

ILLINOIS POLLUTION CONTROL BOARD
February 8, 2006

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| PEOPLE OF THE STATE OF ILLINOIS, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | PCB 96-98 |
| |) | (Enforcement - Water) |
| SKOKIE VALLEY ASPHALT, INC., EDWIN) |) | |
| L. FREDERICK, JR., and RICHARD J. |) | |
| FREDERICK, |) | |
| |) | |
| Respondents. |) | |

HEARING OFFICER ORDER

On December 14, 2005, respondent filed a motion to quash complainant's deposition notices to respondent regarding complainant's fee petition. On December 28, 2005, complainant filed a second motion for protective order and a response to respondent's motion to quash. On January 9, 2006, respondents filed a motion to strike complainant's motion for protective order, and a response to that order. On January 19, 2006, complainant filed a response to the motion to strike. For the following reasons, the hearing officer denies respondent's motion to quash, denies respondent's motion to strike the motion for protective order, and grants complainant's motion for protective order.

Respondents' motion to quash asserts that depositions of respondents' attorneys will not lead to admissible evidence at hearing on the issue of complainant's fees and costs, and that deposing respondents' attorneys will violate the attorney-client privilege. Respondents further assert that the depositions are inconsistent with the Board's April 7, 2005 order calling for limited discovery.

The hearing officer first notes that the Board's order issued on November 17, 2005 ruled that it would not be fair to allow respondents to conduct discovery on the reasonableness of attorney fees without allowing complainant to conduct similar discovery. The Board ordered respondents to respond to complainant's discovery requests by December 3, 2005. On December 5, 2005, respondents filed their responses to complainant's discovery requests, but in response to each interrogatory (except for the most perfunctory), respondents objected and provided no answer. These discovery responses violate the spirit of the Board's order. Furthermore, respondents have provided no argument or case law to defend their assertion that the information would not be admissible, or lead to information admissible at hearing, or that it would violate the attorney-client privilege. The motion to quash is denied.

Complainant's motion for protective order asks that respondents' attorneys be required to participate in a full and good faith conference with complainant's attorneys regarding any further discovery dispute prior to seeking Board intervention. Respondents' motion to strike offered no

compelling argument on which to grant that motion, thus the motion to strike is denied. The parties are directed to make every effort to get through the discovery process with no further involvement from the Board or the hearing officer. Accordingly, the hearing officer grants the motion for protective order. In any motion, objection, or other filing related to any discovery problem, respondents' attorneys must relate the measures taken to resolve the problem with complainant's attorneys before the filing of the motion.

The Board's November 17, 2005 order directs the hearing officer to schedule a status conference to set a detailed discovery schedule. The parties are directed to meet before the next status conference to determine a detailed discovery schedule to propose to the hearing officer at the next status conference.

The parties are directed to participate in a telephone status conference with the hearing officer at 2:00 p.m. on March 9, 2006. Complainant is directed to initiate the call.

IT IS SO ORDERED.



Carol Webb
Hearing Officer
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CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were mailed, first class, on February 8, 2006 to each of the persons on the attached service list.

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on February 8, 2006:

Dorothy M. Gunn
Illinois Pollution Control Board
James R. Thompson Center
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