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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD OCT 27 2003

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.)

STATE OF ILLINOIS
Pollution Control Board

No. PCB 96-98

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on October 27, 2003, we filed with the Illinois Pollution Control Board Complainant's Response to Respondents' Motion to Bar the Testimony of Betty Lavis, Complainant's Response to Respondents' Motion to Bar the Testimony of Mike Garretson, Complainant's Response to Respondents' Motion to Bar the Testimony of Don Klopke, and Complainant's Response to Respondents' Motion to Bar the Testimony of Ken Savage, true and correct copies of which are attached and hereby served upon you.

Respectfully submitted,

LISA MADIGAN
Attorney General
State of Illinois

BY:



MITCHELL L. COHEN
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601
(312) 814-5282

SERVICE LIST

Mr. David O'Neill
Mr. Michael B. Jagwiel
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5487 North Milwaukee
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Ms. Carol Sudman
Hearing Officer
Illinois Pollution Control Board
600 S. Second Street, Suite 402
Springfield, Illinois 62704

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COMPLAINANT'S RESPONSE TO
 RESPONDENTS' MOTION TO BAR THE TESTIMONY OF
BETTY LAVIS

Comes now, Complainant, the People of the State of Illinois, and in Response to "Respondents' Motion to Bar the Testimony of Betty Lavis" states as follows:

1. The original Complaint in this case was filed November 3, 1995. The First Amended Complaint was filed December 29, 1997, and the Second Amended Complaint was accepted for filing October 17, 2002.

2. Respondents' chose never to serve Complainant with any discovery requests from the date the original Complaint was filed until late July, 2003.

3. Even as late as June 9, 2003, Respondents' filed for an extension of time for the discovery schedule.

4. Not until this Motion to Bar testimony has Respondents' counsel ever indicated, in any form, hearing, letter, telephone call, or conversation, that Respondents wanted to take the depositions of all Complainants' witnesses.

5. Complainant would have listed Betty Lavis as a witness in discovery ever since filing the First Amended Complaint. She was the United States Environmental Protection Agency Inspector assigned to investigate the water pollution source of the Avon Drainage Ditch in late 1994 and 1995. At that time, she spoke with the individual respondents.

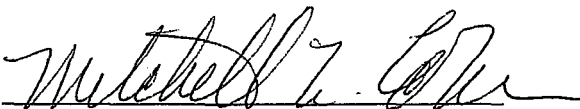
6. The USEPA documents were provided to Respondents in discovery.

7. Respondents' discovery strategy cannot now be used to claim unfair surprise, ambush, or prejudice so as to limit the Complainant's cases and bar the testimony of Betty Lavis.

8. Respondents' knew, or should have known, that Complainant would call witnesses that investigated the source of the water pollution in the Avon Drainage Ditch in late 1994 and 1995.

WHEREFORE, Complainant requests that Respondents' Motion to Bar the Testimony of Betty Lavis be denied, and that Betty Lavis be allowed to fully testify.

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN,
Attorney General of the
State of Illinois,

By: 
MITCHELL L. COHEN
Assistant Attorney General
Environmental Bureau
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Chicago, IL 60601
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COMPLAINANT'S RESPONSE TO
RESPONDENTS' MOTION TO BAR THE TESTIMONY OF
KEN SAVAGE

Comes now, Complainant, the People of the State of Illinois, and in Response to "Respondents' Motion to Bar the Testimony of Ken Savage" states as follows:

1. The original Complaint in this case was filed November 3, 1995. The First Amended Complaint was filed December 29, 1997, and the Second Amended Complaint was accepted for filing October 17, 2002.

2. Respondents' chose never to serve Complainant with any discovery requests from the date the original Complaint was filed until late July, 2003.

3. Even as late as June 9, 2003, Respondents' filed for an extension of time for the discovery schedule.

4. Not until this Motion to Bar testimony has Respondents' counsel ever indicated, in any form, hearing, letter, telephone call, or conversation, that Respondents wanted to take the depositions of all Complainants' witnesses.

5. Complainant would have listed Ken Savage as a witness in discovery ever since filing the First Amended Complaint. He was one of the Illinois Environmental Protection Agency employees assigned to investigate the complaints of water pollution and its source in the Avon Drainage Ditch in late 1994 and 1995. At that time, he spoke with the individual respondents.

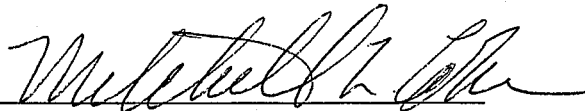
6. The documents that form the basis of his opinions and observations were provided to Respondents in discovery.

7. Respondents' discovery strategy cannot now be used to claim unfair surprise, ambush, or prejudice so as to limit the Complainant's cases and bar the testimony of Don Klopke.

8. Respondents' knew, or should have known, that Complainant would call witnesses that investigated the source of the water pollution in the Avon Drainage Ditch in late 1994 and 1995.

WHEREFORE, Complainant requests that Respondents' Motion to Bar the Testimony of Ken Savage be denied, and that Ken Savage be allowed to fully testify.

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN,
Attorney General of the
State of Illinois,

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MITCHELL L. COHEN
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COMPLAINANT'S RESPONSE TO
 RESPONDENTS' MOTION TO BAR THE TESTIMONY OF
DON KLOPKE

Comes now, Complainant, the People of the State of Illinois, and in Response to "Respondents' Motion to Bar the Testimony of Don Klopke" states as follows:

1. The original Complaint in this case was filed November 3, 1995. The First Amended Complaint was filed December 29, 1997, and the Second Amended Complaint was accepted for filing October 17, 2002.

2. Respondents' chose never to serve Complainant with any discovery requests from the date the original Complaint was filed until late July, 2003.

3. Even as late as June 9, 2003, Respondents' filed for an extension of time for the discovery schedule.

4. Not until this Motion to Bar testimony has Respondents' counsel ever indicated, in any form, hearing, letter, telephone call, or conversation, that Respondents wanted to take the depositions of all Complainants' witnesses.

5. Complainant would have listed Don Klopke as a witness in discovery ever since filing the First Amended Complaint. He was one of the Illinois Environmental Protection Agency employees assigned to investigate the complaints of water pollution and its source in the Avon Drainage Ditch in late 1994 and 1995. At that time, he spoke with the individual respondents.

6. The documents that form the basis of his opinions and observations were provided to Respondents in discovery.

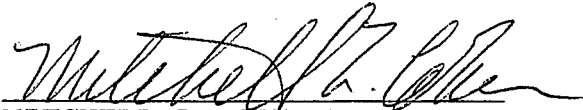
7. Respondents' discovery strategy cannot now be used to claim unfair surprise, ambush, or prejudice so as to limit the Complainant's cases and bar the testimony of Don Klopke.

8. Respondents' knew, or should have known, that Complainant would call witnesses that investigated the source of the water pollution in the Avon Drainage Ditch in late 1994 and 1995.

WHEREFORE, Complainant requests that Respondents' Motion to Bar the Testimony of Don Klopke be denied, and that Don Klopke be allowed to fully testify.

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN,
Attorney General of the
State of Illinois,

By:


MITCHELL L. COHEN
Assistant Attorney General
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COMPLAINANT'S RESPONSE TO
 RESPONDENTS' MOTION TO BAR THE TESTIMONY OF
MIKE GARRETSON

Comes now, Complainant, the People of the State of Illinois, and in Response to "Respondents' Motion to Bar the Testimony of Mike Garretson" states as follows:

1. The original Complaint in this case was filed November 3, 1995. The First Amended Complaint was filed December 29, 1997, and the Second Amended Complaint was accepted for filing October 17, 2002.

2. Respondents' chose never to serve Complainant with any discovery requests from the date the original Complaint was filed until late July, 2003.

3. Even as late as June 9, 2003, Respondents' filed for an extension of time for the discovery schedule.

4. Not until this Motion to Bar testimony has Respondents' counsel ever indicated, in any form, hearing, letter, telephone call, or conversation, that Respondents wanted to take the depositions of all Complainants' witnesses.

5. Complainant would have listed Mike Garretson (or possibly someone else working at the Illinois Environmental Protection Agency, Division of Water Pollution Control, Compliance Assurance Section) as a witness in discovery ever since filing the Original Complaint. Respondents' NPDES permit was issued, and their Discharge Monitoring Report ("DMR") requirements begin, in 1986. All the allegations in the Complaints, except the water pollution count, relate to Respondents' NPDES permit and DMRs.


6. Respondents' discovery strategy cannot now be used to claim unfair surprise, ambush, or prejudice so as to limit the Complainant's cases and bar the testimony of Mike Garretson.

7. Respondents knew, or should have known, that Complainants would use witnesses to testify about their NPDES permit and DMRs.

WHEREFORE, Complainant requests that Respondents' Motion to Bar the Testimony of Mike Garretson be denied, and that Mike Garretson be allowed to fully testify.

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN,
Attorney General of the
State of Illinois,

By:




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CERTIFICATE OF SERVICE

I, MITCHELL COHEN, an Assistant Attorney General, certify that on the 27th day of October, 2003, I caused to be served by telefax and First Class Mail the foregoing **Complainant's Response to Respondents' Motion to Bar the Testimony of Betty Lavis, Complainant's Response to Respondents' Motion to Bar the Testimony of Mike Garretson, Complainant's Response to Respondents' Motion to Bar the Testimony of Don Klopke, and Complainant's Response to Respondents' Motion to Bar the Testimony of Ken Savage**, to the parties named on the attached service list.


MITCHELL L. COHEN
Assistant Attorney General