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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

DEC 08 2004

STATE OF ILLINOIS
Pollution Control Board

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.)

No. PCB 96-98

NOTICE OF FILING

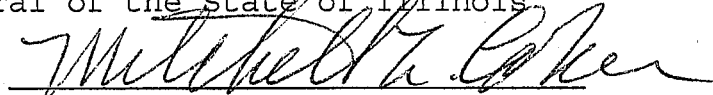
TO: Mr. David S. O'Neill
5487 N. Milwaukee Ave.
Chicago, IL 60630

Ms. Carol Webb, Hearing Officer
Illinois Pollution Control Board
600 S. 2nd Street, Suite 402
Springfield, Illinois 62704

PLEASE TAKE NOTICE that the Complainant, PEOPLE OF THE STATE OF ILLINOIS, filed with the Illinois Pollution Control Board, **COMPLAINANT'S RESPONSE TO MOTION TO RENEW RESPONDENTS' MOTION TO STAY AND/OR EXTEND TIME TO RESPOND TO COMPLAINANT'S PETITION FOR ATTORNEYS' FEES AND COSTS**, a true and correct copy of which is attached hereto and is hereby served upon you.

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

BY:



MITCHELL L. COHEN
Assistant Attorney General
Environmental Bureau
188 West Randolph, 20th Floor
Chicago, IL 60601
(312) 814-5282

Dated: December 8, 2004

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No. PCB 96-98

Enforcement

COMPLAINANT'S RESPONSE TO
 MOTION TO RENEW RESPONDENTS' MOTION TO STAY
 AND/OR EXTEND TIME TO RESPOND TO
COMPLAINANT'S PETITION FOR ATTORNEYS' FEES AND COSTS

Complainant, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, responds to Respondents' "Motion To Renew Respondents' Motion To Stay And/Or Extend Time To Respond To Complainant's Petition For Attorneys' Fees and Costs" as follows:

1. The Board notes in their October 21, 2004 ("October Order"), Order that on September 28, 2004, Respondents, Skokie Valley Asphalt, Inc. ("SVA"), Edwin Frederick, and Richard Frederick, " . . . filed a response to and motion to stay and/or extend time to responds to the petition for attorney fees and

costs."¹ In that same introductory paragraph the Order implies that the Board denied Respondents' Motion stating that "[t]he Board . . . denies the additional relief requested by respondents."² If, in fact, the Board already denied Respondents' Motion, then the People object to renewing the Motion. If the decision was already made, then Respondents' Motion to Renew " . . . is a thinly disguised attempt to file a motion for reconsideration of a Board order" and such motion is inappropriate.³ Equally important to consider is the fact that this case is now over nine years old.⁴ It was tried in October 2003.⁵ The Board issued its Opinion and Order in September 2004.⁶ Under these circumstances, there is no need to go to the time and expense to "renew" or "reconsider" matters already decided.

2. However, later in the same October Order the Board states it cannot rule on Respondents' Motion as well as the People's

¹ People v. Skokie Valley Asphalt, Co., Inc., Edwin L. Frederick, Jr., and Richard J. Frederick: PCB 96 - 98 (October 21, 2004) at 1.

² Id.

³ 35 Ill. Adm. Code 101.520.

⁴ Initial filing November 3, 1995.

⁵ October 27 and 28, 2003; see Board's Docket, or case activity.

⁶ See Board's Docket, or case activity.

Petition for fees and costs.⁷ "Thus, the Board no longer has jurisdiction of this case. The Board cannot rule on the Petition seeking attorney fees and the accompanying issues unless it regains jurisdiction."⁸

3. If the Board has not ruled on Respondents' Motion, and from the language cited above it appears that the Board has not, then Respondents' Motion to Renew is unnecessary since it, and the Petition for Costs and Fees, are pending before the Board. Though the October Order does not specifically state that rulings on the Motion and Petition are reserved until such time that the Board regains jurisdiction, there is nothing to suggest that Respondents' Motion was dismissed and either needs to be filed again, or renewed. Respondents do not cite any authority suggesting that this step, a motion to renew, is necessary or required in order for the Board to rule on the pending motion, and the People cannot find within the Board's procedural regulations where such a motion might be needed.

4. Respondents surprisingly do not attach a copy of their Motion as an exhibit, or cite to the Motion so that it can be adopted by reference. Since the People do not believe such a Motion to Renew is necessary, the failure to include, or adopt

⁷ People v. Skokie Valley Asphalt, Co., Inc., Edwin L. Frederick, Jr., and Richard J. Frederick: PCB 96 - 98 (October 21, 2004) at 2.

⁸ Id.

"Respondents' Initial Response to and Motion to Stay and/or Extend Time to Respond to Complainant's Petition for Attorneys' Fees and Costs" is not an issue.

5. Should, however, a Motion to Renew be required in order for the Board to consider "Respondents' Initial Response to and Motion to Stay and/or Extend Time to Respond to Complainant's Petition for Attorneys' Fees and Costs", then the People have no objection to Respondents adopting and incorporating by reference, the document filed September 28, 2004, without any additional procedure, or filing.

6. Likewise, in an overabundance of caution, the People by reference adopt and incorporate "Complainant's Response to Respondents' Motion to Stay and/or Extend Time to Respond to Complainant's Petition for Attorneys' Fees and Costs" filed October 12, 2004, (as opposed to filing a Motion to Renew Complainant's Response) in this Response for the Board's consideration.

7. Also, if a Motion to Renew is a necessary step in order for the Board to consider matters pending before Respondents' Petition for Review was filed, the People respectfully request additional time to file such Motion so that the Board may consider "Complainant's Petition for Attorneys' Fees and Costs" which forms the basis for "Respondents' Initial Response to and Motion to Stay and/or Extend Time to Respond to Complainant's

Petition for Attorneys' Fees and Costs".

WHEREFORE, Complainant, People of the State of Illinois, requests this Board either:

1. Deny Respondents' Motion to Renew if the Board has already decided "Respondents' Initial Response to and Motion to Stay and/or Extend Time to Respond to Complainant's Petition for Attorneys' Fees and Costs" in the October 21, 2004, Order; or

2. If the Board did not decide "Respondents' Initial Response to and Motion to Stay and/or Extend Time to Respond to Complainant's Petition for Attorneys' Fees and Costs" in the October 21, 2004, Order, then rule that such Motion to Renew is not necessary for the Board to rule on pending matters now that it has regained jurisdiction in this case; or

3. If such Motion to Renew is a necessary step for the Board to consider matters filed before and at the same time as Respondents filed their Petition for Review, then allow Respondents to adopt and incorporate "Respondents' Initial Response to and Motion to Stay and/or Extend Time to Respond to Complainant's Petition for Attorneys' Fees and Costs" without further procedure, or filing, accept this Response which incorporates "Complainant's Response to Respondents' Motion to Stay and/or Extend Time to Respond to Complainant's Petition for Attorneys' Fees and Costs" for consideration in ruling on Respondents' underlying motion, and grant Complainant additional

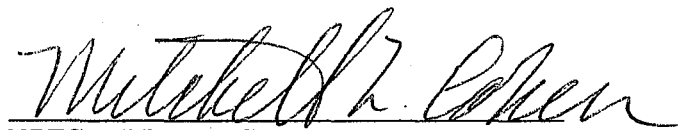
time to file a Motion to Renew Complainant's Petition for
Attorneys' Fees and Costs.

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) 814-5282

CERTIFICATE OF SERVICE

I, MITCHELL L. COHEN, an Assistant Attorney General, do certify that I caused to be mailed this 8th day of December, 2004, the foregoing COMPLAINANT'S RESPONSE TO MOTION TO RENEW RESPONDENTS' MOTION TO STAY AND/OR EXTEND TIME TO RESPOND TO COMPLAINANT'S PETITION FOR ATTORNEYS' FEES AND COSTS and NOTICE by first-class mail in a postage prepaid envelope and depositing same with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois, 60601.


MITCHELL L. COHEN