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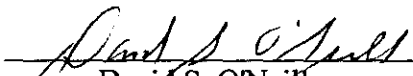
JAN 09 2006

**STATE OF ILLINOIS**  
**Pollution Control Board**  
**BEFORE THE 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 AND RESPONSE TO COMPLAINANT'S SECOND MOTION FOR PROTECTIVE ORDER, a copy of which is hereby served upon you.

  
David S. O'Neill

January 9, 2006

David S. O'Neill, Attorney at Law  
5487 N. Milwaukee Avenue  
Chicago, IL 60630-1249  
(773) 792-1333

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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Complainant, )  
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EDWIN L. FREDERICK, JR., individually and as )  
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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

PCB 96-98

Enforcement

**RESPONDENTS' MOTION TO STRIKE IN PART COMPLAINANT'S SECOND MOTION FOR PROTECTIVE ORDER AND RESPONSE TO RESPONDENTS' MOTION TO QUASH DEPOSITION NOTICES AND RESPONSE TO COMPLAINANT'S SECOND MOTION FOR PROTECTIVE ORDER**

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 their attorney, David S. O'Neill, herein object to and move to strike the Complainant's Second Motion for Protective Order and in support thereof states as follows:

**PROCEDURAL BACKGROUND**

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 limited discovery.
2. The Order specifically 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 Complainant served the Respondents with deposition notices demanding to take the depositions of the Respondents’ attorneys.
4. In the Order of November 17, 2005, the Respondents were directed to respond to the Complainant’s discovery requests within thirty days of the date of the Order.
5. Consistent with the November 17, 2005 Order, the Respondents filed a Motion to Quash Complainant’s Request for Deposition with the Board on December 14, 2005.
6. On December 28, 2005, the Complainant filed the Complainant’s Second Motion for Protective Order and Response to Respondents’ Motion to Quash Deposition Notices.

**MOTION TO STRIKE IN PART COMPLAINANT’S SECOND MOTION FOR  
PROTECTIVE ORDER AND RESPONSE TO  
RESPONDENTS’ MOTION TO QUASH DEPOSITION NOTICES**

8. In what appears to be a continuance of its effort to obviate Board procedures and general principals of respect for the Board and the rights of the Respondents, the Complainant has elected to file a motion for a protective order as part of a response to a motion by the Respondents
9. 35 Illinois Administrative Code 101.500(e) states in relevant part:

“The moving person shall not have the right to reply, except as permitted by the Board or the hearing officer to prevent material prejudice.”
10. In accordance with 35 IAC 101.500(e), absent leave by the Board, the Respondents are not allowed to respond to the Complainant’s Second Motion for Protective Order and Response to Respondents’ Motion to Quash Deposition Notices because it would be construed as a reply to the Complainant’s response.
11. There is no reason that the Complainant’s Second Motion for Protective Order and the Complainant’s Response to Respondents’ Motion to Quash Deposition Notices needed to be in the same filing, and in fact, the common practice is to file replies and motions as

separate documents.

12. The Respondents see no potential of prejudice to the Complainant in striking the Second Motion for Protective Order portion of the Complainant's Second Motion for Protective Order and the Complainant's Response to Respondents' Motion to Quash Deposition Notices and requiring the Complainant to file a separate Complainant's Second Motion for Protective Order at a later date.
13. If and when the Complainant elects to file a Complainant's Second Motion for Protective Order, the Respondents would be able to respond to the motion in compliance with the Board's Procedural Rules.
14. Therefore, the Second Motion for Protective Order portion of the Complainant's Second Motion for Protective Order and the Complainant's Response to Respondents' Motion to Quash Deposition Notices should be stricken to avoid depriving the Respondents their right to respond to the Complainant's motion.

**OBJECTIONS TO COMPLAINANT'S  
SECOND MOTION FOR PROTECTIVE ORDER**

15. In the alternative, the Respondents ask leave of the Board to present arguments in objection to the Complainant's second motion for protective order without addressing the Complainant's response to the Respondents' Motion to Quash.
16. If the Board is of the opinion that the Respondents are subject to the requirements of 35 IAC 500.100(e), the Respondents argue that the Board should permit them to respond because the Respondents would be materially prejudiced, if for no other reason than they would be subject to a protective order.
17. In the Order of November 17, 2005, the Board clearly put the responsibility of deciding the appropriateness and the scope of the discovery in this matter in the control of the hearing officer. Order of November 17, 2005 at 9.
18. The hearing officer is scheduled to have a status hearing on this matter when the discovery issues are identified. *Id.*

19. Based on the Complainant's deplorable record of honoring agreements, acting in good faith and filing false and malicious statements in documents filed outside the procedures established by the Board's rules, and the fact that the letters that the Respondents claim to be in the spirit of Illinois Supreme Court Rule 201 (k) were actually nothing more than personnel false and disturbing attacks against the Respondents' attorneys, the Respondents have no faith in the Complainant acting in a professional and civil manner in a 201(k) discussion and prefer to deal through the hearing officer.
20. The request for a protective order is no more than a continuation of the Complainant's continued grand standing and misrepresentation of the actual activities in this case and an attempt to prejudice the trier of fact as to which party is responsible for interfering with and delaying the completion of discovery and attempting to hide the misconduct of its attorneys.
21. The Respondents find the Complainant's request for a protective order to be disingenuous in light of the fact that the Complainant has refused to supply the Respondents most of the discovery responses requested by the Respondents including many of the same items that Complainant is claiming that the Respondents must produce for the Complainant and even though it is the Complainant's claim for fees and cost that are at issue in the matter.
22. If a protective order were to be issued, it would need to apply to both parties.
23. The hearing officer should be allowed to resolve this issue as the hearing officer deems necessary without interference from a protective order.
24. Consequently, the Complainant's Motion for a protective order should be recognized for the frivolous filing and posturing that it is and be denied by the Board.

WHEREFORE, the Respondents respectfully move this Board to strike in part the Complainant's Second Motion for Protective Order and Response to Respondents' Motion to Quash Deposition Notices Complainant's Discovery Objections as it pertains to the request for a motion for a protective order or in the alternative to deny the same.

Respectfully submitted,

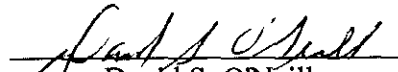
  
David S. O'Neill

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Chicago, Illinois 60630-1249  
(773) 792-1333

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that I have served the attached RESPONDENTS' MOTION TO STRIKE AND RESPONSE TO COMPLAINANT'S SECOND MOTION FOR PROTECTIVE ORDER by hand delivery on January 9, 2006 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 9<sup>th</sup>

day of January, 20 06

  
Notary Public

