

BEFORE THE 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

RECEIVED
 CLERK'S OFFICE
 JUL 15 2003
 STATE OF ILLINOIS
Pollution Control Board

**RESPONDENTS' RESPONSE TO COMPLAINANT'S FIRST MOTION COMPEL
 RESPONDENT[S] TO RESPOND TO DISCOVERY REQUESTS**

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 first motion to compel respondents to respond to discovery requests and herein request that the Board deny the motion. In support of its position, the Respondent states as follows:

1. The Respondents presently have pending before the Board a "Motion for Reconsideration of the Board's Order of June 5, 2003" that was filed with the Board on June 16, 2003.
2. If the Respondents prevail in this Motion for Reconsideration, the Respondents Richard J. Frederick and Edwin L. Frederick may be dismissed as Respondents and therefore would not be required to either respond to discovery request or promulgate requests for discovery.
3. The Respondents presently have pending before the Board a "Motion for Extension of Time for Discovery Schedule" that was filed with the Board on June 16, 2003.
4. In the Motion for Extension of Time for Discovery Schedule, the Respondents have moved the Board to "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..." (Motion at 3.)

5. The Respondents "Motion for Reconsideration of the Board's Order of June 5, 2003" is a motion "concerning the dismissal of the Respondents" and will be affected by the Board's Order in response to the Respondents' a "Motion for Extension of Time for Discovery Schedule".
6. To require the Respondents to participate in discovery until the Board has been able to issue an order that determines whether or not they are even parties to the complaint could place an undue burden and hardship on persons that may not even be proper parties to the Complaint.
7. In light of these pending motions, the Respondents maintain that the July 3, 2003 cut off date for completion of written discovery established by the hearing officer is no longer a workable date and the proper date for the completion of written discovery can only be established after the Board has ruled on the above-mentioned motions.
8. In its response to the Respondents' "Motion for Extension of Time for Discovery Schedule" the Complainant's stated that "Complainant has no objection to extending the time in which Edwin and Richard Frederick answer pending discovery 28 days after the date of the Board order addressing the various motions...". (Resp at 1.) However, it now files a first motion to compel Respondents to respond to discovery requests in direct conflict with its previous statement.
9. The Respondents point out for the Board that the Complainant has manipulated the Board to extend discovery of this matter from the original discovery cutoff date of October 20, 2000 to allow for a second discovery period that was completed on February 1, 2002 and then again had the Board reopen discovery by a Hearing Officer Order February 19, 2003. However, now nearly three years after the discovery period for this case started, the Complainant can not allow the Board a sufficient amount of time to make a ruling on a matter of major significance in this case.

Wherefore, the Respondent respectfully requests that the Board deny the Complainant's first motion compel respondents to respond to discovery requests.

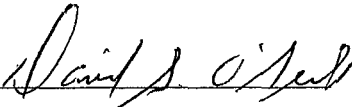

David S. O'Neill

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

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached Respondents' Response to the Complainant's first motion to compel respondents to respond to discovery requests 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

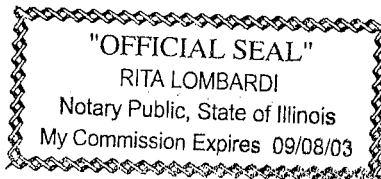
NOTARY SEAL

SUBSCRIBED AND SWORN TO ME this 16th _____

day of July, 20 03



Notary Public



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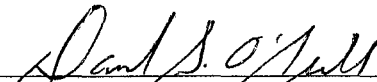
JUL 16 2003

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
STATE OF 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 Respondents' Response to the Complainant's first motion to compel respondents to respond to discovery requests, 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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