

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS, )  
 by LISA MADIGAN, Attorney General )  
 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. )

PCB 96-98  
(Enforcement – RCRA)


**NOTICE OF FILING**

**TO:** Mr. David S. O’Neill, Esq.  
Mr. Michael B. Jawgiel, Esq.  
5487 North Milwaukee Avenue  
Chicago, Illinois 60630-1249

Ms. Carol Webb, Hearing Officer  
Pollution Control Board  
1021 North Grand Avenue East  
P.O. Box 19274  
Springfield, Illinois 62794-9274

PLEASE TAKE NOTICE that I have today filed **Complainant’s Response to “Respondents’ Motion to Strike Complainant’s Motion for Protective Order and Response to Respondents’ Motion to Strike Complainant’s Objection to Discovery and Respondents’ Motion to Compel Complainant’s Response to Discovery Request”** with the Office of the Clerk of the Illinois Pollution Control Board, true and correct copies of which are attached hereto and herewith served upon you.

PEOPLE OF THE STATE OF ILLINOIS,  
 by LISA MADIGAN, Attorney General  
 of the State of Illinois

BY: 

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MICHAEL C. PARTEE  
 Assistant Attorney General  
 Environmental Bureau/North  
 188 West Randolph Street, Suite 2001  
 Chicago, Illinois 60601  
 Tel: (312) 814-2069  
 Fax: (312) 814-2347

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 Respondents. )

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**COMPLAINANT’S RESPONSE TO “RESPONDENTS’ MOTION TO STRIKE  
COMPLAINANT’S MOTION FOR PROTECTIVE ORDER AND RESPONSE TO  
RESPONDENTS’ MOTION TO STRIKE COMPLAINANT’S OBJECTION TO  
DISCOVERY AND RESPONDENTS’ MOTION TO COMPEL COMPLAINANT’S  
RESPONSE TO DISCOVERY REQUEST”**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, hereby responds to Respondents’, SKOKIE VALLEY ASPHALT CO., INC., EDWIN L. FREDERICK, JR., and RICHARD J. FREDERICK, “Motion to Strike Complainant’s Motion for Protective Order and Response to Respondents’ Motion to Strike Complainant’s Objection to Discovery and Respondents’ Motion to Compel Complainant’s Response to Discovery Requests.” In support of its response, Complainant states as follows:

**RELEVANT CASE HISTORY**

1. On July 20, 2005, Complainant filed its Response to Respondents’ (two) Motions to Strike Complainant’s Letters of May 24, 2005 and June 14, 2005 Regarding Discovery.

Significantly, Complainant's Letter of May 24, 2005, in part, addressed another of Respondents' recent motions to strike: Respondents' Motion to Strike Complainant's Discovery Requests.

2. Also on July 20, 2005, Complainant filed its Motion for Protective Order and Response to "Respondents' Motion to Strike Complainant's Objections to Discovery and Respondents' Motion to Compel Complainant's Response to Discovery Request."

3. Respondents failed to respond to Complainant's Motion for Protective Order within 14 days pursuant to Section 101.500 of the Board's Procedural Rules (35 Ill. Adm. Code 101.500).

4. However, on August 15, 2005, Respondents filed two more motions to strike: "Respondents' Motion to Strike Complainant's Response to Respondents' Motions to Strike Complainant's Letters of May 24, 2005 and June 14, 2005 Regarding Discovery" (hereafter referred to as "Respondents' Fifth Motion to Strike") and "Respondents' Motion to Strike Complainant's Motion for Protective Order and Response to Respondents' Motion to Strike Complainant's Objection to Discovery and Respondents' Motion to Compel Complainant's Response to Discovery Request" (hereafter referred to as "Respondents' Sixth Motion to Strike").

5. Complainant responds to Respondents' Sixth Motion to Strike herein and responds to Respondents' Fifth Motion to Strike in a separate pleading.

**RESPONDENTS' SIXTH MOTION TO STRIKE MUST BE DENIED**

6. Respondents' Sixth Motion to Strike is the latest in a series of seemingly never-ending motions to strike from Respondents.

7. Respondents' Sixth Motion to Strike is nonresponsive to the facts and law set forth in the pleading that it seeks to strike, namely Complainant's Motion for Protective Order

and Response to “Respondents’ Motion to Strike Complainant’s Objection to Discovery and Respondents’ Motion to Compel Complainant’s Response to Discovery Requests.”

Complainant’s pleading sets forth facts and law in support of its Motion for Protective Order and Response. Complainant showed numerous and specific examples of why Respondents’ discovery requests are objectionable and why the Board should issue a protective order against Respondents’ abusive discovery tactics. Respondents’ Sixth Motion to Strike does not address a single fact, case, court rule or Board rule raised in Complainant’s pleading.

8. Relative to the numerous motions to strike that preceded it, Respondents’ Sixth Motion to Strike raises no new facts or law whatsoever.

9. With one exception, Respondents Sixth Motion to Strike is simply a repetition of previous argument made without reliance on any legal authority.

10. The exception is that Respondents now argue that Complainant’s Motion for a Protective Order should not be granted because “[t]he Complainant has failed to exercise a number of means to object to the Respondents [*sic*] discovery requests that would not require a protective order and extensive intervention by the Board.” (Respondents’ Sixth Motion to Strike at 4, ¶ 28.)

11. Respondents do not identify any of the means by which Complainant should have objected to discovery. Obviously, such means do not include such traditional means as discovery objections and Supreme Court Rule 201(k) conferences because Respondents already moved to strike Complainant’s discovery objections and Rule 201(k) correspondence. Respondents’ argument based on some unspecified, alternative means of resolving a discovery dispute other than discovery objections and Rule 201(k) is wholly without merit.

12. Respondents' argument that Complainant should not be granted a protective order is also surreptitiously made through a motion to strike because Respondents failed to file a timely response to Complainant's Motion for a Protective Order pursuant to the Board's Procedural Rule 101.500. This should not be permitted by the Board.

13. Respondents' Sixth Motion to Strike must be denied.


14. Complainant also respectfully submits that the Board should no longer tolerate Respondents' frivolous pleadings.

WHEREFORE, Complainant respectfully requests that the Board enter an order in favor of Complainant and against Respondents as follows:

- A. Denying Respondents' Sixth Motion to Strike;
- B. Assessing against Respondents the Complainant's reasonable attorneys' fees and costs in responding to Respondents' Sixth Motion to Strike; and
- C. Granting any further relief that is just and fair under the circumstances.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS  
by LISA MADIGAN, Attorney General  
of the State of Illinois

BY:   
MICHAEL C. PARTEE  
Assistant Attorney General  
Environmental Bureau/North  
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CERTIFICATE OF SERVICE

It is hereby certified that true and correct copies of the **Notice of Filing and Complainant's Response to "Respondents' Motion to Strike Complainant's Motion for Protective Order and Response to Respondents' Motion to Strike Complainant's Objection to Discovery and Respondents' Motion to Compel Complainant's Response to Discovery Request"** were sent by First Class Mail, postage prepaid, to the persons listed on the Notice of Filing on August 17, 2005.

BY:   
MICHAEL C. PARTEE

It is hereby certified that the foregoing were electronically filed with the Board on August 17, 2005:

Pollution Control Board, Attn: Clerk  
James R. Thompson Center  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601

BY:   
MICHAEL C. PARTEE