

ILLINOIS POLLUTION CONTROL BOARD
September 4, 2003

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 96-98
) (Enforcement – Water)
SKOKIE VALLEY ASPHALT, CO., INC.,)
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.)

ORDER OF THE BOARD (by T.E. Johnson):

This matter is before the Board on complainant's second motion to compel respondents to respond to discovery requests, filed on July 28, 2003. On August 11, 2003, respondents Skokie Valley Asphalt Co., Inc. (Skokie Valley), Edwin L. Frederick, Jr., and Richard J. Frederick (the Fredericks) filed a response to the second motion to compel. The complainant filed Exhibit A and a correction to the second motion to compel on August 21, 2003.

The hearing in this matter is scheduled to begin in less than 60 days, on October 28, 2003. The Board, rather than the hearing officer, is addressing this motion to avoid any unnecessary delay in resolution of discovery issues prior to hearing.

For the reasons articulated below, the Board grants the motion to compel in part, and directs the respondents to respond to discovery as set forth in this order.

MOTION TO COMPEL

In their motion, the complainant seeks answers to interrogatories regarding financial information and documentation pertaining to the Fredericks' responsibilities at Skokie Valley. Mot. at 3. The complainant asserts that the financial information such as income, assets and tax returns is relevant in that it may be used to determine penalty amounts, the deterrent affect of such penalties, and the economic benefit that respondents have incurred from noncompliance with the Act (415 ILCS 5/1 *et seq.* (2002) and associated regulations. *Id.*

The complainant also argues that the respondents' refusal to answer requests for information on the sale of Skokie Valley is unwarranted as the identity of the current owners of Skokie Valley is relevant. Mot. at 4.

The complainant addresses respondents' refusal to answer certain questions that respondents allege are ambiguous or a question of law. The allegedly ambiguous questions include those for which the People defined terms, such as "oily," "diesel fuel odor," and "oil surface sheen." Mot. at 4-5. The complainant asserts that it defined these terms for respondents in a July 24, 2003 letter and demands that the respondents provided answers to the request to admit where those terms appeared. Mot. at 5.

RESPONSE TO THE MOTION TO COMPEL

Respondents assert that financial information, including the sale of Skokie Valley, is not relevant. Resp. at 2. Respondents argue that the civil penalties under the Act are codified without reference to consideration of mitigating or punitive factors, and that the respondents have not made any arguments based on economic hardship that would make the financial information requested relevant. *Id.*

The respondents assert that certain requests to admit involve questions of law and do not require an answer. Resp. at 3. The respondents refuse to answer allegedly ambiguous questions that rely on terms as defined by the complainant. *Id.* Respondents assert that the definitions provided by complainant in its letter are not derived from a technical source or dictionary, and are not necessarily consistent with the common meaning of the terms. *Id.* Respondents assert that they cannot answer the requests in question because they did not test the materials and do not know if they contained oil or petroleum product, and would not be able to differentiate the smell of diesel fuel from other products with similar odors or be able to determine if the sheen on the water was caused by oil or some other event. *Id.*

DISCUSSION

All relevant information and information calculated to lead to relevant information is discoverable. 35 Ill. Adm. Code 101.614. The financial information sought by the complainant may be relevant, and, at a minimum, is calculated to lead to relevant information. If the Board finds that respondents committed the alleged offenses, financial information is relevant to ascertain any economic benefit derived from a delay in compliance, and to determine the amount of monetary penalty needed to deter further violations. *See* 415 ILCS 5/43(h)(3),(4) (2002). Accordingly, the motion to compel financial information is granted. Specifically, Skokie Valley is directed to answer interrogatories 4, 5, 6, 7, and 8, as well as comply with requests to produce numbers 6, 7, and 8. The Fredericks are directed to answer interrogatories 6, 7, 8, 10, 19, and 20, as well as comply with requests to produce number 4, 5, 6, and 7.

Respondents are directed to provide documentation regarding the Fredericks' responsibilities at Skokie Valley. If no documentation is available, respondents shall so advise the complainant.

The Board is not convinced by respondents' arguments that certain requests to admit involve questions of law. Skokie Valley is directed to answer requests to admit 1, 2, 3, 4, 5, 6, 9, and 11. The Fredericks are directed to answer requests 1, 2, 3, 4, 5, 6, and 11. Further, "grab sample" is a commonly understood term in the industry, and the respondents are directed to answer requests referencing that term - 13, 14, and 15.

Finally, the second motion to compel is denied regarding those requests to admit referencing the term "oily discharge" – requests 41 through 52 of the requests directed at both Skokie Valley and the Fredericks. The term is ambiguous, and open to various interpretations.

Respondents are ordered to produce discovery as set forth in this order no later than September 30, 2003.

OTHER MATTERS

The complainant submitted Exhibit A and a correction to the second motion to compel on August 21, 2003. Exhibit A consists of all the discovery requests the complainant served on or about May 7, 2003, as well as respondents' answers to the requests. The complainant also seeks to correct paragraph 20 of its motion to compel to read: "No answers were provided to Complainant's first request for admission of facts on Respondent Edwin L. Frederick, Jr. Complainant demands that SVA provide those answers immediately." Corr. at 2.

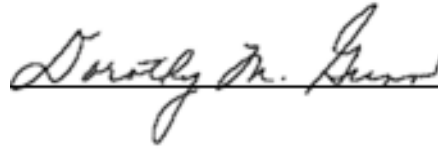
To date, the respondents have not responded to the correction. In light of the hearing scheduled to occur October 28 and 29, 2003, the Board finds that it is necessary to address this issue in this order. *See* 35 Ill. Adm. Code 101.500(d). Accordingly, Edwin L. Frederick, Jr. is directed to answer the request for admission of fact on or before September 30, 2003. The request should be answered in accordance with the decisions made in this order.

CONCLUSION

The second motion to compel is granted in part. The respondents are directed to answer the discovery requests as set forth in this order on or before September 30, 2003. However, the respondents are not required to answer requests to admit number 41 through 52, regarding the term "oily discharge." Further, Edwin L. Frederick, Jr. is directed to answer complainant's first request for admission of fact in accordance with the decisions made in this order on or before September 30, 2003.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 4, 2003, by a vote of 5-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", is written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board