

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In The Matter Of:)	
)	
COMMONWEALTH EDISON CO.,)	
)	
Complainant,)	
)	
v.)	PCB NO. 1250
)	
FREDERICK K. SLAYTON, ANN VOLE)	
SLAYTON, and CIONI EXCAVATING, INC.,)	
)	
Respondents.)	

NOTICE OF FILING

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

PLEASE TAKE NOTICE that on November 15, 2011, I caused to be filed with the Illinois Pollution Control Board, via e-mail, Respondent Cioni Excavating, Inc.'s response to Complainant's formal complaint, a copy of which are hereby served upon you.



William Mosconi

CERTIFICATE OF SERVICE

I, William Mosconi, an attorney, state on oath and under penalties of perjury that service of this Notice and any above cited document(s) was accomplished by placing the same in the US Mail with first class postage being fully prepaid, being addressed to the parties indicated above, and depositing the same at Northbrook, Illinois before the hour of 5:00 pm., on November 15, 2011.

William Mosconi
DEFRENZA MOSCONI, PC
707 Skokie Boulevard, Suite 410
Northbrook, IL 60062
Tel.: 847/513-6699
Fax: 847/513-6609
A.R.D.C.# 6205782
e-mail: wmosconi@dmmlaw.net



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In The Matter Of:)	
)	
COMMONWEALTH EDISON CO.,)	
)	
Complainant,)	
)	
v.)	PCB NO. 1250
)	
FREDERICK K. SLAYTON, ANN VOLE)	
SLAYTON, and CIONI EXCAVATING, INC.,)	
)	
Respondents.)	

FORMAL RESPONSE

Respondant, Cioni Excavating, Inc., ("Cioni") by and through its undersigned attorney, William Mosconi of DeFrenza Mosconi, PC and hereby responds to the Formal Complaint of Commonwealth Edison Co. "Complainant" as follows:

FACTUAL BACKGROUND

1. Complainant, Commonwealth Edison Co., is the owner of a right of way west of and adjacent to 3030 W. 10th St. Waukegan, Illinois ("right of way").

Response: Respondent has insufficient knowledge to either admit or deny the allegations contained herein and therefore, denies the same and demands strict proof thereof.

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.

Response: Respondent has insufficient knowledge to either admit or deny the allegations contained herein and therefore, denies the same and demands strict proof thereof.

b. Beginning in 1999 or 2000, on a date better known to Respondents, Rocks Ann Trucking Inc. leased land at 3030 W. 10th St, Waukegan, IL ("Waukegan location") from the land's owner and lessor, Ben Floyd.

Response: Respondent has insufficient knowledge to either admit or deny the allegations contained herein and therefore, denies the same and demands strict proof thereof.

c. Frederick K. Slayton operated Rocks Ann Trucking, Inc., and a second corporation, Rocks Ann Construction, Inc. from the leased Waukegan location.

Response: Respondent has insufficient knowledge to either admit or deny the allegations contained herein and therefore, denies the same and demands strict proof thereof.

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.

Response: Respondent has insufficient knowledge to either admit or deny the allegations contained herein and therefore, denies the same and demands strict proof thereof.

e. Frederick K. Slayton operated READCO, LLC from the leased Waukegan location and represented himself as the owner of the company.

Electronic Filing - Received, Clerk's Office, 11/15/2011

Response: Respondent has insufficient knowledge to either admit or deny the allegations contained herein and therefore, denies the same and demands strict proof thereof.

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.

Response: Respondent admits that it maintained its principal place of business at 70 Noll Street, Waukegan, IL 60085. Further, that Cioni was in the excavation business. Respondent denies the remaining allegations therein and demands strict proof thereof.

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.

Response: Respondent has insufficient knowledge to either admit or deny the allegations

contained herein and therefore, denies the same and demands strict proof thereof.

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.

Response: Respondent has insufficient knowledge to either admit or deny the allegations contained herein and therefore, denies the same and demands strict proof thereof.

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.

Response: Respondent has insufficient knowledge to either admit or deny the allegations contained herein and therefore, denies the same and demands strict proof thereof.

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.

Response: Respondent denies the allegations against Cioni. Further answering, Respondent has insufficient knowledge to either admit or deny the remaining allegations contained herein and therefore, denies the same and demands strict proof thereof.

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.

Response: Respondent has insufficient knowledge to either admit or deny the allegations contained herein and therefore, denies the same and demands strict proof thereof.

f. Waukegan Police Office Donnenwirth investigated the excavation waste mound during a visit to the Waukegan location on February 9, 2007. Officer Dormenwirth 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.

Response: Respondent has insufficient knowledge to either admit or deny the allegations contained herein and therefore, denies the same and demands strict proof thereof.

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.

Response: Respondent has insufficient knowledge to either admit or deny the allegations contained herein and therefore, denies the same and demands strict proof thereof.

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.

Response: Respondent has insufficient knowledge to either admit or deny the allegations contained herein and therefore, denies the same and demands strict proof thereof.

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.

Response: Respondent has insufficient knowledge to either admit or deny the allegations contained herein and therefore, denies the same and demands strict proof thereof.

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.

Response: Respondent has insufficient knowledge to either admit or deny the allegations contained herein and therefore, denies the same and demands strict proof thereof.

7. Respondents' conduct was willful and malicious, causing injury to Complainant's right of way.

Response: Respondent has insufficient knowledge to either admit or deny the allegations contained herein and therefore, denies the same and demands strict proof thereof.

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."

Response: This allegation is against Frederick K. Slayton and therefore no Response is sought from Cioni. Further answering, Respondent has insufficient knowledge to either admit or deny the allegations contained herein and therefore, denies the same and demands strict proof thereof.

9. Sections 3305 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.

Response: This allegation is against Frederick K. Slayton and therefore no Response is sought from Cioni. Further answering, Respondent has insufficient knowledge to either admit or deny the allegations contained herein and therefore, denies the same and demands strict proof thereof.

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.

Response: This allegation is against Frederick K. Slayton and therefore no Response is sought from Cioni. Further answering, Respondent has insufficient knowledge to either admit or deny the allegations contained herein and therefore, denies the same and demands strict proof thereof.

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).

Response: This allegation is against Frederick K. Slayton and therefore no Response is sought from Cioni. Further answering, Respondent has insufficient knowledge to either admit or deny the allegations contained herein and therefore, denies the same and demands strict proof thereof.

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).

Response: This allegation is against Frederick K. Slayton and therefore no Response is sought from Cioni. Further answering, Respondent has insufficient knowledge to either admit or deny the allegations contained herein and therefore, denies the same and demands strict proof thereof.

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."

Response: This allegation is against Ann Vole Slayton and therefore no Response is sought from Cioni. Further answering, Respondent has insufficient knowledge to either admit or deny the allegations contained herein and therefore, denies the same and demands strict proof thereof.

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.

Response: This allegation is against Ann Vole Slayton and therefore no Response is sought from Cioni. Further answering, Respondent has insufficient knowledge to either admit or deny the allegations contained herein and therefore, denies the same and demands strict proof thereof.

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.

Response: This allegation is against Ann Vole Slayton and therefore no Response is sought from Cioni. Further answering, Respondent has insufficient knowledge to either admit or deny the allegations contained herein and therefore, denies the same and demands strict proof thereof.

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).

Response: This allegation is against Ann Vole Slayton and therefore no Response is sought from Cioni. Further answering, Respondent has insufficient knowledge to either admit or deny the allegations contained herein and therefore, denies the same and demands strict proof thereof.

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).

Response: This allegation is against Ann Vole Slayton and therefore no Response is sought from Cioni. Further answering, Respondent has insufficient knowledge to either admit or deny the allegations contained herein and therefore, denies the same and demands strict proof thereof.

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."

Response: To the extent that the above varies from the statute, law or code, Cioni denies the same.

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.

Response: To the extent that the above varies from the statute, law or code, Cioni denies the same.

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.

Response: Cioni denies the above allegations and each of them and demands strict proof thereof.

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).

Response: Cioni denies the above allegations and each of them and demands strict proof thereof.

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).

Response: Cioni denies the above allegations and each of them and demands strict proof thereof.

PRAYER FOR RELIEF

WHEREFORE, Respondent, Cioni Excavating, Inc., respectfully requests that the Board enter an order against the Complainant Commonwealth Edison Co as follows:

- A. Dismissing the above Formal Complaint against Cioni Excavating, Inc., with prejudice.
- B. Granting such other relief as the Board may deem appropriate.

Respectfully submitted,
Cioni Excavating, Inc.

By:



William Mosconi

William Mosconi
DEFRENZA MOSCONI, PC
707 Skokie Boulevard
Suite 410
Northbrook, IL 60062
Tel.: 847/513-6699
Fax: 847/513-6609
A.R.D.C.# 6205782