

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD **RECEIVED**  
CLERK'S OFFICE

JUN 01 2005

STATE OF 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 Discovery Related to Attorneys' Fees and Costs**, with the Office of the Clerk of the Illinois Pollution Control Board, true and correct copies of which are 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 2001  
Chicago, Illinois 60601  
Tel: (312)814-2069

**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 Discovery Related to Attorneys' Fees and Costs**, were sent by First Class Mail, postage prepaid, to the persons listed on the Notice of Filing on June 1, 2005.

BY:   
MICHAEL C. PARTEE

It is hereby certified that the originals plus nine (9) copies of the foregoing were hand-delivered to the following person on June 1, 2005:

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

BY:   
MICHAEL C. PARTEE

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**COMPLAINANT'S RESPONSE TO RESPONDENTS' MOTION TO STRIKE  
DISCOVERY RELATED TO ATTORNEYS' FEES AND COSTS**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, hereby responds to Respondents', SKOKIE VALLEY ASPHALT CO., INC., EDWIN L. FREDERICK, JR., and RICHARD J. FREDERICK, Motion to Strike Complainant's Interrogatories, Document Requests and Deposition Notices to Respondents Regarding Complainant's Fee Petition. In Response, Complainant states as follows:

**I. INTRODUCTION**

**A. Relevant Case History**

On September 2, 2004, the Illinois Pollution Control Board ("Board") found, in relevant part, that "... respondents committed willful, knowing or repeated violations in this case." (Order at 6 (September 2, 2004).) Accordingly, the Board authorized Complainant to file a petition for attorneys' fees and costs. On September 17, 2004, Complainant filed its Attorneys'

Fees and Costs Petition.

On September 28, 2004, Respondents filed a pleading, titled "Initial Response to and Motion to Stay and/or Extend Time to Respond to Complainant's Petition for Attorneys' Fees and Costs" (hereafter referred to as "Initial Response"). In their Initial Response, Respondents made numerous, specific, unsupported, factual allegations regarding Complainant's Attorneys' Fees and Costs Petition. None of these allegations are a matter of record. Following are a few examples of Respondents' factual allegations:

- "The pay rate for the Complainant's attorneys is obviously fabricated." (Initial Response at ¶ 16.)
- "It is hard to justify a claim for attorneys' fees and cost [sic] by the Illinois Attorney General's office that is approximately ten times the amount that three Respondents combined paid to defend themselves against frivolous claims." (Initial Response at ¶ 17.)
- "It is also hard to justify an hourly fee for public service that is greater than the weighted-average fee charged by the Respondents' attorney even though the Respondents' attorneys [sic] fees include costs." (Id.)

On January 10, 2005, Respondents filed another pleading, titled "Motion to Establish Discovery Schedule and Motion for Extension of Time to Respond Under Board Order of December 16, 2004" (hereafter referred to as the "Discovery Schedule Motion").

On April 7, 2005, the Board granted Respondents' Discovery Schedule Motion and directed Respondents to file and serve limited and focused discovery requests by April 25, 2005, Complainant to file and serve answers to said discovery requests by May 25, 2005, and the Hearing Officer to proceed to hearing on the issue as expeditiously as possible. The April 7,

2005 Order did not address Respondents' allegations regarding Complainant's Attorneys' Fees and Costs Petition and did not prohibit Complainant from serving discovery requests regarding these allegations.

Thereafter, Respondents filed and served discovery requests by April 25, 2005, and Complainant filed and served its answers to said discovery requests by May 25, 2005. Complainant also filed and served discovery requests (interrogatories, document requests and deposition notices) by April 25, 2005. (See Exhibit A to this Response.) Complainant then sent Respondents a letter, dated May 24, 2005, pursuant to Rule 201(k) regarding Complainant's discovery requests, among other issues. (See Exhibit B to this Response.)

Rather than contact Complainant pursuant to Rule 201(k) or answer Complainant's discovery requests, on May 18, 2005, Respondents filed yet another pleading, titled "Respondents' Motion to Strike Complainant's Interrogatories, Document Request and Deposition Notices to Respondents Regarding Complainant's Fee Petition" (hereafter referred to as "Motion to Strike"). Respondents' Motion to Strike seeks to strike Complainant's interrogatories, document requests and deposition notices in their entirety on the grounds that the April 7, 2005 Order did not grant Complainant additional time to conduct discovery; that the Complainant "has not been authorized to conduct discovery and has no legal basis for which to do so;" and that "Respondents have no legal obligation to respond to Complainant's discovery requests and do not desire to do so on a voluntary basis." (Motion to Strike at ¶¶ 3, 6 and 7.)

## **II. RELEVANT LEGAL STANDARD**

The purpose of discovery is to enable attorneys to better prepare and evaluate their cases. See Carlson v. General Motors Corp., 289 N.E.2d 439, 449 (Ill. App. 1st Dist. 1972); see also Terry v. Fisher, 145 N.E.2d 588, 593 (Ill. 1957). In Carlson, the Court reiterated the purpose of

discovery: “the principle is now well established that the purposes of litigation are best served when each party knows as much about the controversy as is reasonably practicable.” 289 N.E.2d at 449. The Supreme Court Rules specifically provide that a party is entitled to full disclosure regarding “any matter relevant to the subject matter.” Ill. Sup. Ct. R. 201(b)(1). Courts have further held that discovery presupposes a range of relevance and materiality that includes not only what is admissible at trial, but also that which leads to what is admissible at the trial. See Krupp v. Chicago Transit Auth., 132 N.E.2d 532, 535 (Ill. 1956). The Illinois Supreme Court has expressed its preference for extensive disclosure through discovery. People v. Williford, 649 N.E.2d 941, 944 (Ill.App. 5th Dist.1995). *Thus, discovery for each party is favored and should not be denied without just cause. Id.*

### **III. RESPONDENTS’ MOTION TO STRIKE MUST BE DENIED**

#### **A. Complainant’s Discovery Requests Are Directly Relevant to the Numerous, Factual Allegations Made by Respondents**

Respondents introduced bald factual allegations into this proceeding concerning the reasonableness of Complainant’s Attorneys’ Fees and Costs Petition in light of the Respondents’ own attorneys’ fees and costs. Notwithstanding the irrelevance of Respondents’ allegations, *Respondents made these allegations, none of which are a matter of record*, and Complainant is entitled to full disclosure regarding the factual bases for them under the principles of discovery.

Discovery is a two-way street, and the standard for discoverability is extremely broad. It is a well-established principle that the purposes of litigation are best served when each party knows as much about the controversy as is reasonably practicable. Carlson, 289 N.E.2d at 449. Complainant (and the Board) knows *nothing* about Respondents’ attorneys’ fees and costs. Therefore, Complainant served timely, focused and limited interrogatories, document requests

and notices of deposition regarding Respondents' attorneys' fees and costs.

Respondents do not argue that Complainant's discovery requests seek privileged or confidential information such that Respondents need not answer. Respondents do not raise just cause for entirely striking Complainant's discovery requests. Instead, Respondents have introduced bald allegations into this proceeding and now seek to prevent Complainant from conducting any discovery into these allegations. Respondents' Motion to Strike rests solely on the April 7, 2005 Order, which does not support the extraordinary relief sought in their Motion to Strike. Indeed, that Order neither addresses Respondents' factual allegations nor prohibits Complainant's discovery requests. Respondents interpret this silence as support for their Motion to Strike. This interpretation is unfounded. Obviously, the April 7, 2005 Order does not contradict the basic discovery concept of full disclosure. For these reasons, Respondents' Motion to Strike must be denied.

**B. Complainant Will Be Severely Prejudiced If Respondents Do Not Answer Its Discovery Requests**

Respondents also do not argue that they will be prejudiced in any way by answering Complainant's discovery requests. On the other hand, Complainant will be severely prejudiced if Respondents do not fully disclose the factual bases for their allegations.

Without full disclosure, Complainant cannot be fully apprised of the factual bases for Respondents' allegations, none of which are a matter of record. Complainant will be unprepared and severely prejudiced at a hearing on the reasonableness of the Attorney's Fees and Costs Petition if such information is denied. Again, the purpose of discovery is to enable attorneys to better prepare and evaluate their cases. See Carlson, 289 N.E.2d at 449; Terry, 145 N.E.2d at 593. Absence full disclosure by Respondents, Complainant cannot be adequately apprised or

prepare for hearing, which will result in severe prejudice to Complainant. For these reasons, Respondents' Motion to Strike must be denied.

**C. Respondents Also Failed to Comply With Rule 201(k)**

Respondents also failed to comply with Rule 201(k). Neither of Respondents' attorneys even telephoned Complainant's attorneys prior to filing the Motion to Strike. (See Exhibit B at 3.) Had Respondents initiated a conference pursuant to Rule 201(k) to informally resolve differences, their frivolous Motion to Strike could have been avoided. To date, Complainant's attorneys still have not heard from Respondents' attorneys, despite Complainant's letter, dated May 24, 2005. (*Id.*) Respondents' failure to contact Complainant regarding a discovery dispute prior to filing yet another pleading violates Rule 201(k) and the letter and spirit of the April 7, 2005 Order, which expressly discouraged pleadings that are not designed to further a speedy and ultimate resolution of this case. (Order at 4 (April 7, 2005).) Both Rule 201(k) and the April 7, 2005 Order required an informal dispute resolution process between the parties prior to filing further pleadings. Respondents refused to participate in that process. This provides yet another basis to deny their Motion to Strike.

**IV. CONCLUSION**

Respondents placed their attorneys' fees and costs at issue. However, Respondents' bald allegations regarding their own attorneys' fees and costs are not a matter of record. Complainant (and the Board) knows nothing about Respondents' attorneys' fees and costs. Without just cause, Respondents now seek the extraordinary relief of a Board Order preventing full disclosure regarding the bases for their bald allegations.

Respondents have not objected to the substance of Complainant's discovery requests or claimed any privilege. Complainant will be severely prejudiced if it must proceed to hearing




without being adequately apprised of Respondents' allegations through limited and focused discovery. Discovery is a two-way street and Complainant is entitled to full disclosure under the rules of discovery. Contrary to the Respondents' contention, the April 7, 2005 Order does not support the extraordinary relief sought.

Lastly, Respondents also failed to comply with Rule 201(k) and the April 7, 2005 Order prior to filing yet another pleading with the Board. Had Respondents attempted to resolve their differences informally with Complainant prior to filing another pleading, their Motion to Strike could have been avoided. For each of these reasons, Respondents' Motion to Strike must be denied, and Respondents must be ordered to answer Complainant's discovery requests regarding attorneys' fees and costs.

Respectfully submitted,

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

BY: 

MICHAEL C. PARTEE (Tel 312/814-2069)  
MITCHELL L. COHEN (Tel 312/814-5282)  
Assistant Attorneys General  
Environmental Bureau/North  
188 West Randolph, Suite 2001  
Chicago, Illinois 60601

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RICHARD J. FREDERICK, Individually )  
and as Owner and Vice President of Skokie )  
Valley Asphalt Co., Inc., )

PCB 96-98

Respondents. )

NOTICE OF DISCOVERY

TO: See Certificate of Service

PLEASE TAKE NOTICE that I have today caused to be filed with the Office of the Clerk of the Pollution Control Board the **Complainant's Interrogatories, Document Requests and Deposition Notices to Respondents Regarding Complainant's Fee Petition**, true and correct copies of which are herewith served upon you.

Respectfully submitted,

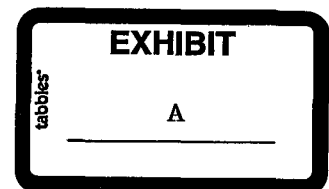
PEOPLE OF THE STATE OF ILLINOIS,  
by LISA MADIGAN, Attorney General  
of the State of Illinois

BY:



MICHAEL C. PARTEE  
Assistant Attorney General  
Environmental Bureau  
188 West Randolph Street, Suite 2001  
Chicago, Illinois 60601  
Tel: 312-814-2069

THIS FILING IS SUBMITTED ON RECYCLED PAPER



**CERTIFICATE OF SERVICE**

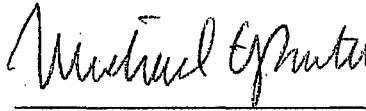
It is hereby certified that true and correct copies of the foregoing **Notice and Complainant's Interrogatories, Document Requests and Deposition Notices to Respondents Regarding Complainant's Fee Petition** were mailed, first class postage prepaid, to each of the following on April 25, 2005:

Carol Webb, Hearing Officer  
Illinois Pollution Control Board  
1021 N. Grand Ave. E.  
P.O. Box 19274  
Springfield, IL 62794-9274

David S. O'Neill, Esq.  
5487 N. Milwaukee Ave.  
Chicago, IL 60630

Michael B. Jawgiel, Esq.  
5487 N. Milwaukee Ave.  
Chicago, IL 60630

BY:



\_\_\_\_\_  
MICHAEL C. PARTEE

It is hereby certified that the original plus nine (9) true and correct copies of the foregoing **Notice and Complainant's Interrogatories, Document Requests and Deposition Notices to Respondents Regarding Complainant's Fee Petition** were also hand-delivered to the following on April 25, 2005:

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

BY:



\_\_\_\_\_  
MICHAEL C. PARTEE

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and as Owner and Vice President of Skokie )  
Valley Asphalt Co., Inc., )

PCB 96-98

Respondents. )

**COMPLAINANT'S INTERROGATORIES TO RESPONDENTS**  
**REGARDING COMPLAINANT'S FEE PETITION**

Pursuant to Illinois Pollution Control Board Rule 101.620, 35 Ill. Adm. Code 101.620,  
and Illinois Supreme Court Rule 213, Complainant, PEOPLE OF THE STATE OF ILLINOIS,  
requests that Respondents, SKOKIE VALLEY ASPHALT CO., INC., EDWIN L. FREDERICK,  
JR., and RICHARD J. FREDERICK, answer in writing, under oath, on or before May 25, 2005,  
the following interrogatories:

**I. INSTRUCTIONS**

1. The Respondents are required, in answering these interrogatories to furnish all information available to the Respondents or their attorneys, employees, agents, contractors, experts, or consultants, or which is ascertainable by reasonable inquiry whether or not the requested information might be available from another entity.

2. If an interrogatory has subparts, the Respondents are required to answer each part separately and in full.

3. If the Respondents cannot answer an interrogatory in full, they are required to answer all parts of the interrogatory to the extent possible and specify the reason for their inability to provide additional information.

4. As to each interrogatory, or portion thereof, identify in the answer every oral communication, document or writing which relates to the interrogatory or response, whether or not such identification is specifically requested by the interrogatory.

5. In answering each interrogatory, identify each document, person, communication or meeting which relates to, corroborates, or in any way forms the basis for the answer given.

6. The Respondents shall make the requested documents available for inspection and copying at the Office of the Illinois Attorney General, 188 West Randolph Street, Suite 2001, Chicago, Illinois.

7. Pursuant to Illinois Supreme Court Rule 213(e), the Respondents are requested to serve upon Complainant corrected, supplemented or augmented answers hereto, documents or other forms of information from whatever source, which arguably tends to show that Respondents' prior answers are, might be, were or might have been in a sense incorrect, incomplete, potentially misleading or less than fully responsive or truthful.

8. The Respondents shall supplement its answers and responses as new information and documents become available.

9. If dates are requested, the exact date should be given if possible. However, if the exact date cannot be determined due to absence or inadequacy of records, the best estimate should be given as to the interrogatory and labeled as such.

10. In construing these interrogatories:

- a. The singular shall include the plural and the plural shall include the singular; and
- b. A masculine, feminine or neuter pronoun shall not exclude the other genders.

11. If you encounter any ambiguity in construing any interrogatory or any definition or instruction pertaining to any interrogatory, set forth the matter deemed ambiguous and the construction chosen or used in responding to the interrogatory.

12. In producing documents, you are requested to furnish all documents or things in your actual or constructive possession, custody or control, or known or available to you, regardless of whether such documents or things are possessed directly by you or by your attorneys, agents, employees, representatives or investigators.

13. This discovery is deemed continuing, necessitating supplemental answers by the Respondent, or anyone acting on its behalf, when or if it obtains additional information which supplements or alters the answers now provided.

## II. CLAIMS OF PRIVILEGE

1. With respect to any interrogatory which Respondents refuse to answer on a claim of privilege, provide a statement signed by an attorney representing the Respondents setting forth for each such assertion of privilege:

- a. The name and job title of every person involved in the conversation or communication;
- b. The nature of the information disclosed;
- c. All facts relied upon in support of the claim of privilege;

- d. All documents related to the claim of privilege;
- e. All events, transactions or occurrences related to the claim of privilege;

and

- f. The statute, rule or decision which is claimed to give rise to the privilege or the reason for its unavailability.

If the objection relates to only part of an interrogatory, the balance of the interrogatory should be answered in full.

2. If you claim the attorney-client privilege or any other privilege is applicable to any document, with respect to that document:

- a. State the date of the document;
- b. Identify each and every author of the document;
- c. identify each and every other person who prepared or participated in the preparation of the document;
- d. identify each and every person for whom the document was received;
- e. identify each and every person from whom the document was received;
- f. State the present location of the document and all copies thereof;
- g. Identify each and every person having custody or control of the document and all copies thereof; and
- h. Provide sufficient further information concerning the document to explain the claim of privilege and to permit adjudication of the propriety of that claim.

### III. DEFINITIONS

1. "Attorney fee issue" means the attorney fee issue referenced in the Board's Order in this case, dated April 7, 2005, which involves Respondents' objection to Complainant's petition for attorney's fees and costs.
2. This "case" encompasses the first Violation Notice from the Illinois EPA until the present time.
3. "Communication" shall mean, without limitation, any and all forms of transferring information, including discussions, conversations, meetings, conferences, interviews, negotiations, agreements, understandings, inquiries, correspondence, documents, or other transfers of information whether written or oral or by any other means, and includes any document which abstracts, digests, transcribes or records any communication.
4. "Document" shall be construed in its customary broad sense and shall include, but is not limited to, the original and any non-identical copy, whether different from the original because of notes made on said copy or otherwise, or any agreement; bank record or statement; book of account, including any ledger, sub-ledger, journal, or sub-journal; brochure; calendar; chart; check; circular; communication (intra- or inter-company or governmental entity or agency or agencies); contract; copy; correspondence; diary; draft of any document; graph; index; instruction; instruction manual or sheet; invoice; job requisition; letter; license; manifest; manual; memorandum; minutes; newspaper or other clipping; note; note book; opinion; pamphlet; paper; periodical or other publication; photograph; print; receipt; record; recording report; statement; study; summary including any memorandum, minutes, note record, or summary of any (a) telephone, videophone or intercom conversation or message, (b) personal conversation or interview, or (c) meeting or conference; telegram; telephone log; travel or



expense record; voucher; worksheet or working paper; writing; any other handwritten, printed, reproduced, recorded, typewritten, or otherwise produced graphic material from which the information inquired of may be obtained, or any other documentary material of any nature, in the possession, custody or control of Respondent.

5. "Identification" or "identify" shall mean:

- a. As to an individual, stating his or her:
  - i. Full and customarily used names;
  - ii. Present business and residence addresses;
  - iii. Business or profession during the relevant time period;
  - iv. Every office, title, or position held during the relevant time period;  
and
  - v. Every employer during the relevant time period.
- b. As to any person other than an individual, stating:
  - i. Its legal name and any other name used by it;
  - ii. The form or manner of its organization (*e.g.*, partnership, corporation, etc.); and
  - iii. The state of its incorporation (if it is incorporated) and the address of its principal place of business.
- c. As to a document, stating:
  - i. The date of its creation, execution, and receipt;
  - ii. Its author or signatory;
  - iii. Its addressee and any other recipient;
  - iv. Its type or nature (*e.g.*, letter, memorandum, etc.);

- v. The identity of the custodian;
  - vi. The identity of the document; and
  - vii. The present location of the document.
- d. As to any event, incident, conversation, transaction or occurrence, stating:
- i. The date;
  - ii. The place where it took place and the manner of its occurrence;
  - iii. Identification of all the participants;
  - iv. Its purpose and subject matter; and
  - v. A description of what transpired.

6. The term "knowledge" means first hand information and/or information derived from any other source, including hearsay.

7. "Person" shall include, but is not limited to, any natural person; business or corporation, whether for profit or not; firm, partnership, or other non-corporate business organization; charitable, religious, educational, governmental, or other non-profit institution, foundation, body, or other organization; or employee, agent, or representative of any of the foregoing.

8. "Or" shall mean and/or wherever appropriate.

9. "Related to" or "relating to" shall mean anything which, directly or indirectly, concerns, consists of, pertains to, reflects, evidences, describes, sets forth, constitutes, contains, shows, underlies, supports, refers to in any way, is or was used in the preparation of, is appended to, is legally logically or factually connected with, proves, disproves, or tends to prove or disprove.

10. "Relied upon" shall mean being or having been depended upon or referred to or being or having been arguably appropriate for such reliance.

11. "Respondents" shall mean SKOKIE VALLEY ASPHALT CO., INC., EDWIN L. FREDERICK, JR., and RICHARD J. FREDERICK D'Angelo Enterprises, Inc., and any of Respondents' attorneys, employees, agents, representatives, successors or assigns, or any other person acting or believed by Respondents to have acted on their behalf.

#### IV. INTERROGATORIES

##### Interrogatory #1

Identify the individual(s) answering these interrogatories on behalf of the Respondents, including his relationship to the Respondents, and how long he has been associated with the Respondents. Specify the particular interrogatories to which each such person contributed.

Answer:

##### Interrogatory #2

With respect to any witnesses that Respondents may call at a hearing on the attorney fee issue, state the following:

- a. The name, address and employer of each witness;
- b. A summary of the relevant facts within the knowledge of or to which said witness will testify; and
- c. A list of all documents or photographs which any such witness relied upon, will use or which Respondents may introduce into evidence in connection with the

testimony of said witness.

Answer:

**Interrogatory #3**

Identify any and all opinion witnesses that Respondents interviewed and/or expects to call at a hearing on the attorney fee issue. Specify:

- a. The subject matter on which the opinion witness is expected to testify as well as the conclusions, opinions and/or expected testimony of any such witness;
- b. The qualifications, including, but not limited to, the opinion witness' educational background, practical experience in the area in which he is expected to testify, any articles or papers he has written, any and all seminars and post graduate training he has received, his experience, if any, as a teacher or lecturer, and his professional appointments and associations;
- c. The identity of each document examined, considered, or relied upon by him to form his opinions;
- d. All proceedings in which each opinion witness has previously testified as an opinion witness;
- e. Any and all reports of the opinion witness; and
- f. Whether or not each such person viewed, examined, inspected or conducted any tests at or concerning the site in issue and, if so, state:
  - i. The date of each such viewing, examining, inspecting or testing;

- ii. The location at which each such viewing, examining, inspecting or testing took place;
- iii. The nature of each such viewing, examining, inspecting or testing (*i.e.*, visual, photographic, etc.);
- iv. The names, addresses, titles, and capacities of all persons present during each such viewing, examining, inspecting or testing; and
- v. Whether notes, calculations, reports or other documents were prepared or made during or as a result of any such examination, inspection or test, and identify same.

Answer:

**Interrogatory #4**

For each attorney that has provided legal services to Respondents related to this case, list all of their hours spent on such services, as well as the corresponding activity performed, regardless of whether all such hours and activities were actually billed to Respondents.

Answer:

**Interrogatory #5**

For each attorney that has provided legal services to Respondents related to this case, describe the attorney fee arrangement with Respondents and as between attorneys in this case (e.g., flat fee arrangement, hourly billing arrangement).

Answer:

**Interrogatory #6**

For each attorney that has provided legal services to Respondents related to this case, list all of their hours spent on such services, as well as the corresponding activity performed, that were billed to Respondents.

Answer:

**Interrogatory #7**

For each attorney that has provided legal services to Respondents related to this case, list their hourly billing rate while providing such services, and list any changes in hourly billing rates during the pendency of this case.

Answer:

**Interrogatory #8**

Itemize all costs, on a daily basis, that were billed to Respondents and/or accrued by Respondents' attorneys related to this case.

Answer:

**Interrogatory #9**

For each attorney that has provided legal services to Respondents related to this case, describe their education and legal experience and expertise relevant to this case.

Answer:

**Interrogatory #10**

For each attorney that has provided legal services to Respondents related to this case, list their hourly rate billed in all other similar cases during the same time frame of this case.

Answer:

**Interrogatory #11**

Identify the name, address and telephone number for the attorney(s) that will be representing attorneys David S. O'Neill and Michael B. Jawgiel when they give deposition and hearing testimony on the attorney fee issue.

Answer:

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  
188 West Randolph Street, Suite 2001  
Chicago, Illinois 60601  
Tel: 312-814-2069



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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Complainant, )

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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. )

RECEIVED  
CLERK'S OFFICE  
APR 25 2005  
STATE OF ILLINOIS  
Pollution Control Board

PCB 96-98

**COMPLAINANT'S DOCUMENT REQUESTS TO RESPONDENTS**  
**REGARDING COMPLAINANT'S FEE PETITION**

Pursuant to Illinois Pollution Control Board Rule 101.620, 35 Ill. Adm. Code 101.620, and Illinois Supreme Court Rule 214, Complainant, PEOPLE OF THE STATE OF ILLINOIS, requests that Respondents, SKOKIE VALLEY ASPHALT CO., INC., EDWIN L. FREDERICK, JR., and RICHARD J. FREDERICK, produce, under oath, on or before May 25, 2005, following documents for inspection and copying at the Office of the Attorney General, 188 West Randolph Street, Suite 2001, Chicago, Illinois:

**I. INSTRUCTIONS**

1. If any requested document is not or cannot be produced in full, produce it to the extent possible, indicating with particularity what documents or portion of any such documents is not or cannot be produced and the reason therefore.

2. If no documents ever existed that address the subject of any request, please state so affirmatively for each applicable request.
3. If a document responsive to any request existed in the past, but does not currently exist, Respondent is instructed to provide all available information about the author and contents of that document and the circumstances of its destruction.
4. In producing documents, you are requested to produce the original of each document requested together with all non-identical copies and drafts of that document.
5. All documents should be produced in the same order as they are kept or maintained by you.
6. All documents should be produced in a file, folder, envelope, or other container in which the documents are kept or maintained by you. If for any reason the container cannot be produced, please produce copies of all labels or other identifying markings.
7. Documents attached to each other should not be separated.
8. Documents not otherwise responsive to this request shall be produced if such documents refer to, relate to, or explain the documents called for by this request and constitute routing slips, transmittal memoranda or letters, comments, evaluations, or similar documents.
9. Each document request should be construed and responded to independently from each other request. The scope of any requests should not be construed to limit or narrow the scope of any other request.
10. Complainant incorporates by reference herein the Instructions, Claims of Privilege and Definitions sections of Complainant's Interrogatories to Respondent Regarding Complainant's Fee Petition.

## II. DOCUMENT PRODUCTION REQUEST

1. A daily accounting of all hours, as well as the corresponding activity performed, for each attorney that has provided legal services to Respondents related to this case, regardless of whether all such hours and activities were actually billed to Respondents.
2. All time records for each attorney that has provided legal services to Respondents related to this case.
3. A daily accounting of all costs incurred by each attorney that has provided legal services to Respondents related to this case, regardless of whether all such costs were actually billed to Respondents.
4. All invoices for attorney's fees from Respondents' attorneys related to this case.
5. All invoices for costs incurred by each of Respondents' attorneys related to this case.
6. A daily accounting of all costs directly incurred by Respondents related to this case.
7. All documents identified, relating to, and/or referred to in Respondents' or Respondents' attorneys' answers to Complainant's Interrogatories to Respondent Regarding Complainant's Fee Petition.

Respectfully submitted,

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

BY: 

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MICHAEL C. PARTEE

Assistant Attorney General

Environmental Bureau

188 West Randolph Street, Suite 2001

Chicago, Illinois 60601

Tel: 312-814-2069

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. )

RECEIVED  
CLERK'S OFFICE

APR 25 2005

STATE OF ILLINOIS  
Pollution Control Board

PCB 96-98

**COMPLAINANT'S DEPOSITION NOTICES TO RESPONDENTS**  
**REGARDING COMPLAINANT'S FEE PETITION**

To: See Certificate of Service

PLEASE TAKE NOTICE that counsel for Complainant shall, pursuant to Illinois  
Pollution Control Board Rule 101.622, 35 Ill. Adm. Code 101.622, and Illinois Supreme Court  
Rule 206, take the discovery depositions of the following persons commencing on the dates and  
times indicated at the Attorney General's Office, Environmental Bureau North, 188 West  
Randolph Street, Suite 2001, Chicago, Illinois 60601:

1. David S. O'Neill beginning at 9:30 a.m. on June 16, 2005; and
2. Michael B. Jawgiel beginning at 1:30 p.m. on June 16, 2005.

Respectfully submitted,

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

BY:



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MICHAEL C. PARTEE  
Assistant Attorney General  
Environmental Bureau  
188 West Randolph Street, Suite 2001  
Chicago, Illinois 60601  
Tel: 312-814-2069



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

May 24, 2005

Sent Via First Class Mail

Mr. David S. O'Neill, Esq.  
5487 North Milwaukee Avenue  
Chicago, Illinois 60630-1249

Re: **Discovery – People v. Skokie Valley Asphalt Co., Inc., et al., PCB 96-98**

Dear Mr. O'Neill:

I enclose Complainant's answers to Respondents' requests to admit facts, interrogatories and document requests pertaining to the petition for fees and costs. The purpose of this letter is to initiate a conference pursuant to Illinois Supreme Court Rule 201(k) to resolve any potential differences over Respondents' requests. This letter also addresses Respondents' deposition notice for former Assistant Attorney General Bernard Murphy. Lastly, this letter addresses Respondents' failure to comply with Rule 201(k) prior to filing their Motion to Strike Complainant's discovery requests pertaining to the petition for fees and costs.

**Complainant's Three Main Objections to Respondents' Discovery Requests**

Categorically, we object to Respondents' requests for three main reasons. First, and most troubling, your discovery requests contain inflammatory allegations and insinuations of perjury, unethical conduct, over-billing and other improprieties by the Attorney General's Office, particularly by former Assistant Attorney General Joel Sternstein. None of these allegations and insinuations has any thread of truth. These are attacks on Complainant's attorneys and have no application to any issue in the case. It is truly a sad chapter in any case when an opposing attorney resorts to this sort of bully tactic.

Properly conducted, this should be a dignified procedure. As attorneys, we are officers of the court – in this case the Board – and we owe a professional duty to the Board and to each other. Your allegations and insinuations clearly exceed all bounds. In any other case, we would file a motion for a protective order and sanctions. However, given the letter and spirit of the Board's last order, dated April 7, 2005, which expressly directed us to resolve this in a speedy manner, we decided to write you instead. Frankly, we hope that the problem ends with this letter. The Attorney General's Office has acted in an above-board and professional manner in this case. We expect the same in return. I know that the Board is loathe to hear another discovery dispute,

EXHIBIT

B

but we will bring this problem to the Board's attention if it continues.

Second, Complainant objects to Request to Admit Fact Nos. 3, 11, 12, 13, 15, 16, 17, 18, 19, 20, and 37, Interrogatory No. 14, and Document Request Nos. 6, 7, 10, 11, 12, 17 and 21 on relevance grounds and because they violate the Board's Order, dated April 7, 2005. These requests seek information regarding Complainant's request for AAG Sternstein's fees, which were previously disallowed by the Board. The Board expressly ordered that "the parties are not to address [AAG Sternstein's fees] in conducting discovery or at hearing." (Id.) For these reasons, Complainant does not answer these particular requests.

Third, Complainant objects to Request to Admit Fact Nos. 4, 5, 6, 8, 9, 27, 28, and 30, Interrogatory Nos. 16 and 23(i), and Document Request Nos. 5, 7, 8 and 9 on relevance and privacy grounds because they seek information regarding personal compensation to the Assistant Attorneys General in this case. An Assistant Attorney General's personal compensation has no bearing on the petition for fees and costs. These requests regarding personal compensation are harassing and made in bad faith, and are not designed to resolve this dispute in a speedy and final manner. Your transparent attempt to develop the argument that our billing rate does not reflect our salary is not only irrelevant under the legal standard, but it is so vastly oversimplified as to have no validity. You fail to recognize that our billing rate would not reflect our salary because employee benefits, employer's liability insurance, overhead costs (rent, office equipment, support staff, etc.) and many, many other distributions and costs, are also included in that billing rate. You also fail to acknowledge that, as governmental attorneys, our billing rate is already well below that of a similarly experienced environmental attorney in private practice in downtown Chicago. That said, this is not an invitation to audit the Attorney General's Office. The point is that no attorney "takes home" his hourly billing rate, so his salary is irrelevant to the reasonableness of his requested fees.

We did not locate any Board or court precedent where personal compensation was allowed or even considered in determining the reasonableness of a petition for fees and costs. It is simply not a factor considered by the Board or courts. The Board has previously found that an hourly of \$150.00 per hour is reasonable for an Assistant Attorney General. See e.g., People v. J & F Hauling, Inc., PCB 02-21 (May 1, 2003). Therefore, the *only* relevant issue is the reasonableness of the amount of hours billed and the costs incurred. For these reasons, Complainant does not answer these particular requests.

### **Respondents' Deposition Notice for Former AAG Murphy**

We received Respondents' deposition notice for former AAG Murphy's deposition on June 24, 2005. Please be advised that AAG Murphy left the Attorney General's Office (on good terms) last year. If you need to depose him, please contact him directly. Mr. Murphy now serves as Assistant General Counsel, Department of Law, City of Chicago Board of Education, 125 South Clark Street, 7th Floor, Chicago, Illinois.



**Respondents' Failure to Comply With Rule 201(k)**  
**Prior to Filing Their Motion to Strike**

Lastly, you failed to comply with Rule 201(k) prior to filing Respondents' Motion to Strike Complainant's discovery requests. We did not even receive a telephone call from you (or Michael Jawgiel) in this regard. Had you contacted us, we may have been able to resolve this dispute informally and without further, needless litigation.

We served you with discovery requests because you made numerous, factual allegations concerning the petition for fees and costs that are not a matter of record. As one example, in paragraph 17 of "Respondents' Initial Response To And Motion To Stay And/Or Extend Time To Respond To Complainant's Petition For Attorneys' Fees And Costs," you alleged the following:

It is hard to justify a claim for attorneys' fees and cost [sic] by the Illinois Attorney General's office that is approximately ten times the amount that three Respondents combined paid to defend themselves against frivolous claims.

Respondents' legal fees and costs are not a matter of record. Your dispute of the petition for fees and costs is based, in part, on a comparison between Complainant's and Respondents' fees and costs and we are entitled to conduct discovery on it. You also made numerous other factual allegations that are not a matter of record. Furthermore, there is no prejudice or hardship to you in answering our discovery requests. On the other hand, we cannot be adequately apprised of your allegations if you refuse to answer our limited and focused discovery requests. In order to resolve this dispute, we invite you to contact us pursuant to Rule 201(k).

Sincerely,



Michael C. Partee  
Assistant Attorney General  
Environmental Bureau  
188 West Randolph Street, Suite 2001  
Chicago, Illinois 60601  
Tel: (312)814-2069  
Fax: (312)814-2347  
E-Mail: mpartee@atg.state.il.us

cc: Carol Webb, Hearing Officer  
Michael B. Jawgiel, Esq.