BEFORE THE 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., 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' MOTION TO STRIKE COMPLAINANT'S LETTER OF MAY 24, 2005 REGARDING DISCOVERY, a copy of which is hereby served upon you.

David S. O'Neill

July 6, 2005

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

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RESPONDENTS' MOTION TO STRIKE COMPLAINANT'S LETTER OF MAY 24, 2005 REGARDING DISCOVERY

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 its attorney, David S. O'Neill, herein move this Board to strike the Complainant's Letter of May 24, 2005 and in support thereof states as follows:

PROCEDURAL HISTORY

1. On April 7, 2005, the Board issued an Order in the above captioned matter. In this Order, the Board granted the Respondents' motion for extension of time to allow for limited discovery.
2. The Order states that "the Board will grant the respondents additional time in order to conduct discovery..." Order of April 7, 2005 at 3. In the Conclusion of the Order, the Board "grants respondents' motion for extension of time and authorizes respondents to

conduct discovery on the attorney fees issue". Id at 4.

MOTION TO STRIKE

3. On May 24, 2005, the Complainant sent a letter to the Respondents under the pretense of initiating a conference pursuant to Illinois Supreme Court Rule 201(k), even though the provisions of Supreme Court Rule 201(k) do not apply to this situation because the Complainant was never given leave to conduct discovery by the Board.

4. In the letter, the Complainant falsely accuses the Respondents and their attorneys of a number of improprieties.

5. The letter of May 24, 2005 to the Respondents was copied to an employee of the Board – Ms. Carol Webb. Letter at 3.

6. In Section 101.100 of the Board's Procedural Rules, the term "ex parte communication" is defined as a:

> "communication between a person who is not a Board Member or Board employee and a Board Member and Board employee that reflects on the substance of a pending Board proceeding and that takes place outside the record of the proceeding. Communications regarding matters of procedure and practice, such as the format of pleadings, number of copies required, manner of service, and status of proceedings, are not considered ex parte communications [5ILCS 100/10-60(d)]. For purposes of this definition, "Board employee" means a person the Board employs on a full-time, part-time, contract or intern basis. Ill Rules of Civ Proc

7. Ms. Webb is a Board employee and based on the definition in the Procedural Rules, the Complainant's letter of May 25, 2005 is an ex parte communication.

8. Under Section 101.114 of the Board's Procedural Rules, Ms. Webb is required to make the ex parte communication part of the record of the proceeding.

9. Assuming the Complainant's letter of May 25, 2005 has or will be made part of the record for this case, the Respondents move to have the letter stricken from the record.

10. There are no provisions in the Board's procedural rules to allow the Complainant to file such a letter.

11. Unless stricken, the Complainant will be allowed to enter information into the record, that is seeded with false statements.

12. The Board's Procedural Rules do not offer any mechanism for the Respondents and their attorneys to respond to the accusations and statements in the Complainant's letter of May 25, 2005.

13. Allowing the uncontested false statements to appear in the record has the potential of prejudicing the trier of fact in this matter.

Wherefore, the Respondents respectfully request the Board to strike the Complainant's letter of May 25, 2005 from the record.

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 RESPONDENTS' MOTION TO STRIKE COMPLAINANT'S LETTER OF MAY 24, 2005 REGARDING DISCOVERY by hand delivery on July 6, 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 6th

day of July, 20 05

Notary Public

OFFICIAL SEAL
RITA LOMBARDI
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:09/06/07