

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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DEC 01 2004

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)	
Complainant,)	
)	PCB 96-98
)	
v.)	Enforcement
)	
)	
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)	

**MOTION TO STAY PAYMENT OF PENALTY UNDER BOARD ORDER OF
SEPTEMBER 2, 2004**

The Respondents, 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., by and through their attorney, David S. O'Neill, herein respectfully move the Board to Stay Payment of Penalty under the Board Order of October 21, 2004. In support of this Motion, the Respondents state as follows:

1. On September 2, 2004, the Board filed an Opinion and Order in the above-captioned matter.
2. On September 28, 2004, the Respondents filed with the Board a Motion to Stay and/or Extend Time to Respond to Complainant's Petition for Attorneys' Fees and Cost.
3. In the September 28, 2004, the Respondents requested the Board to clarify whether or not the Opinion and Order of September 28, 2004 was a final opinion. (Motion of September 28, 2004 at 1.). The Respondents required a clear understanding of whether or not the Opinion and Order of September 28, 2004 was a final order for a number of reason including a need to know

whether or not it would be timely to file a motion to stay enforcement of the September 28, 2004 Opinion and Order

4. On October 21, 2004, the Board issued an Order stating that the Opinion and Order of September 28, 2004 was not a final opinion and order. (Order of October 21, 2004 at 3.)
5. In the October 21, 2004 Order, the Board also stayed the payment of the penalty imposed in the September 2, 2004 Opinion and Order. (Order of October 21, 2004 at 1.)
6. In reliance on the Order of October 21, 2004, the Respondents determined that the filing of a motion to stay payment of the penalty imposed by the September 2, 2004 Opinion and Order was neither timely nor necessary and therefore no such motion was filed with the Board.
7. On November 19, 2004, the Complainant filed a Motion to Void the Board's October 21, 2004 Order and seeks to have the order to stay payment of the penalty imposed by the September 2, 2004 Opinion and Order voided.
8. The Respondents are of the opinion that Complainant's Motion to Void the Board's October 21, 2004 Order is an improper attempt to circumvent the Board's procedural rules and limit the Board's discretion of entering orders on its own motion.
9. To protect against the possibility that the Board grants the Complainant's Motion to Void the Board's October 21, 2004 Order and determines that the Complainant may enforce against the Respondents even though a final order has not been entered in this matter, the Respondents hereby enter a motion to stay enforcement of the penalty imposed in the September 2, 2004 Order.

Wherefore the Respondents respectfully request the Board to stay enforcement of the penalty imposed in the September 2, 2004 Order.

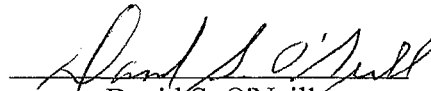

David S. O'Neill

David S. O'Neill, Attorney at Law
5487 N. Milwaukee Avenue
Chicago, Illinois 60630-1249
(773) 792-1333

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached MOTION TO STAY PAYMENT OF PENALTY UNDER BOARD ORDER OF SEPTEMBER 2, 2004 by hand delivery on December 1, 2004, upon the following party:

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

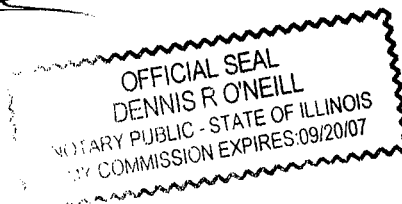

David S. O'Neill

NOTARY SEAL

SUBSCRIBED AND SWORN TO ME this 12

day of Dec, 20 04


Notary Public



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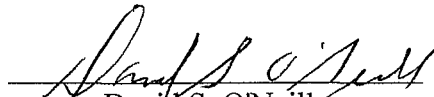
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NOTICE OF FILING

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the attached MOTION TO STAY PAYMENT OF PENALTY UNDER BOARD ORDER OF SEPTEMBER 2, 2004, a copy of which is hereby served upon you.


David S. O'Neill

December 1, 2004

David S. O'Neill, Attorney at Law
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