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STATE OF ILLINOIS  
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
Complainant, )  
) )  
) )  
v. ) )  
) )  
) )  
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 )

PCB 96-98  
Enforcement

**MOTION TO ESTABLISH DISCOVERY SCHEDULE AND MOTION FOR  
EXTENSION OF TIME TO RESPOND UNDER BOARD ORDER OF  
DECEMBER 16, 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 establish a discovery schedule and for the extension of time to respond under Board Order of December 16, 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 as established by the Board's Order of September 2, 2004.
3. In the September 28, 2004, the Respondents requested the Board to "allow the Respondents to perform discovery and participate in evidentiary hearings with respect to the

Complainant's claims in the Complainant's Petition for Attorneys' Fees and Costs." (Motion of September 28, 2004 at 6.)

4. On December 16, 2004, the Board issued an Order stating the Respondents' motion to stay was granted in part. The Board stated that the "Board will not hold any hearings on attorney's fees and cost, but will allow the respondents additional time to respond." The respondents were given until January 13, 2005 to respond to the State's request for attorneys' fees and costs. (Order of December 16, 2004 at 3.)

5. With its order of December 16, 2004 Order, the Board -- by granting the Respondents' motion in part and not specifically denying the Respondents' request for discovery -- implicitly ruled that the Respondents are entitled to discovery with respect to the issue of Complainant's request for attorneys' fees and costs.

6. However, in the Order of December 16, 2004, the Board failed to establish a schedule for discovery.

7. The Respondents have sent "Respondents' First Set of Document Requests Regarding Attorneys' Fees, Cost and Expenses".

8. The Respondents also plan to send out additional requests to produce, interrogatories and plan to take depositions in this matter.

9. The Respondents request the Board's assistance in scheduling this discovery and establishing a cut-off date for the completion of the discovery process.

10. In its Oder of December 16, 2004, the Board established a deadline of January 13, 2005 for the Respondents to respond to the Complainant's request for attorneys' fees and costs. (Order of December 16, 2004 at 3.)

11. The Complainant's response to Respondents' First Set of Document Requests Regarding Attorneys' Fees, Cost and Expenses is not due until after the deadline of January 13, 2005 for the Respondents to respond to the Complainant's request for attorneys' fees and costs.

12. The Respondents will need the information gathered from the Complainant's response to the Respondents' First Set of Document Requests Regarding Attorneys' Fees, Cost and Expenses to prepare it s response to the Complainant's request for attorneys' fees and costs

13. In addition, the Respondents need the other information that will be acquired through the

discovery process to prepare its response to the Complainant's request for attorneys' fees and costs.

14. The date on which the Respondents' response to the Complainant's request for attorney's fees and costs needs to be extended to a date after the cut-off day for discovery that allows the Respondents sufficient time to analyze the discovery material and prepare their response.

Wherefore the Respondents respectfully request the Board to establish a discovery schedule for the issue of the Complainant's request for attorneys' fees and costs and to extend the date for the Respondents' to respond to the Complainant's request for attorneys' fees and cost to a date that allows the Respondents time to analyze the discovery material and prepare their response.

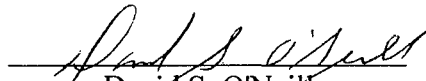
  
David S. O'Neill

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 ESTABLISH DISCOVERY SCHEDULE AND MOTION FOR EXTENSION OF TIME TO RESPOND UNDER BOARD ORDER OF DECEMBER 16, 2004 by hand delivery on January 12, 2005, upon the following party:

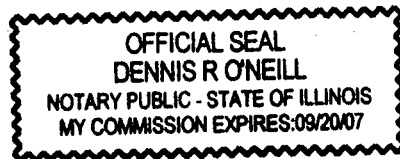
Mitchell Cohen  
Environmental Bureau  
Assistant Attorney General  
Illinois Attorney General's Office  
188 W. Randolph, 20th Floor  
Chicago, IL 60601


  
David S. O'Neill

NOTARY SEAL

SUBSCRIBED AND SWORN TO ME this 10<sup>th</sup>

day of JAN, 20 05



  
Notary Public

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CLERK'S OFFICE

JAN 10 2005

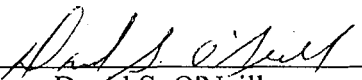
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NOTICE OF FILING

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the attached MOTION TO ESTABLISH DISCOVERY SCHEDULE AND MOTION FOR EXTENSION OF TIME TO RESPOND UNDER BOARD ORDER OF DECEMBER 16, 2004, a copy of which is hereby served upon you.

  
David S. O'Neill

January 12, 2004

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