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AUG 11 2003

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS  
*Pollution Control Board*

PEOPLE OF THE STATE OF ILLINOIS,	)	
Complainant,	)	
	)	PCB 96-98
v.	)	
	)	Enforcement
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, JR., individually and as owner and	)	
Vice-President of Skokie Valley Asphalt Co., Inc.	)	
	)	
Respondents.	)	

**RESPONDENTS' RESPONSE TO COMPLAINANT'S SECOND MOTION TO COMPEL RESPONDENTS TO RESPOND TO DISCOVERY REQUESTS**

Now come the Respondents, SKOKIE VALLEY ASPHALT, CO., an Illinois corporation, EDWIN L. FREDERICK, JR., individually and as owner and President of Skokie Valley Asphalt Co., Inc. and RICHARD J. FREDERICK, JR., individually and as owner and Vice-President of Skokie Valley Asphalt Co., Inc., by and through their attorney, David S. O'Neill, and in response to the Complainant's Second Motion to Compel Respondents to Respond to Discovery Requests states as follows:

1. On July 23<sup>rd</sup>, 2003 the Respondents, Richard J. Frederick and Edwin L. Frederick, caused to be delivered to the Complainant, their complete responses to the discovery that had been requested from them by the Complainant.
2. On July 28<sup>th</sup>, 2003 the Respondents, Skokie Valle Asphalt Co., Inc., caused to be delivered to the Complainant, its complete responses to the discovery that had been requested from them by the Complainant.
3. On July 28<sup>th</sup>, 2003, the Complainant filed the "Complainant's Second Motion to Compel Respondents to Respond to Discovery" .
4. In its Second Motion to Compel Discovery, the Complainant argues that the Respondents

should be compelled to supply “information related to incomes, assets, tax returns and other financial information” that the Respondents maintain is irrelevant. The Complainant states that the information is relevant because the “financial information may be used to determine penalty amounts, the deterrent affect of such penalties and the economic benefit that Respondents have incurred from noncompliance...” (Motion at 3.)

5. The Respondents argue that the Complainant is intentionally misleading the Board in its argument that the requested financial information is relevant to this case. In its Second Amended Complaint, the Complainant request civil penalties against the Respondents for each and every day of violation of Section 12(a) and Section 12(f) of the Act. (Second Amended Complaint at 5, 6, 9, 14 and 16.)
6. The civil penalties allowed under Section 12(a) and Section 12(f) of the Act are codified in the Act without reference to consideration of mitigating or punitive factors such as deterrent affects, financial hardship or economic benefit.
7. In its Second Amended Complaint, the Complainant requested specific civil penalties without making request of the Board to consider any mitigating or punitive factors. (Second Amended Complaint at 5, 6, 9, 14 and 16.)
8. The Respondents have not made any arguments based on economic hardship that would make the financial information requested by the Complainant relevant.
9. Wherefore, the Complainant’s argument that the requested financial information is relevant is false and misleading.
10. The Complainant argues that information on the sale of Skokie Valley Asphalt Co., Inc. and LRF Inc. and information on the identity of the current owners of the SVA/LRF site are “relevant to this matter given that the proceeds from the sale of SVA or LRF are financial assets that are discoverable according to the rational provided...”
11. For the same reasons sited in the response to the claim that other financial information is relevant, the Respondents again argue that the Complainant is attempting to mislead the Board with its argument and that the Complainant’s argument that the requested information is relevant is false.
12. In its Second Motion to Compel Discovery, the Complainant argues that the Respondents

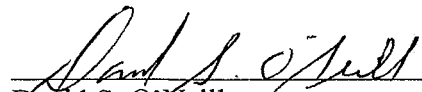
Richard J. Frederick and Edwin L. Frederick failed to provide any documents explaining their responsibilities at SVA. (Motion at 4.)

13. The Articles of Dissolution for Skokie Valley Asphalt Co. Inc. that were produced in response to the discovery requests show that the entity was dissolved in 1998. Further, the information produced shows that all of the entities assets – including company records – were sold in 1997. As a result, the Respondents no longer have control of the entity's records that were requested. The response to the request to produce is complete.
14. In its Second Motion to Compel Discovery, the Complainant demands that Respondents provide answers to request to admit facts that the Respondents maintain involve an “issue of law”. (Id.)
15. The Complainant fails to contest any specific items that the Respondents maintain involve an issue of law and fails to make any arguments that the requests do not involve issues of law.
16. The Respondents have difficulty responding to the request to compel that lacks specific arguments as to why the matters requested do not involve issues of law. However, the Respondents have reviewed their responses and upon review, maintain their position with respect to every item they refused to answer because they involve issues of law.
17. In its Second Motion to Compel Discovery, the Complainant demand that the Respondents provide answers tot eh request to admit where the terms “oily”, “diesel fuel odor” and oil surface sheen” appear. (Id. At 5.)
18. In their reply to the Complainants 201(k) letter, the Respondents informed the Complainant that the definitions for these terms that the Complainant supplied in 201 (k) letter do not resolve the ambiguity of the request for admission of facts. The Respondents did not test the materials and do not know of they contained oil or petroleum product. The Respondents would also not be able to differentiate the smell of diesel fuel from other products with similar odors and would not be able to determine if the sheen on the water was caused by oil or some other natural or artificial event. The respondents are also not willing to depend on definitions supplied by the Complainant outside of the scope of the Request for Admission of Facts especially when the definitions are not

derived from a technical or dictionary source and are not necessarily consistent with the common meaning of the terms. The Respondents maintain this same argument and position in this Response.

19. In its Second Motion to Compel Discovery, the Complainant demands that the Respondent, Skokie Valley Asphalt Co., Inc., reply to discovery request.
20. In its reply to the Complainant's 201(k) letter, the Respondent informed the Complainant that Skokie Valley Asphalt Co., Inc's submittal of discovery response was delayed for want of a signature from a corporate officer and also informed the Complainant that the information would be delivered on July 28, 2003. The information was delivered to the Complainant on July 28, 2003, prior to the filing of the Complainant's Motion to Compel.

WHEREFORE, the Respondents maintain that their responses to the Complainant's discovery are complete, pursuant to the Board's Procedural Rules and the Rules of the Illinois Supreme Court and respectfully requests the Board to recognize this motion as a furtherance of the Complainant's effort to abuse the Board's Procedural Rules and the discovery process in an effort to harass the Respondents and increase the cost to the Respondents of defending themselves in this long-delayed matter and decline the Complainant's Motion to Compel Discovery and the Complainant's request for attorneys' fees and sanctions.

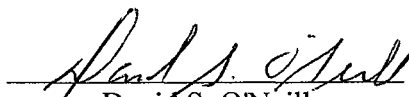
  
David S. O'Neill

David S. O'Neill, Esq.  
5487 N. Milwaukee Avenue  
Chicago, IL 60630-1249  
(773) 774-0814

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached Respondents' Response to Complainant's Second Motion to Compel Respondents to Respond to Discovery Requests by hand delivery on August 11, 2003, upon the following party:

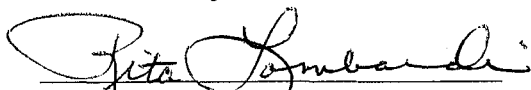
Mitchell Cohen, Esq.  
Environmental Bureau  
Assistant Attorney General  
Illinois Attorney General's Office  
188 W. Randolph, 20th Floor  
Chicago, IL 60601

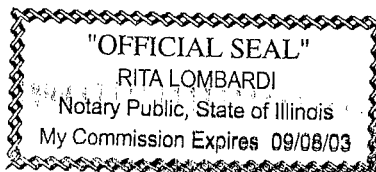
  
David S. O'Neill

NOTARY SEAL

SUBSCRIBED AND SWORN TO ME this 11<sup>th</sup>

day of August, 20 03

  
Notary Public



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Valley Asphalt Co., Inc. and RICHARD J.        )  
FREDERICK, JR., individually and as owner and )  
Vice-President of Skokie Valley Asphalt Co., Inc. )  
  )    )  
  Respondents.                                    )

**NOTICE OF FILING**

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the Respondents' Response to Complainant's Second Motion to Compel Respondents to Respond to Discovery Requests, a copy of which is hereby served upon you.

  
\_\_\_\_\_  
David S. O'Neill

August 11, 2003

David S. O'Neill.  
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