

ILLINOIS POLLUTION CONTROL BOARD
October 17, 2002

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 96-98
) (Enforcement – Water)
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.)

ORDER OF THE BOARD (by T.E. Johnson):

On July 26, 2002, the Office of the Attorney General, on behalf of the People of the State of Illinois, (complainant) filed a second amended complaint against Skokie Valley Asphalt Co., Inc. (Skokie Valley), Edwin L. Frederick, Jr. (Edwin Frederick) and Richard J. Frederick (Richard Frederick). The complainant alleges in the second amended complaint that respondents violated Sections 12 (a) and (f) of the Environmental Protection Act (Act) (415 ILCS 5/12(a), (f) (2000)), as well as 35 Ill. Adm. Code 302.203, 304.105, 304.106, 305.102(b), 309.102(a), and 309.104(a). The complaint alleges the violations concerns respondents' facility at Grayslake Village, Lake County.

On September 25, 2002, Skokie Valley filed a motion to strike the second amended complaint. On October 1, 2002, the complainant filed a response to the motion to strike. On October 11, 2002, Skokie Valley filed additional information in support of the motion to strike.

For the reasons articulated below, the Board accepts Skokie Valley's motion to strike and additional information in support thereof. The Board denies the motion as outlined below. The complainant is given leave to file the second amended complaint, as requested in its response, and the second amended complaint is accepted.

MOTION TO STRIKE

In its motion, Skokie Valley asserts that Section 103.206(d) of the Board's procedural rules require a party wishing to file an amendment to a complaint move the Board for leave to

file the pleading. Mot. at 1.¹ Skokie Valley argues that because no motion to file was filed and leave to file not granted by the Board, the second amended complaint cannot be accepted. *Id.* Skokie Valley maintains that it is “indisputable that material prejudice would result if the second amended complaint is not stricken.” Mot. at 1-2. Skokie Valley requests that the Board strike the second amended complaint unless or until the complainant moves the Board for leave to amend and the Board, in fact, grants such leave. Mot. at 2.

COMPLAINANT’S RESPONSE TO MOTION

In its response, the complainant notes that the motion to strike itself was not timely filed within 30 days after service of the challenged document and should be stricken pursuant to 35 Ill. Adm. Code 101.506. Resp. at 1-2. The complainant denies that any prejudice results from the filing of the second amended complaint because both Edwin Frederick and Richard Frederick have been actively involved in this litigation since 1995. Resp. at 2-3. The complainant contends that because Edwin Frederick and Richard Frederick were responsible for the day to day operations of the business and involved in this litigation for the last seven years, there is no prejudice. Resp. at 3.

The complainant argues that the motion to strike is nothing more than an attempt to delay the hearing in a matter that has been pending before the Board for nearly seven years. Resp. at 4. The complainant asks that the Board to grant relief in one of the following manners: (1) strike the motion to strike; (2) deny the motion to strike; (3) grant leave for the complainant to file the second amended complaint effective July 26, 2002.; or (4) grant complainant leave to file the second amended complaint effective on the date of the Board’s decision on the motion. Resp. at 4-5.

ADDITIONAL INFORMATION IN SUPPORT OF THE MOTION TO STRIKE

On October 11, 2002, Skokie Valley filed additional information in support of the motion to strike the second amended complaint. Skokie Valley further contends that the complainant has not complied with the Board rule requiring a party to move the Board for leave to file an amendment to a complaint. Inf. at 1. Skokie Valley asserts that its motion to strike should be accepted because material prejudice will occur if the motion is not heard. Inf. at 2, citing 35 Ill. Adm. Code 101.506. Skokie Valley argues that the addition of new respondents and the impact of the amendment of the complaint on discovery will cause material prejudice. *Id.*

Skokie Valley argues that even if the motion to strike is not accepted, the Board should strike the second amended complaint on its own motion to maintain the integrity of its procedural rules. Inf. at 3.

¹ Skokie Valley’s motion to strike will be referred to as “Mot. at ___.”; the complainant’s response will be referred to as “Resp. at ___.”; Skokie Valley’s additional information in support of the motion to strike will be referred to as “Inf. at ___.”

DISCUSSION

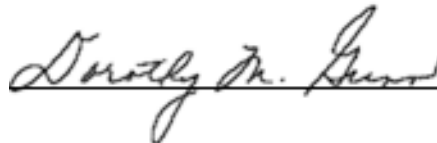
The second amended complaint seeks to add Edwin Frederick and Richard Frederick as respondents, but is substantially identical to the first amended complaint in all other aspects. No new violations are alleged in the second amended complaint. Section 103.206(d) of the Board's rules clearly provides that leave must be sought before the filing of an amended complaint. Complainant acknowledges that leave was not sought, but argues that the motion to strike is only an attempt to delay a case that has been pending for seven years.

The Board first addresses the timeliness of the motion to strike. Although the motion to strike was not filed within 30 days as required by 35 Ill. Adm. Code 101.506, the Board finds that material prejudice would result if the motion is not accepted, and, accordingly, accepts the motion to strike. The Board accepts Skokie Valley's additional information pursuant to 35 Ill. Adm. Code 500(e) for the same reason.

The Board is cognizant of the length of time this case has been pending before the Board, however the procedural rules cannot be ignored and leave must be sought before the filing of an amended complaint. The motion to strike is denied as moot, because in its response, complainant requests leave to file the second amended complaint. *See Resp.* at 6. In the interests of administrative economy, the Board finds that this satisfies the requirements of Section 103.206(d) of the Board's procedural rules, grants complainant leave to file an amended complaint, and accepts the second amended complaint. 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.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 17, 2002, by a vote of 6-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written in black ink. The signature is positioned above a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board