

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 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: 
PAULA BECKER WHEELER
Assistant Attorney General
Environmental Bureau/North
188 West Randolph Street, Suite 2000
Chicago, Illinois 60601
Tel: 312.814.1511
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 TITLED “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 for Final Order.” In support of their response, the People state as follows:

RELEVANT PROCEDURAL HISTORY

1. On October 6, 2006, the Board’s Hearing Officer set this matter for hearing to occur on **December 12, 2006**. This matter concerns the Board’s direction to the People to file a petition for attorneys’ fees and costs (“Fee Petition”). The Fee Petition was filed on September 17, 2004, and included sworn affidavits. The Respondents have opposed the petition through various pleadings.

2. **On December 12, 2006**, the Respondents filed their Motion for Final Order.

3. Previously, on March 28, 2006, the People also filed a Motion for Final Order,

which Respondents moved to strike. The People's Motion for Final Order was denied as was the Respondents' Motion to Strike, pursuant to the Board's Order dated September 7, 2006.

RESPONDENTS' MOTION IS NOT TIMELY

4. Although the People certainly agree with the title of Respondents' Motion, "Motion for Final Order", as is evidenced by the People filing the same titled motion on March 28, 2006, the arguments put forth by the Respondents in their Motion primarily speak to a final Order denying the Fee Petition and merely restate previously made arguments to strike or deny People's Fee Petition.

5. Board Rule 101.508, "Motions to Board Preliminary to Hearing" states that Motions should be filed 21 days prior to the scheduled Board meeting before the hearing date. If the motion is filed after that time frame, the Board will consider the motion if time permits.

6. The Respondents filed their Motion for Final Order on the day of the hearing, not 21 days before the Board meeting prior to the hearing.

7. The Respondents Motion is untimely and furthermore, addresses arguments that would be more appropriate for the Hearing which was held on December 12, 2006.

WHEREFORE, the People respectfully request that the Board deny Respondents' Motion for Final Order to deny the Fee Petition as stated in their Motion, and that the Board make any further decisions on this matter based on the Hearing held on December 12, 2006 and the final briefs filed thereafter.

Respectfully submitted,

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

BY: Paula Becker Wheeler

PAULA BECKER WHEELER

Assistant Attorney General

Environmental Bureau/North

188 West Randolph, Suite 2000

Chicago, Illinois 60601

Tel: 312.814.1511

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 for Final Order**, were sent by First Class Mail, postage prepaid, to the persons listed on the Notice of Filing on December 26, 2006.

BY: *Paula Becker Wheeler*
PAULA BECKER WHEELER

It is hereby certified that the above documents were electronically filed with the following person on December 26, 2006:

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

BY: *Paula Becker Wheeler*
PAULA BECKER WHEELER