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ORIGINAL

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
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PEOPLE 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.)

JUL 28 2003

STATE OF ILLINOIS
Pollution Control Board

PCB 96-98

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on July 28, 2003, we filed with the Illinois Pollution Control Board "COMPLAINANT'S SECOND MOTION TO COMPEL RESPONDENTS, SKOKIE VALLEY ASPHALT, CO., INC., EDWIN L. FREDERICK, JR. AND RICHARD J. FREDERICK, TO RESPOND TO DISCOVERY REQUESTS", 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,

BY: Joel J. Sternstein

JOEL J. STERNSTEIN
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601
(312) 814-5282

THIS DOCUMENT IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

Mr. David O'Neill
Attorney 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

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Skokie Valley Asphalt Co., Inc.,)
)
Respondents.)

No. PCB 96-98

STATE OF ILLINOIS
Pollution Control Board

COMPLAINANT'S SECOND MOTION TO COMPEL
RESPONDENTS, SKOKIE VALLEY ASPHALT, CO., INC.,
EDWIN L. FREDERICK, JR. AND RICHARD J. FREDERICK,
TO RESPOND TO DISCOVERY REQUESTS

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA
MADIGAN, Attorney General of the State of Illinois, pursuant to
Sections 101.100(b), 101.616, 101.618, 101.620, and 101.800 of
the Board's Procedural Rules, 35 Ill. Adm. Code 101.100(b),
101.616, 101.618, and 101.620, Supreme Court Rules 201, 213, 214,
216, and 219, and Hearing Officer Orders dated March 28, 2003 and
June 30, 2003, states in support of Complainant's Second Motion
to Compel Respondents, Skokie Valley Asphalt, Co., Inc., Edwin L.
Frederick, Jr. and Richard J. Frederick, To Respond To Discovery
Requests as follows:

INTRODUCTION

1. This Second Motion to Compel supercedes Complainant's First Motion to Compel filed on July 9, 2003.

2. In accordance with the Hearing Officer Order dated March 28, 2003, Complainants mailed to Respondents' Counsel on May 7, 2003, Interrogatories, Requests to Produce Documents, and Requests for Admissions for all three Respondents.

3. The March 28, 2003 Order required all written discovery to be completed by June 20, 2003.

4. Respondents' answers and responses to the written discovery requests mailed on May 7, 2003 were due no later than June 9, 2003.

5. Respondents failed to answer or respond to Complainant's written discovery requests by June 9, 2003.

6. On June 9, 2003, Respondents' filed a Motion for Extension of Time which asked in essence that Respondents have until July 3, 2003, to answer and respond to Complainant's written discovery requests.

7. Hearing Officer Sudman then issued a new discovery schedule with July 3, 2003 as the date all written discovery was to be completed.¹

8. Respondents failed to answer or respond to Complainant's

¹ Also in accordance with the Hearing Officer Orders, depositions are to be completed by August 20, 2003. Complainants have already noticed four depositions beginning July 30, 2003.

written discovery requests by July 3, 2003.

9. On July 10, 2003 the parties participated in a telephone status conference during which Hearing Officer Sudman again extended the written discovery deadline. The new deadline was set as July 24, 2003.

RESPONDENTS FAIL TO ADEQUATELY RESPOND TO DISCOVERY REQUESTS

10. Respondents delivered only partial and inadequate answers to complainant's written discovery requests on July 23, 2003.

11. In accordance with Sup. Ct. Rule 201(k), Complainant's Counsel tried to resolve discovery differences and sent Respondent's Counsel a 201(k) letter on July 24, 2003, a copy of which is attached as Exhibit A. Respondents responded to Complainant's 201(k) letter the following day, a copy of which is attached as Exhibit B.

12. In their partial answers to Complainant's written discovery requests, Respondents claimed Complainant's requests for information related to incomes, assets, tax returns, and other financial information were irrelevant.

13. Respondents' financial information may be used to determine penalty amounts, the deterrent affect of such penalties, and the economic benefit that Respondents have incurred from noncompliance with the Illinois Environmental Protection Act and the Pollution Control Board's Regulations.

14. Respondents also refused to answer Complainant's requests for information on the sale of Skokie Valley Asphalt Co. Inc. ("SVA") or LRF Inc. Respondents again claimed irrelevance. The identity of the current owners of the SVA/LRF site is relevant to this matter given that the proceeds from the sale of SVA or LRF are financial assets that are discoverable according to the rationale provided in Paragraph 13.

15. Respondents Richard J. Frederick and Edwin L. Frederick ("the Fredericks"), in answering Number 1 of Complainant's Requests for Production, failed to provide any documents explaining their responsibilities at SVA including, but not limited to, Articles of Incorporation, Bylaws, Annual Reports filed with the Secretary of State's Office, other Annual Corporate Reports, and Minutes from 1988 through 1998.

16. It is apparent from the Fredericks' answers to Number 1 of the Requests for Production and from the Fredericks' answers to the other items in the Request for Production that the Fredericks made no effort to answer the Requests for Production. Nearly all of the answers to the Requests for Production had already been provided to Complainant during 2002.

17. Respondents also refuse to answer several of the Complainant's Requests to Admit because "they involve an issue of law". Complainants posed no Requests to Admit Facts based on issues of law and demand that Respondents provide those answers

immediately.

18. Respondents also refuse to answer several of the Requests to Admit Facts because the Respondents claim not to understand the meaning of the terms "oily" "diesel fuel odor" and "oil surface sheen". Complainant defined these terms for Respondent in the July 24, 2003 201(k) letter and demands that Respondents provide answers to the Request to Admit where those terms appeared.

19. No answers were provided to Complainant's Second Set of Interrogatories on Respondent SVA. Complainant demands that SVA provide those answers immediately.

20. No answers were provided to Complainant's Second Request for Production of Documents, Objects, and Tangible Things on Respondent SVA. Complainant demands that SVA provide those answers immediately.

WHEREFORE, Complainant requests, pursuant to the Board's Procedural Rules and the Supreme Court Rules, the following:

1. A finding that Respondents violated the Board's Procedural Rules and the Supreme Court Rules;
2. An Order compelling Respondents to fully answer and respond to Complainant's written discovery immediately;
3. An Order requiring Respondents to pay all attorney fees and costs associated with this Second Motion to Compel; and
4. Such other sanctions that the Board believes to be

appropriate.

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN,
Attorney General of the
State of Illinois,

By:



MITCHELL L. COHEN
JOEL J. STERNSTEIN
Assistant Attorney General
Environmental Bureau
188 W. Randolph St. - 20th Fl.
Chicago, IL 60601
(312) 814-5282/(312) 814-6986



Exhibit A

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

July 24, 2003

Mr. David O'Neill, Esq.
5487 North Milwaukee
Chicago, IL 60630
Fax:(773) 792-8358

via facsimile and US mail

Re: People v. Skokie Valley Asphalt,
Edwin L. Frederick, Jr., and
Richard J. Frederick

Dear Mr. O'Neill,

This letter is written pursuant to Supreme Court Rule 201(k). Please contact me no later than the close of business on Friday, July 25, 2003 to reply to the requests below regarding the inadequate nature of your answers to the State's discovery requests. Please contact me because Mitchell Cohen will be out of the Office on July 24 and 25.

- Requests for incomes, assets, tax returns, and other financial information from all Defendants in Complainant's Interrogatories and Requests for Production are relevant to this matter. This financial information may be used to determine penalty amounts, the deterrent affect of such penalties, and the economic benefit that Respondents have incurred from noncompliance with the Illinois Environmental Protection Act and the Pollution Control Board's Regulations. Respondents' claims of irrelevance in refusing to answer the discovery are without merit. Complainant requests that Respondents provide those answers as soon as possible.
- Requests for information on the sale of Skokie Valley Asphalt Co. Inc. ("SVA") or LRF Inc. and the identity of the current owners of the site are relevant to this matter given that the proceeds from the sale of SVA or LRF are financial assets that are discoverable according to the rationale provided in the preceding paragraph. Respondents' claims of irrelevance in refusing to answer the discovery are without merit. Complainant requests that Respondents provide those answers as soon as possible.
- Respondents Richard J. Frederick and Edwin L. Frederick ("the Fredericks") provided only Articles of Dissolution for SVA and LRF and one amendment to the Articles of Incorporation for SVA in answering Number 1 of the Requests for Production. Respondents Richard J. Frederick and Edwin L. Frederick failed to provide any documents explaining their responsibilities at SVA including, but not limited to, Articles of Incorporation, Bylaws, Annual Reports filed with the Secretary of State's Office, other Annual Corporate Reports, and Minutes from 1988 through 1998. The Fredericks'

answers to Number 1 of the Requests for Production fall far short of what Complainant requested. Furthermore, Respondents have already provided much of this information to Complainants in a February 22, 2002 facsimile from David O'Neill to Kelly Cartwright, who at that time was the Attorney of Record in this matter for Complainant. It is apparent from the Fredericks' answers to Number 1 of the Requests for Production and from the answers to the other items in the Request for Production that Respondents made no additional effort to answer the Requests to Produce. Complainant requests that Respondents make every effort to properly answer the Requests to Produce as soon as possible.

- In each of the Requests to Admit Facts that Complainants served on Respondents, respondents refuse to answer several of the Requests to Admit because "they involve an issue of law". Complainants posed no Requests to Admit Facts based on issues of law. Complainant requests that Respondents provide those answers as soon as possible.
- Each of the Respondents refuses to answer several of the Requests to Admit Facts because the Respondents claim not to understand the meaning of the terms "oily" "diesel fuel odor" and "oil surface sheen". In order to clarify these terms, Complainant provides the following additional definitions:
 - "Oily" means containing oil or other petroleum products.
 - "Diesel fuel odor" means smelling like diesel fuel.
 - "Oil surface sheen" means a thin layer of oil visible to the naked eye that forms on the surface of water in instances where oil has been spilled, placed, or leaked into that water.Now that Respondents understand the terms listed immediately above as defined by Complainant, Complainant requests that Respondents provide answers to the Requests to Admit where the terms appeared.
- No answers were provided to Complainant's Second Set of Interrogatories on Respondent SVA Co. Inc. Complainant requests that SVA provide those answers as soon as possible.
- No answers were provided to Complainant's Second Request for Production of Documents, Objects, and Tangible Things on Respondent SVA. Complainant requests that SVA provide those answers as soon as possible.

Please call me if you have any questions.

201(k) Letter to D. O'Neill
Page 3
July 24, 2003

Sincerely,



Joel J. Sternstein
Assistant Attorney General
Environmental Bureau
188 West Randolph, 20th Floor
Chicago, IL 60601
(312) 814-6986

cc. Ms. Carol Sudman - Illinois Pollution Control Board

DAVID S. O'NEILL, ATTORNEY AT LAW

5487 N. MILWAUKEE AVENUE • CHICAGO, ILLINOIS 60630-1249 • (773) 792-1333 • FAX: (773) 792-8358

Of Counsel with Dennis R. O'Neill, P.C.

ONeillChicago@HotMail.com

July 25, 2003

Exhibit B

Mr. Joel J. Sternstein, Esq.
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
188 W. Randolph, 20th Floor
Chicago, IL 60601

re: **Skokie Valley Asphalt Co., Inc. Reply to June 24, 2003 Letter**

Dear Mr. Sternstein:

Please accept this letter in response to your letter of July 24, 2003. The respondents' point-by-point responses to your letter are as follows:

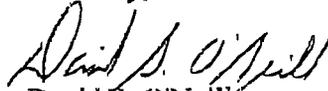
- The Respondents maintain their position that requests concerning financial information are not relevant. Issues concerning financial position and penalties will not be relevant unless and until there is a finding of violation against the Respondents.
- The Respondents maintain their position that the information requested concerning the sale of the entities and the present owners is not relevant. The Complainant's position that this information is relevant because it yields information concerning assets is incorrect for the same reasons stated in the first point.
- The Articles of Dissolution show that the company has been dissolved since 1998. The Respondents have discarded all of the corporate records in the normal course of business. Therefore, there are no records to be produced. I discussed this matter with the Respondents again yesterday to see if the records might be available through their attorneys, accountants or some other source and they informed me that no additional records were available through any source.
- I have reviewed all of the items that the Respondents did not answer because they involved issues of law. Upon review, the Respondents maintain their position and elect to neither admit or deny any of the items.
- The definitions supplied by the Complainant in the letter do not resolve the ambiguity of the requests for admission of facts. The Respondents did not test the materials and do not know if they contained oil or petroleum product. The Respondents also would not be able to differentiate the smell of diesel fuel from other products with similar odors and would not be able to determine if the sheen on the water was caused by oil or some other natural or artificial event. The Respondents are also not willing to depend on definitions supplied by the Complainant outside the scope of the Requests for Admission of Facts especially when

the definitions are not derived from a technical or dictionary source and are not necessarily consistent with the common meaning of the terms.

The answer to the "Complainant's Second of Interrogatories on Respondent SVA Co. Inc." has been completed but needs to be reviewed and executed by a representative of Skokie Valley Asphalt Co., Inc. I am presently trying to make arrangements to have a representative of Skokie Valley review and sign the Answer. Hopefully, it will be delivered to the Complainant on Monday July 28, 2003.

The answer to the "Complainant's Second Request for Production of Documents, Objects and Tangible Things on Respondent SVA Co. Inc." has been completed but needs to be reviewed and executed by a representative of Skokie Valley Asphalt Co., Inc. I am presently trying to make arrangements to have a representative of Skokie Valley review and sign the answer. Hopefully, it will be delivered to the Complainant on Monday July 28, 2003.

Sincerely,


David S. O'Neill

CERTIFICATE OF SERVICE

I, MITCHELL COHEN, an Assistant Attorney General, certify that on the 28th day of July, 2003, I caused to be served by First Class Mail the foregoing "COMPLAINANT'S SECOND MOTION TO COMPEL RESPONDENTS, SKOKIE VALLEY ASPHALT, CO., INC., EDWIN L. FREDERICK, JR. AND RICHARD J. FREDERICK, TO RESPOND TO DISCOVERY REQUESTS" to the parties named on the attached service list, by telefaxing and by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.



JOEL J. STERNSTEIN
Assistant Attorney General