BEFORE THE ILLINOIS POLLUTION CONTROL BOARDCLERK'S OFFICE

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

v

SKOKIE VALLEY ASPHALT, CO., INC., 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.

SEP 17 2004

STATE OF ILLINOIS Pollution Control Board

No. PCB 96-98 (Enforcement - Water)

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on September 17, 2004, we filed with the Illinois Pollution Control Board The People of the State of Illinois' Attorney Fees and Costs Petition, a true and correct copy of which is attached and hereby served upon you.

Respectfully submitted,

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:

MITCHELL L. COHEN
Assistant Attorney General

Environmental Bureau

188 W. Randolph St., 20th Floor

Chicago, Illinois 60601

(312) 814-5282

SERVICE LIST

Mr. David O'Neill Mr. Michael B. Jagwiel Attorneys at Law 5487 North Milwaukee Chicago, Illinois 60630

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

RECEIVED CLERK'S OFFICE

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

SEP 17 2004

STATE OF ILLINOIS Pollution Control Board

No. PCB 96-98

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.

THE PEOPLE OF THE STATE OF ILLINOIS' ATTORNEY FEES AND COSTS PETITION

On September 2, 2004, after a hearing in this case, the Board found " . . . that Respondents committed willful, knowing, or repeated violations in this case."

"Section 42(f) of the Act . . . authorizes the Board to award attorney fees to the People where a respondent has committed a willful, knowing, or repeated violation of the Act ."2 Section 42(f) of the Act also authorizes the Board to award the costs associated with bringing an environmental enforcement

People v. Skokie Valley Asphalt, Co., Inc., Edwin L. Frederick, Jr., and Richard J. Frederick: PCB 96 - 98 (September 2, 2004) at 23.

Ta.

action.³ Wherefore, the People of the State of Illinois respectfully request, in accordance with the Opinion and Order of the Board issued September 2, 2004, that the Board award attorney fees in the amount of \$ 134,250.00 and costs in the amount of \$ 3,482.84.⁴

1. REASONABLE ATTORNEY FEES

The People are only seeking attorney fees for the time spent and work performed by AAGs Cohen, Sternstein and Murphy.

A conservative estimate of time AAG Cohen spent prosecuting this case against Respondents is 527.00 hours. A conservative estimate of time AAG Sternstein spent prosecuting this case against Respondents is 224.5 hours. A conservative estimate of time AAG Murphy spent prosecuting this case against Respondents is 143.5 hours. Multiplying the number of hours AAGs Cohen, Sternstein, and Murphy spent prosecuting this case, (527.0 + 224.5 + 143.5 = 895) 895, times the reasonable hourly rate of

³ 415 ILCS 5/42(f) (2002).

⁴ The People adopt the information provided to the Board related to attorney fees and costs in The People of the State of Illinois' Closing Rebuttal Argument and Reply Brief and supplement the same with this Attorney Fees and Costs Petition. Please note an error related to costs (deposition transcripts) was discovered and corrected.

⁵ See Exhibit A: affidavit and time sheet.

⁶See Exhibit B: affidavit and time sheet.

⁷See Exhibit C: affidavit and time sheet.

\$150.00 equals \$ 134,250.00.8

The People seek a total of \$ 134,250.00 in attorneys' fees to be deposited by Respondents into the "Attorney General's State Projects and Court Ordered Distribution Fund."

B. REASONABLE COSTS

The People of the State of Illinois request an award of \$ 3,482.84 for the costs incurred in prosecuting this case against Respondents. The payment for costs from Respondents should also be deposited into the "Attorney General's State Projects and Court Ordered Distribution Fund."

The costs are broken down as follows:

Depositions \$	1,796.65
Off-site Photocopying \$	1,119.34
AAG Cohen's travel & lodging \$	305.62
AAG Murphy's travel & lodging \$	261.23

TOTAL EXPENSES

3,482.84

The Board has held that \$150.00 hourly rate for attorney's fees is reasonable. See <u>People v. J & F Hauling Inc.</u>, PCB 02-221 (May 1, 2003), citing <u>Panhandle</u>, slip op. at 37 (Nov. 15, 2001).

⁹ See Exhibit D: affidavit and list of expenses.

VI. CONCLUSION

WHEREFORE, Complainant, the People of the State of Illinois, respectfully requests that this Board award its attorney fees in the amount of \$ 134,250.00 and costs in the amount of \$ 3,482.84 and order Respondents to deposit that amount into the "Attorney General's State Projects and Court Ordered Distribution Fund."

Respectfully submitted,

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:

MITCHELL L. COHEN

Assistant Attorney General

Environmental Bureau

188 West Randolph, 20th Floor

Chicago, IL 60601

 $(312) \cdot 814 - 5282$

State of Illinois) ·
) SS
County of Lake)

I, Mitchell L. Cohen, upon affirmation, state as follows:

- I am an Assistant Attorney General in the Environmental Bureau North of the Illinois Attorney General's Office and assigned to assist in the representation of the People of the State of Illinois in the case styled, <u>People v. Skokie Valley Asphalt Co., Inc., et al.</u>, PCB No. 96-98, filed before the Illinois Pollution Control Board.
- 2. I have reviewed the hours I spent prosecuting this case which include compiling the attached time sheets, and having personal and direct knowledge of same, the undersigned certifies that the statements set forth in this affidavit and attachment pertaining to the hours spent prosecuting this case are true and accurate.

Further affiant sayeth not.

Mitchell L. Cohen

Assistant Attorney General
Environmental Bureau North

Subscribed to and affirmed before me this 16th day of Suptember, 2004.

NOTARY PUBLIC, STATE OF ILLINOIS MY COMMISSION EXPIRES 12-7-2004

EXHIBIT

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	Time
	Date Description Time
	5/29/2002 Meeting re: file transfer, call to David O'Neill
	6/11/2002 Subst. of Atty; Agreed Mo. To Cancel & Reschedule
	6/18/2002 Rev. Mo., Complaint & Case Status Hrg
	6/19/2002 File Review 8.00
	7/18/2002 File Review 4.00
	7/19/2002 PCB Status Hrg; Draft Amended Complaint 4.00
	7/26/2002 Prep Amended Complaint for filing
	7/29/2002 Correct Notice of Filing
	8/20/2002 File Review 3.00
	9/25/2002 Rev. Mo. To Strike Complaint
	10/1/2002 Resp. to Motion to Strike
	10/11/2002 Rev. Resp. Add. Info 1.00
•	10/18/2002 Rev. Bd. Order: discuss case strategy \ 2.00
	11/20/2002 Preo. For & PCB Status Hrg
	12/18/2002 Prep. Mo. Deem Facts Admitted/Summ. Judgment 4.00
	12/20/2002 Finalize Mo. & Rev. D's late answer 5.00
	12/23/2002 Prep. For & PCB Status Hrg 2.00
	1/6/2003 Rev. & Discuss D's Resp. to Mo Summ Judg 2.00
٠.	1/10/2003 Reply to D's Resp. to Motion 2.00
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	5/5/2003 work on discovery 4.00
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	5/7/2003 Finalize Mot to Strike Ds Mo to dismiss for filing 3.00
	5/12/2003 Rev Mot.s & Ds Mo for leave to reply
	6/9/2003 Rev PCB Order, related docs, Mo for ext. of time, etc.
	6/13/2003 D's Mo for ext of time - resp.
	6/16/2003 Resp to Mo for Ext of time 1.00
	6/27/2003 Prep. For & hrg, rev. D's Mo for reconsid.
	7/3/2003 Disc rev, Hrg Off. Order, research Mo for reconsid.
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	7/8/2003 Research/drft mo to compel 3.00
	7/9/2003 drft 1st Mo to compel 3.00
٠,	7/10/2003 Rev. case status & hrg
	7/16/2003 rev d's filings & related docs 3.00
	7/25/2003 disc and rev. bd. Order 2.00
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State of Illinois)
) SS
County of Lake)

I, Joel J. Sternstein, upon affirmation, state as follows:

- I am an Assistant Attorney General in the Environmental Bureau North of the Illinois Attorney General's Office and, prior to October 16, 2003, I was assigned to assist in the representation of the People of the State of Illinois in the case styled, <u>People v. Skokie Valley Asphalt Co., Inc., et al.</u>, PCB No. 96-98, filed before the Illinois Pollution Control Board.
- 2. I have reviewed the hours I spent prosecuting this case, and having personal and direct knowledge of same, the undersigned certifies that the statements set forth in this affidavit and attachment pertaining to the hours spent prosecuting this case are true and accurate.

Further affiant sayeth not.

Joel J. Sternstein

Assistant Attorney General Environmental Bureau North

sel TSteprist

Subscribed to and affirmed before me this flot day of suplember 2004.

OFFICIAL SEAL
PHYLLIS DUNTON
NOTABLY PUBLIC STATE OF ILLINO

NOTARY PUBLIC, STATE OF ILLINOIS MY COMMISSION EXPIRES 12-7-2004

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EXHIBIT
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	Drafted Complainant's Response to Respondent's Motion	6	Sep 26 2002	
	to Strike the Second Amended Complaint	6	Sep 27 2002 Sep 30 2002	
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	Drafted Motion for Leave to File Reply and Reply to Respondent's	5	Jan 15 2003	
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	Drafted Complainant's Motion to Strike or Dismiss Respondent's	4	Apr 11 2003	
•	Affirmative Defenses	6	Apr 14 2003	
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	Meeting with AAG Cohen to Discuss Case	2	Apr 18 2003	Expression of the second
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	Draft First Motion to Compel Response to Discovery	7	Jul 9 2003	
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	Draft Second Motion to Compel Response to Discovery	5	Jul 25 2003
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	Board status call	1	Jul 29 2003
	Prepare for depositions of Frederick Brothers	4	Aug 1 2003
		8	Aug 4 2003
		5	Aug 5 2003
· ·	Attend deposition of Richard Frederick	3	Aug 5 2003
•	Attend deposition of Nichard Frederick	3	Aug 3 2003
	Prepare for / Attend depostions of Edwin Frederick	4	Aug 6 2003
	Answer Respondent's Discovery Requests	4	Aug 18 2003
		4	Aug 19 2003
		4	Aug 20 2003
		4	Aug 21 2003
		2	Aug 22 2003
•	December 1981	0.5	Sep 5 2003
	Board status call		Sep 5 2003
	Review Complainant's Response to Strike Amended Complaint and	1	Sep 10 2003
	Recuse Attorney Sternstein	. ,	
•			
	Draft Affidavit for Response to Recuse Attorney Sternstein	1 🛴	Sep 11 2003
	Draft Complainant's Pre-Hearing Memorandum	2	Sep 12 2003
		4	Sep 15 2003
•		46 : 14 -	Sep 16 2003
		7	Sep 17 2003 Sep 18 2003
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	Trial Preparation with witnesses Garretson and Kallis	4	Oct 2 2003
	Board status call	0.5	Oct 7 2003
	Trial Preparation with witness Garretson and Kallis	4	Oct 15 2003

State of Illinois)
) SS
County of Lake)

- I, Bernard J. Murphy, Jr., upon affirmation, state as follows:
- 1. I am an Assistant Attorney General in the Environmental Bureau North of the Illinois Attorney General's Office and assigned to assist in the representation of the People of the State of Illinois in the case styled, <u>People v. Skokie Valley Asphalt Co., Inc., et al.</u>, PCB No. 96-98, filed before the Illinois Pollution Control Board.
- 2. I have reviewed the hours I spent prosecuting this case, which include compiling the attached time sheets, and having personal and direct knowledge of same, the undersigned certifies that the statements set forth in this affidavit and attachment pertaining to the hours spent prosecuting this case are true and accurate.

Further affiant sayeth not.

Bernard J. Murphy, Jr. Asst. Chief Assistant Attorney General Environmental Bureau North

Subscribed to and affirmed before me this // day of Juptamba, 2004.

Notary Public

OFFICIAL SEAL
PHYLLIS DUNTON
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 12-7-2004

EXHIBIT

Society

C

Date :	Description	
10/3/2003	Pleading review, trial preparation	2.5
10/6/2003	Document review, trial preparation	: 4
10/7/2003	Attend hearing, trial preparation	7
10/8/2003	Trial preparation	6
	Trial preparation, resolve discovery issues	, 6
10/16/2003	Review Board order, conference w/ Sternstein and Cohe	7.5
10/17/2003	File review, trial preparation	3.5
10/22/2003	Trial preparation	7.5
10/23/2003	Trial preparation	9.5
10/24/2003	Trial preparation	9
10/25/2003	Trial preparation	4
10/27/2003	Trial preparation	10
10/28/2003	Pre-trial preparation, conduct pre-trial, trial preparation	10
10/29/2003	Trial preparation, travel to trial venue	12
10/30/2003	Trial preparation, conduct trial	14
10/31/2003	Trial preparation, conduct trial, travel to home	13
11/17/2003	Prepare draft of closing statement	4
11/18/2003	Prepare draft of closing statement	4
	Review and revise reply in support of closing argument	1.5
4/12/2004	Preparation of fees affidavit and statement of hours work	: 15
	Review Respondent's motion to strike closing argument,	3
9/8/2004	Review Board order, analyze costs/fees issues	2.5
9/16/2004	Compile fees work sheet, affidavit	2
	Total hours worked 1	43.5

State of Illinois	.)(
) SS
County of Lake)

- I, Mitchell L. Cohen, upon affirmation, state as follows:
- I am an Assistant Attorney General in the Environmental Bureau North of the Illinois Attorney General's Office and assigned to assist in the representation of the People of the State of Illinois in the case styled, People v. Skokie Valley Asphalt Co., Inc., et al., PCB No. 96-98, filed before the Illinois Pollution Control Board.
- I have reviewed the costs incurred by the State of Illinois prosecuting this case, related invoices, and as set forth in the attached list of costs incurred, and having personal and direct knowledge of same, the undersigned certifies that the statements set forth in this affidavit and attachment pertaining to the costs incurred in prosecuting this case are true and accurate.
- During the review of invoices, I discovered an error made regarding the costs of deposition transcripts. That error was corrected and is reflected in The People of the State of Illinois' Attorney Fees and Costs Petition, this affidavit, and the attached lists of costs.
 - The State of Illinois incurred \$3,482.84 in costs in prosecuting this case.

Further affiant sayeth not.

Assistant Attorney General Environmental Bureau North

Subscribed to and affirmed before me this Lay of

> totary Public-OFFICIAL SEAL PHYLLIS DUNTON NOTARY PUBLIC, STATE OF ILLINOIS MY COMMISSION EXPIRES 12-7-2004

EXHIBIT

People v. Skokie Valley Asphalt Co., Inc., et al.

PCB No. 96-98

Illinois Pollution Control Board

COSTS INCURRED BY THE STATE OF ILLINOIS

3,482.84

Depositions:		,\$ %	1,796.65
Edwin Frederick Deposition: Richard Frederick Deposition: Chris Kallis/James Huff Deps:	\$ 311.80 \$ 292.90 \$ 1,191.95		A
Photocopying, off-site		\$	1,119.34
Kinkos 9/30/03 Kinkos 10/6/03 Kinkos 10/16/03	\$ 63.70 \$ 466.64 \$ 589.00		
AAG Cohen Travel & Lodging		\$	305.62
October 28, 2003 through Octo Mileage, lodging (Holiday Inn, IL), meals, tolls, and parking			
AAG Murphy Travel & Lodging	r A	\$	261.23
October 29, 2003 through Octo Mileage, lodging (Holiday Inn, IL), meals, tolls, and phone			v

TOTAL COSTS

CERTIFICATE OF SERVICE

I, MITCHELL COHEN, an Assistant Attorney General, certify that on the 17th day of September, 2004, I caused to be served by First Class Mail The People of the State of Illinois' Attorney Fees and Costs Petition, to the parties named on the attached service list.

MITCHELL L. COHEN

Assistant Attorney General

\\oagfile\home\$\MCohen\MLC\SkokieValley\FeeFetNotofFiling.wpd