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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

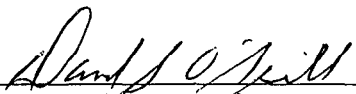
JUL 06 2005

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.,)
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 TO STRIKE COMPLAINANT'S OBJECTIONS TO DISCOVERY AND MOTION TO COMPEL COMPLAINANT'S RESPONSE TO DISCOVERY REQUEST, a copy of which is hereby served upon you.


David S. O'Neill

July 6, 2005

David S. O'Neill, Attorney at Law
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(773) 792-1333

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Skokie Valley Asphalt Co., Inc.,)	
Respondents)	

**RESPONDENTS' MOTION TO STRIKE COMPLAINANT'S OBJECTIONS TO
DISCOVERY AND MOTION TO COMPEL
COMPLAINANT'S RESPONSE TO DISCOVERY REQUEST**

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 its attorney, David S. O'Neill, herein move this Board to strike the Complainant's objections to the Respondents' request for Discovery and compel the Complainant's response to Respondents' requests for discovery and in support thereof states as follows:

PROCEDURAL HISTORY

1. On April 7, 2005, the Board issued an Order in the above captioned matter. In this Order, the Board granted the Respondents' motion for extension of time to allow for discovery.
2. The Order states that "the Board will grant the respondents additional time in order to conduct discovery..." Order of April 7, 2005 at 3. In the Conclusion of the Order, the Board "grants respondents' motion for extension of time and authorizes respondents to

- conduct discovery on the attorney fees issue”. Id at 4.
3. On April 25, 2005, the Respondents filed with the Board the “Respondents’ First Set of Interrogatories Regarding Attorneys’ Fees, Costs and Expenses”, Respondents’ First Set of Document Requests Regarding Attorneys’ Fees, Costs and Expenses”, “Respondents’ First Request for Admission of Facts Regarding Attorneys’ Fees, Costs and Expenses” and “Notice of Deposition Regarding Attorneys’ Fees, Costs and Expenses”.
 4. The discovery request stated that the responses to discovery should be delivered by May 25, 2005 consisted with the requirements of Illinois Supreme Court Rule 213 and the Board Order of April 7, 2005.
 5. The Complainant and its attorneys failed to deliver the responses to discovery by the deadline established by the Illinois Supreme Rule 213 and the Board Order of April 7, 2005.
 6. Instead, the Complainant’s attorney sent objections to the Respondents’ discovery requests and failed to respond to request to admit facts Nos. 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 15, 16, 17, 18, 19, 20, 27, 28, 30 and 37, document requests Nos. 5, 6, 7, 8, 9, 10,11, 12, 17 and 21 and interrogatories 16, 21, and 23.
 7. The Complainant’s limited response to the remaining discovery request is generally evasive and non-responsive and subject to objections that misinterpret Board orders or have no basis in legal standards for objections. These responses can be addressed through a 201(k) conference after the issue of the validity of the objections has been addressed by the Board.
 8. Under the pretense of responding to the Respondents’ request for discovery, the Complainant’s attorney also sent a communication to the Respondents’ attorney, in a form and manner not allowed for by the Board’s Procedural Rules stating that they would not be supplying full response to the Respondents’ request for discovery. The Complainant’s attorneys also attempted to have the communication made part of the Board’s record in this case by making the communication an ex-parte communication with a Board employee.
 9. In its Notice of Deposition, the Respondents requested that the Complainant produce Mr.

Mitchell Cohen and Mr. Bernard Murphy for deposition on June 24, 2005 pursuant to the provisions of Section 2-1003 of the Illinois Code of Civil Procedure.

10. The Complainant failed to produce either Mr. Cohen or Mr. Murphy for deposition on June 24, 2005 as required under Section 2-1003 of the Illinois Code of Civil Procedure.

THE COMPLAINANT'S OBJECTIONS SHOULD BE STRICKEN

11. The objections presented by the Complainant's lack the specificity required of any objection to a request for discovery. In its objections to Respondents' discovery requests, the Complainant relies on general objections and fails to specifically state the basis for each objection.
12. The burden of demonstrating that a request for discovery is improper is on the party responding to the discovery request – in this situation, the Complainant.
13. Absent an argument identifying the portion of the discovery request that is being objected to and a legal basis for the objection, the Complainant's objections can not stand.
14. The general objections given by the Complainants, even if applied to specific portions of discovery requests, are not the basis for objections.
15. In its general objections, the Complainant attempts to misconstrue the statement in the Board's Oder of April 7, 2005 that requires that "any pleading by either party not designed to further a speedy and ultimate resolution of this case will not be tolerated by the hearing officer or the Board." (Complainant's Answers and Objections filed May 24, 2005 at 2.)
16. The Respondents' discovery requests are consisted with the Board's goal of a "speedy and ultimate resolution of this case". Discovery is the tool that allows for the exchange of information needed to resolve legal disputes. The "Respondents' First Set of Interrogatories Regarding Attorneys' Fees, Costs and Expenses", Respondents' First Set of Document Requests Regarding Attorneys' Fees, Costs and Expenses", "Respondents' First Request for Admission of Facts Regarding Attorneys' Fees, Costs and Expenses" and "Notice of Deposition Regarding Attorneys' Fees, Costs and Expenses" are intended to allow the Respondents to gather the information required to prepare its response to the

request for fees and cost in a timely manner.

17. The Respondents prepared and served its discovery request consistent with the schedule established by the Board in its Order of April 7, 2005 to help ensure the speedy and ultimate resolution of this case.
18. It is the action of the Complainant and its attorneys that jeopardize the speedy and ultimate resolution of this manner
19. The time it would take the Complainant to respond to the Respondents' requests for discovery is inconsequential compared to the delay now caused by the Complainant's failure to comply with the Board's discovery schedule.
20. In its general objections, the Complainant also attempts to misconstrue the statement in the Board's Order of April 7, 2005 that requires that "the parties are not to address [AAG Joel Sternstein's fees] in conducting discovery or at hearing." (Complainant's Answers and Objections filed May 24, 2005 at 2.)
21. Nothing in the Respondents' discovery request addresses either Mr. Sternstein's or the Board's misconduct in this case. However, the Board's attempt to limit discovery with respect to the conflict of Mr. Sternstein should not be interpreted to prevent the Respondents from investigating Complainant and its attorneys other misconduct and ethical breaches.
22. Among the issues that Respondents need to address through discovery is the conduct of the remaining attorneys in supervising Mr. Sternstein during the periods in which he violated Board procedural rules and the ARDC Code of Ethics, the possibility of ex parte communication between the remaining attorneys and the Board employees, the knowledge the remaining attorneys had of Mr. Sternstein's misconduct and ex parte communications, the level to which the remaining attorneys instructed and condoned Mr. Sternstein's misconduct, the reason why Mr. Cohen has filed false affidavits with the Board and the reason why the remaining attorneys are now claiming fees for work that Mr. Sternstein claimed to have been performed and the Board has ruled can not be recovered by the Complainant.
23. The Respondents' discovery requests are designed to gather information on these issue

- and are required to allow the Respondents' to prepare its response to the Complainant's request for fees and costs.
24. The Complainant's objection to the Respondents' request for information based on the argument that Mr. Sternstein may have been involved in the misconduct of the other attorneys should not be allowed.
 25. In its general objections, the Complainant objects to responding to request for discovery that it has unilaterally determined are not relevant .. They also object to answering requests for discovery on privacy ground. (Complainant's Answers and Objections filed May 24, 2005 at 2.)
 26. The Respondents' request for discovery are designed to discover facts or lead to facts that are required to prepare its response to the Complainant's attorneys fees. As such, they are relevant.
 27. There is no legal or logical basis for refusing to respond to request for discovery on an argument of privacy. The very purpose of discovery is to allow for the exchange of personal information. This argument is further discredited by the fact that most of the information requested by the Respondents to which the Complainant and its attorneys are objecting are part of the public record.
 28. The remaining general objections stated by the Complainant and its attorney are so poorly argued that they defy response by the Respondents.

COMPLAINANT'S SHOULD BE COMPELLED TO RESPOND TO RESPONDENTS'
DISCOVERY REQUESTS

29. The Board has consistently held that discovery should be as wide as possible with respect to the facts of the case to allow the issues to be developed as fully as possible.
Environmental Protection Agency v. Decatur Sanitary District, et. al. PCB 77-157 at 2;
People of the State of Illinois v. Doren Poland, Lloyd Yoho, et. al. PCB 98-148 at 2.
30. The Board's statements in its Order of April 7, 2005 requesting limited discovery and stating "any pleading by either party not designed to further a speedy and ultimate resolution of this case will not be tolerated by the hearing officer or the Board." are not

inconsistent with the Board's position of allowing broad discovery.

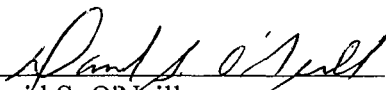
31. "Respondents' First Request for Admission of Facts Regarding Attorneys' Fees, Costs and Expenses" are intended to allow the parties to identify items not in dispute and consequently avoid further discovery and delays.
32. The "Respondents' First Set of Interrogatories Regarding Attorneys' Fees, Costs and Expenses" are intended to allow the Respondent to identify issues and non issues to be addressed at Deposition or reasonably argued in the Respondents' Response to Complainant's Demand for Attorneys' Fees and Cost.
33. The "Respondents' First Request for Admission of Facts Regarding Attorneys' Fees, Costs and Expenses" is intended to allow the Respondent to obtain documents necessary to verify other responses obtained from the Complainant and allow the Respondents to clarify any discrepancies through deposition.
34. Consequently, thorough and timely discovery is consistent with the Board's objective of a speedy and ultimate resolution of this case.
35. It is the Complainant's pleadings and responses that raise objections to reasonable discovery and fail to supply information required to allow the Respondents to prepare a response to the Complainant's Demand for Fees and Cost that would be classified as a pleading not designed to further a speedy and ultimate resolution of this case. Consistent with the April 7, 2005 Order, these pleadings and responses should not be tolerated by the hearing officer or the Board.
36. As such, the Complainant should be compelled to respond to the discovery request presented by the Respondents.

**RESPONDENT SHOULD BE COMPELLED TO PRODUCE WITNESSES UNDER
THEIR CONTROL FOR DEPOSITION**

37. In its "Notice of Deposition Regarding Attorneys' Fees, Costs and Expenses", the Respondents requested that the Complainant produce Mr. Mitchell Cohen and Mr. Bernard Murphy for deposition on June 24, 2005 pursuant to the provisions of Section 2-1003 of the Illinois Code of Civil Procedure.

38. The Complainant failed to produce either Mr. Cohen or Mr. Murphy for deposition on June 24, 2005 as required under Section 2-1003 of the Illinois Code of Civil Procedure.
39. The Complainant does not deny that Mr. Cohen is a witness under their control
40. The Complainants unilaterally decided that Mr. Cohen's deposition was not timely scheduled and should not be taken until all written discovery had been completed. Therefore, the Complainant and its attorneys refused to produce Mr. Cohen at the time and place requested.
41. The Complainant did not ask leave of the Board or approval of the Respondents in deciding not to produce the witness.
42. The Respondents were prepared to take Mr. Cohen's deposition at the time scheduled and the Complainant's failure to produce the witness for deposition has resulted in unnecessary delay of the Board's objective of a speedy and ultimate resolution of this case.
43. The Complainants should be compelled to produce witnesses for deposition, or at a minimum, cooperate with the Respondents in scheduling said depositions to allow for the speedy and ultimate resolution of this case.

Wherefore, the Respondents respectfully request the Board to strike the Complainant's Objection to Discovery and compel Complainant's response to discovery and cooperation in scheduling depositions.

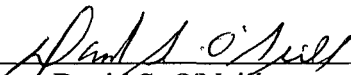

David S. O'Neill

David S. O'Neill, Attorney at Law
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Chicago, Illinois 60630-1249
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CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached RESPONDENTS' RESPONDENTS' MOTION TO STRIKE COMPLAINANT'S OBJECTIONS TO DISCOVERY AND MOTION TO COMPEL COMPLAINANT'S RESPONSE TO DISCOVERY REQUEST by hand delivery on July 6, 2005, 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 6th

day of July, 20 05


Notary Public

