

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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DEC 14 2004

STATE OF ILLINOIS
Pollution Control Board

No. PCB 96-98

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.)

NOTICE OF FILING

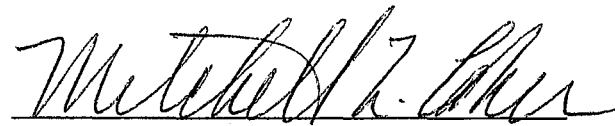
TO: See Attached Service List

PLEASE TAKE NOTICE that on December 14, 2004, we filed with the Illinois Pollution Control Board **Complainant's Response and Objection to Respondents' Motion to Stay Payment of Penalty Under Board Order of September 2, 2004**, a true and correct copy of which is attached and hereby served upon you.

Respectfully submitted,

LISA MADIGAN
Attorney General
State of Illinois

BY:



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 Skokie Valley Asphalt Co., Inc.,)
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 Respondents.)

No. PCB 96-98

**COMPLAINANT'S RESPONSE AND OBJECTION TO
RESPONDENTS' MOTION TO STAY PAYMENT OF PENALTY UNDER
BOARD ORDER OF SEPTEMBER 2, 2004**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA
MADIGAN, Attorney General of the State of Illinois, pursuant to
Section 101.500 of the Board's Procedural Regulations, 35 Ill.
Adm. Code 101.500, responds and objects to Respondents' Motion to
Stay Payment of Penalty Under Board Order of September 2, 2004.

In response and objection to Respondents' Motion, the People
state as follows:

INTRODUCTION

1. On September 2, 2004, the Board issued an Opinion and
Order ("September Order") finding Respondents violated the

Environmental Protection Act and Board Regulations.¹ This September Order included a finding " . . . that Edwin and Richard Frederick are personally liable for the activities of Skokie Valley."² It also included a finding " . . . that Respondents committed willful, knowing, or repeated violations in this case."³

2. Based on the evidence, the Board ordered Respondents to pay a civil penalty of \$153,000.⁴

3. Respondents were ordered to pay the civil penalty "[n]o later than October 18, 2004"⁵

4. Respondents did not ask to stay the enforcement of the September Order before October 18, 2004.

5. Respondents did not ask to stay payment of the penalty required by the Board in the September Order before October 18, 2004.

6. And, Respondents did not pay the civil penalty ordered by the Board by October 18, 2004.

RESPONDENTS' MOTION IS UNTIMELY

7. If Respondents had any legal, or factual basis for filing a Motion to Stay Enforcement of a Board Order, or a Motion to

¹ People v. Skokie Valley Asphalt Co. et al., PCB 96 - 98 (September 2, 2004).

² Id. at 11.

³ Id. at 23.

⁴ Id. at 1, 23, and 24.

⁵ Id. at 24.

Stay Payment of a Civil Penalty, such a Motion was due before October 18th, the ordered deadline, not after Respondents are in constructive contempt of a Board Order.

8. Respondents' excuse for failing to file a Motion to Stay when they filed their Petition for Review defies logic.

9. In this Motion to Stay Respondents claim they ". . . required a clear understanding of whether or not the Opinion and Order of September 28, 2004, was a final order for a number of reason including a need to know whether or not it would be timely to file a motion to stay enforcement of the September 28, 2004 Opinion and Order."⁶

10. Why does that statement, not even including all the mistakes, defy logic? If the Board's September Order was a final order as Respondents thought when they filed their Petition for Review, then they had at least some basis (pending appeal) to file a Motion to Stay and chose not to. If the September Order was not final, then there is no basis for such a motion.⁷ Whether the September Order was final, or not, Respondents chose not to file any motion regarding payment of the penalty before the penalty was due.

11. Now, Respondents know the September Order was not final

⁶ The Opinion and Order should have the date of September 2, 2004. Respondents' Motion to Stay, paragraph 3.

⁷ 35 Ill. Adm. Code 101.906(c).

and six weeks after the penalty was due they file a Motion to Stay without citing any legal basis, or offering any factual basis to justify such a motion.

RESPONDENTS' MOTION TO STAY IS DISINGENUOUS

12. Respondents claim "[i]n reliance on the Order of October 21, 2004, the Respondents determined that the filing of a motion to stay payment of the penalty . . . was neither timely nor necessary" ⁸

13. Yes, the Board issued an order October 21, 2004,⁹ but at that point Respondents penalty payment was overdue and Respondents had no expectation that the penalty would be stayed for any reason since Respondents never asked for such relief.¹⁰

14. To say now, six weeks after payment of the penalty was due and knowing full well that Respondents did not comply with the Board's September Order, that they relied on the October Order even without making a request to stay the payment is disingenuous.

CONCLUSION

15. There is no legal or factual basis for Respondents' Motion to Stay Payment of the Penalty.

⁸ Respondents' Motion to Stay, paragraph 6.

⁹ People v. Skokie Valley Asphalt Co. et al., PCB 96 - 98 (October 21, 2004).

¹⁰ See also, Complainant's Motion to Void the Board's October 21, 2004, Order.

16. Respondents failed to comply with the Board's September Order.

17. Respondents offer no authority for the filing, or the granting of their Motion to Stay.

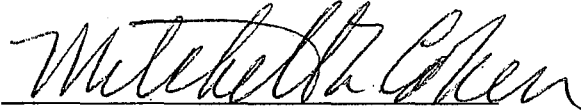
18. Under such circumstances, Complainant objects to the granting of Respondents' Motion to Stay.

WHEREFORE, Complainant, the People of the State of Illinois, respectfully requests this Board deny Respondents' Motion to Stay Payment of Penalty Under Board Order of September 2, 2004. In the alternative, if the Board either grants Respondents' Motion to Stay, or determines that Respondents' Motion to Stay is moot because the Board had jurisdiction to stay payment of the penalty in its October 21, 2004, Order, then Complainant respectfully

requests that such stay be treated as a stay of judgment pending appeal and require Respondents to post a bond " . . . in an amount sufficient to cover the amount of the judgment, interest and costs."¹¹

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

By:



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¹¹ Sup. Ct. R. 205(a) and (f).

CERTIFICATE OF SERVICE

I, MITCHELL COHEN, an Assistant Attorney General, certify that on the 14th day of December, 2004, I caused to be served by First Class Mail the foregoing **Complainant's Response and Objection to Respondents' Motion to Stay Payment of Penalty Under Board Order of September 2, 2004**, to the parties named on the attached service list.


MITCHELL L. COHEN
Assistant Attorney General