

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS  
Pollution Control Board

In The Matter Of: )  
)  
)  
COMMONWEALTH EDISON CO., )  
)  
Complainant, )  
)  
v. )  
)  
)  
FREDERICK K. SLAYTON, ANN VOLE )  
SLAYTON, and CIONI EXCAVATING, )  
INC., )  
)  
Respondents. )

PCB NO. 1250

ORIGINAL

FORMAL COMPLAINT

Complainant, Commonwealth Edison Co., by and through its undersigned attorneys, Sidley Austin LLP, and pursuant to Section 31(d) of the Illinois Environmental Protection Act (415 ILCS 5/31(d)), hereby complains of the Respondents Frederick K. Slayton, Ann Vole Slayton, and Cioni Excavating, Inc. (collectively "Respondents") as follows:

FACTUAL BACKGROUND

1. Complainant, Commonwealth Edison Co., is the owner of a right of way west of and adjacent to 3030 W. 10<sup>th</sup> St. Waukegan, Illinois ("right of way").
2. Respondent Frederick K. Slayton and his wife Respondent Ann Vole Slayton are the former owners, operators or managers of two trucking, construction and excavation businesses, Rocks Ann Trucking Inc. and READCO, LLC, incorporated in Illinois and operated in Waukegan, Illinois.
  - a. Frederick K. Slayton and Ann Vole Slayton incorporated Rocks Ann Trucking, Inc. in September 1993. Ann Vole Slayton was listed as the corporation's

registered agent and president. Frederick K. Slayton served as the corporation's day-to-day manager. The business was registered at 333 Highwood, Highwood, IL, a home address of Frederick K. Slayton and Ann Vole Slayton.

- b. Beginning in 1999 or 2000, on a date better known to Respondents, Rocks Ann Trucking Inc. leased land at 3030 W. 10<sup>th</sup> St, Waukegan, IL ("Waukegan location") from the land's owner and lessor, Ben Floyd.
  - c. Frederick K. Slayton operated Rocks Ann Trucking, Inc. and a second corporation, Rocks Ann Construction, Inc. from the leased Waukegan location.
  - d. In 2005, Fredrick K. Slayton and Ann Vole Slayton formed and incorporated READCO, LLC. The principal office for READCO, LLC was located at 333 Highwood, Highwood, IL, a home address of Fredrick K. Slayton and Ann Vole Slayton.
  - e. Frederick K. Slayton operated READCO, LLC from the leased Waukegan location and represented himself as the owner of the company.
3. Respondent Cioni Excavating, Inc. is an Illinois corporation with its principle place of business at 70 Noll Street, Waukegan, Illinois 60085. At times relevant to this Complaint, Cioni Excavating Inc. was in the excavation business. Cioni Excavating, Inc. worked together with Fredrick K. Slayton and Ann Vole Slayton on various construction jobs and often loaned equipment to Fredrick K. Slayton, Ann Vole Slayton and/or their companies.
  4. From 2000 through at least 2007, on dates and time better known to the Respondents, the Respondents, Rocks Ann Trucking Inc. and READCO, LLC, repeatedly trespassed and dumped excavation waste and other debris onto Complainant's right of way at the

Waukegan location, resulting in a mound of excavation waste that currently sits on the right of way. Some of the known evidence of Respondents' repeated violations includes:

- a. On April 23, 2001, City of Waukegan Engineer John Moore sent a letter to Frederick K. Slayton, informing him that waste had been pushed by his employees onto the north end of the right of way at the Waukegan location and an adjacent forest preserve. The letter directed him to obtain a permit and remove the fill by May 25, 2001.
- b. Between April 28, 2001 and September 27, 2001, Frederick K. Slayton sent multiple letters to John Moore claiming that the waste had been removed from the right of way.
- c. On October 5, 2001, John Moore sent a letter to Lake County Stormwater Management disclosing that Rocks Ann Trucking, Inc. had dumped eighteen additional loads of waste and debris onto the right of way. The letter noted that John Moore had directed Frederick K. Slayton to remove the waste.
- d. From 2000 through at least 2007, multiple witnesses observed Cioni Excavating, Inc., Rocks Ann Trucking, Inc., READCO, LLC and their employees and agents dump excavation waste on the right of way.
- e. On February 8, 2007, while replacing an underground cable at the right of way, Complainant's employee, Mike Boutcher, discovered a large excavation waste mound. Mr. Boutcher questioned the tenant at the Waukegan location, later identified as Frederick K. Slayton, regarding the waste. Frederick K. Slayton represented himself as the owner of READCO, LLC, and told Mr. Boutcher that the waste was placed on the right of way by former tenant Rocks Ann Trucking, Inc. Frederick K. Slayton did not disclose at that time that he was the manager

and that Ann Vole Slayton, his wife, was the president of Rocks Ann Trucking, Inc.

- f. Waukegan Police Office Donnenwirth investigated the excavation waste mound during a visit to the Waukegan location on February 9, 2007. Officer Donnenwirth took photographs of the waste piles and reported that it appeared the tenant at the location was using the right of way to dump material, despite a clearly posted No Trespassing sign.
  - g. On March 7, 2007 Waukegan Police Officer Perez responded to a complaint that a truck, registered to Frederick K. Slayton, had driven onto the right of way.
  - h. On May 30, 2007, Lake County Illinois Forest Preserve Police CSO Erik Tjarksen responded to a complaint that there was encroachment and vehicles parked on the right of way.
5. The sources of the excavation waste located on the right of way, better known to Respondents, may include but are not limited to (1) the eighteen additional loads of waste deposited on the right of way by Rocks Ann Trucking, Inc. and/or Respondents in 2001; (2) debris transported by READCO, LLC and/or Respondents during a 2006 condominium development project at Laurel Avenue in Highland Park, Illinois; (3) debris moved by READCO, LLC and/or Respondents in connection with a 2006 construction project at Jeffrey Place in Highwood, Illinois; and (4) waste from other excavation companies that paid the Respondents and/or their businesses a fee to dump their excavation spoils at or near the site and/or from other disposals onto the right of way by Respondents.

6. The estimated cost to remove the excavation waste from the right of way will exceed \$900,000. Additionally, Complainant previously paid SET Environmental, Inc. \$121,000 for the removal of a portion of the excavation waste in 2007.
7. Respondents' conduct was willful and malicious, causing injury to Complainant's right of way.

COUNT I – FREDERICK K. SLAYTON

8. Section 21 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/21, provides in pertinent part, that

"No person shall:

(a) Cause or allow the open dumping of any waste.

\* \* \*

(e) Dispose, treat, store or abandon any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder."

9. Sections 3.305 and 3.535 of the Act, 415 ILCS 5/3.305 and 3.535, respectively provide the following definitions:

"Open dumping" means the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.

"Waste" means any garbage...or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities.

10. Respondent Frederick K. Slayton caused or allowed open dumping of waste by personally directing or participating in the disposal of excavation waste from multiple construction contracts on Complainant's right of way between 2000 and at least 2007 and by personally directing or participating in other disposals of waste on Complainant's right of way.

11. By causing or allowing the open dumping of waste, Respondent Frederick K. Slayton violated Section 21(a) of the Act, 415 ILCS 5/21(a).
12. By disposing of waste at a site that does not meet the requirements of the Act and of the regulations and the standards promulgated thereunder, Respondent Frederick K. Slayton has violated Section 21(e) of the Act, 415 ILCS 5/21(e).

COUNT II – ANN VOLE SLAYTON

13. Section 21 of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/21, provides in pertinent part, that

“No person shall:

(a) Cause or allow the open dumping of any waste.

\* \* \*

(e) Dispose, treat, store or abandon any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder.”

14. Sections 3.305 and 3.535 of the Act, 415 ILCS 5/3.305 and 3.535, respectively provide the following definitions:

“Open dumping” means the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.

“Waste” means any garbage...or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities.

15. Respondent Ann Vole Slayton caused or allowed open dumping of waste by personally directing or participating in the disposal of excavation waste from multiple construction contracts on Complainant’s right of way between 2000 and at least 2007 and by personally directing or participating in other disposals of waste on Complainant’s right of way.

16. By causing or allowing the open dumping of waste, Respondent Ann Vole Slayton violated Section 21(a) of the Act, 415 ILCS 5/21(a).
17. By disposing of waste at a site that does not meet the requirements of the Act and of the regulations and the standards promulgated thereunder, Respondent Ann Vole Slayton has violated Section 21(e) of the Act, 415 ILCS 5/21(e).

COUNT III – CIONI EXCAVATING, INC.

18. Section 21 of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/21, provides in pertinent part, that

“No person shall:

(a) Cause or allow the open dumping of any waste.

\* \* \*

(e) Dispose, treat, store or abandon any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder.”

19. Sections 3.305 and 3.535 of the Act, 415 ILCS 5/3.305 and 3.535, respectively provide the following definitions:

“Open dumping” means the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.

“Waste” means any garbage...or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities.

20. Respondent Cioni Excavating, Inc. caused or allowed open dumping of waste by disposing of excavation waste from construction contracts on Complainant’s right of way some time between 2000 and at least 2007 and by participating in other disposals of waste on Complainant’s right of way.

21. By causing or allowing the open dumping of waste, Respondent Cioni Excavating, Inc. violated Section 21(a) of the Act, 415 ILCS 5/21(a).

22. By disposing of waste at a site that does not meet the requirements of the Act and of the regulations and the standards promulgated thereunder, Respondent Cioni Excavating, Inc. has violated Section 21(e) of the Act, 415 ILCS 5/21(e).

PRAYER FOR RELIEF

WHEREFORE, Complainant, Commonwealth Edison Co., respectfully requests that the Board enter an order against the Respondents Frederick K. Slayton, Ann Vole Slayton, and Cioni Excavating, Inc.:

A. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;

B. Finding the Respondents have violated the Act and the regulations as alleged herein;

C. Ordering Respondents to cease and desist from any and all future violations of the Act and associated regulations;

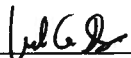
D. Ordering Respondents to fully clean-up and restore Complainant's right of way at the Waukegan location;

E. Granting such other relief as the Board may deem appropriate.



Respectfully submitted,

Commonwealth Edison Co.

BY:   
\_\_\_\_\_  
Alan P. Bielawski  
William G. Dickett  
Katharine B. Falahee  
Sidley Austin LLP  
1 South Dearborn Street  
Chicago, IL 60603

*Counsel for Commonwealth Edison Co.*

Dated: September 15, 2011

## NOTICE TO RESPONDENT

### INFORMATION FOR RESPONDENT RECEIVING FORMAL COMPLAINT

Please take notice that today I filed with the Clerk of the Illinois Pollution Control Board (Board) a formal complaint, a copy of which is served on you along with this notice. You may be required to attend a hearing on a date set by the Board.

Information about the formal complaint process before the Board is found in the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.*) and the Board's procedural rules (35 Ill. Adm. Code 101 and 103). These can be accessed at the Board's Web site ([www.ipcb.state.il.us](http://www.ipcb.state.il.us)). The following is a summary of some of the most important points in the Act and the Board's procedural rules. It is provided for general informational purposes only and does not constitute legal advice or substitute for the provisions of any statute, rule, or regulation:

#### Board Accepting Formal Complaint for Hearing; Motions

The Board will not accept this formal complaint for hearing if the Board finds that it is either "duplicative" or "frivolous" within the meaning of Section 31(d) of the Act (415 ILCS 5/31(d)) and Section 101.202 of the Board's procedural rules (35 Ill. Adm. Code 101.202). "Duplicative" means that an identical or substantially similar case is already pending before the Board or in court. *See* 35 Ill. Adm. Code 103.212(a) and item 10 of the formal complaint.

"Frivolous" means that the formal complaint seeks relief that the Board does not have the authority to grant, or fails to state a cause of action upon which the Board can grant relief. For example, the Board has the authority to order a respondent to stop polluting and pay a civil penalty, to implement pollution abatement measures, or to perform a cleanup or reimburse cleanup costs. The Board does not have the authority, however, to award attorney fees to a citizen complainant. *See* 35 Ill. Adm. Code 103.212(a) and items 5 and 9 of the formal complaint.

If you believe that this formal complaint is duplicative or frivolous, you may file a motion with the Board, within 30 days after the date you were served with the complaint, requesting that the Board not accept the complaint for hearing. The motion must state the facts supporting your belief that the complaint is duplicative or frivolous. Memoranda, affidavits, and any other relevant documents may accompany the motion. If you need more time than 30 days to file a motion alleging that the complaint is duplicative or frivolous, you must file a motion for an extension of time within 30 days after service of the complaint. A motion for an extension of time must state why you need more time and the amount of additional time you need. Timely filing a motion alleging that the complaint is duplicative or frivolous will stay the 60-day period for filing an answer to the complaint. *See* 35 Ill. Adm. Code 103.204, 103.212(b).

All motions filed with the Board's Clerk must include an original, nine copies, and proof of service on the other parties. Service may be made in person, by U.S. mail, or by messenger service. Mail service is presumed complete four days after mailing. *See* 35 Ill. Adm. Code 101.300(c), 101.302, 101.304.

If you do not respond to the Board within 30 days after the date on which the complaint was served on you, the Board may find that the complaint is not duplicative or frivolous and accept the case for hearing. The Board will then assign a hearing officer who will contact you to schedule times for telephone status conferences and for hearing. *See* 35 Ill. Adm. Code 103.212(a).

#### Answer to Complaint

You have the right to file an answer to this formal complaint within 60 days after you receive the complaint. If you timely file a motion alleging that the complaint is duplicative or frivolous, or a motion to strike, dismiss, or challenge the sufficiency of the complaint, then you may file an answer within 60 days after the Board rules on your motion. *See* 35 Ill. Adm. Code 101.506, 103.204(d), (e), 103.212(b).

The Board's procedural rules require the complainant to tell you as respondent that:

**Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney. 35 Ill. Adm. Code 103.204(f).**

#### Necessity of an Attorney

Under Illinois law, an association, citizens group, unit of local government, or corporation must be represented before the Board by an attorney. In addition, an individual who is not an attorney cannot represent another individual or other individuals before the Board. However, even if an individual is not an attorney, he or she is allowed to represent (1) himself or herself as an individual or (2) his or her unincorporated sole proprietorship. *See* 35 Ill. Adm. Code 101.400(a). Such an individual may nevertheless wish to have an attorney prepare an answer and any motions or briefs, and present a defense at hearing.

#### Costs

In defending against this formal complaint, you are responsible for your attorney fees, duplicating charges, travel expenses, witness fees, and any other costs that you or your attorney may incur. The Board requires no filing fee to file your answer or any other document with the Board. The Board will pay any hearing costs (*e.g.*, hearing room rental, court reporting fees, hearing officer expenses).

If you have any questions, please contact the Clerk's Office at (312) 814-3629.

## CERTIFICATE OF SERVICE

I, the undersigned, on oath or affirmation, state that on September 15, 2011, I served the attached formal complaint and notice on the respondents by certified mail at the addresses below:

### RESPONDENTS' ADDRESSES:

Frederick K. Slayton  
210 W. Walker  
Highland Park, IL 60035

Ann Vole Slayton  
210 W. Walker  
Highland Park, IL 60035

Cioni Excavating, Inc.  
70 Noll Street  
Waukegan, IL 60085

Cioni Excavating, Inc.  
Attn: William Mosconi  
707 Skokie Boulevard  
Suite 410  
Northbrook, IL 60062



Alan P. Bielawski  
William G. Dickett  
Katharine B. Falahee  
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1 South Dearborn Street  
Chicago, IL 60603

*Counsel for Commonwealth Edison Co.*

## SERVICE LIST

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