

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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APR 25 2005

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 )

PCB 96-98  
Enforcement

STATE OF ILLINOIS  
Pollution Control Board

**RESPONDENTS' FIRST REQUEST FOR ADMISSION OF FACTS  
REGARDING ATTORNEYS' FEES, COSTS AND EXPENSES**

The Respondents, 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., by and through their attorney, David S. O'Neill, pursuant to Illinois Supreme Court Rule 213, herein respectfully, serve upon Complainant the following request for admission of facts, the responses to which are to be delivered by May 25, 2005, to the offices of David S. O'Neill, 5487 N. Milwaukee Avenue, Chicago, Illinois 60630-1249.

**INSTRUCTIONS**

1. If a claim of privilege is alleged with respect to any request for admission and the Complainant refuses to answer based on the claim of privilege, the Complainant is instructed to provide a statement signed by an attorney representing the Complainant setting forth:
  - a. the nature of the claim of privilege
  - b. the statute, rule or decision which is claimed to give rise to the claim of privilege;

- c. all facts relied upon in support of the claim of privilege;
- d. an identification of all documents related to the claim of privilege.

### DEFINITIONS

The following definitions are to be used in interpreting and responding to this request regardless of whether the definition occurs before or after the use of the term defined:

Each request herein must be interpreted and responded to in light of the following definitions regardless of whether the definition occurs before or after the use of the term:

- A. "Respondents" means the parties identified as Respondents in the title of this request.
- B. "State" means the Plaintiff, People of the State of Illinois and includes each of its departments, agencies, agents, servants, employees and experts.
- C. "Identify" means fully state and enumerate:
  - 1. As to person: state the full name, title, relation to the person to which this request is directed and the business address of such person;
  - 2. As to document: state the particular document (e.g. study, letter, map, etc. as detailed below), its date, title, author, addressee, publisher and any other basis for identification of such record. Also, state the person or body having charge of the document, the address and room number where such is physically located, the particular file containing such document and any other information which would facilitate a search for such record; and
  - 3. As to action or reason: state each action taken, the name of the person taking such action and/or making the determination, the date, time and location of said action and/or determination and the detailed nature of that act and identify all witnesses thereto and Related Documents.
- D. "In the possession of" means in the physical possession of, or under or subject to the control of or available to as a matter of right, the person or body named or any person or body subject to the control or direction of such person or body in regard to the record or item named.
- E. "Related to, Relating to, Concerning, Pertaining to, Relevant to, or Regarding" means consist of, refer to, reflect or be in any way logically, factually or conceptually connected with the matter discussed directly or indirectly.
- F. "Document" means all copies of all written or graphic matter of every kind and description, however produced or reproduced, whether relating to facts, opinion, event, recollection or intention, whether draft or a final, original or a reproduction including, but not limited to: canceled checks, ledgers, audits, diaries, calendars, photographs, notes, outlines, requisitions, reports, summaries, invoices, witness statements, bills of lading, orders, receipts, bank records, laboratory analysis,

computations, models (whether computer generated or otherwise), letters, statements, correspondence, memoranda of telephone or personal conversations or other communications, memoranda of intra or inter office communications, bulletins, electronically stored information including, without limitation, such information which constitutes a complete file, a portion of file and without exception, any other computer or retrievable data (whether encoded, taped, or coded electrostatically, electromagnetically or otherwise); and any other Documents functionally similar to the foregoing, however described in the possession, custody or control of the Party to which this request is directed.

- G. If a request relates to reports, studies or like Documents, the request shall include all drafts, outlines, computations, notes, work paper and other information utilized or necessary to prepare the report, study or like document.
- H. "Communication" means all inquiries, discussions, conversations, negotiations, agreements, understandings, meetings, telephone conversations, letters, notes, telegrams, and all other forms of oral or written intercourse.
- I. "And, or, and/or" means and, as well as or, shall be construed either disjunctively or conjunctively, as necessary to bring within the scope of this requested information and/or Documents which might otherwise be construed to be outside its scope.
- J. "Plural/Gender" as used herein, means any use of the singular shall include the plural and the singular. As used herein, any word connoting the masculine or feminine gender shall include the masculine, feminine and the non-gender, and the use of the non-gender shall include both the masculine and the feminine.
- K. "Non-Disclosure" means with respect to information which is withheld or not disclosed as requested pursuant hereto, due to a claim of privilege or non-disclosure, a statement shall be provided by counsel setting forth as to each such withholding or non-disclosure:
  - 1. A brief description of the nature and subject matter and the reason for withholding or non-disclosure of the information; and
  - 2. The statute, rule, decision or other basis which is claimed to give rise to the privilege, or any other justification for the non-disclosure or withholding of the requested information.
- L. "Subject Matter of this Case" means in any manner conceptually Related to questions of fact or law in this case regardless of the point in time and whether they are Related to a motion, complaint, answer, counterclaim, cross claim, affirmative defenses or other pleadings whether in original or amended form.
- M. "Knowledge" means information either favorable or unfavorable to the position of the Person at whom this request is directed.
- N. "Person" ("People") includes natural persons, partnerships and governmental and private entities whether incorporated or otherwise but does not include the Respondents, its agents, employees or experts.

- O. "Facility" means any land or structures at any time used to conduct any operation of the Respondents which is Related to the Subject Matter of this Case and includes, but is not limited to, any former and/or current plant as necessary to broaden the request and the scope of the required response.
- P. "Board" shall mean the Illinois Pollution Control Board and includes each of its departments, agencies, agents, servants, employees and experts..
- Q. "Illinois Attorney General's Office" shall mean the Office of the Illinois Attorney General and includes each of its departments, agencies, agents, servants, employees and experts..
- R. "Attorneys Claiming Fees" shall include all employees of the State that are claiming fees and cost matter and will include, but is not necessarily limited to Bernard Murphy and Mitchell Cohen.

### FACTS

Fact No. 1

At all times relevant to the request for attorneys' fees, cost and expenses, attorney Mitchell Cohen was an assistant Attorney General employed by the State and the Illinois Attorney General's Office.  
Response:

Fact No. 2

At all times relevant to the request for attorneys' fees, cost and expenses, attorney Bernard Murphy was an assistant Attorney General employed by the State and the Illinois Attorney General's Office.  
Response:

Fact No. 3

At all times relevant to the request for attorneys' fees, cost and expenses, attorney Joel Sternstein was an assistant Attorney General employed by the State and the Illinois Attorney General's Office.  
Response:

Fact No. 4:

The Attorneys Claiming Fees are paid for their services by the State at a salary as opposed to an hourly rate.  
Response:

Fact No. 5:

Taxpayers, including the Respondents, pay the Attorneys Claiming Fees through their taxes at a non-hourly rate salary.

Response:

Fact No. 6:

The Attorneys Claiming Fees have, in fact, already determined their pay rate through their employment relationship with the State

Response:

Fact No. 7:

The Attorneys Claiming Fees were not precluded from working on other matters as a result of their acceptance of responsibilities for this matter.

Response:

Fact No. 8:

The Attorney Claiming Fees are assigned to the Environmental Bureau of the Illinois Attorney General's Office and as a result have experience and expertise in the field of Illinois environmental law. and their salary reflects this expertise and experience.

Response:

Fact No. 9:

The Attorneys Claiming Fees salary reflect the fact that they are assigned to the Environmental Bureau of the Illinois Attorney General's Office and their experience and expertise in the field of Illinois environmental law.

Response:

Fact No. 10:

This case involves legal issues and procedures with which the Attorneys Claiming Fees are supposed to have expertise and experience and does not involve novel and difficult issues.

Response:

Fact No. 11:

The assignment of attorney Sternstein to this case, at a time when he had little or no experience and expertise in environmental litigation is an indication of the fact that the Illinois Attorney General's Office and the Attorneys Claiming Fees recognized that the matter did not involve a novel and difficult issues.

Response:

Fact No. 12:

Attorney Cohen was either co-counsel or supervising attorney to Attorney Sternstein during all or part of the time in which Attorney Cohen is claiming fees.

Response:

Fact No. 13:

Attorney Cohen knew that Attorney Sternstein had been employed by the Board in the period immediate before being assigned to this matter.

Response:

Fact No. 14:

Attorney Cohen had a duty to know and comply with the Procedural Rules of the Board.

Response:

Fact No. 15:

The Board's Procedural Rules prohibited Attorney Sternstein from representing a party in this matter during the period in which fees are being claimed.

Response:

Fact No. 16:

Attorney Cohen knew or should have known that Attorney Sternstein was prohibited from representing a party in this case

Response:

Fact No. 17:

During discovery in this matter, the Respondents specifically asked the Complainant for information on the past employment history of the Attorneys Claiming Fees and the Complainant failed to divulge that Attorney Sternstein had previously been employed by the Board and had been involved in decisions concerning this case.

Response:

Fact No. 18:

During the period in which fees are being claimed, Attorney Sternstein was having ex-parte communications with both Board members and Board staff.

Response:

Fact No. 19:

Attorney Cohen had a duty to determine if Attorney Cohen was ineligible to represent a party and was otherwise involved in unethical conduct in this matter, to prevent Attorney Sternstein from representing a party in this matter if a conflict exists, to make the Board and the Respondents of any conflict and violation of Board Procedural Rules and to report such conflicts, violations and ethical breaches to the proper disciplinary boards and to his supervisors at the Illinois Attorney General's Office.

Response:

Fact No. 20:

Attorney Cohen's failure to properly handle and address the conflict and ethical breaches of attorney Sternstein represent an ethical breach by Attorney Cohen.

Response:

Fact No. 21:

The Attorneys Claiming Fees never prepared a budget for the for representing the State in this matter and no such budget was submitted to the State and approved by the State or any other client.

Response:

Fact No. 22:

The Attorneys Claiming Fees did not maintain time sheets or logs of any kind to document and verify the hours worked on this matter.

Response:

Fact No. 23:

The Attorneys Claiming Fees did not submit periodic invoices or request for payments to their clients with respect to this matter.

Response:

Fact No. 24:

The Attorneys Claiming Fees did not discuss their hourly billing rates with the State or any other client in this matter or gain approval to bill at any agreed to billing rate other than the salary paid to the Attorney Claiming Fees by the State .

Response:

Fact No. 25:

Throughout the course of efforts to negotiate and settle this matter, the Attorneys Claiming Fees did on more than one occasion use the fact that they could collect legal fees costs and expenses in negotiations and attempted to use this fact to increase the amount of the final settlement amount offer.

Response:



Fact No. 26:

Throughout the course of efforts to negotiate and settle this matter, the Attorneys Claiming Fees did not and, in fact, refused to offer the Respondents any details of the amount of the attorneys fees, costs and expenses being claimed.

Response:

Fact No. 27:

None of the Attorneys Claiming Fees has ever been paid an hourly rate as high as the hourly rate they are requesting in this matter.

Response:

Fact No. 28:

The Attorneys Claiming Fees have not collected any payments from the State based on the hourly rate they are claiming in request for legal fees in this manner.

Response:

Fact No. 29:

The Attorneys Claiming Fees did not consult any expert or cite any authority in fabricating the hourly fee charges in its determination of attorneys' fees.

Response:

Fact No. 30:

The Attorneys Claiming Fees have not collected any payments from the State based on the hourly rate they are claiming in request for legal fees in this manner.

Response:

Fact No. 31:

The Attorneys Claiming Fees did not present any argument for attorneys' fees, cost and expenses at the hearing on this matter before the Board on October 30 and 31, 2003

Response:

Fact No. 32:

In its Closing Rebuttal Argument and Reply Brief, the Attorneys Claiming Fees claimed total expenses of \$5,574.84 but failed to offer receipts and other documentation that proved that these charges were actually incurred.

Response:

Fact No. 33:

Attorney Cohen executed an affidavit on April 13, 2004 in which he affirmed that State of Illinois incurred \$5,574.84 in costs in prosecuting this case and submitted this affidavit as evidence of the State's claim for expenses in this matter.

Response:

Fact No. 34:

Attorney Cohen executed an affidavit on September 16, 2004 in which he affirmed that State of Illinois incurred \$3,482.84 in costs in prosecuting this case and submitted this affidavit as evidence of the State's claim for expenses in this matter.

Response:

Fact No. 35:

The affidavit filed by Attorney Cohen on April 13, 2004 contained false information and supported a false claim for recovery of expenses even though Attorney Cohen states in the affidavit that the information in the Affidavit is "true and accurate" and that he has "reviewed the costs incurred".

Response:

Fact No. 36:

The submission of an affidavit with false information as testimony and evidence to the Board constitutes perjury on behalf of Attorney Cohen, the Illinois Attorney General's Office and the State.

Response:

Fact No. 37:

To date, none of the Attorneys Claiming Fees, the Illinois Attorney General's Office or the State have taken any disciplinary action or review procedures with respect to Attorney Sternstein's ethical breach in representing a client at the Board in violation of the Board's Procedural Rules, Attorney Cohen's Ethical breach in supervising or co-counseling this matter with Attorney Sternstein when Attorney Cohen knew or should have known that Attorney Sternstein was violating the Board's Procedural Rules or for Attorney Cohen's perjury in executing a false affidavit and none of the parties have reported these actions to appropriate disciplinary commissions as required.

Response:

Fact No. 38:

The cost of off-site copying included the copying of a number of pages and documents that were not entered into evidence and referred to at hearing.

Response:

Fact No. 39:

Travel and lodging expenses incurred by Attorney Cohen and Attorney Murphy were cost incurred strictly at the discretion of those attorneys and were not necessary for the prosecution of this case.

Response:

Fact No. 40:

The Attorneys Claiming Fees each submitted affidavit to support the hours they billed as legal fees.

Response:

Fact No. 41:

None of the summaries of hours presented by the Attorneys Claiming Fees with their affidavits represent a record of hours that were kept at the time the work was performed.

Response:

Fact No. 42:


The summaries of hours presented by the Attorneys Claiming Fees with their affidavits were prepared for the purpose of submittal with the affidavits and the petition for attorneys' fees.

Response:

Fact No. 43:

The summaries of hours presented by the Attorneys Claiming Fees with the affidavits and the petition for attorneys' fees have not and will not be presented to the Attorneys Claiming Fees' clients for actual payment.

David S. O'Neill

  
On behalf of the Respondents

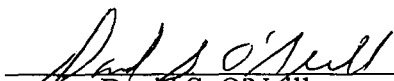
April 25, 2005

David S. O'Neill, Attorney at Law  
5487 N. Milwaukee Avenue  
Chicago, Illinois 60630-1249  
(773) 792-1333

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached RESPONDENTS' FIRST REQUEST FOR ADMISSION OF FACTS REGARDING ATTORNEYS' FEES, COSTS AND EXPENSES by hand delivery on April 25, 2005, upon the following party:

Mitchell Cohen  
Environmental Bureau  
Assistant Attorney General  
Illinois Attorney General's Office  
188 W. Randolph, 20th Floor  
Chicago, IL 60601

  
\_\_\_\_\_  
David S. O'Neill

NOTARY SEAL

SUBSCRIBED AND SWORN TO ME this 23<sup>rd</sup> \_\_\_\_\_

day of APRIL, 20 05

  
\_\_\_\_\_  
Notary Public



