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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JUL 7 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

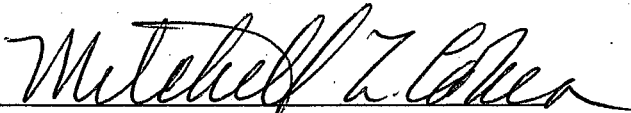
TO: See Attached Service List

PLEASE TAKE NOTICE that on July 7, 2003, we filed with the Illinois Pollution Control Board "**Complainant's Response to Respondent's Motion for Reconsideration of the Board's Order of June 5, 2003**", a true and correct copy of which is attached and hereby served upon you.

Respectfully submitted,

JAMES E. RYAN
Attorney General
State of Illinois

BY:


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STATE OF ILLINOIS
Pollution Control Board

No. PCB 96-98

**COMPLAINANT'S RESPONSE TO
 RESPONDENT'S MOTION FOR RECONSIDERATION OF THE
BOARD'S ORDER OF JUNE 5, 2003**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA
 MADIGAN, Attorney General of the State of Illinois, pursuant to
 Sections 101.202 and 101.520 of the Board's Procedural
 Regulations, 35 Ill. Adm. Code 101.202 and 101.520, responds to
 Respondent's Motion For Reconsideration Of The Board's Order Of
 June 5, 2003, as follows:

INTRODUCTION

1. The Board's June 5, 2003, Order ("June Order")
 addressed various motions previously filed in this case:
 Complainant's Motion to Strike or Dismiss Respondents'
 Affirmative Defenses; Respondent's Motion to Dismiss Edwin L.
 Frederick, Jr. and Richard J. Frederick; and Complainant's Motion

to Strike Respondent's Motion to Dismiss.

2. The June Order did not terminate the proceedings in this case, but rather allowed the proceedings to continue with discovery and litigation.

**THE BOARD'S JUNE 5, 2003, ORDER IS NOT A FINAL ORDER
AND THEREFORE IS NOT RIPE FOR RECONSIDERATION**

3. Section 101.202 Definitions for Board's Procedural Rules, 35 Ill. Adm. Code 101.202, defines "Final Order" as follows:

"Final Order" means an order of the Board that terminates the proceeding leaving nothing further to litigate or decide and that is appealable to an appellate court pursuant to Section 41 of the Act.

4. The June Order is not a final order.

5. The June Order allowed one of Respondents' Affirmative Defenses to stand and did not allow two of the three respondents to be dismissed from the case.

6. The June Order addresses motions and issues brought up by the parties during litigation of this case related to the ongoing litigation. The motions did not seek to end ". . . the proceeding leaving nothing further to litigate . . ." and the June Order was not meant to, and does not, end the proceedings.

7. Section 101.520(a) of the Board's Procedural Rules and Regulations, 35 Ill. Adm. Code 101.520(a), states as follows:

- a) Any motion for reconsideration or modification of a **final** Board order must be filed within 35 days after the receipt of the order. (emphasis added)

8. Since the June Order is not a final order, it is not ripe for reconsideration.

WHEREFORE, Complainant requests, pursuant to the June 5, 2003, Order of the Board, and sections 101.202 and 101.520 of the Board's Procedural Regulations, 35 Ill. Adm. Code 101.202 and 101.520, that the Board strike Respondent's Motion for Reconsideration of the Board's Order of June 5, 2003.

COMPLAINANT ADOPTS AND INCORPORATES EARLIER ARGUMENTS

9. Should the June 5, 2003, Order of the Board be construed as a final order, or if the Complainant misinterpreted the Board's Procedural Regulations, then Complainant objects to and contests Respondent's Motion for Reconsideration.

10. Complainant adopts and incorporates the following pleadings, motions and responses previously filed with the Board: Complainant's Second Amended Complaint; Complainant's Motion to Strike or Dismiss Respondents' Affirmative Defenses; and Complainant's Motion to Strike Respondent's Motion to Dismiss or, in the alternative, a Response to the Motion to Dismiss.

11. Section 101.902 under Subpart I: Review of Final Board Opinions and Orders, 35 Ill. Adm. Code 101.902, states as follows:

Motions for Reconsideration

In ruling upon a motion for reconsideration, the Board will consider factors including new evidence, or a change in the law, to conclude that the Board's decision was in error.

12. Respondents, in the Motion for Reconsideration, do not provide any new evidence, or assert a change in the law.

13. Therefore, Respondents' Motion for Reconsideration should be denied.

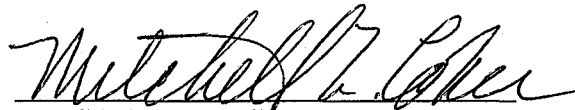
CONCLUSION

14. The Board's Order of June 5, 2003, is not a final order, and therefore, not ripe for a Motion for Reconsideration; Respondent's Motion for Reconsideration should be stricken.

15. If the June Order can be the subject of a Motion for Reconsideration, it should be denied because Respondents do not present any new evidence or assert a change in the law.

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

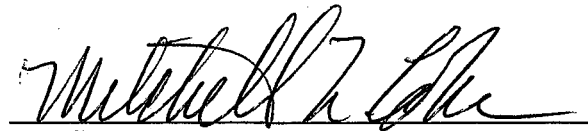
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CERTIFICATE OF SERVICE

I, MITCHELL COHEN, an Assistant Attorney General, certify that on the 7th day of July, 2003, I caused to be served by First Class Mail the foregoing **“Complainant’s Response to Respondent’s Motion for Reconsideration of the Board’s Order of June 5, 2003”** to the parties named on the attached service list, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.


MITCHELL L. COHEN
Assistant Attorney General

