

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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SEP 09 2003

PEOPLE OF THE STATE OF ILLINOIS,)

Complainant,)

PCB 96-98

STATE OF ILLINOIS
Pollution Control Board

v.)

Enforcement

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.)

**RESPONDENT'S MOTION TO DISMISS THE COMPLAINANT'S
SECOND AMENDED COMPLAINT AND
TO RECUSE COMPLAINANT'S ATTORNEY JOEL J. STERNSTEIN**

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 move the Board to dismiss the Complainant's Second Amended Complaint and to recuse Complainant's Attorney, Joel J. Sternstein. In support of its position, the Respondents state as follows:

1. On or about November 3, 1995, the Complainant filed a complaint in the above captioned matter.
2. On or about December 29, 1997, the Complainant filed a First Amended Complaint in the above captioned matter.
3. On or about July 26, 2002, the Complainant filed a Second Amended Complaint. The second amended complaint was accepted by the Board in its ruling of October 17, 2002 despite the fact that the Second Amended Complaint was deficient both because the

Complainant had not filed for leave to amend the complaint (Board Order of October 17, 2002 at 2.) and despite the fact that the Second Amended Complaint did not include the mandatory language of 35 Ill. Adm. Code 103.204(f) (Board Order of March 20, 2003 at 3).

4. On or about July 30, 2002, concurrent with the filing of the Second Amended Complaint, Joel J. Sternstein filed an appearance as co-counsel on behalf of the Complainant.
5. Section 101.112(b) of the Illinois Pollution Control Board's Procedural Rules (35 Ill. Adm. Code) states, in relevant part, that:

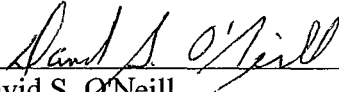
No former Board Member or Board employee may represent any other person in any Board proceeding in which he or she participated personally and substantially as a Board Member or Board employee, unless the Board, and, as applicable, all parties or proponents in the proceeding consent in writing after disclosure of the participation.

6. On information and belief, Mr. Joel J. Sternstein was an employee of the Illinois Pollution Control Board during the period during which this matter was before the Board..
7. In his capacity as an employee of the Board, Mr. Joel J. Sternstein participated personally and substantially in the proceedings in this matter.
8. At no time was Mr. Sternstein's participation in the proceedings before the Board disclosed to the Respondents or their attorneys.
9. At no time did the Respondents or their attorneys consent in writing to allow Mr. Sternstein to represent the Complainant in this matter.
10. Any matters filed by the Complainant and any decisions made and orders issued by the Board subsequent to or concurrent with the time that Mr. Sternstein filed his appearance are tainted by this apparent bias and conflict of interest.

Wherefore, the Respondent respectfully requests that the Board dismiss the Complainant's Second Amended Complaint, which was filed concurrently with the appearance by Mr. Sternstein, and accepted by the Board after the date that Mr. Sternstein filed his appearance, and also void all orders issued regarding the Second Amended Complaint. The Respondents also respectfully request that Mr. Sternstein be recused from further representing the Complainant in

this matter.

Respectfully submitted



David S. O'Neill

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

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President of Skokie Valley Asphalt Co., Inc.)	
)	
Respondents.)	

NOTICE OF FILING

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the Respondents' Motion to Dismiss the Complainant's Second Amended Complaint and to Recuse Complainant's Attorney, Joel J. Sternstein, a copy of which is hereby served upon you.



 David S. O'Neill

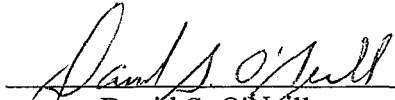
September 9, 2003

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

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached Respondents' Motion to Dismiss the Complainant's Second Amended Complaint and to Recuse Complainant's Attorney, Joel J. Sternstein 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 NINTH

day of SEPTEMBER, 20 03



Notary Public

