

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 Final Order**, with the Office of the Clerk of the Illinois Pollution Control Board, a true and correct copy of which is attached hereto and herewith served upon you.

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
188 West Randolph Street, Suite 2000
Chicago, Illinois 60601
Tel: 312.814.2069
Fax: 312.814.2347
E-Mail: mpartee@atg.state.il.us

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)

**COMPLAINANT'S RESPONSE TO RESPONDENTS' MOTION TO STRIKE
COMPLAINANT'S MOTION FOR FINAL ORDER**

Complainant, PEOPLE OF THE STATE OF ILLINOIS ("People"), by LISA MADIGAN, Attorney General of the State of Illinois, hereby responds to the Respondents' "Motion to Strike the People's Motion for Final Order." In support of their response, the People state as follows:

PROCEDURAL HISTORY

1. After a hearing on all issues two and a half years ago, the Board entered an Order finding willful, knowing or repeated violations of the Illinois Environmental Protection Act and Board rules, assessing a \$153,000 civil penalty, and assessing the People's attorneys' fees and costs against the Respondents. (See Board's Sept. 2, 2004 Order.) The Board further directed the People to file a petition for attorneys' fees and costs ("Fee Petition"), which was filed on September 17, 2004, and included sworn affidavits.

2. On March 28, 2006, the People filed a Motion for Final Order pursuant to Board Rule 101.516 because, despite the significant passage of time and Respondents' unprecedented opportunity to conduct discovery regarding the Fee Petition, Respondents have failed to substantiate their dispute of the Fee Petition.

3. On April 11, 2006, Respondents did not respond to the People's Motion for Final Order, but instead, filed a Motion to Strike it.

ENTRY OF A FINAL ORDER IN THIS CASE IS PROPER

4. Respondents' Motion to Strike (their ninth motion to strike in ten months)¹ is their most venomous pleading to date.

5. Respondents' Motion to Strike is entirely unresponsive to the People's Motion for Final Order. Respondents sidestep the People's Motion for Final Order on procedural grounds. Respondents unsuccessfully contend that the Motion for Final Order is really an untimely motion for reconsideration of the Board's April 7, 2005 Order granting Respondents' request for discovery and a hearing on the Fee Petition. (Motion to Strike at 3.)

6. However, the People's Motion for Final Order cannot be a motion for reconsideration because there is nothing to consider again. Respondents have already realized the benefit of the limited discovery allowed under the Board's April 7, 2005 Order. The Board cannot undue the discovery that was previously authorized and completed pursuant to the Board's April 7, 2005 Order, nor do the People request this in their Motion for Final Order. Respondents have also had an entire year to specifically identify any attorney time or costs in the

¹ Respondents have, throughout the course of the last year, refused to file "responses" or "replies" to the People's pleadings. Instead, Respondents have engaged in the questionable practice of moving to strike all pleadings by the People, at one point even moving to strike the People's response to another of their motions to strike. (See Respondents' Aug. 17, 2005 motion to strike.)

Fee Petition that are excessive relative to the corresponding service performed, but they failed to do so, which was the point of the Motion for Final Order.

7. The People's Motion for Final Order was expressly filed pursuant to Board Rule 101.516 (Motions for Summary Judgment). (See Motion for Final Order at 1.) When the party moving for summary judgment files supporting affidavits containing well-pleaded facts (the People) and the party opposing the motion (the Respondents) files no counteraffidavits, the Board must accept as admitted the material facts set forth in the movant's affidavits. *Beelman Truck Co. v. Cosentino*, 253 Ill.App.3d 420, 426, 624 N.E.2d 454, 458-58 (5th Dist. 1993); *People v. Rogers*, PCB 00-127, 2000 WL 510685, at *2 (Apr. 20, 2000). In the present case, affidavits containing well-pleaded facts support the People's request for entry of a final order assessing \$100,575.00 in fees and \$3,482.84 in costs against Respondents. At the same time, Respondents have not filed any counteraffidavits. (*Id.* at 2 and 7.)

8. Moreover, it is insufficient for the nonmovant (Respondents) to merely identify issues they could raise at a hearing; a more specific response is required. *Env. Site Devs., Inc. v. White and Brewer*, PCB 96-180, 1997 WL 735012, at *8 (Nov. 20, 1997). "The nonmovant must present bona fide facts to withstand a motion for summary judgment; the nonmovant cannot hide behind equivocations and conjecture and expect to prevent the entry of summary judgment." *Id.* (underline added). Merely alluding to issues that they could raise at hearing and hiding behind conjecture is all that Respondents have done in opposition to the People's Fee Petition. Respondents' dispute has been "all show and no substance." This is a singular dispute over a Fee Petition, yet throughout the lengthy course of this dispute, Respondents have failed to specifically identify a single hour of attorney time or a single cost that is excessive relative to the

corresponding service performed. Respondents even failed to do so when confronted with the People's Motion for Final Order.

9. Therefore, entry of a final order pursuant to Board Rule 101.516 is proper.

WHEREFORE, the People respectfully request that the Board deny Respondents' Motion to Strike, enter a final order assessing \$100,575.00 in fees and \$3,482.84 in costs against Respondents pursuant to Rule 101.516, and grant any further relief that is fair and just 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
188 West Randolph, Suite 2000
Chicago, Illinois 60601
Tel: 312.814.2069
Fax: 312.814.2347

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 Final Order**, were sent by First Class Mail, postage prepaid, to the persons listed on the Notice of Filing on April 12, 2006.

BY: 
MICHAEL C. PARTEE

It is hereby certified that the above documents were electronically filed with the following person on April 12, 2006:

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

BY: 
MICHAEL C. PARTEE