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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SEP 11 2003

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
SKOKIE VALLEY ASPHALT, CO., INC.,)
an Illinois corporation,)
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.)

No. PCB 96-98

NOTICE OF FILING

TO: Mr. David S. O'Neill Ms. Carol Sudman
Mr. Michael Jawgiel Hearing Officer
5487 N. Milwaukee Ave. Illinois Pollution Control Board
Chicago, IL 60630 c/o Illinois EPA
1021 North Grand Ave.
PO Box 19276
Springfield, Illinois 62794-9276

PLEASE TAKE NOTICE that Complainant, PEOPLE OF THE STATE OF ILLINOIS, filed with the Illinois Pollution Control Board COMPLAINANT'S RESPONSE TO RESPONDENTS' MOTION TO DISMISS COMPLAINANT'S SECOND AMENDED COMPLAINT AND TO RECUSE COMPLAINANT'S ATTORNEY JOEL J. STERNSTEIN a true and correct copy of which is attached hereto and is hereby served upon you.

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

BY: Mitchell L. Cohen
MITCHELL L. COHEN
JOEL J. STERNSTEIN
Assistant Attorney General
Environmental Bureau
188 West Randolph, 20th Floor
Chicago, IL 60601
(312) 814-5282
(312) 814-6986

Dated: September 11, 2003

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**COMPLAINANT'S RESPONSE TO
RESPONDENT'S MOTION TO DISMISS COMPLAINANT'S
SECOND AMENDED COMPLAINT AND
TO RECUSE COMPLAINANT'S ATTORNEY JOEL J. STERNSTEIN**

Comes now, the People of the State of Illinois, Complainant,
and responds to "Respondent's Motion to Dismiss Complainant's
Second Amended Complaint and to Recuse Complainant's Attorney
Joel J. Sternstein, as follows:

I. Respondent's Motion to Dismiss should be Denied.

Respondent's Motion to Dismiss Complainant's Second Amended
Complaint should be denied since it was not filed within 30 days
after the service of the Second Amended Complaint. Section
101.506 of the Pollution Control Board Procedural Rules, states
that "[a]ll motions to strike, dismiss, . . . any pleading filed

with the Board must be filed within 30 days after the service of the challenged document" 35 Ill. Adm. Code 101.506 (2001). On October 17, 2002, the Board issued an Order in this case; the final sentence of which read: "The Respondents may file an answer as provided in Section 103.204(d) of the Board's rules using October 17, 2002, as the date the complaint was received." People v. Skokie Valley Asphalt Co., Inc., PCB 96-98, slip op. at 3 (Oct. 17, 2002). By the time the Board issued this Order, Joel J. Sternstein's Entry of Appearance had been on file for months. Any motion to strike, or dismiss a pleading was due in November, 2002. Since Respondent did not file the Motion to Dismiss until September 9, 2003, it is not timely and should be denied.¹

II. Mr. Sternstein should not be Recused.

Respondents' Motion to Recuse Joel Sternstein should be denied. In paragraph 6 of Respondents Motion, David O'Neill, respondents' attorney, goes so far as to say "[o]n information and belief, Mr. Joel J. Sternstein" worked at the Pollution Control Board. See Respondents' Motion, page 2. Then in paragraph 7, O'Neill makes a bald faced accusation that Mr. Sternstein ". . . participated personally and substantially" in this case. See Respondents' Motion, page 2. There is not a reference to any work, order, or opinion written by Mr.

¹ See also, People v. Skokie Valley Asphalt Co., Inc., PCB 96-98, slip op. at 7 (June 5, 2003) for similar discussion related to Respondent's Motion to Dismiss the Fredericks.

Sternstein. There is not a reference to any work, order, or opinion written by Board Member Melas which may have been prepared, or drafted by Mr. Sternstein. There is not a cite or reference that Mr. Sternstein participated in any hearing related to this case. Respondents provided nothing: not one shred of evidence; not even a basis for an inference that Mr. Sternstein personally and substantially participated in this case while working at the Board.

Joel J. Sternstein is a licensed attorney in the State of Illinois. He is an Assistant Attorney General for the Illinois Attorney General's Office working in the Environmental Bureau. See affidavit attached. He previously work for the Illinois Pollution Control Board. He assisted Board Member Nicholas J. Melas in drafting opinions and orders for the Board.

Section 101.112(b) of the Illinois Pollution Control Board's Procedural Rules, 35 Ill. Adm. Code 101.112(b), states, in relevant part, that:

No former Board Member or Board employee may represent any other person in any Board proceeding in which he or she participated personally and substantially as a Board Member or Board employee

This case was never assigned to Board Member Melas during the time Mr. Sternstein worked for the Board: July 1998 through June 2002. Mr. Sternstein never participated personally or substantially, as a Board employee on this case. Therefore, there is no basis whatsoever for Respondents to move to recuse Mr.

Sternstein from this case.

Furthermore, Mr. Sternstein advised the Environmental Bureau when he was hired which pending cases he worked on at the Pollution Control Board where the People of the State of Illinois was a party represented by the Attorney General's Office. He did this to avoid conflict knowing he could not work on those cases. He took the affirmative step to ensure no conflicts would exist when joining the Environmental Bureau. Mr. Sternstein never worked on this case at the time he was employed by the Pollution Control Board so there is no conflict and no basis for recusal.

This process of avoiding conflicts of interest, or the appearance of impropriety is no different than the one used by the Pollution Control Board. For example, Illinois Pollution Control Board Hearing Officer Bradley P. Halloran was previously an Assistant Attorney General in the Environmental Bureau of the Illinois Attorney General's Office. While an Assistant Attorney General, Mr. Halloran worked on this case. When Mr. Halloran became a Hearing Officer, he did not hear any matters related to this case. Since Mr. Halloran worked on this case before joining the Pollution Control Board, he cannot now participate on the case.

However, since Mr. Sternstein never participated personally, or substantially, on this case while employed by the Illinois Pollution Control Board before joining the Attorney General's

Office, he can represent the People of the State of Illinois in this case.

Conclusion

Respondents' Motion to Dismiss should be denied and their Motion to Recuse Mr. Sternstein should be denied. Again, Respondents file an untimely Motion to Dismiss. Besides being untimely, there is no basis in law or fact for the Motion.

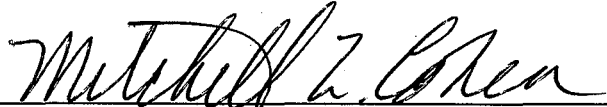
WHEREFORE, Complainant respectfully requests not only that "Respondent's Motion to Dismiss the Complainant's Second Amended Complaint and to Recuse Complainants' Attorney Joel J. Sternstein be denied, but also requests that Respondents and their attorney, David S. O'Neill be sanctioned in accordance with the Board Regulations and the Illinois Rules of Civil Procedure for filing this frivolous motion.

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

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

ROSEMARIE CAZEAU, Chief
Environmental Bureau

BY:



Mitchell L. Cohen
Assistant Attorney General

MITCHELL L. COHEN
JOEL STERNSTEIN
Assistant Attorneys General
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 Vice President of)
 Skokie Valley Asphalt Co., Inc.,)
 Respondents.)

AFFIDAVIT OF JOEL J. STERNSTEIN

I, Joel J. Sternstein, being first duly sworn on oath,
state:

1. I am a licensed attorney in the State of Illinois.
2. I have been employed as an Assistant Attorney General in the Environmental Bureau of the Office of the Illinois Attorney General in Chicago since June of 2002.
3. Prior to working for the Office of the Illinois Attorney General, I was an Attorney for Board Member Nicholas J. Melas at the Illinois Pollution Control Board from July 1998 until June 2002.
4. During my tenure at the Illinois Pollution Control Board, Board Member Melas and I were responsible for drafting the opinions and orders on Board Member Melas' assigned enforcement cases.

5. During my tenure at the Illinois Pollution Control Board, the People v. Skokie Valley Asphalt case, PCB 96-98, was not assigned to Board Member Melas.

6. During my tenure at the Illinois Pollution Control Board, I never drafted any opinions or orders or had any other involvement pertaining to the People v. Skokie Valley Asphalt case, PCB 96-98.

7. During my tenure at the Illinois Pollution Control Board, I knew respondents' attorney David O'Neill. We spoke to each other on occasion when he walked by my office.

8. When I began working for the Office of the Illinois Attorney General, I provided a list of the pending enforcement cases that I was working on at the Illinois Pollution Control Board. I would not and am not allowed to work on enforcement cases for the Office of the Illinois Attorney General that I previously worked on at the Illinois Pollution Control Board.

9. During my tenure at the Illinois Pollution Control Board, I never participated personally and substantially in any proceeding related to the People v. Skokie Valley Asphalt case, PCB 96-98.


Joel J. Sternstein

Subscribed and sworn to before me
this 11th day of September, 2003.


NOTARY PUBLIC

OFFICIAL SEAL
PHYLLIS DUNTON
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 12-31-2004

CERTIFICATE OF SERVICE

I, MITCHELL L. COHEN, an Assistant Attorney General, do certify that I caused to be mailed this 11th day of September 2003, the foregoing COMPLAINANT'S RESPONSE TO RESPONDENTS' MOTION TO DISMISS COMPLAINANT'S SECOND AMENDED COMPLAINT AND TO RECUSE COMPLAINANT'S ATTORNEY JOEL J. STERNSTEIN and NOTICE by first-class mail in a postage prepaid envelope and depositing same with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois, 60601.


MITCHELL L. COHEN