

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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JUN 9 2003

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 SKOKIE VALLEY ASPHALT, CO., an Illinois )  
 corporation, EDWIN L FREDERICK, JR., )  
 individually and as owner and President of Skokie )  
 Valley Asphalt Co., Inc., and RICHARD J. )  
 FREDERICK, individually and as owner and Vice )  
 President of Skokie Valley Asphalt Co., Inc. )  
 )  
 Respondents. )

PCB 96-98

Enforcement

STATE OF ILLINOIS  
*Pollution Control Board*

**RESPONDENT'S MOTION FOR EXTENSION OF TIME  
FOR DISCOVERY SCHEDULE**

The Respondents, SKOKIE VALLEY ASPHALT, CO., an Illinois corporation, EDWIN L FREDERICK, JR., individually and as owner and President of Skokie Valley Asphalt Co., Inc., and RICHARD J. FREDERICK, individually and as owner and Vice President of Skokie Valley Asphalt Co., Inc., by and through their attorney, David S. O'Neill, herein moves the Board for extension of time of the period for discovery both for Edwin L. Frederick and Richard J. Frederick to respond to Complainant's request for production, interrogatories and request for admission of facts and the cutoff date for discovery established by the hearing officer . In support of its position, the Respondent states as follows:

**PROCEDURAL HISTORY**

1. By a hearing officer order dated February 19, 2003, the hearing officer established a new discovery schedule for this matter that stated in relevant part that all written discovery in this matter was to be completed within ninety days after the Board ruling on the motion

- for summary judgment.
2. On April 18, 2003, the Complainant's filed a Motion to Dismiss the Respondent[s'] Affirmative Defense
  3. On April 30, 2003, the Respondents filed a Response to Complainant's Motion to Strike or Dismiss Respondent's Motion to Dismiss.
  4. On May 7, 2003, the Complainants filed a Motion for Leave to File a Reply and its Reply to Respondent[s'] Response to Complainant's Motion to Strike or Dismiss Respondents' Motion to Dismiss.
  5. On April 23, 2003, the Respondents filed a Motion to Dismiss the Respondents Edwin L. Frederick and Richard J. Frederick.
  6. On May 7, 2003, the Complainant filed a Motion to Strike Respondents' Motion to Dismiss Edwin L. Frederick and Richard J. Frederick, or, in the Alternative Complainant's Response to and Request to Deny Respondents' Motion to Dismiss Edwin L. Frederick and Richard J. Frederick.
  7. To date, the Board has not ruled on any of these Motions.
  8. On May 7, 2003, the Complainants served on the Respondents Edwin L. Frederick and Richard J. Frederick First Sets of Interrogatories, First Requests for Production of Documents, Objects, and Tangible Things and First requests for Admission of Facts.
  9. The Complainant requested that the Respondents answer the discovery within twenty-eight days from the date of service.
  10. Because service to Respondents was by mail, the effective date of service is four days after mailing and consequently, the answers to discovery would be due on June 9, 2003.


#### **ARGUMENT FOR EXTENSION OF TIME**

1. In accordance with Section 101.522 of the Board's Procedural Rules, the Board, for good cause shown on a motion, may extend the time for any act which is required to be done within a limited period. (35 Ill. Adm. Code 101.522).
2. In this matter, the Respondents may be dismissed by the Board in the Board's order to be

prepared in response to the Respondent's Motion to Dismiss or in the other Board orders still pending in response to other motions before the Board.

3. If the Respondents are dismissed, the Respondents will not be required to respond to the Complainant's discovery requests.
4. Depending on the decisions in the Board's orders in response to the pending motions, the content of the Respondents' request for discovery may be altered or it may be possible that the Respondents will not require any discovery from the Complainant.
5. The compliance with the existing deadline to answer the Complainant's discovery and the cut-off date for discovery would result in a considerable cost and effort to the Respondents that may not be required of them. Further, the Respondents may not be fully aware of the issues it may need to address in this matter, and therefore, may not know what information to request in discovery until the orders in response to the pending motions have been issued.
6. The extension of time for the discovery schedule will not in any way materially prejudice the Respondent's ability to proceed with this case.

Whereby, the Respondents respectfully request this Board to find that good cause has been shown in this motion, and as a result, extend the period of time for the Respondents Edwin L. Frederick and Richard J. Frederick to answer the Complainant's pending discovery until twenty-eight (28) days after the Board issues orders to address all motions concerning the dismissal of the Respondents or the appropriateness of the discovery schedule and extend the deadline for the completion of discovery until ninety (90) days after the Board issues orders to address all motions concerning the dismissal of the Respondents or the appropriateness of the discovery schedule.


  
\_\_\_\_\_  
David S. O'Neill

David S. O'Neill, Attorney at Law  
5487 N. Milwaukee Avenue  
Chicago, IL 60634-1249  
Phone:(773) 792-1333

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached Respondent's Motion for Extension of Time for Discovery Schedule by hand delivery on June 9, 2003 upon the following party:

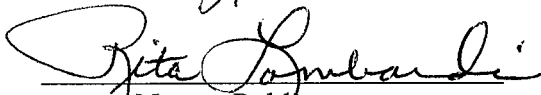
Mitchell Cohen  
Environmental Bureau  
Assistant Attorney General  
188 W. Randolph, 20th Floor  
Chicago, IL 60601

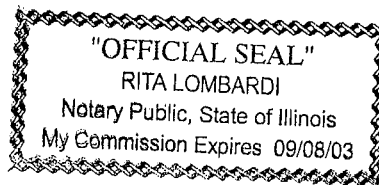
  
\_\_\_\_\_  
David S. O'Neill

NOTARY SEAL

SUBSCRIBED AND SWORN TO ME this 9th

day of June, 20 03

  
\_\_\_\_\_  
Notary Public



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Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
Complainant,	)	
	)	PCB 96-98
	)	
v.	)	Enforcement
	)	
	)	
SKOKIE VALLEY ASPHALT, CO.,	)	
Respondent	)	

NOTICE OF FILING

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the Respondent's Motion for Extension of Time for Discovery Schedule , a copy of which is hereby served upon you.

  
David S. O'Neill

June 9, 2003

David S. O'Neill, Attorney at Law  
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