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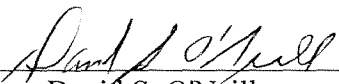
STATE OF ILLINOIS
Pollution Control Board

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 FOR APPEAL OF HEARING OFFICER'S ORDER OF FEBRUARY 8, 2006 a copy of which is hereby served upon you.



David S. O'Neill

March 20, 2006

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

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Respondents.)	

**RESPONDENTS' MOTION FOR APPEAL OF HEARING OFFICER'S ORDER OF
FEBRUARY 8, 2006**

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 file a motion to appeal to the full body of the Illinois Pollution Control Board the decisions in the Hearing Officer Order of February 8, 2006 for the above-captioned case and in support thereof states as follows:

PROCEDURAL BACKGROUND

1. On February 23, 2006, the Respondents filed an Appeal of the Hearing Officer's Order of February 8, 2006.
2. On March 10, 2006, the Complainant file a Motion to Deny Respondents' Appeal of Hearing Officer's February 8, 2006 Order.

**ARGUMENT THAT MOTION TO APPEAL WAS PROPERLY FILED IN
ACCORDANCE WITH 35 Ill. Adm. Code 101.518**

3. The Complainant seems to argue in his motion to deny that Respondents' appeal of the hearing officer's order of February 8, 2006 should be denied simply because the Respondents failed to state the obvious point that the appeal was being filed pursuant to the requirements of the Board's Procedural Rule 101.518 and because the Respondents did not use the word "motion" in a filing where it is "moving" the Board to take action.
4. Under the Board's procedural rules, the only way to appeal the decision of a hearing officer is under the provisions of 35 Ill. Adm. Code 101.518. Consequently, if the filing is entitled as an appeal of a hearing officer's order, there should be no basis for assuming that it is anything but a motion for an appeal in accordance with 35 Ill. Adm. Code 101.518.
5. The Board's Procedural rules define "Motion" as "a request made to the Board or the hearing officer for the purpose of obtaining a ruling or order directing or allowing some act to be done in favor of the movant." (35 Ill. Adm. Code Subpart B 101.202). Under this definition, the filing by the Respondents of February 23, 2006 is clearly a motion in accordance with the provisions of 35 Ill. Adm. Code 101.518.
6. In its motion to deny, the Complainant cites two cases to support its motion. Neither case contains relevant language. (Complainant's Motion to Deny of March 10, 2006 at 8.)
7. In citing People v. Poland (PCB 98-148 at 1), the Complainant attempts to twist the Board's simple restatement of the language of 35 Ill. Adm. Code 101.518 into a ruling that "[a] motion to allow interlocutory appeal is necessary to satisfy the procedural requirement under Section 101.518" (Complainant's Motion to Deny of March 10 at 8). No such statement was made by the Board.
8. The Respondent also cites the Board's Order of Feb. 3, 1994 in Zarlenga v. Partnership Concepts, PCB 92-178 which has absolutely no relevance as to the issue of whether a movant needs to use the word "motion" in his motion in order for the motion to comply with the requirements of 35 Ill. Adm. Code 101.518.

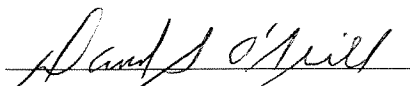
9. In fact, the motions for interlocutory appeal in both the People v. Poland and the Zarlenga v. Partnership Concepts are similar to the Respondents' filing of February 23, 2006 in the statement of the basis for appeal with the exception that the Respondents elected not to state the obvious facts that the filing was a motion and was filed in accord with 35 Ill. Adm. Code 101.518.
10. The Complainant's Motion to Deny is a forty (40) page filing that devotes exactly two (2) paragraphs to the motion to deny. (Complainant's Motion to Deny of March 10, 2006 at 8.) The remainder of the filing consists of a mischaracterization of the procedural history of the matter, personal and libelous attacks on the Respondents' counsel and a response to the Respondent's motion for Interlocutory Appeal of the Hearing Officers Order of February 8, 2006 which is not allowed under the Board's Procedural Rules.
11. The Complainant continues to file frivolous and baseless motions with the Board with total disregard for the Board's rules, resulting in a waste of Board resources and an undue financial and emotional burden on the Respondents. The Complainant's actions also result in a delay in determining the misconduct of the Complainant's attorneys with respect to requesting fees and cost in this matter.
12. The Complainant's continues to fail to act with professionalism and civility and the Board continues to tolerate such action without sanctions by the Board.
13. Respondents do hereby request that the Board accept the Respondents motion for interlocutory appeal as filed.

MOTION TO APPEAL THE HEARING OFFICER'S ORDER
OF FEBRUARY 8, 2006

14. In the alternative, the Respondents do hereby move the Board for permission to appeal the Hearing Officer's Order of February 8, 2006 in accordance with the provisions of 35 Ill. Adm. Code 101.518.
15. The Respondents request that if the motion to appeal is granted, the Board accept the appeal as filed by the Respondents with the Board on February 23, 2006.

WHEREFORE, the Respondents respectfully request that the Board find that the Respondents filing of February 23, 2006 was, in fact, the filing of a motion for an interlocutory appeal of the hearing officer's ruling in compliance with the requirements of 35 Ill. Adm. Code 101.518 or, in the alternative, respectfully move the Board for leave to appeal to the Board and accept as argued the appeal to the Board filed on February 23, 2006 to reverse the Hearing Officer Order of February 8, 2006 and issue an order to grant the Respondents' Motion to Quash Complainant's Deposition Notices to Respondents Regarding Complainant's Fee Petition of December 14, 2005, grant the Respondents' Motion to Strike in Part Complainant's Second Motion to Quash Deposition Notices and Response to Complainant's Second Motion for Protective Order of January 9, 2006 and deny Complainant's Second Motion for Protective Order and Response to Respondents' Motion to Quash Deposition Notices.

Respectfully submitted,


David S. O'Neill

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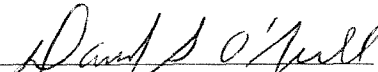
CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached RESPONDENTS' MOTION FOR APPEAL OF HEARING OFFICER'S ORDER OF FEBRUARY 8, 2006 by hand delivery on March 20, 2006 upon the following party:

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

Ms. Carol Webb
Hearing Officer
Illinois Pollution Control Board
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P. O. Box 19274
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Michael Partee
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 17th

day of March, 20 06


Notary Public

