by the Complainant, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), the Hearing Officer having reviewed the parties' submissions and considered the arguments of Counsel and being fully apprised in the premises,

IT IS HEREBY ORDERED

1. That Northern's objections and refusal and failure to fully respond to Illinois EPA's discovery requests lacked substantial justification.
2. That Northern's objections to Illinois EPA Interrogatories No. 11 and 12 are overruled, as they do not ask for legal opinions but request facts. Northern is ordered to fully and completely answer Illinois EPA Interrogatories Nos. 11, 12, 13, and 14.
3. That Northern and its counsel are ordered to investigate the existence of records responsive to Illinois EPA Interrogatory No. 15 and Request to Produce No. 2 and to answer said interrogatory and respond to said production request fully and completely.
4. That Northern's objection to Illinois EPA Interrogatory No. 16 is overruled, as it does not ask for a legal opinion but request facts. Northern is ordered to fully and completely answer

Illinois EPA Interrogatory No. 16.

5. That Northern's objections to Illinois EPA Interrogatory No. 22 and Illinois EPA Requests to Produce Nos. 3, 4, 5, and 6 are overruled, as these requests seek information and materials squarely within the scope of discovery. Northern is ordered to answer said interrogatory and respond to said production requests fully and completely.

6. That Northern has fourteen (14) days from the entry of this Order to comply with its provisions in full.

IT IS SO ORDERED.

Hearing Officer
Illinois Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY)	
)	
Complainant,)	
)	
v.	)	AC 2012-051
	)	(IEPA No. 87-12-AC)
NORTHERN ILLINOIS	)	(Administrative Citation)
SERVICE COMPANY,)	
)	
Respondent.)	

MEMORANDUM OF LAW IN SUPPORT
OF COMPLAINANT'S MOTION TO COMPEL

NOW COMES the Complainant, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), by and through its counsel, Special Assistant Attorney General Scott B. Sievers, and for its memorandum of law in support of Complainant's Motion to Compel states the following:

I. STANDARD OF LAW

The General Rules of the Pollution Control Board state that, "[f]or purposes of discovery, the Board may look to the Code of Civil Procedure and the Supreme Court Rules for guidance where the Board's procedural rules are silent." 35 Ill. Adm. Code 101.616 (2013). Subsection (a) of Illinois Supreme Court Rule 219 provides, in pertinent part, that "[i]f a party fails to answer any interrogatory served upon him or her, or to comply with a request for the production of documents ... , the proponent of the ... interrogatory or the party serving the request may on like notice move for an order compelling an answer or compliance with the request." Ill. S. Ct. R. 219(a) (eff. July 1, 2002).

II. DISPUTED DISCOVERY REQUESTS

Interrogatories Nos. 11, 12, 13 and 14

Illinois EPA Interrogatories Nos. 11 and 12 ask Northern whether it makes particular contentions and, if so, to state all facts upon which those contentions are based. To each of these interrogatories, Northern responded, "Objection; interrogatory asks for a legal opinion and not facts." The interrogatories state as follows:

11. Do you contend that individuals and/or entities other than you were responsible for placing at your site the lumber, plastic, fabric, metal, white pipe, and other miscellaneous materials piled together on March 14, 2012? If your answer is anything other than an unequivocal "No," state all **facts** upon which you base your contention.

12. Do you contend that individuals and/or entities other than you were responsible for placing at your site the off-rim tires that were present on March 14, 2012? If your answer is anything other than an unequivocal "No," state all **facts** upon which you base your contention.

(emphasis added). Interrogatories Nos. 13 and 14 follow up on these interrogatories as follows:

13. If your answer to either Interrogatory No. 11 or No. 12 above was anything other than an unequivocal "No," identify all steps you have taken to restrict access to your site from unauthorized individuals or entities.

14. If your answer to either Interrogatory No. 11 or No. 12 above was anything other than an unequivocal "No," identify all steps you have taken to determine the responsible individuals and/or entities as well as the names and addresses of each individual or entity you determined to be so responsible.

Northern responded to both Interrogatories Nos. 13 and 14 by stating "See answers to interrogatory Nos. 11 and 12."

Interrogatories seeking a party's contentions are known as "contention interrogatories."

10 Ill. Prac., Civil Discovery § 13:12 (2012 ed.) While Illinois EPA is unaware of any published Illinois state court opinion addressing contention interrogatories, they are commonplace, with Illinois federal courts repeatedly confronting them. *See, e.g., Vidimos, Inc. v. Laser Lab Ltd.*, 99

F.3d 217, 222 (7th Cir. 1996) (“If [defendant] wished to minimize uncertainty concerning the scope of [plaintiff’s] claims, it could have served contention interrogatories.”); *Auto Meter Products, Inc. v. Maxima Technologies & Systems, LLC*, 2006 WL 3253636, 2 (N.D. Ill. 2006) (“Contention interrogatories, such as those at issue here, basically ‘require the answering party to commit to a position and give factual specifics supporting its claims.’”) The Pollution Control Board itself has seen such discovery tools. *See Dorothy v. Flex-N-Gate Corporation*, 2006 WL 3265962 (PCB 2006). Objections to contention interrogatories claiming they sought work product and legal conclusions have been overruled by the U.S. District Court for the Central District of Illinois. *Stevens v. DeWitt County, Ill.*, No. 11-CV-3162, 2013 WL 819372, at *3 (C.D. Ill. Mar. 6, 2013).

As is apparent from Interrogatories Nos. 11 and 12 themselves, they do not ask for a legal opinion, as Northern asserts. Instead, they simply request that, if Northern contends others were responsible for placing certain materials on its site, that Northern disclose facts supporting its contentions. Furthermore, Interrogatories No. 13 and 14 call upon Northern to disclose all steps it has taken to determine the responsible parties and to restrict access to its site if Northern contends that others are responsible for placing those materials on its site. These interrogatories seek information relating to Northern’s claims and defenses in this action and thus fall squarely within the scope of discovery set forth in Illinois Supreme Court Rule 201(b)(1).

Illinois EPA has requested that Northern withdraw its objections to Interrogatories Nos. 11 and 12 and fully answer Interrogatories Nos. 11, 12, 13, and 14, but Northern has not done so. (See Exs. F, G & J.) This Board should find that Northern’s objections to Interrogatories Nos. 11 and 12 and its refusal and failure to fully respond to Interrogatories Nos. 11, 12, 13, and 14 were made without substantial justification, should overrule Northern’s objections, and should order

Northern to answer these interrogatories fully and unequivocally.

Interrogatory No. 15 and Request to Produce No. 2

Illinois EPA Interrogatory No. 15 asked Northern to “[i]dentify in detail all U.S. Environmental Protection Agency, Illinois Environmental Protection Agency, and Winnebago County permits you had as of March 14, 2012 concerning solid waste or used tires.” Northern responded, “See response to request to produce No. 2.”

Illinois EPA Request to Produce No. 2 sought “[t]rue and accurate copies of all U.S. Environmental Protection Agency, Illinois Environmental Protection Agency, and Winnebago County permits you had as of March 14, 2012 concerning solid waste or used tires.” Northern responded, “Will produce if available; investigation continuing; in addition complainant is in possession of all permits concerning solid waste or used tires as of March 14, 2012 issued to respondent.”

The scope of discovery under Illinois Supreme Court Rule 201 comprises “the existence, description, nature, custody, condition, and location of any documents or tangible things.” Ill. S. Ct. R. 201(b)(1). (eff. Jan. 1, 2013). Asserting that requested documents may already be possessed by the requestor is not a proper response to discovery. *See Stickler v. McCarthy*, 64 Ill. App. 2d 1, 15-16 (1st Dist. 1965). Further, Northern’s response that it “[w]ill produce if available” indicates it does not know whether the documents are available. Attorneys responding to discovery requests are “under an obligation to thoroughly investigate the records available and inquire as to the knowledge of all corporate agents.” *Cincinnati Companies v. West American Ins. Co.*, 287 Ill. App. 3d 505, 513 (2d Dist. 1997).

Illinois EPA has requested that Northern and its counsel determine whether the requested documents exist to its knowledge or in its possession or control. (Ex. F.) If they do exist, then

Northern should identify them in its response to Interrogatory No. 15 and produce copies in response to Request to Produce No. 2 if the documents are in its possession or control. If they do not exist, then Northern should indicate that in its discovery responses. Northern, however, has failed to comply with either Interrogatory No. 15 or Request to Produce No. 2. (Ex. J.)

This Board should find that Northern has refused and failed to properly respond to Interrogatory No. 15 and Request to Produce No. 2 and that its refusal and failure to properly respond was made without substantial justification. Accordingly, this Board should order Northern and its counsel to investigate the existence of records responsive to these discovery requests and to comply with them fully and unequivocally.

Interrogatory No. 16

Illinois EPA Interrogatory No. 16 stated as follows: "Do you contend that, as of March 14, 2012, your site fulfilled the requirements for a sanitary landfill in Illinois? If so, state all facts upon which you base your contention." Northern responded, "Objection; interrogatory asks for a legal opinion and not facts."

Like Interrogatories Nos. 11 and 12 above, Interrogatory No. 16 is a contention interrogatory. And like those previous interrogatories, Interrogatory No. 16 does not request Northern's legal opinion but instead seeks the facts Northern relies upon if it contends that its site qualified as a sanitary landfill. Just as Northern's objections and responses to Interrogatories Nos. 11 and 12 were improper, so, too, is Northern's objection and response to Interrogatory No. 16. Consequently, this Board should find that Northern's objection to Interrogatory No. 16 and refusal and failure to fully respond to it was made without substantial justification; should overrule Northern's objection; and should order Northern to answer this interrogatory fully and unequivocally.

Interrogatory No. 22 and Requests to Produce Nos. 3, 4, 5, and 6

Illinois EPA Interrogatory No. 22 stated, "Identify all records documenting any of the facts asserted in your answers to the previous interrogatories, describing each record with specificity, including its subject, date, author, and addressee, where applicable, and state the full name and address of the individual or entity having possession, custody, or control of each record." Northern answered, "Objection; burdensome and oppressive; see responses to document requests." Illinois EPA Request to Produce No. 3, in turn, requested "[t]rue and accurate copies of all records identified in your answer to Interrogatory No. 22 of the Complainant's First Interrogatories to Respondent." Northern responded as follows:

RESPONSE: Objection; burdensome and oppressive; there may be voluminous documents which have some relation to interrogatory answers but which have no practical relevance to the issues in the case; for example, there may be a packing slip buried in a warehouse somewhere relating to the production of a pallet which appears in the photographs attached to the Petition. This document quite clearly would not be relevant to the issues raised in the Petition and it would be burdensome upon respondent to require it to track down every such piece of paper. Further examples could be given; there may be documents which respondent intends to introduce at trial and when respondent determines what those documents are, it will provide them to petitioner; investigation continuing.

Not only is this Northern's response to this request to produce, but it is Northern's response to Requests to Produce Nos. 4, 5, and 6 as well.¹ (Ex. J.) Those production requests seek the following:

4. True and accurate copies of all records referenced in your answers to Complainant's First Interrogatories to Respondent.

¹ That Northern apparently cut and pasted its improper objection and response to Request to Produce No. 3 for reuse in responding to subsequent discovery requests is particularly evident in its objection to Request to Produce No. 5. That objection argues that documents may be related to interrogatory answers but have no relevance in a case. Northern makes that argument despite the fact that this particular request to produce does not mention interrogatory answers whatsoever.

5. True and accurate copies of all records documenting the facts set forth in your Petition for Review.

6. True and accurate copies of all records documenting the facts set forth in your answers to Complainant's First Interrogatories to Respondent.

Northern's objections to these discovery requests are improper because they demonstrate a misunderstanding of both the scope and purpose of discovery. "[D]iscovery presupposes a range of relevance and materiality which includes not only what is admissible at trial, but also that which leads to what is admissible at the trial." *Fawcett v. Reinertsen*, 131 Ill. 2d 380, 385 (1989) (internal quotations omitted). This Board's rules specifically provide that all relevant information and information calculated to lead to relevant information is discoverable, excluding materials protected from disclosure by State courts or by Board rule. 35 Ill. Adm. Code 101.616(a) (2013).

Illinois Supreme Court Rule 201 provides that

a party may obtain by discovery full disclosure regarding any matter relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking disclosure or of any other party, including the existence, description, nature, custody, condition, and location of any documents or tangible things, and the identity and location of persons having knowledge of relevant facts.

Ill. S.Ct. Rule 201(b)(1) (West 2013).

Interrogatory No. 22 and the interrogatories that precede it seek information that is clearly relevant in this action, such as the factual basis for Northern's Response to Violations within its Petition for Review. The same holds true for the production requests, which seek records specifically referenced in Northern's interrogatory answers (No. 4) or documenting the facts set forth in those answers (No. 6) as well as records documenting facts Northern itself set forth in its Petition for Review (No. 5). Therefore, if records exist documenting the facts asserted in Northern's interrogatory answers or that are referenced in those answers, they necessarily are also

relevant or at least reasonably calculated to lead to relevant evidence so as to require disclosure.

Northern supports its objections by stating that “there may be documents which respondent intends to introduce at trial and when respondent determines what those documents are, it will provide them to petitioner.” No discovery rule permits one party to condition its disclosure of responsive documents upon its own determination whether it intends to use them at trial. If Northern’s version of discovery were the rule, any smoking gun could be hidden safely away from discovery simply by not identifying it as evidence to be used at trial. Northern’s position offends the objectives of discovery, which “are to enhance the truth-seeking process, to enable attorneys to better prepare for trial, to eliminate surprise and to promote an expedition and final determination of controversies in accordance with the substantive rights of the parties.” *D.C. v. S.A.*, 178 Ill. 2d 551, 561 (Ill. 1997)

Northern’s objections are based upon an erroneous comprehension of the scope of discovery and its obligation to fully disclose responsive documents regardless whether it intends to use them at trial. Illinois EPA requested that Northern withdraw its objections to these discovery requests and respond to them fully, but Northern has not done so. (*See* Exs. F, G & J.) Consequently, this Board should find that Northern’s objections to Interrogatory No. 22 and Requests to Produce Nos. 3, 4, 5, and 6 as well as its refusal and failure to fully respond to them lacked substantial justification; should overrule Northern’s objections; and should enter an order compelling Northern to answer this interrogatory and respond to these requests to produce fully and unequivocally.

IV. CONCLUSION

WHEREFORE, the Complainant, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, moves this honorable Board to FIND that the Respondent's objections and refusal and failure to fully respond to the aforementioned discovery requests lacked substantial justification; to OVERRULE the Respondent's objections to the discovery requests; and to COMPEL the Respondent to fully and completely answer the Complainant's interrogatories and respond to the Complainant's production requests.

Dated: July 23, 2013

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Respectfully submitted,

ILLINOIS ENVIRONMENTAL
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BY:



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