

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

DEC 01 2004

STATE OF 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.,)	
Respondents)	

RESPONSE TO COMPLAINANT'S MOTION TO VOID
THE BOARD'S OCTOBER 21, 2004 ORDER

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 respond to the Complainant's Motion to Void the Board's October 21, 2004, Order. In response to the Motion, the Respondents state as follows:

1. On November 19, 2004, the Complainants filed a Motion to Void the Board's October 21, 2004 Order and seeks to have the order to stay payment of the penalty imposed by the September 2, 2004 Opinion and Order voided.
2. The Board's Procedural Rules do not make provisions for motions to void Board Opinions and Orders by motion of the parties.
3. The Complainant's motion to void is a thinly disguised attempt to file a motion for reconsideration of a Board order.
4. The Board's Procedural Rules only make provisions for motions for reconsideration of final Board opinions and orders (35 Ill. Adm. Code 101.902).

5. Because the Board's October 21, 2004 Order is clearly not a final opinion and order, the Complainant's motion to void/motion for reconsideration should not be considered by the Board.

6. In its motion, the Complainant misstates that this matter is on appeal (Motion at 1.). In fact, the Complainant had been notified by the State of Illinois Appellate Court Second District that the appeal had been dismissed (Ill. App Ct. 2nd Dist. Order of November 18, 2004) prior to the filing of its motion.

7. At the time that the Complainant filed its November 19, 2004 Motion, it was aware that the Board had jurisdiction and would be able to reissue or renew its order of October 21 without any issue of jurisdiction.

8. Wherefore, the Complainant's Motion was filed in bad faith and should have been to filed as a motion requesting the Board to renew or reissue its Order of October 21, 2004 instead of a motion arguing to void based on lack of jurisdiction.

9. While the Complainant's arguments regarding jurisdiction are not persuasive, this issue can easily be avoided because the Board may Order a renewal of its order of October 21, 2004 or reissue the Order at this time when the Complainant's issue of jurisdiction is no longer relevant.

10. The Complainant also argues that the Board should void the portion of its October 21, 2004 Order which stays the payment of the civil penalty in the Opinion and Order of September 2, 2004 because there was no motion to stay the penalty.

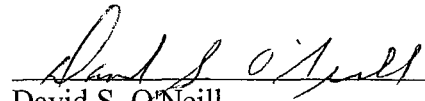
11. It is within the Board discretion to determine whether or not the Respondents' Motion of September 28, 2004 included a motion to stay the payment of the civil penalty in the Opinion and Order of September 2, 2004.

12. The Board also has the right to issue an order on its own motion.

13. The Board clearly has issued an order to stay payment of the penalty imposed in the opinion and order of September 2, 2004 (Order of October 21, 2004 at 2). Whether the order was prompted by the Respondents' motion or on the Board's motion is academic and any clarification of the origin of the consideration of the stay would not effect the Board's right to order the stay.

Wherefore, the Respondents respectfully request that the Board not consider the motion to void filed by the Complainant or in the alternative, if the Board does consider the motion,

either find that the standing order to stay payment of the penalty imposed in the September 2, 2004 should not be voided or renew or reissue an order to stay payment of the penalty imposed in the September 2, 2004.

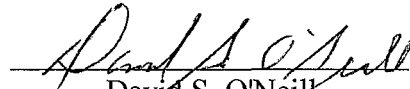

David S. O'Neill

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 MOTION TO STAY PAYMENT OF PENALTY UNDER BOARD ORDER OF SEPTEMBER 2, 2004 by hand delivery on December 1, 2004, upon the following party:

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

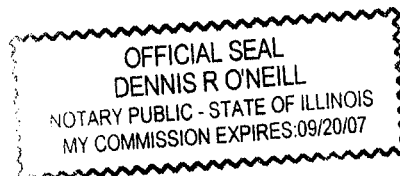

David S. O'Neill

NOTARY SEAL

SUBSCRIBED AND SWORN TO ME this 1st

day of Dec, 20 04


Notary Public



RECEIVED
CLERK'S OFFICE

DEC 01 2004

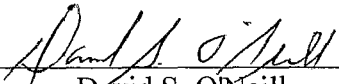
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NOTICE OF FILING

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the MOTION TO STAY PAYMENT OF PENALTY UNDER BOARD ORDER OF SEPTEMBER 2, 2004, a copy of which is hereby served upon you.



David S. O'Neill

December 1, 2004

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