

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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MAR 01 2005

STATE OF ILLINOIS
Pollution Control Board

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

No. PCB 96-98

NOTICE OF FILING

TO: Mr. David S. O'Neill
5487 N. Milwaukee Ave.
Chicago, IL 60630

Ms. Carol Sudman
Hearing Officer
Illinois Pollution Control Board
600 S. 2nd Street, Suite 402
Springfield, Illinois 62704

PLEASE TAKE NOTICE that the Complainant, PEOPLE OF THE STATE OF ILLINOIS, filed with the Illinois Pollution Control Board, **COMPLAINANT'S FIRST RESPONSE TO RESPONDENTS' MOTION TO COMPEL RESPONSE TO DISCOVERY FILED MORE THAN A YEAR AFTER THE HEARING**, a true and correct copy of which is attached hereto and is hereby served upon you.

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

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

Dated: March 1, 2005

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Enforcement

COMPLAINANT'S FIRST RESPONSE TO
 RESPONDENTS' MOTION TO COMPEL RESPONSE TO DISCOVERY
FILED MORE THAN A YEAR AFTER THE HEARING

Complainant, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, pursuant to Sections 101.500 and 101.502 of the Illinois Pollution Control Board Regulations ("Board Regulations"), 35 Ill. Adm. Code 101.500 and 101.502, hereby responds to Respondents' Motion to Compel Response to Discovery filed more than a year after the hearing in this case, and states as follows:

1. On July 29, 2003, Hearing Office Sudman issued an order establishing August 29, 2003, as the last date for depositions with written discovery ending a week earlier.

2. The hearing in this case was held at the end of October

2003.

3. On September 2, 2004, the Board issued its Opinion and Order.

4. On September 28, 2004, Respondents filed a Motion where they asked for, among other things, additional time to perform more discovery and participate in evidentiary hearings.

5. In ruling on Respondents' Motion in an October 21, 2004, Order, "[t]he Board stays the \$153,000 in penalties ordered in the Board's September 2, 2004, order, but denies the additional relief requested by respondents."

6. On December 1, 2004, Respondents renewed essentially the same motion they filed September 28, 2004.

7. On December 16, 2004, the Board issued another order related to Respondents' Motion:

In the Motion to Stay, the respondents' assert the need to conduct discovery on the issues of fees and costs, as well as their right to an evidentiary hearing. The motion to stay is granted in part. The Board will not hold any hearings on the issue of attorney's fees and costs, but will allow the respondents additional time to respond. The respondents are hereby given until January 13, 2005, 28 days from the date of this order, to respond to the People's request for attorney fees and costs.

8. The Board specifically stated that it will not hold any hearings on the issue, but allowed Respondents another opportunity to respond to the Motion.

9. Respondents failed to respond to the People's request for attorney fees and costs in accordance with the Board's December

16th Order.

10. Instead, on January 10, 2005, Respondents filed a motion to establish a discovery schedule disingenuously stating that on December 16th, the Board " . . . implicitly ruled that Respondents are entitled to discovery"

11. No, the Board granted Respondents another chance to respond to the Motion. The Board did not grant Respondents request to conduct more discovery.

12. As such, on January 18, 2005, the People filed their response and objection to Respondents' motions.

13. Since then, the People have been waiting for the Board's ruling on Respondents' pending motions and the Board's final order.

14. There is no statutory, common law, or Board Order authorizing Respondents to conduct discovery at this time. Therefore, the People are under no obligation to respond to any discovery and have not taken the time, or gone to the additional expense of doing so. (Should the Board allow additional discovery in this case in the future, the People will file the appropriate motions and objections.)

CONCLUSION

WHEREFORE, Complainant, People of the State of Illinois, requests this Board to deny Respondents' Motion to Compel, deny

all other pending motions filed by Respondents, and issue its final order in the case.

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

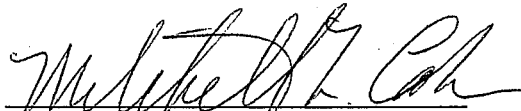
BY:



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CERTIFICATE OF SERVICE

I, MITCHELL L. COHEN, an Assistant Attorney General, do certify that I caused to be mailed this 1st day of March 2005, the foregoing **COMPLAINANT'S FIRST RESPONSE TO RESPONDENTS' MOTION TO COMPEL RESPONSE TO DISCOVERY FILED MORE THAN A YEAR AFTER THE HEARING and NOTICE** by first-class mail in a postage prepaid envelope and depositing same with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois, 60601 to the persons listed on the notice.


MITCHELL L. COHEN