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JUL 16 2003

STATE OF ILLINOIS  
Pollution Control Board

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

**RESPONDENTS' RESPONSE TO COMPLAINANT'S RESPONSE TO  
 RESPONDENT[S]' MOTION FOR RECONSIDERATION OF THE BOARD'S ORDER  
 OF JUNE 5, 2003**

The Respondents, Skokie Valley Asphalt Co., Edwin L. Frederick and Richard J. Frederick, by and through their attorney, David S. O'Neill, herein respond to the Complainant's Response to Respondent[s]' Motion for Reconsideration of the Board's Order of June 5, 2003. In support of its position, the Respondents state as follows:


1. In its Response to Respondent[s]' Motion for Reconsideration of the Board's Order of June 5, 2003, the Complainant argues that the Board's June 5, 2003 order is not a final order and therefore is not ripe for reconsideration. (Resp. at 2.)
2. The Complainant argues that Section 101.520 only applies to "final orders" as that term is defined in section 101.202 of the Board's Procedural Rules and because the Board's Order of June 5, 2003 does not fit the definition of a "final order", the Respondents are not allowed to file a Motion for Reconsideration of the June 5, 2003 Order. (Resp. at 2.)
3. The logic of this argument by the Complainant is so misguided and unfounded that it makes it difficult to respond to the Complainant's Response.
4. Section 101.520 (a) of the Board's Procedural Rules that addresses Motions for

Reconsideration does not use the term “final order” that is defined in Section 101.202 but instead differentiates the rule from only “final rules” by using the term “final Board rule”. Therefore the Complainant’s argument is not even applicable.

5. Because the Respondents’ Motion for Reconsideration of the Board’s Order of June 5, 2003 is, in fact, a motion for reconsideration, and because the Respondents have no guidance to determine what the term “final Board order” includes, the Respondents filed the Motion in compliance with Section 101.520.
6. As required by Section 101.520(a) of the Board’s Procedural Rules, the Respondent’s Motion for Reconsideration of the Board’s Order of June 5, 2003, the motion was filed within 35 days after receipt of the order.
7. Even if the Board were to find that Section 101.520 of the Board’s Procedural Rules applies to “final orders” and that the Board’s Order of June 5, 2003 was not a “final order” as the term is defined in Section 101.520, Section 101.520 is not intended as a bar for the filing of all motions that do not pertain to “final orders”. The clear reading of Section 10.520 indicates that it is intended to be a bar for filings motions for consideration of final Board orders more than 35 days after receipt of the order and not as a bar to filing any other motions that are not motions for consideration of “final Board orders”.
8. If, for some reason, the Board finds that the Respondents’ Motion for Reconsideration of the Board’s Order of June 5, 2003. Should not have been filed subject to the provisions of section 101.520 , the Respondents would still be allowed to file a motion in accordance with the provisions of section 101.500 which states that “[t]he Board may entertain any motion the parties wish to file...”. There is no issue that the Respondents’ motion is properly filed under section 101.520 of the Board’s procedural rules.
9. The Complainant also misapplies the provisions of section 101.920 of the Board’s Procedural Rules in its argument against the Respondents’ Motion for Reconsideration of the Board’s Order of June 5, 2003. Section 101.920 clearly states that new evidence and a change in the law are “included” in the factors the Board will consider in a ruling for a motion for reconsideration. This language implies that other factors are also to be considered.

10. Based on the implication that other factors are to be considered by the Board, the Complainant's argument that the Motion for Reconsideration should be denied because the Respondents' Motion for Reconsideration does not "provide any new evidence, or assert any new change in the law" (Resp. at 4.) is not a dispositive argument that would prevent the Board from adjusting its order of June 5, 2003.

Wherefore, the Respondent respectfully requests that the Board discount the arguments made by the Complainant and grant the items sought in the Respondents' Motion for Reconsideration of the Board's Order of June 5, 2003.


  
David S. O'Neill

David S. O'Neill, Attorney at Law  
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CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached Respondents' Response to the Complainant's Response to Respondent[s'] Motion for Reconsideration of the Board's Order of June 5, 2003 by hand delivery on July 16, 2003 upon the following party:

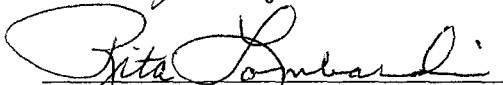
Mitchell Cohen  
Environmental Bureau  
Illinois Attorney General's Office  
Assistant Attorney General  
100 W. Randolph, 11th Floor  
Chicago, IL 60601

  
David S. O'Neill

NOTARY SEAL

SUBSCRIBED AND SWORN TO ME this 16<sup>th</sup>

day of July, 20 03

  
Notary Public



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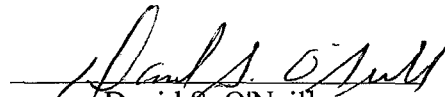
STATE OF ILLINOIS  
Pollution Control Board

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 Complainant's Response to Respondent[s'] Motion for Reconsideration of the Board's Order of June 5, 2003, a copy of which is hereby served upon you.

  
David S. O'Neill

July 16, 2003

David S. O'Neill, Attorney at Law  
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