

Exhibit 20

Department's Admissions that it has no evidence that WASCO meets the required elements of the definition of "operator" under G.S. 130A-290(a)(21) or 40 CFR 260.10

Ex. 20(a) – WASCO's Second Requests for Admissions to Department
(excerpted to show Request Nos. 132–34, and 175–80) (served Apr. 15, 2014)

Ex. 20(b) – Department's Admissions (served Sept. 9, 2014)
(included with Affidavit of WASCO's Counsel Dan Biederman dated Oct. 22, 2014)
(excerpted to show Responses to Request Nos. 132–34, and 175–80)

Exhibit 20(a)

WASCO's Second Requests for Admissions to Department
(excerpted to show Request Nos. 132–34, and 175–80) (served Apr. 15, 2014)

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

13 EHR 18253

WASCO LLC

Petitioner,

and

DYNA-DIGGR, LLC

Intervenor

v.

N.C. DEPT OF ENVIRONMENT AND NATU-
RAL RESOURCES, DIVISION OF WASTE
MANAGEMENT

Respondent.

WASCO's SECOND SET OF
REQUESTS FOR ADMISSION
TO RESPONDENT-DIVISION

Pursuant to the North Carolina Rules of Civil Procedure (“*Rules*”) and Chapter 150B of the North Carolina General Statutes, and Chapter 3 of Title 26 of the N. C. Administrative Code (“*Hearing Procedures*”), petitioner WASCO LLC hereby submits its Second Set of Requests for Admission to respondent N.C. Department of Environment and Natural Resources, Division of Waste Management. (each a “*Request*” and collectively the “*Requests*”) Please comply with the requirements of Hearings Division Rule .0112 within fifteen (15) days of service hereof, and serve all responses to Poyner Spruill LLP, 301 Fayetteville Street, Suite 1900, Raleigh, N.C. 27601.

DEFINITIONS & INSTRUCTIONS

WASCO incorporates herein by reference the Instructions and the Definitions set forth in *WASCO's First RFAs* (defined below) (including defined terms within the individual requests of *WASCO's First RFAs*), provided however, the definition for “Site” is *not* incorporated, and the following modifications and additions apply to these Requests:

“*11/06/2013 Draft Compliance Order*” means the draft Compliance Order with Administrative Penalty (Docket No. 2014-008) identified with the Department’s Bates Nos. WASCO008722 to WASCO008732, which relates to Mary Siedlecki’s November 6, 2013 e-mail identified with the Department’s Bates No. WASCO008720.

“*11/15/2013 Draft Compliance Order*” means the draft Compliance Order with Administrative Penalty (Docket No. 2014-008) identified with the Department’s Bates Nos. WASCO005418 to WASCO005434, which relates to Mary Siedlecki’s November 15, 2013 e-mail to Dexter Matthews *et al.* identified with the Department’s Bates No. WASCO005417.

"2010 Amendment" means the EPA Form 8700-23 signed by Donald Lee and dated April 27, 2010, which was the subject of several requests set forth in the Department's First Request for Admissions to Dyna-Digger, LLC, which Dyna-Digger admitted "'under penalty of law' that it was an 'owner' and an 'operator' of the Facility."

"2011 Draft Admin Order" means the draft Administrative Order in Lieu of Post-Closure Permit identified with the Department's Bates Nos. WASCO005268 to WASCO005308, which relates to Mary Siedlecki's August 8, 2011 e-mail identified with the Department's Bates No. WASCO005267.

"2013 Draft NOV" means the draft Notice of Violation identified with the Department's Bates Nos. WASCO005627 to WASCO005637, which relates to Elizabeth Fisher's November 27, 2013 e-mail identified with the Department's Bates No. WASCO005626.

"AD&F" or **"ADF"** mean Asheville Dyeing & Finishing.

"ADF Haz Waste License" has the meaning set forth in Request No. 114.

"ADF Closure/Post-Closure Plan" means the March 31, 1992 *Closure/Post-Closure Plan* for the Facility prepared by Roy F. Weston, Inc., identified with the Department's Bates Nos. WASCO000714 to WASCO000797 (associated with Mary Siedlecki's November 1, 2011 e-mail identified with the Department's Bates No. WASCO000692).

"ADF Post-Closure Groundwater Plan" means the September 2, 1992 *Post-Closure Ground Water Sampling and Analysis Plan* for the Facility by Aquaterra, Inc., identified with the Department's Bates Nos. WASCO000693 to WASCO000713 (associated with Mary Siedlecki's November 1, 2011 e-mail identified with the Department's Bates No. WASCO000692).

"ADF Post-Closure Plan" means the portions of the ADF Closure/Post-Closure Plan, the ADF PCP Modification, and the ADF Post-Closure Groundwater Plan that apply to post-closure activities.

"ADF PCP Modification" means the October 27, 1992 *Modification to Post-Closure Plan* for the Facility by Aquaterra, Inc., identified with the Department's Bates Nos. WASCO000798 to WASCO000800 (associated with Mary Siedlecki's November 1, 2011 e-mail identified with the Department's Bates No. WASCO000692).

"Anvil Knitwear" means Anvil Knitwear, Inc. (inclusive of its past and present subsidiaries and parent companies, and its and their directors, members, managers, officers and employees), which owned and operated the Facility from approximately January 28, 1995 through December 17, 2007.

"AOC" means Administrative Order on Consent # 89-249, entered by Winston Mills.

"April 1995 Letter" has the meaning set forth in Request No. 189.

"Asheville Dyeing & Finishing" is the assumed name for Winston Mills with respect to its operations at the Facility.

"Blue Ridge Industrial" means Blue Ridge Industrial Support Co. (inclusive of its past and present subsidiaries, parents and affiliated companies and its and their directors, members, managers, officers and em-

ployees), which is the surviving entity of the merger between itself and Brisco, as set forth in those certain Articles of Merger executed by Loren K. Lanter, as “President/CBO” of each entity, and filed with the North Carolina Secretary of State on September 22, 2008 (SOSID No. 0014240).

“**Brisco**” means Brisco, Inc., inclusive of its past and present subsidiaries, affiliated, successor and parent companies and its and their directors, members, managers, officers and employees. For the purpose of clarity, all references to Brisco include Blue Ridge Industrial for any period including or after September 22, 2008.

“**Culligan**” means Culligan International Co., inclusive of all its directors, members, managers, officers and employees.

“**DENR 2013 FA Summary**” means the document identified with the Department’s Bates No. WASCO001651 (attached to Jenny Lopp’s May 1, 2013 e-mail identified with the Department’s Bates No. WASCO001650).

“**Department’s First RFAs**” means *Respondent’s First Request for Admissions to WASCO LLC*.

“**Draft Alt Mechanism**” has the meaning set forth in Request No. 210.

“**Dyna Digger**” or “**Dyna-Diggr**” or similar reference (e.g., “Dyna Digger”, etc.) means intervenor Dyna-Diggr, LLC, inclusive its past and present subsidiaries, parents and affiliated companies and its and their directors, members, managers, officers and employees.

“**Facility**” has the meaning ascribed to it in the Department’s definition of that term in its *First Request for Admissions* to WASCO, i.e., “the real property located at 850 Warren Wilson Road, Swannanoa, North Carolina 28778, with EPA Identification Number NCD 070 619 663, including all contiguous land, structures, other appurtenances, and improvements on the land.”

“**McGregor**” means McGregor Corporation, the parent entity of Winston Mills, inclusive of its past and present subsidiaries and parent companies, and its and their directors, members, managers, officers and employees.

“**Mid-Atlantic Associates**” means Mid-Atlantic Associates, P.A.

“**Mineral Springs**” means Mineral Springs Environmental, P.C.

“**RFA**” has the meaning set forth in Request No. 198.

“**Sewerage District**” means the Metropolitan Sewerage District of Buncombe County, North Carolina.

“**SIU Permit**” means a *Permit to Discharge Industrial Waste for Significant Industrial User* issued by the Sewerage District.

“**WASCO**” means WASCO LLC (f/k/a Water Applications & Systems Corporation, f/k/a United States Filter Corporation).

"WASCO's First RFAs" means WASCO's *First Set of Requests for Admission to Respondent-Division*, served upon the Department on January 6, 2014.

"WASCO's First RFPDs" means WASCO's *First Set of Requests for Production of Documents* (Nos. 1-33) to Respondent-Division, served upon the Department on January 6, 2014.

"Winston Mills" means Winston Mills, Inc., inclusive of its past and present subsidiaries and parent companies and its and their directors, members, managers, officers and employees.

REQUESTS FOR ADMISSION

99. At any point during the period *beginning February 21, 2008 and ending August 16, 2013*, you had a copy of (or your attorneys, agents or representatives had a copy of) the *Industrial/Commercial User Application for Permit to Discharge and Wastewater Survey* for the Facility that was submitted by Brisco (attached hereto as RFA Exhibit No. R28).

Admit _____ Deny _____

or Response (pursuant to Rule 36):

100. At any point during the period *beginning August 1, 2008 and ending August 16, 2013*, you had a copy of (or your attorneys, agents or representatives had a copy of) the Sewerage District's July 29, 2008 *Industrial Pretreatment Inspection Report* related to Brisco's operations at the Facility (attached hereto as RFA Exhibit No. R29).

Admit _____ Deny _____

or Response (pursuant to Rule 36):

101. At any point during the period *beginning January 8, 2007 and ending August 16, 2013*, you had a copy of (or your attorneys, agents or representatives had a copy of) the Sewerage District's January 8, 2007 *Industrial Pretreatment Inspection Report* related to Anvil Knitwear's operations at the Facility (attached hereto as RFA Exhibit No. R30).

Admit _____ Deny _____

or Response (pursuant to Rule 36):

* * * *

[pages omitted]

129. With respect to the *RCRA Inspection Report* for the Facility dated September 12, 2012 (identified with the Department's Bates No. WASCO001545), no Department employee ever contacted WASCO to request access to the Facility at any time during the period from June 27, 2006 through September 12, 2012.

Admit _____ Deny _____

or Response (pursuant to Rule 36):

130. With respect to the *RCRA Inspection Report* for the Facility dated "6-13 & 7-10-2013" (identified with the Department's Bates Nos. WASCO006391 to WASCO006392), no Department employee ever contacted WASCO to request access to the Facility at any time during the period from September 12, 2012 through July 10, 2013.

Admit _____ Deny _____

or Response (pursuant to Rule 36):

131. With respect to the e-mail chain identified with the Department's Bates Nos. WASCO010929 to WASCO010930, the 11/15/2013 Draft Compliance Order directly relates to the following statement contained in Mark Wilkins' 2:36 PM e-mail: "PS-I guess Buttercup, Mary, Jodie, etc. were in a meeting with D last week. Talking about issuing a Compliance Order with Penalty to AD&F. So I guess they gave this long presentation about why AD&F needs an Order . . ."

Admit _____ Deny _____

or Response (pursuant to Rule 36):

132. You have no evidence of any WASCO employee(s) having been engaged in "the actual operation, supervision and maintenance of" the Facility at any time during the period **August 29, 1990** through to **August 16, 2013**.

Admit _____ Deny _____

or Response (pursuant to Rule 36):

133. You have no evidence of any WASCO employee(s) having been "*principally* engaged in . . . the actual operation, supervision and maintenance" of the Facility at any time during the period **August 29, 1990** through to **August 16, 2013**.

Admit _____ Deny _____

or Response (pursuant to Rule 36):

134. You have no evidence of any WASCO employee(s) having been "*in charge of* . . . the actual operation, supervision and maintenance" of the Facility at any time during the period **August 29, 1990** through to **August 16, 2013**.

Admit _____ Deny _____

or Response (pursuant to Rule 36):

135. Each document you produced in response to *WASCO's First RFPDs* (refer to Definitions) are true and accurate copies of such documents.

Admit _____ Deny _____

or Response (pursuant to Rule 36):

136. With respect to the e-mail chain identified with the Department's Bates Nos. WASCO010929 to WASCO010930, the 2013 Draft NOV (refer to Definitions) directly relates to the following statement contained in Mark Wilkins' 2:36 PM e-mail:

D sat there and after everyone else quit talking, the first question he asked "So, when did we issue the NOV?"

Complete silence. "You know we normally issue an NOV, then if there is no response, we issue an Order with penalty, right?" Still silence. So after my neighbor and Jodie spent weeks writing this Order, they have to go back and start writing an NOV.

Admit _____ Deny _____

or Response (pursuant to Rule 36):

* * * *

[pages omitted]

175. With respect to the Department's assertion that WASCO is an "operator" of the Facility, at no time during the period of **October 26, 2004** through **August 16, 2013** did any of the Department employees who participated in the process associated with the formulation of that assertion have any evidence that WASCO exercised any amount of control over the Facility.

Admit _____ Deny _____

or Response (pursuant to Rule 36):

176. With respect to the Department's assertion referenced in Request No. 175, at no time during the period of **October 26, 2004** through **August 16, 2013** did any of the Department employees who participated in the process associated with the formulation of that assertion have any evidence that WASCO was actively involved in the day-to-day operations of the Facility.

Admit _____ Deny _____

or Response (pursuant to Rule 36):

177. With respect to the Department's assertion referenced in Request No. 175, at no time during the period of **October 26, 2004** through **August 16, 2013** did any of the Department employees who participated in the process associated with the formulation of that assertion have any evidence that WASCO had ultimate authority and control over the Facility.

Admit _____ Deny _____

or Response (pursuant to Rule 36):

178. With respect to the Department's assertion referenced in Request No. 175, at no time during the period of **October 26, 2004** through **August 16, 2013** did any of the Department employees who participated in the process associated with the formulation of that assertion have any evidence that WASCO made all financial decisions concerning the Facility.

Admit _____ Deny _____

or Response (pursuant to Rule 36):

179. With respect to the Department's assertion referenced in Request No. 175, at no time during the period of **October 26, 2004** through **August 16, 2013** did any of the Department employees who participated in the process associated with the formulation of that assertion have any evidence that WASCO had any employees at the Facility.

Admit _____ Deny _____

or Response (pursuant to Rule 36):

180. With respect to the Department's assertion referenced in Request No. 175, at no time during the period of **October 26, 2004** through **August 16, 2013** did any of the Department employees who participated in the process associated with the formulation of that assertion have any evidence that WASCO had active and pervasive control over the overall operations at the Facility.

Admit _____ Deny _____

or Response (pursuant to Rule 36):

181. With respect to the Department's assertion referenced in Request No. 175, at no time during the period of **January 1, 1995** through **October 26, 2004** did any of the Department employees who participated in the process associated with the formulation of that assertion have any evidence that Culligan had any employees operating the Facility.

Admit _____ Deny _____

or Response (pursuant to Rule 36):

182. With respect to the Department's assertion referenced in Request No. 175, at no time during the period of **January 1, 1995** through **October 26, 2004** did any of the Department employees who participated in the process associated with the formulation of that assertion have any evidence that Culligan was actively involved in the day-to-day operations of the Facility.

Admit _____ Deny _____

or Response (pursuant to Rule 36):

* * * *

[pages omitted]

POYNER SPRUILL LLP

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N.C. State Bar #7697
P.O. Box 1801
Raleigh, NC 27601-1801
(919) 783-2842

/s/ Daniel J. Biederman, Sr.
Daniel J. Biederman, Sr.
Biederman & Associates
25 East Washington, Suite 700
Chicago, IL 60602

Attorneys for Petitioner -- WASCO LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing WASCO's SECOND SET OF REQUESTS FOR ADMISSION TO RESPONDENT-DIVISION was served upon the Respondent and/or persons indicated below in this contested case by electronic mail as indicated below and by placing a copy thereof in the United States Mail, postage prepaid, addressed as follows:

Elizabeth A. Fisher
Assistant Attorney General
NC Dept. of Justice – Environmental Section
P.O. Box 629
Raleigh, NC 27602
efisher@ncdoj.gov
Counsel for Respondent

William Clarke, Esq.
Roberts & Stevens, P.A.
P.O. Box 7647
Asheville, NC 28802
bclarke@roberts-stevens.com
Counsel for Intervenor-Petitioner

This 15th day of April 2014.

/s/ Daniel J. Biederman, Sr.
Daniel J. Biederman, Sr.

Exhibit 20(b)

Department's Admissions (served Sept. 9, 2014)
(included with Affidavit of WASCO's Counsel Dan Biederman dated Oct. 22, 2014)
(excerpted to show Responses to Request Nos. 132–34, and 175–80)



STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13EHRI8253

WASCO LLC)	
)	
WASCO,)	
and)	
)	
DYNA-DIGGR,)	
)	
INTERVENOR,)	FIRST AMENDED
)	AFFIDAVIT OF WASCO'S
v.)	COUNSEL DAN BIEDERMAN
)	
N.C. DEPARTMENT OF ENVIRONMENT)	
AND NATURAL RESOURCES, DIVISION OF)	
WASTE MANAGEMENT)	
)	
DIVISION.)	
)	

Dan Biederman, after being duly sworn, states as follows:

1. Neither I nor WASCO had any advance notice of the Respondent's ("Division") intentions of filing a motion for summary judgment, which it filed on September 25, 2014.
2. Faced with very short, ten day response time under 26 N.C. Admin. Code 03.0115, WASCO sought an immediate 30 day extension of time to respond, to November 7, 2014. Upon further review of Division's 39 page brief, affidavits from the four witnesses it had identified as its 30(b)(6) witnesses, and the voluminous exhibits filed in support, WASCO determined that it needed to proceed with conducting the previously-noticed 30(b)(6) deposition of Division, and obtain the resulting transcript, before responding to the summary judgment motion. That was not possible before the November 7, 2014 deadline. As a result, WASCO is seeking a further extension of time to respond to the summary judgment motion.
3. I have read the brief filed today in support of WASCO's motion for a continuance regarding Division's summary judgment motion. That brief sets forth the reasons why deposition testimony from Division will be highly relevant and is needed before the Office considers summary judgment motions.

- Doc. Ex. 1321 -

4. I have personally reviewed the Division of Waste Management's Memorandum of Law in Support of Respondent's Motion for Summary Judgment (Memo). I have also personally reviewed all of the documents filed in this contested case. Those documents also reflect there are material issues of fact arising from the documents exchanged between the parties that warrant deposition testimony from Division's witnesses before summary judgment motions are considered.

5. This contested case arose from the Division's August 16, 2013 directive that asserts that WASCO is "liable as an operator" under the State Hazardous Waste Program for the former Asheville Dyeing and Finishing textile manufacturing facility in Swannanoa, North Carolina. (Div. MSJ, Ex. A-7).

6. As demonstrated by the Exhibits that are included with the Memo (Exhibits), the Division had sent several communications prior to August 16, 2013 that also asserted that WASCO had such liability. The Division communicated the following bases as supporting its assertions: (i) "RCRA," "North Carolina General Statute 130A-Article 9 (Solid Waste Management Act as amended)," and "a RCRA Part A permit application dated September 23, 2008 . . ." (Div. MSJ, Ex. A-2); and (ii) "N.C.G.S. § 130-290 [sic]" and "the RCRA Subtitle C Site Identification Form dated September 18, 2008." (Div. MSJ, Ex. A-4).

7. Division's counsel's May 2, 2013 email to me included an attachment comprised of several scanned documents and noted "I am attaching a number of documents related to the financial assurance / compliance history for the former Asheville Dyeing and Finishing site that should help explain my client's basis for classifying WASCO as an 'operator' under RCRA and the State Hazardous Waste Program."

8. The Exhibits do not include several communications from, or on behalf of, WASCO in which counsel or WASCO employees communicated to the Division that neither WASCO nor its former subsidiary, Culligan International Company, had ever owned or operated the Facility, including but not limited to, my June 6, 2012 memorandum on behalf of WASCO (*see* Attach. 1),¹ and my September 27, 2012 letter (*see* Attach. 2, which responded to the letter including in the Division's Ex. A-5).

9. WASCO asserts that the definition of "operator" under N.C.G.S. § 130A-290(a)(21) governs the Division's determination of whether an entity is an operator under the State Hazardous Waste Program and denies that it was ever "principally engaged in, and is in charge of, the actual operation, supervision, and maintenance of a solid waste management facility." (Pet., Pet'r Pre-Hr'g Stmt., Pet'r Resp. in Opp'n to Resp't Mot. to Dismiss).

¹ Consistent with the duty of candor owed to this Tribunal, it must be acknowledged that I included citations to *United States v. Bestfoods* with respect to oversight activities. Upon subsequent research related to this matter, I became aware of additional authorities from the U.S. EPA's Environmental Appeals Board in which it interpreted the definition of operator with respect to interim status requirements under 40 C.F.R. Part 265. *See In re Southern Timber Products, Inc.*, RCRA (3008) Appeal 89-2, 3 E.A.D. 371 (Nov. 13, 1990) (Final Decision), and 3 E.A.D. 880 (Feb. 28, 1992) (Order on Mot. for Recons.) ("*Southern Timber II*"). The Board differentiated "allegations under CERCLA, RCRA § 3008(d)(2)(A), or RCRA § 7003" from determinations of "operator" with respect to Part 265. *Southern Timber II*, 3 E.A.D. at [885-900].

- Doc. Ex. 1322 -

10. WASCO additionally asserts that the definition of “operator” under 40 C.F.R. § 260.10 does not govern the Division’s determinations of operator status under the State Hazardous Waste Program, *see, e.g.*, N.C.G.S. § 130A-294(c) (in which the General Assembly set forth requirements for the Division to follow with respect to “rules governing hazardous waste,” and using the term “operator” six times), but denies that it was ever “responsible for the overall operation of [the Facility].”

11. I have personally reviewed the documents and responses produced in discovery by Division in this action. *See* Attach. 4, Resp. to RFA No. 135 (admitting each document the Division produced are true and accurate copies of such documents).

12. WASCO’s requests to Division sought to develop the evidentiary record regarding WASCO’s role with the actual operation, supervision and maintenance of a solid waste management facility. The Division’s responses with respect to requests directly related to the General Assembly’s definition of operator in N.C.G.S. § 130A-290(a)(21) leave many unresolved fact issues regarding operator status under the State Hazardous Waste Program, to wit:

- Responses to RFA Nos. 48, 51 and 54 indicate that no determination under G.S. § 130A-290(a)(21) have been performed. *See* Attach. 3.
- Responses to RFA Nos. 132-34 admit that WASCO did not meet the definition under G.S. § 130A-290(a)(21) for “any active business at the Facility,” but appear to assert that the statutory definition can be separately applied to “post-closure operations” rather than to a solid waste management facility. *See* Attach. 4.
- In response to RFA 73, the Division replies that, after a reasonable inquiry, it could not admit or deny whether WASCO had any employees at the Facility who met the definition of operator under G.S. § 130A-290(a)(21). *See* Attach. 3.
- Intervenor-Petitioner Dyna-Diggr (“Dyna-Diggr”) admits that it has no evidence that WASCO meets or ever met the requirements of G.S. § 130A-290(a)(21). *See* Attach. 5, Resps. to RFA Nos. 132, 134 and 136.
- In response to Interrogatory No. 6, asserted a *new* claim that John Coyne and Rodney Huerter were principally engaged in post-closure operations, purportedly sufficient to meet the definition of operator under G.S. § 130A-290(a)(21). *See* Attach. 6.

13. WASCO’s requests to Division also sought to develop the evidentiary record regarding WASCO’s role with the actual operation, supervision and maintenance of a solid waste management facility with respect to the U.S. EPA’s definition of operator in 40 C.F.R. § 260.10, and the Division’s responses, similarly, leave many unresolved fact issues regarding operator status under RCRA rather than the State Hazardous Waste Program, to wit:

- Doc. Ex. 1323 -

- Responses to RFA Nos. 57–65 represent that the Division performed and “reaffirmed” a determination under § 260.10. *See* Attach. 3.
- The response to RFA No. 98 admits the definitions under G.S. § 130A-290(a)(21) and 40 C.F.R. § 260.10 are different. *See* Attach. 3. The response to RFA No. 66 denies that G.S. § 130A-290(a)(21) controls over 40 C.F.R. § 260.10 with respect to the State Hazardous Waste Program. The responses to RFA Nos. 66 and 83 impliedly represent that the Division is required to base operator determinations under § 260.10. *Id.*
- Responses to RFA Nos. 175–87 admit that WASCO did not meet the fact-intensive elements that have been applied to the definition under § 260.10² with respect to “any active business at the Facility,” but appear to assert that the statutory definition can be separately applied to “post-closure operations” rather than to a facility. *See* Attach. 4.
- Dyna-Diggr admits that it has no evidence that WASCO meets or ever met the fact-intensive elements that have been applied to the definition under § 260.10. *See* Attach. 5, Resps. to RFA Nos. 165–69.

14. WASCO’s requests to Division that sought to develop the evidentiary record regarding the discrepancies associated with Division’s positions regarding G.S. § 130A-290(a)(21) and 40 C.F.R. § 260.10, similarly, leave many unresolved fact issues that are material to the issues of this contested case, to wit:

- Division objected and provided no responses to RFA Nos. 99–110, and 112–21, which all related to various operating permits and authorizations issued by regulatory control authorities, which WASCO asserts are indicia of “operation” of a facility. *See* Attach. 4.
- Responses to Interrogatories Nos. 3, 7, 17, and 20 referenced a new “totality of the communications” standard for which WASCO is not aware of any supporting authority related to “operator determinations,” based upon reasonable investigation, and which appears to require a factual inquiry. *See* Attach. 6.
- The response to RFA No. 111, related to a document that the Division produced to WASCO during discovery but which is not included in the Exhibits, confirms the Division’s knowledge that another entity “is the company currently operating at the Asheville Dyeing and Finishing site.” *See* Attach. 4; *see also* Attach. 7 (the document referenced in RFA 111); Attach. 8.2 (an August 16, 2010 email which included the referenced document as an attachment named “ADF EMAIL (SOURCE)”). The

² *See* note 1, *supra*.

* * * *

[pages omitted]

- Doc. Ex. 1328 -

- The Division attempts to support these new theories with three affiants who testify with reference to "totality of my communications with WASCO" (Ex. Q-1), "totality of the circumstances" (Ex. Q-2, Q-3), despite the fact that the affidavits are not mentioned in any manner in the Memo.

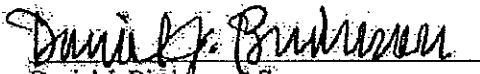
In order to understand Division's newly proffered theories, it is necessary to depose the Division.

23. In its Memo, Division summarily concludes that WASCO is a post-closure operator based on WASCO's "involvement with the Facility." Clearly, WASO should be entitled to develop the factual record on what Division believes is WASCO's "involvement."

24. The Memo also includes a veiled threat against "Huerter in his personal capacity," (Memo, p. 23) at that has never before been asserted, and which appears to be based on mischaracterizations of fact. (See Memo, ¶¶ 39-40, pp. 23-14). WASO should be entitled to develop the factual record on this new allegation.

25. Affiant respectfully submits that in order to properly respond to Division's Memo that it be permitted to depose Division.

This the 22 day of October, 2014.


Daniel J. Biederman, Sr.

STATE OF ILLINOIS

COUNTY OF DaPage

I, Julie Moratto, a Notary Public of the County and State aforesaid, do hereby certify that Daniel J. Biederman personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official stamp or seal, this the 22 day of October, 2014.


Notary Public

My Commission Expires:



* * * *

[pages omitted]

- Doc. Ex. 1377 -

Attachment 4

Division's Responses to WASCO's Second RFAs
(Sept. 9, 2014)

STATE OF NORTH CAROLINA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

COUNTY OF WAKE

13 EHR 18253

WASCO LLC)
Petitioner,)
and)
DYNA-DIGGR, LLC)
Intervenor)
v.)
N.C. DEPT OF ENVIRONMENT AND)
NATURAL RESOURCES, DIVISION OF)
WASTE MANAGEMENT)
Respondent.)

RESPONSE TO
WASCO's SECOND SET OF
REQUESTS FOR ADMISSION
TO RESPONDENT-DIVISION

Now comes Respondent, North Carolina Department of Environment and Natural Resources, Division of Waste Management, acting through its Hazardous Waste Section ("the Section") and responds to WASCO's Second Set of Requests for Admission.

Respondent objects to these requests overall as unduly burdensome, needlessly cumulative, not reasonably calculated to lead to the discovery of admissible evidence, and designed for the purpose of harassment and delay, considering the breadth of information already produced by Respondent and the fact that Respondent has also provided WASCO with access to the entire public case file.

Respondent responds further with specificity as follows:

99. Respondent objects to Request No. 99 as not reasonably calculated to lead to the discovery of admissible evidence, as the operator assertion in the August 16, 2013 letter that led to the instant contested case was based on WASCO's involvement with the Facility in relation to the post-closure portion of the State Hazardous Waste Program and not the involvement of Briscoe in relation to water-quality laws not administered by the Hazardous Waste Section. Respondent further objects to the extent the reference to "attorneys, agents or representatives" seeks information outside the scope of its possession.

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124. Respondent objects to Request No. 124 as unduly burdensome, needlessly cumulative, and designed for the purpose of harassment and delay. WASCO asked for Respondent's position with regard to the applicable definitions in Requests Nos. 48, 51, 54, 66 through 69, 82, and 83, and Respondent has answered those requests. Respondent further objects to this request as it would call for legal analysis outside of Respondent's expertise to elaborate on the answers already provided.
125. Respondent objects to Request No. 125 as unduly burdensome, needlessly cumulative, and designed for the purpose of harassment and delay. WASCO asked for Respondent's position with regard to the applicable definitions in Requests Nos. 48, 51, 54, 66 through 69, 82, and 83, and Respondent has answered those requests. Respondent further objects to this request as it would call for legal analysis outside of Respondent's expertise to elaborate on the answers already provided.
126. Respondent admits that the cited email contains the quoted language but denies that it is proper to draw any legal conclusions from the same in isolation.
127. Admitted.
128. Respondent objects to Request No. 128 as not reasonably calculated to lead to the discovery of admissible evidence, as the Section's activities subsequent to the filing of WASCO's petition could not have had any bearing on the August 16, 2013 letter that led to this contested case.
129. Upon reasonable inquiry, the information known by or readily available to Respondent is insufficient for Respondent to admit or deny the truth of this request.
130. Upon reasonable inquiry, the information known by or readily available to Respondent is insufficient for Respondent to admit or deny the truth of this request.
131. Respondent objects to Request No. 131 as not reasonably calculated to lead to the discovery of admissible evidence, as Mark Wilkins has never been involved with regulation of the Facility in either a project manager or supervisory capacity. Any statements by him would be inadmissible hearsay. Moreover, Respondent further objects to the extent the question calls for speculation.
132. Respondent denies Request No. 132 with regard to the actual operation, supervision and maintenance of the Facility's post-closure operations but admits that Respondent has no evidence that WASCO ever participated in the actual operation, supervision and maintenance of any active business at the Facility.
133. Respondent denies Request No. 133 with regard to being principally engaged in the actual operation, supervision and maintenance of the Facility's post-closure operations but admits that Respondent has no evidence that WASCO was ever principally engaged

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in the actual operation, supervision and maintenance of any active business at the Facility.

134. Respondent denies Request No. 134 with regard to being in charge of the actual operation, supervision and maintenance of the Facility's post-closure operations but admits that Respondent has no evidence that WASCO was ever in charge of the actual operation, supervision and maintenance of any active business at the Facility.
135. Respondent admits Request No. 135 with the qualification that certain documents were redacted based on attorney-client privilege. Redactions appeared as boxes with Xs in the middle and were identified on Respondent's privilege logs. Respondent further clarifies that, pursuant to the e-discovery agreement with opposing counsel discussed in Respondent's August 14, 2014 letter, certain documents not produced in native format were produced in TIFF format (a widely used and supported near-native format compatible with both Concordance and War Room) with multiple metadata fields.
136. Respondent objects to Request No. 136 as not reasonably calculated to lead to the discovery of admissible evidence, as Mark Wilkins has never been involved with regulation of the Facility in either a project manager or supervisory capacity. Any statements by him would be inadmissible hearsay. Moreover, Respondent further objects to the extent the question calls for speculation.
137. Respondent objects to Request No. 137 as not reasonably calculated to lead to the discovery of admissible evidence.
138. Respondent objects to Request No. 138 as not reasonably calculated to lead to the discovery of admissible evidence.
139. Respondent objects to Request No. 139 as not reasonably calculated to lead to the discovery of admissible evidence.
140. Respondent objects to Request No. 140 as not reasonably calculated to lead to the discovery of admissible evidence.
141. Respondent objects to Request No. 141 as not reasonably calculated to lead to the discovery of admissible evidence.
142. Respondent objects to Request No. 142 as not reasonably calculated to lead to the discovery of admissible evidence.
143. Respondent objects to Request No. 143 as not reasonably calculated to lead to the discovery of admissible evidence.
144. Respondent objects to Request No. 144 as not reasonably calculated to lead to the discovery of admissible evidence.

* * * *

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173. Respondent objects to Request No. 173 as not reasonably calculated to lead to the discovery of admissible evidence.
174. Respondent admits that the cited email contains the quoted language but denies that it is proper to draw any legal conclusions from the same in isolation.
175. Respondent denies Request No. 175 with regard to WASCO's control of the Facility's post-closure operations but admits that Respondent has no evidence that WASCO ever controlled any active business at the Facility.
176. Respondent denies Request No. 176 with regard to WASCO's involvement in the day-to-day post-closure operations concerning the Facility but admits that Respondent has no evidence that WASCO was ever involved in any day-to-day operations of an active business at the Facility.
177. Respondent denies Request No. 177 with regard to WASCO's ultimate authority and control of the Facility's post-closure operations but admits that Respondent has no evidence that WASCO ever had ultimate authority and control of any active business at the Facility.
178. Respondent denies Request No. 178 with regard to financial decision-making concerning the Facility's post-closure operations but admits that Respondent has no evidence that WASCO ever made financial decisions related to any active business at the Facility.
179. Respondent denies Request No. 179 to the extent Mineral Springs "had any employees at the Facility" and Mineral Springs was employed by WASCO, but admit this request in all other respects.
180. Respondent denies Request No. 180 with regard to active and pervasive control over the overall post-closure operations but admits that Respondent has no evidence that WASCO ever had active and pervasive control over the overall operations of any active business at the Facility.
181. Respondent objects to Request No. 181 as not reasonably calculated to lead to the discovery of admissible evidence.
182. Respondent objects to Request No. 182 as not reasonably calculated to lead to the discovery of admissible evidence.
183. Respondent objects to Request No. 183 as not reasonably calculated to lead to the discovery of admissible evidence.
184. Respondent objects to Request No. 184 as not reasonably calculated to lead to the discovery of admissible evidence.

* * * *

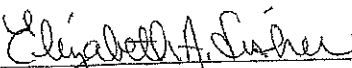
[pages omitted]

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211. Respondent objects to Request No. 211 as not reasonably calculated to lead to the discovery of admissible evidence as WASCO's petition concerns the Section's operator assertions as they relate to WASCO and not Dyna-Digger.
212. Respondent admits Request No. 212 in part and denies it in part. Respondent admits that § 264.144 is one regulation that governs "inflation adjustments" but denies that it is the only applicable part of the State Hazardous Waste Program.

Respectfully submitted this the 9th day of September, 2014.

ROY COOPER
Attorney General

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing RESPONSE TO WASCO'S SECOND SET OF REQUESTS FOR ADMISSION has been served on the parties to this action by sending a copy of the same to the parties' counsel of record by electronic mail with an attached file in a readily accessible PDF format, in accordance with 26 NCAC 03 .0102(a)(3), as follows:

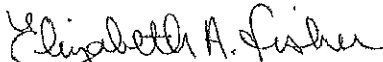
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This the 9th day of September, 2014.

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