

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.)

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 Complainant's Response to Respondents' Motions to Strike Complainant's Letters of May 24, 2005 and June 14, 2005 Regarding Discovery"** 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
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 Complainant,)
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 SKOKIE VALLEY ASPHALT CO., INC.,)
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 JR., Individually and as Owner and President of)
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 Valley Asphalt Co., Inc.,)
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**COMPLAINANT’S RESPONSE TO “RESPONDENTS’ MOTION TO STRIKE
COMPLAINANT’S RESPONSE TO RESPONDENTS’ MOTIONS TO STRIKE
COMPLAINANT’S LETTERS OF MAY 24, 2005 AND JUNE 14, 2005 REGARDING
DISCOVERY”**

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 Response to Respondents’ Motions to Strike Complainant’s Letters of May 24, 2005 and June 14, 2005 Regarding Discovery.” In support of its response, Complainant states as follows:

RELEVANT CASE HISTORY

1. On July 20, 2005, Complainant filed its Response to Respondents’ (two) Motions to Strike Complainant’s Letters of May 24, 2005 and June 14, 2005 Regarding Discovery. Significantly, Complainant’s Letter of May 24, 2005, in part, addressed another of Respondents’ recent motions to strike: Respondents’ Motion to Strike Complainant’s Discovery Requests.

2. Also on July 20, 2005, Complainant filed its Motion for Protective Order and Response to "Respondents' Motion to Strike Complainant's Objections to Discovery and Respondents' Motion to Compel Complainant's Response to Discovery Request."

3. Respondents failed to respond to Complainant's Motion for Protective Order within 14 days pursuant to Section 101.500 of the Board's Procedural Rules (35 Ill. Adm. Code 101.500).

4. However, on August 15, 2005, Respondents filed two more motions to strike: "Respondents' Motion to Strike Complainant's Response to Respondents' Motions to Strike Complainant's Letters of May 24, 2005 and June 14, 2005 Regarding Discovery" (hereafter referred to as "Respondents' Fifth Motion to Strike") and "Respondents' Motion to Strike Complainant's Motion for Protective Order and Response to Respondents' Motion to Strike Complainant's Objection to Discovery and Respondents' Motion to Compel Complainant's Response to Discovery Request" (hereafter referred to as "Respondents' Sixth Motion to Strike").

5. Complainant responds to Respondents' Fifth Motion to Strike herein and responds to Respondents' Sixth Motion to Strike in a separate pleading.

RESPONDENTS' FIFTH MOTION TO STRIKE MUST BE DENIED

6. Respondents' Fifth Motion to Strike is the latest in a series of seemingly never-ending motions to strike from Respondents.

7. Respondents' Fifth Motion to Strike is nonresponsive to the facts and law set forth in the pleading that it seeks to strike, namely Complainant's Response to "Respondents' Motions to Strike Complainant's Letters of May 24, 2005 and June 14, 2005 Regarding Discovery." Complainant's pleading sets forth facts and law pertaining to ex parte

communications with the Board. Complainant established that its Rule 201(k) letters of May 24, 2005 and June 14, 2005 were not ex parte communications with the Board, but even if they were, the appropriate remedy is to make them a part of the record, which has already occurred on a number of occasions. Respondents' Fifth Motion to Strike does not address a single fact, case, court rule or Board rule raised in Complainant's pleading.

8. Relative to the numerous motions to strike that preceded it, Respondents' Fifth Motion to Strike raises no new facts or law whatsoever.

9. Respondents' Fifth Motion to Strike is simply a repetition of previous argument made without reliance on any legal authority.

10. Respondents' Fifth Motion to Strike must be denied.

11. Complainant also respectfully submits that the Board should no longer tolerate Respondents' frivolous pleadings.

WHEREFORE, Complainant respectfully requests that the Board enter an order in favor of Complainant and against Respondents as follows:

- A. Denying Respondents' Fifth Motion to Strike;
- B. Assessing against Respondents the Complainant's reasonable attorneys' fees and costs in responding to Respondents' Fifth Motion to Strike; and
- C. Granting any further relief that is just and fair under the circumstances.

Respectfully submitted,

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

BY: 

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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 Complainant's Response to Respondents' Motions to Strike Complainant's Letters of May 24, 2005 and June 14, 2005 Regarding Discovery"** were sent by First Class Mail, postage prepaid, to the persons listed on the Notice of Filing on August 17, 2005.

BY: 
MICHAEL C. PARTEE

It is hereby certified that the foregoing were electronically filed with the Board on August 17, 2005:

BY: 
MICHAEL C. PARTEE