

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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.,)
Respondent)

PCB 96-98

Enforcement

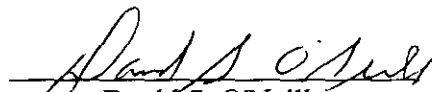
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CLERK'S OFFICE

AUG 15 2005

STATE OF ILLINOIS
Pollution Control Board

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 RESPONSE TO RESPONDENTS' MOTION TO STRIKE COMPLAINANT'S LETTER OF MAY 24, 2005 AND JUNE 14, 2005 REGARDING DISCOVERY, a copy of which is hereby served upon you.


David S. O'Neill

August 15, 2005

David S. O'Neill, Attorney at Law
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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.

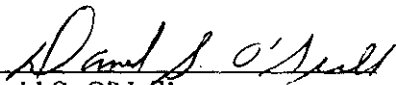
3. On May 24, 2005, the Complainant sent a letter to the Respondents under the pretense of initiating a conference pursuant to Illinois Supreme Court Rule 201(k), even though the provisions of Supreme Court Rule 201(k) do not apply to this situation because the Complainant was never given leave to conduct discovery by the Board.
4. The hearing officer was copied on the May 24, 2005 letter and consequently, the letter was added to the record for this matter.
5. On June 14, 2005 the Complainant sent another letter to the Respondents.
6. The hearing officer was also copied on the June 14, 2005 letter and consequently, the letter was added to the record for this matter.
7. On July 6, 2005, the Respondents filed separate motions to strike the Complainant’s letters of May 24, 2005 and June 14, 2005 from the record.
8. On July 20, 2005, the Complainant filed “Complainant’s Response to Respondents’ Motions to Strike Complainant’s Letters of May 24, 2005 and June 14, 2005 Regarding Discovery”.
9. The Complainant attached copies of both the May 24, 2005 letter and the June 14, 2005 letter to its “Complainant’s Response to Respondents’ Motions to Strike Complainant’s Letters of May 24, 2005 and June 14, 2005 Regarding Discovery”.

ARGUMENT TO STRIKE

10. The Board’s procedural rules make no provisions requiring the attachment of documents to motions or responses to motions filed with the Board.
11. The attachment of the letters was not necessary for the filing of the response or for the arguments presented in the response.
12. As previously argued by the Respondents in their July 6, 2005 motions to strike, the letters submitted by the Complainant should not be made part of the record in this case.

13. Unless the May 24, 2005 letter is stricken, the Complainant will be allowed to enter information into the record, that is seeded with false statements.
14. The Board's Procedural Rules do not offer any mechanism for the Respondents and their attorneys to respond to the accusations and statements in the Complainant's letter of May 24, 2005.
15. Allowing the uncontested false statements in the May 24, 2005 letter to appear in the record has the potential of prejudicing the trier of fact in this matter.
16. Unless the June 14, 2005 letter is stricken, the Complainant will be allowed to enter arguments into the record, through procedures not allowed by the Board's rules.
17. The Board's Procedural Rules do not offer any mechanism for the Respondents and their attorneys to respond to the arguments in the Complainant's letter of June 14, 2005.
18. Allowing the Complainant to present these legal arguments in the record has the potential of prejudicing the trier of fact in this matter.
19. The only reason for the Complainant to attach the letters of May 24, 2005 and June 14, 2005 is to make another attempt to introduce false, argumentative and prejudicial information into the records through means outside of the Board's Procedural Rules.
20. Because these improper materials are part of the "Complainant's Response to Respondents' Motions to Strike Complainant's Letters of May 24, 2005 and June 14, 2005 Regarding Discovery", the "Complainant's Response to Respondents' Motions to Strike Complainant's Letters of May 24, 2005 and June 14, 2005 Regarding Discovery" needs to be stricken from the record.

Wherefore, the Respondents respectfully request the Board to strike the “Complainant’s Response to Respondents’ Motions to Strike Complainant’s Letters of May 24, 2005 and June 14, 2005 Regarding Discovery” from the record in its entirety.

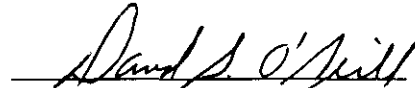

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CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached RESPONDENTS' MOTION TO STRIKE COMPLAINANT'S RESPONSE TO RESPONDENTS' MOTION TO STRIKE COMPLAINANT'S LETTER OF MAY 24, 2005 AND JUNE 14, 2005 REGARDING DISCOVERY by hand delivery on August 15, 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 15th

day of August, 20 05


Notary Public

