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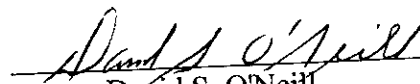
BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)	
Complainant,)	
)	PCB 96-98
)	
v.)	Enforcement
)	
)	
SKOKIE VALLEY ASPHALT, CO., INC.,)	
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 COMPLAINANT'S MOTION FOR FINAL ORDER , a copy of which is hereby served upon you.


David S. O'Neill

April 11, 2006

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

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Respondents.)	

RESPONDENTS' MOTION TO STRIKE
COMPLAINANT'S MOTION FOR FINAL 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 move to strike the Complainant's Motion for Final 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 and participate in a hearing regarding attorney fees and costs." (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 Respondents filed with the Board and served upon the Complainant the Respondents’ First Request for Admission of Facts regarding Attorneys’ Fees, Costs and Expenses.
4. On May 24, 2005, Complainant filed its Answer and Objections to Respondents’ First Request for Admission of Facts regarding Attorneys’ Fees, Costs and Expenses.
5. In the Order of November 17, 2005, the Respondents were directed to respond to the Complainant’s Answer and Objections to Respondents’ First Request for Admission of Facts regarding Attorneys’ Fees, Costs and Expenses within thirty days of the date of the Order.
6. As directed by the November 17, 2005 Order, the Respondents were directed to respond to the Complainant’s Answer and Objections to Respondents’ First Request for Admission of Facts regarding Attorneys’ Fees, Costs and Expenses.
7. On December 28, 2005, the Complainant filed a Motion for Leave to File Reply Instanter to Respondents’ Response to Complainant’s Discovery Objections.
8. On January 9, 2006, the Respondents filed Objections to and Motion to Strike Complainant’s Motion for Leave to File Reply Instanter to Respondents’ Response to Discovery Objections. In the Motion, the Respondents argue that 35 Illinois Administrative Code Section 101.500(e) prohibits the Complainant from filing its motion of December 28, 2005.
9. To date, the Board has not ruled on the motion of December 28, 2005 or the motion of January 9, 2006.
10. On March 30, 2006, the Complainant filed Complainant’s Motion for Final Order which is the subject of this motion to strike.

OBJECTION TO COMPLAINANT’S MOTION

11. The Complainant’s Motion to Strike of March 30, 2006 is, in fact, a motion for reconsideration of the Board’s Order of April 7, 2005.

12. The Complainant is asking the Board to reconsider and reverse its order of April 7, 2005 in which the Board clearly states that “the Board will grant additional time in order to conduct discovery and participate in a hearing regarding attorneys fees and costs.” (Order of April 7, 2005 at 3.)
13. The Respondents have not been allowed to participate in a hearing regarding attorneys fees and costs to date
14. To issue a final judgment the Board would need to reconsider and reverse its Order of April 7, 2005 and rule that it is not allowing the Respondents to participate in a hearing regarding attorneys’ fees and costs.
15. Therefore, the Complainants, under the guise of a Motion for Final Order and in its continuing effort to disrespect and circumvent the Board’s Procedural Rules, are, in fact, making a motion for reconsideration of the Board’s Order of April 7, 2005.
16. Pursuant to sections 101.202 and 101.520 of the Board’s Procedural Rules, the Complainant is not allowed to file a motion for reconsideration of the April 7, 2005 Order.
17. As the Complainant persuasively argued in its July 7, 2003 “Complainant’s Response to Respondent’s Motion for Reconsideration of the Board’s Order of June 5, 2003”, if an “Order is not a final order, it is not ripe for reconsideration”. (Complainant’s Motion of July 7, 2006 at 3.)
- 18.. Based on the definition of “Final Order” in section 101.202 of the Board’s Procedural Rules, the Order of April 7, 2005 is not a “Final Order” and therefore, the parties may not file motions for reconsideration of the Order of April 7, 2005.
19. 35 Ill Adm. Code Section 101.520(a) states:
 - a) Any motion for reconsideration or modification of a final Board order must be filed within 35 days after receipt of the Order.
20. Clearly, the Complainant’s filing of March 30, 2006 was not made within 35 days of the Board’s Order of April 6, 2006 and therefore, may not be accepted by the Board in accord with the Board’s Procedural Rules.

21. With the filing of its Motion for Final Judgment, the Complainant continues to demonstrate its total disregard and disrespect for the Board and the Respondents. Under the Board's Procedural Rules, there was no legal basis for filing this motion.
21. It is suspected that the Complainant knows that if it had properly followed procedural rules and properly titled its motion, the motion would need to be denied or stricken as a matter of procedure.
22. If the attorneys for the Complainant are indeed the \$150 per hour trained professionals they claim to be in their petition for fees and costs, they should be held to the duty of comprehending and complying with procedural rule and general rules of professionalism.
22. The Complainant's Motion for Final Judgment is a one-hundred-fifteen (115) page filing that fails to state any argument for a grounds for final judgment or grounds for a motion for reconsideration. Instead, the Complainant uses this filing to misstate and fabricate the background and procedural history of the matter, present personal and libelous attacks on the Respondents' counsel, misrepresent discovery materials while hindering the Respondents' rights to examine the same and present arguments in favor of it motion for fees and costs in a forum that does not allow the Respondents an opportunity to respond.
22. The Complainant continues to file frivolous and baseless motions with the Board with total disregard for the Board's rules, resulting in a waste of Board resources and an undue financial and emotional burden on the Respondents. The Complainant's actions also result in a delay in determining the misconduct of the Complainant's attorneys with respect to requesting fees and cost in this matter.
23. This tactic is a continuation of the Complainant's effort to add false, inflammatory and prejudicial statements into the record through extraneous correspondences that are unnecessarily copied to the hearing officer and other maneuvers.
24. It is also a continuation of the Complainant's abuse and disregard of the Board's procedures which have resulted in unnecessary cost and obstruction of justice for both the Board and the Respondents.

25. In its mislabeled "Motion for Final Judgment", the Complainant makes continuous references to the activities of Mr. Joel Sternstein and attempts to portray the fact that Mr. Sternstein's request for fees were denied is somehow a reduction of the fees requested by the Complainant.
26. In the Order of April 7, 2005, the Board clearly stated that parties are not to address the issues of misconduct related to Mr. Sternstein's activities in conducting discovery or at the hearing. (Order of April 7, 2005 at 4.) The Complainant shows its contempt for the Board by openly violating this Order, while baselessly accusing the Respondents of doing the same.
27. The Complainant's continues to fail to act with professionalism and civility and the Board continues to tolerate such action without the sanctions it referenced in its Order of November 17, 2005. (Order of November 17, 2005 at 9.)

WHEREFORE, the Respondents respectfully move this Board to strike the Complainant's Motion for Final Order or in the alternative to deny the same.

Respectfully submitted,


David S. O'Neill

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

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached RESPONDENTS' MOTION TO STRIKE COMPLAINANT'S MOTION FOR FINAL ORDER by hand delivery on April 11, 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

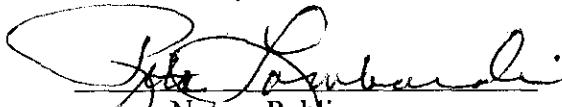
Michael Partee
Environmental Bureau
Assistant Attorney General
Illinois Attorney General's Office
188 W. Randolph, 20th Floor
Chicago, IL 60601


David S. O'Neill

NOTARY SEAL

SUBSCRIBED AND SWORN TO ME this 10th

day of April, 20 06


Notary Public

