

ORIGINAL

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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PEOPLE OF THE STATE OF ILLINOIS, )  
 Complainant, )  
 )  
 v. )  
 )  
 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 )  
 President of Skokie Valley Asphalt Co., Inc. )  
 )  
 Respondents. )

PCB 96-98

Enforcement

STATE OF ILLINOIS  
Pollution Control Board

**RESPONDENTS' HEARING BRIEF FILED ON BEHALF  
 OF 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 PRESIDENT OF SKOKIE  
 VALLEY ASPHALT CO., INC.**

As instructed in the Hearing Officers's order, 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 President of Skokie Valley Asphalt Co., Inc. , by and through their attorney, David S. O'Neill, herein submit their hearing brief.

**PARTIES INVOLVED**

1. Complainant – People of the state of Illinois are represented by the Office of the Attorney General of Illinois.
2. 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 President of Skokie Valley Asphalt Co., Inc. represented by David S. O'Neill, 5487 N. Milwaukee Avenue, Chicago, IL 60630-1249 and Michael Jawgiel of 5487 N. Milwaukee Avenue, Chicago, IL 60630-1249.

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## FACTS ON THE RECORD

The Respondents have not received all of the discovery material relevant to this matter. Consequently, the Respondents reserve the right to amend its statement with respect to the "Facts on the Record" in its hearing brief.

1. Skokie Valley Asphalt Co., Inc. was an Illinois corporation that operated at 700 . Lake St in Grayslake, IL. (Dep. of Edwin L. Frederick at 8).
2. Edwin L. Frederick is a resident of Illinois whose home address is 6361 Innsbruck Court, Libertyville, Illinois (Dep. of Edwin L. Frederick at 7).
3. Richard J. Frederick is a resident of Illinois whose home address is 814 Ellen Way, Libertyville, Illinois (Dep. of Richard J.. Frederick at 8).
4. Richard J. Frederick was vice president of Skokie Valley Asphalt Co., Inc. (Dep. of Richard J.. Frederick at 14).
5. Skokie Valley Asphalt had a garage and kept equipment storage, dispatch trucks and rollers at a maintenance shop at the Grayslake location. (Dep. of Richard J.. Frederick at 8).
6. Skokie Valley Asphalt did not perform mixing of asphalt at the Grayslake facility. (Dep. of Richard J.. Frederick at 8).
7. Richard J. Frederick did not have responsibility for day-to-day operations at the Skokie Valley Asphalt site in Grayslake.(Dep. of Richard J.. Frederick at 17)
8. Bob Christensen, an employee of Skokie Valley asphalt Co., Inc. Had responsibility completing DMR submittals for Skokie Valley. (Dep. of Richard J.. Frederick at 23).
9. At the time that Skokie Valley NPDES permit was due for renewal, the officers of the company discussed the matter with representatives of the IEPA and were of the impression that they would not be required to apply for an individual permit because there Grayslake operation would be covered by a blanket permit to be issued to the Illinois Truckers' Association or the Asphalt Paving Association. (Dep. of Richard J.. Frederick at 32 to 35).
10. Skokie Valley Asphalt Co., Inc. retained Jim Huff of Huff and Huff Inc. to address the problem of the discharge to the Avon Ditch. (Dep. of Richard J.. Frederick at 47 to 50).
11. After Skokie Valley was sold the business records for Skokie Valley were taken to the landfill in Grayslake by the new owners of the business. No copies were maintained. (Dep. of Richard J.. Frederick at 55 to 58).

12. No gasoline was stored in underground storage tanks at the site. (Dep. of Edwin L. Frederick at 13).
13. Edwin L. Frederick was the President of Skokie Valley Asphalt Co., Inc. (Dep. of Edwin L. Frederick at 36).
14. Skokie Valley paid to have booms put into the water near the Skokie Valley asphalt plant in Grayslake in response to allegations of a discharge. (Dep. of Edwin L. Frederick at 47).

### PLEADINGS

1. The Complainant brought a cause of action against the Defendants pursuant to Section 42 of the Illinois Environmental Protection Act, 415ILCS 5/42 (2000) ("Act").

2. Section 12(f) of the Act provides as follows:

No person shall:

- a. Cause threaten or allow the discharge of any contaminant into the waters of the State ... without an NPDES permit for point discharges issued by the Agency under section 38(b) of this Act, or in violation of any term or condition imposed by such permit...

3. Section 305.102(b) of the Board regulations provides as follows:

Reporting Requirements

- b. Every holder of an NPDES Permit is required to comply with the monitoring, sampling, recording and reporting requirements set forth in the permit and this chapter.

4. Standard Condition No. 19 of the NPDES Permit No. IL0065005 provides as follows:

The permittee shall not make any false statements, representation or certification in any application, record, report, plan or other document submitted to the Agency or the US EPA, or requested to be maintained under the permit.

5. Section 3.09.102(a) of the Board Water Pollution Regulations provides as follows:

NPDES Permit Required

- a. Except as in compliance with the provisions of the Act, Board regulations and CWA, and the provisions and conditions of the NPDES permit issued to the discharger, the discharge of any contaminant or pollutant by any person into waters of the State from a point source or into a well shall be unlawful.

6. Section 309.104(a) of the Board Water Pollution Regulations provides as follows:

Renewal

- (a) Any permittee who wishes to continue to discharge after the expiration date of his NPDES Permit shall apply for reissuance of the permit not less than 180 days prior to the expiration date of the permit..

7. Section 309.102 (a) of the Board Water Regulations provides as follows:

NPDES Permit Required

- a) Except as in compliance with the provisions of the Act, Board regulations and the CWA, and the provisions and conditions of the NPDES permit issued to the discharger, the discharge of any contaminant or pollutant by any person into waters of the State from a point source or into a well shall be unlawful.

8. Section 305.102(b) of the Board Water Pollution Regulations, provides as follows:

Reporting Requirements

- b) Every holder of an NPDES Permit is required to comply with the monitoring, sampling, recording and reporting requirements set forth in the permit and this chapter.

9. Special Condition No. 4 of SVA's NPDES Permit No. IL0065005 provides as follows:

"The permittee shall record monitoring results on Discharge Monitoring Report forms using one such form for each discharge each month. The completed Discharge Monitoring Report form shall be submitted monthly to IEPA, no later than the 15<sup>th</sup> day of the following month, unless otherwise specified by the Agency."

10. Special Condition No. 1 of SVA's NPDES Permit No. IL 0065005 provides as follows:

"Samples shall be taken in compliance with the effluent monitoring requirements and shall be taken at a point representative of the discharge, but prior to entry into the receiving stream."

11. Section 12(a) of the Act provides as follows:

No person shall:

- a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter with other sources, or so as to violate regulations or standards adopted by the Illinois Pollution Control Board under this Act.

12. Section 304.105 of the Board Water pollution Regulations provides, in pertinent part, as

follows:

**Violation of Water Quality Standards**

In addition to the other requirements of this Part, no effluent shall, alone or in combination with other sources, cause a violation of any applicable water quality standard...

13. Section 304.106 of the Board Water pollution Regulations provides, in pertinent part, as follows:

**Offensive Discharges**

In addition to the other requirements of this Part, no effluent shall contain settleable solids, floating debris, visible oil, grease, scum, or sludge solids. Color, odor and turbidity must be reduced to below obvious levels.

14. Section 304.141(a) of the Board Water Pollution Regulations provides, in pertinent part, as follows:

**NPDES Effluent Standards**

- (a) No person to whom an NPDES Permit has been issued may discharge any contaminant in his effluent in excess of the standards and limitations for that contaminant which are set forth in the permit.

**ISSUES OF FACT AND LAW**

1. Did any and/or all of the Respondents cause or allow any of the violations alleged in the Plaintiff's Second Amended Complaint?
2. Did the activities any or all of the Respondents caused or allowed violations of Section 12 (f) of the Act and 35 Ill. Adm. Code 305.102(b)?
3. Did the activities any or all of the Respondents caused or allowed violations of Section 12 (f) of the Act and 35 Ill. Adm. Code 309.102(a) and 309.104(a)?
4. Did the activities of the State discharge the duties of the Respondents to file for renewal of its NPDES permit?
5. Does the Complainant's failure to timely file its Complaint against the Respondents create a defense under the doctrines of laches and equitable estoppel?

### APPLICATION OF LAW

1. The Respondents are in the processing of identifying case law both in the Illinois Court system and of the Illinois Pollution Control Board in support of their position. The Respondents can not complete this process until it has received all of the discovery material in this matter. The Respondents reserve the right to amend this hearing brief when additional case law materials have been identified.
2. It is argued that Richard J. Frederick and Edwin L. Frederick did not cause or allow any of the alleged violations set forth in the Complaint.


### WITNESSES

1. Respondent Edwin L. Frederick will be testifying as a fact witness on behalf of the Respondents.
2. James Huff will be testifying as a fact and expert witness on behalf of the Respondents.

### EXHIBITS

1. The Respondents efforts to compile a list of exhibits to be used at hearing has been hindered by the fact that the discovery process in this matter has not been completed. The Respondents reserve the right to submit exhibit items at a later time.
2. The Respondents reserve the right to utilize any document produced during discovery or used during trial by the Complainants.

Respectfully submitted,

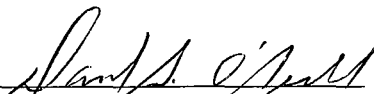
  
David S. O'Neill

David S. O'Neill  
5487 N. Milwaukee Avenue  
Chicago, IL 60630-1249  
773 283-6916  
Attorney Code No.: 52275

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached Hearing Brief by hand delivery on September 22, 2003, upon the following party:

Mitchell Cohen  
Environmental Bureau  
Assistant Attorney General  
188 W. Randolph, 20th Floor  
Chicago, IL 60601

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

NOTARY SEAL

SUBSCRIBED AND SWORN TO ME this 22nd

day of Sept., 20 03

  
\_\_\_\_\_  
Notary Public



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Enforcement

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's Hearing Brief, a copy of which is hereby served upon you.



David S. O'Neill

September 22, 2003

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 Chicago, IL 60630-1249  
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