

RECEIVED

SEP 17 2004

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.)

STATE OF ILLINOIS
Pollution Control Board

No. PCB 96-98
(Enforcement - Water)

NOTICE OF FILING

TO: See Attached Service List

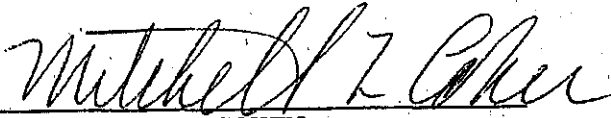
PLEASE TAKE NOTICE that on September 17, 2004, we filed with the Illinois Pollution Control Board **The People of the State of Illinois' Attorney Fees and Costs Petition**, a true and correct copy of which is attached and hereby served upon you.

Respectfully submitted,

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

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

ROSEMARIE CAZEAU, Chief
Environmental Bureau

BY: 

MITCHELL L. COHEN
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601
(312) 814-5282

SERVICE LIST

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Mr. Michael B. Jagwiel
Attorneys at Law
5487 North Milwaukee
Chicago, Illinois 60630

Ms. Carol Sudman
Hearing Officer
Illinois Pollution Control Board
600 S. Second Street, Suite 402
Springfield, Illinois 62704

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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SEP 17 2004

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)

Complainant,)

v.)

No. PCB 96-98

SKOKIE VALLEY ASPHALT, CO., INC.,)

an Illinois corporation,)

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.)

THE PEOPLE OF THE STATE OF ILLINOIS'
ATTORNEY FEES AND COSTS PETITION

On September 2, 2004, after a hearing in this case, the Board found " . . . that Respondents committed willful, knowing, or repeated violations in this case."¹

"Section 42(f) of the Act . . . authorizes the Board to award attorney fees to the People where a respondent has committed a willful, knowing, or repeated violation of the Act."² Section 42(f) of the Act also authorizes the Board to award the costs associated with bringing an environmental enforcement

¹ People v. Skokie Valley Asphalt, Co., Inc., Edwin L. Frederick, Jr., and Richard J. Frederick: PCB 96 - 98 (September 2, 2004) at 23.

² Id.

action.³ Wherefore, the People of the State of Illinois respectfully request, in accordance with the Opinion and Order of the Board issued September 2, 2004, that the Board award attorney fees in the amount of \$ 134,250.00 and costs in the amount of \$ 3,482.84.⁴

1. REASONABLE ATTORNEY FEES

The People are only seeking attorney fees for the time spent and work performed by AAGs Cohen, Sternstein and Murphy.

A conservative estimate of time AAG Cohen spent prosecuting this case against Respondents is 527.00 hours.⁵ A conservative estimate of time AAG Sternstein spent prosecuting this case against Respondents is 224.5 hours.⁶ A conservative estimate of time AAG Murphy spent prosecuting this case against Respondents is 143.5 hours.⁷ Multiplying the number of hours AAGs Cohen, Sternstein, and Murphy spent prosecuting this case, (527.0 + 224.5 + 143.5 = 895) 895, times the reasonable hourly rate of

³ 415 ILCS 5/42(f) (2002).

⁴ The People adopt the information provided to the Board related to attorney fees and costs in The People of the State of Illinois' Closing Rebuttal Argument and Reply Brief and supplement the same with this Attorney Fees and Costs Petition. Please note an error related to costs (deposition transcripts) was discovered and corrected.

⁵ See Exhibit A: affidavit and time sheet.

⁶ See Exhibit B: affidavit and time sheet.

⁷ See Exhibit C: affidavit and time sheet.

\$150.00 equals \$ 134,250.00.⁸

The People seek a total of \$ 134,250.00 in attorneys' fees to be deposited by Respondents into the "Attorney General's State Projects and Court Ordered Distribution Fund."

B. REASONABLE COSTS

The People of the State of Illinois request an award of \$ 3,482.84 for the costs incurred in prosecuting this case against Respondents.⁹ The payment for costs from Respondents should also be deposited into the "Attorney General's State Projects and Court Ordered Distribution Fund."

The costs are broken down as follows:

Depositions	\$ 1,796.65
Off-site Photocopying	\$ 1,119.34
AAG Cohen's travel & lodging	\$ 305.62
AAG Murphy's travel & lodging	\$ 261.23

TOTAL EXPENSES	\$ 3,482.84
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⁸The Board has held that \$150.00 hourly rate for attorney's fees is reasonable. See People v. J & F Hauling Inc., PCB 02-221 (May 1, 2003), citing Panhandle, slip op. at 37 (Nov. 15, 2001).

⁹See Exhibit D: affidavit and list of expenses.

VI. CONCLUSION

WHEREFORE, Complainant, the People of the State of Illinois, respectfully requests that this Board award its attorney fees in the amount of \$ 134,250.00 and costs in the amount of \$ 3,482.84 and order Respondents to deposit that amount into the "Attorney General's State Projects and Court Ordered Distribution Fund."

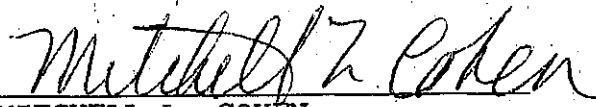
Respectfully submitted,

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

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

ROSEMARIE CAZEAU, Chief
Environmental Bureau

BY:


MITCHELL L. COHEN
Assistant Attorney General
Environmental Bureau
188 West Randolph, 20th Floor
Chicago, IL 60601
(312) 814-5282

Date	Description	Time
5/29/2002	Meeting re: file transfer, call to David O'Neill	1.00
6/11/2002	Subst. of Atty; Agreed Mo. To Cancel & Reschedule	4.00
6/18/2002	Rev. Mo., Complaint & Case Status Hrg	1.00
6/19/2002	File Review	8.00
7/18/2002	File Review	4.00
7/19/2002	PCB Status Hrg; Draft Amended Complaint	4.00
7/26/2002	Prep Amended Complaint for filing	2.00
7/29/2002	Correct Notice of Filing	1.00
8/20/2002	File Review	3.00
9/25/2002	Rev. Mo. To Strike Complaint	1.00
10/1/2002	Resp. to Motion to Strike	2.00
10/11/2002	Rev. Resp. Add. Info	1.00
10/18/2002	Rev. Bd. Order; discuss case strategy	2.00
11/20/2002	Prep. For & PCB Status Hrg	1.00
12/18/2002	Prep. Mo. Deem Facts Admitted/Summ. Judgment	4.00
12/20/2002	Finalize Mo. & Rev. D's late answer	5.00
12/23/2002	Prep. For & PCB Status Hrg	2.00
1/6/2003	Rev. & Discuss D's Resp. to Mo. - Summ Judg	2.00
1/10/2003	Reply to D's Resp. to Motion	2.00
1/17/2003	Finalize Reply to D's Response to Motion re: Summ. Judg.	2.00
3/31/2003	Rev. PCB Order & related docs	3.00
4/16/2003	Mtg & research re: aff. Defenses	4.00
4/17/2003	Mo. To strike aff. Ds	3.00
4/18/2003	Finalize Mo. To Strike Aff. Ds	3.00
4/25/2003	Rev. & Research Mo. To Dismiss	3.00
4/28/2003	Rev. & Research Mo. To Dismiss	4.00
4/30/2003	Rev. Ds Resp to Mo. To Strike Aff. Ds	2.00
5/2/2003	work on discovery	4.00
5/5/2003	work on discovery	4.00
5/6/2003	Mo to stike Ds Mot to Dismiss.	3.00
5/7/2003	Finalize Mot to Strike Ds Mo to dismiss for filing	3.00
5/12/2003	Rev Mot.s & Ds Mo for leave to reply	2.00
6/9/2003	Rev PCB Order, related docs, Mo for ext. of time, etc.	3.00
6/13/2003	D's Mo for ext of time - resp.	2.00
6/16/2003	Resp to Mo for Ext of time	1.00
6/27/2003	Prep. For & hrg, rev. D's Mo for reconsid.	3.00
7/3/2003	Disc rev, Hrg Off. Order, research Mo for reconsid.	4.00
7/7/2003	Resp to Mo to Recons, discovery	4.00
7/8/2003	Research/draft mo to compel	3.00
7/9/2003	drft 1st Mo to compel	3.00
7/10/2003	Rev. case status & hrg	2.00
7/16/2003	rev d's filings & related docs	3.00
7/25/2003	disc and rev. bd. Order	2.00
7/28/2003	Mo to compel	2.00
7/29/2003	Dep. Prep. & status hrg	4.00
7/30/2003	Dep Prep/corp rep	4.00
8/4/2003	Dep prep Fred. Bros	3.00
8/5/2003	prep & dep of Rich. Fred.	4.00
8/6/2003	prep & dep of Ed. Fred.	4.00
8/21/2003	dep prep Huff, rev D's resp to mo to compel	6.00
8/25/2003	dep prep Huff	4.00

8/28/2003 dep prep Huff & Kallis	5.00
8/29/2003 dep prep & deps of Huff & Kallis	8.00
9/5/2003 prep for hrg, rev bd order, rev rel doc., hrg	3.00
9/10/2003 rev. mo to dismiss, disc (cont. to late oct)	2.00
9/11/2003 resp to D's mo to dismiss	3.00
9/15/2003 rev. pleadings, disc., pre-trial memo.	6.00
9/18/2003 pre-trial memo	5.00
9/22/2003 finalize pre-trial memo, rev. Ds Hrg Brief	7.00
9/29/2003 trial prep including conf. call w/ Gunnarson & Kallis	7.00
10/2/2003 trial prep, doc rev, Garretson test.	7.00
10/7/2003 hrg & trial prep	4.00
10/8/2003 trial prep & discov. Issues	6.00
10/15/2003 trial prep, docs, Garretson, Huff test.	7.00
10/16/2003 trial prep, rev. Bd order, met w/ RMC, Murphy & Sternstein	4.00
10/17/2003 complete file rev, hrg, conf. re: Issue of continuance	8.00
10/22/2003 trial prep	6.00
10/23/2003 trial prep	4.00
10/24/2003 trial prep	6.00
10/25/2003 trial prep, resp. to mo to bar test.	9.00
10/26/2003 trial prep	6.00
10/27/2003 trial prep	12.00
10/28/2003 pre-trial prep, pre-trial, trial prep	12.00
10/29/2003 trial prep, travel	14.00
10/30/2003 trial prep, travel, trial	13.50
10/31/2003 trial prep, trial, travel	10.50
12/13/2003 rev trial transcript for closing arg	3.50
12/14/2004 rev trial transcript for closing arg	3.50
12/18/2003 closing argument	7.00
12/19/2003 closing argument	8.00
12/20/2003 closing argument	11.00
12/21/2003 closing argument	7.00
12/22/2003 closing argument	7.50
1/11/2004 closing argument	3.00
1/12/2004 closing argument	6.00
1/13/2004 closing argument	14.00
1/14/2004 closing argument	10.00
1/15/2004 closing argument, calls re: late filing, mot to file instanter	7.00
3/29/2004 read Ds closing arg	3.00
4/5/2004 closing rebuttal argument	8.00
4/6/2004 closing rebuttal argument	8.00
4/7/2004 closing rebuttal argument	8.00
4/8/2004 closing rebuttal argument	8.00
4/9/2004 closing rebuttal argument	8.00
4/10/2004 closing rebuttal argument	14.00
4/11/2004 closing rebuttal argument	12.00
4/12/2004 closing rebuttal argument	7.00
4/13/2004 closing rebuttal argument	8.00
4/14/2004 closing rebuttal argument	8.00
4/15/2004 closing rebuttal argument	4.00
5/21/2004 rev D's mo to strike closing rebuttal, discuss w/ Murphy	2.00
5/24/2004 Mo to strike D's mo to strike closing, resp. to mo to strike, related research	4.00
9/8/2004 rev PCB Order, app. Procedure, begin costs/fee petition	5.00

9/9/2004 costs/fee petition
9/15/2004 costs/fee petition

4.00
2.50

Total Time (through September 15, 2004)

527.00

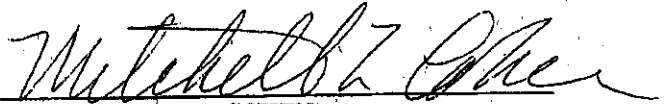
Activity	Time (Hours)	Date
Review file	5	Aug 5 2002
	3	Aug 6 2002
	2	Aug 12 2002
	6	Aug 13 2002
Drafted Complainant's Response to Respondent's Motion to Strike the Second Amended Complaint	6	Sep 26 2002
	6	Sep 27 2002
	4	Sep 30 2002
Board status call	0.5	Oct 16 2002
Board status call	0.5	Nov 20 2002
Drafted Complainant's Motion to Deem Facts Admitted and Motion for Summary Judgement	5	Dec 13 2002
	5	Dec 19 2002
	6	Dec 20 2002
Board status call	0.5	Dec 23 2002
Drafted Motion for Leave to File Reply and Reply to Respondent's Response to Complainant's Motion to Deem Facts Admitted and Motion for Summary Judgement	5	Jan 15 2003
	4	Jan 16 2003
	5	Jan 17 2003
Board status call	0.5	Feb 13 2003
Board status call	0.5	Mar 28 2003
Drafted Complainant's Motion to Strike or Dismiss Respondent's Affirmative Defenses	4	Apr 11 2003
	6	Apr 14 2003
	4	Apr 18 2003
Meeting with AAG Cohen to Discuss Case	2	Apr 18 2003
Drafted discovery	8	Apr 29 2003
	8	Apr 30 2003
	4	May 2 2003
	6	May 6 2003
	6	May 7 2003
Drafted Motion to Strike Respondent's Motion to Dismiss the Frederick Brothers or in the Alternative Complainant's Response and Request to Deny Respondent's Motion to Dismiss the Frederick Brothers	5	May 1 2003
	4	May 2 2003
	1	May 5 2003
Board status call	0.5	Jun 27 2003
Draft First Motion to Compel Response to Discovery	8	Jul 3 2003
	7	Jul 9 2003
Board status call	0.5	Jul 10 2003

Meet with AAGs Cohen and Murphy to Discuss Case	2	Jul 23 2003
Draft Second Motion to Compel Response to Discovery	5	Jul 25 2003
	3	Jul 28 2003
Board status call	1	Jul 29 2003
Prepare for depositions of Frederick Brothers	4	Aug 1 2003
	8	Aug 4 2003
	5	Aug 5 2003
Attend deposition of Richard Frederick	3	Aug 5 2003
Prepare for / Attend depositions of Edwin Frederick	4	Aug 6 2003
Answer Respondent's Discovery Requests	4	Aug 18 2003
	4	Aug 19 2003
	4	Aug 20 2003
	4	Aug 21 2003
	2	Aug 22 2003
Board status call	0.5	Sep 5 2003
Review Complainant's Response to Strike Amended Complaint and Recuse Attorney Sternstein	1	Sep 10 2003
Draft Affidavit for Response to Recuse Attorney Sternstein	1	Sep 11 2003
Draft Complainant's Pre-Hearing Memorandum	2	Sep 12 2003
	4	Sep 15 2003
	6	Sep 16 2003
	7	Sep 17 2003
	3	Sep 18 2003
Trial Preparation with witnesses Garretson and Kallis	4	Oct 2 2003
Board status call	0.5	Oct 7 2003
Trial Preparation with witness Garretson and Kallis	4	Oct 15 2003
TOTAL HOURS	224.5	

Date	Description	Time
10/3/2003	Pleading review, trial preparation	2.5
10/6/2003	Document review, trial preparation	4
10/7/2003	Attend hearing, trial preparation	7
10/8/2003	Trial preparation	6
10/14/2003	Trial preparation, resolve discovery issues	6
10/16/2003	Review Board order, conference w/ Sternstein and Cohe	7.5
10/17/2003	File review, trial preparation	3.5
10/22/2003	Trial preparation	7.5
10/23/2003	Trial preparation	9.5
10/24/2003	Trial preparation	9
10/25/2003	Trial preparation	4
10/27/2003	Trial preparation	10
10/28/2003	Pre-trial preparation, conduct pre-trial, trial preparation	10
10/29/2003	Trial preparation, travel to trial venue	12
10/30/2003	Trial preparation, conduct trial	14
10/31/2003	Trial preparation, conduct trial, travel to home	13
11/17/2003	Prepare draft of closing statement	4
11/18/2003	Prepare draft of closing statement	4
4/12/2004	Review and revise reply in support of closing argument	1.5
4/12/2004	Preparation of fees affidavit and statement of hours work	1
5/21/2004	Review Respondent's motion to strike closing argument,	3
9/8/2004	Review Board order, analyze costs/fees issues	2.5
9/16/2004	Compile fees work sheet, affidavit	2
	Total hours worked	143.5

CERTIFICATE OF SERVICE

I, MITCHELL COHEN, an Assistant Attorney General, certify that on the 17th day of September, 2004, I caused to be served by ~~First Class Mail The People of the State of Illinois' Attorney Fees and Costs Petition,~~ to the parties named on the attached service list.


MITCHELL L. COHEN
Assistant Attorney General

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