

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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JUN 16 2003

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 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. )

No. PCB 96-98

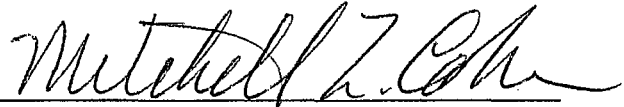
NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on June 16, 2003, we filed with the Illinois Pollution Control Board Complainant's Answer to Respondents' Third Affirmative Defense and Complainant's Response to Respondents' Motion for Extension of Time For Discovery Schedule true and correct copies of which are attached and hereby served upon you.

Respectfully submitted,

LISA MADIGAN  
Attorney General  
State of Illinois

BY:   
MITCHELL L. COHEN  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20th Floor  
Chicago, Illinois 60601  
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Ms. Carol Sudman, Esq.  
Hearing Officer  
Illinois Pollution Control Board  
600 S. Second Street, Suite 402  
Springfield, Illinois 62704

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an Illinois corporation, )  
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individually and as owner and )  
Vice President of )  
Skokie Valley Asphalt Co., Inc., )  
)  
Respondents. )

COMPLAINANT'S ANSWER TO RESPONDENTS' THIRD AFFIRMATIVE DEFENSE

Complainant, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, submits its Answer to Respondents' third affirmative defense. Respondents submitted an answer and three affirmative defenses to complainant's second amended complaint. On June 5, 2003, the Illinois Pollution Control Board ("Board") struck Respondents' first and second affirmative defenses.

The Board did not strike Respondents' third affirmative defense. The third affirmative defense is:

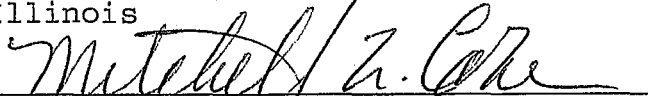
Under the doctrine of *laches* and equitable estoppel, the complainants (sic) should not be allowed to amend its complaint to include respondents Edwin L. Frederick Jr, Jr. and Richard J. Frederick, as respondents and these respondents should not be required to respond to said complaint.

**ANSWER:** Complainant adopts and incorporates by reference its argument and the legal citations cited in Complainant's motion to strike affirmative defenses. In addition to the incorporated argument and legal citations, Complainant does not have sufficient information to admit or deny the allegations in the third affirmative defense. Complainant demands strict proof from respondents with respect to the allegations in the third affirmative defense.

Respectfully submitted,

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

By:

  
MITCHELL L. COHEN  
Assistant Attorney General  
Environmental Bureau  
188 West Randolph Street, 20<sup>th</sup> Fl.  
Chicago, Illinois 60601  
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THIS DOCUMENT IS FILED ON RECYCLED PAPER

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STATE OF ILLINOIS  
Pollution Control Board

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COMPLAINANT'S RESPONSE TO  
RESPONDENT'S MOTION FOR EXTENSION OF TIME  
FOR DISCOVERY SCHEDULE

Comes now, the People of the State of Illinois, Complainant, and responds to Respondent's Motion for Extension of Time for Discovery Schedule as follows:

1. Respondents request in their motion an extension of time for Respondents Edwin L. Frederick and Richard J. Frederick to answer Complainant's pending discovery until 28 days after the Board issues the order addressing the various motions on file.

2. Complainant has no objection to extending the time in which Edwin and Richard Frederick answer pending discovery 28 days after the date of the Board order addressing the various motions on file and would have agreed to same had counsel for

Respondents made the request to Complainant's counsel.

3. The Board issued the relevant Order June 5, 2003.

4. Twenty-eight (28) days from June 5, 2003, is July 3, 2003.

5. Respondents also request in their Motion that the discovery deadline be extended an additional 90 days from the date of the Board's Order, June 5, 2003.

6. Complainant objects to such an extension.

7. On March 28, 2003, Hearing Officer Carol Sudman issued an Order that included the following discovery schedule:

All written discovery completed by June 20, 2003;  
Depositions completed by August 20, 2003; and  
Prehearing memoranda due September 22, 2003.

8. Even with Respondents' written discovery deadline of July 3, 2003, Complainant sees no reason at this time why depositions cannot be completed by August 20, 2003. That way, the case can stay on schedule with the Hearing Officer's Discovery Schedule.<sup>1</sup>

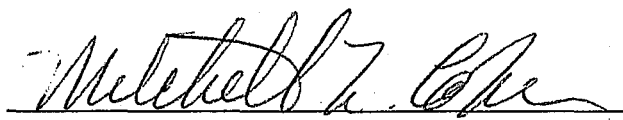
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<sup>1</sup> Contrary to their Affirmative Defense and Motion to Dismiss claims previously filed, Respondents state in this Motion that "[t]he extension of time for the discovery schedule will not in any way materially prejudice the Respondent's ability to proceed with this case." Respondents' Motion, paragraph 6 of Argument.

WHEREFORE, Complainant requests that this Board grant Respondents' request for extension of time to answer pending discovery 28 days from the date of the Board's June 5, 2003, Order, and order Respondents' responses to Complainant's discovery requests due on or before July 3, 2003; Complaint further requests that any and all other requests for extension of time in Respondents' Motion be denied.

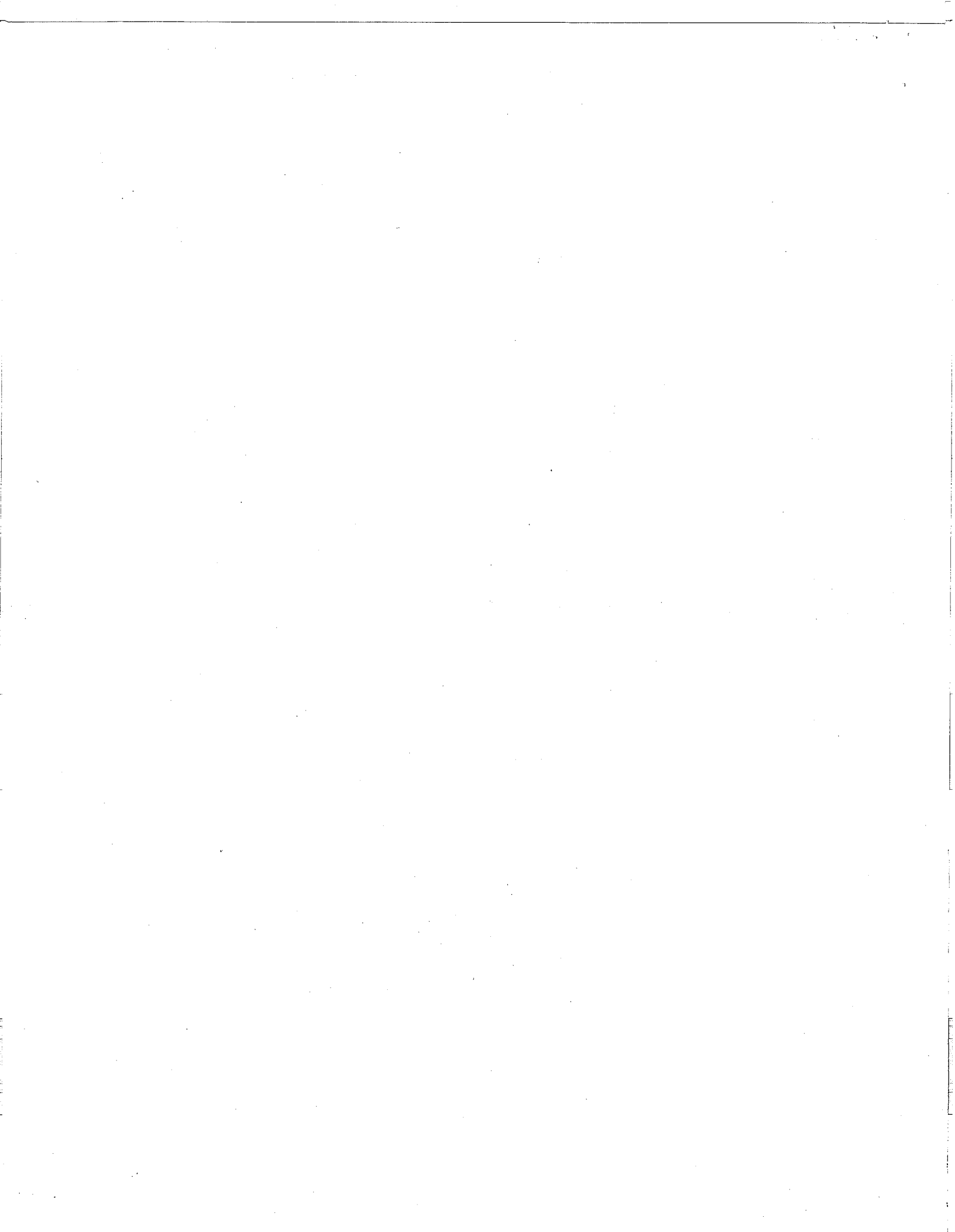
PEOPLE OF THE STATE OF ILLINOIS,  
ex rel. JAMES E. RYAN, Attorney  
General of the State of Illinois

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

BY:   
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Assistant Attorney General

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CERTIFICATE OF SERVICE

I, MITCHELL L. COHEN, an Assistant Attorney General, certify that on the 16th day of June, 2003, I caused to be served by First Class Mail the foregoing Second Amended Complaint to the parties named on the attached service list, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.

  
MITCHELL L. COHEN

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