BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	No. PCB 96-98
	)	
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.	)	

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on 15th of April, 2004, we filed with the Illinois Pollution Control Board **The People of the State of Illinois' Closing Rebuttal Argument and Reply Brief**, a true and correct copy of which is attached and hereby served upon you.

Respectfully submitted,

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BEFORE THE 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

THE PEOPLE OF THE STATE OF ILLINOIS'
CLOSING REBUTTAL ARGUMENT AND REPLY BRIEF

Now comes the Complainant, PEOPLE OF THE STATE OF ILLINOIS, ex rel LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to Hearing Officer Sudman's October 31, 2003, Order presents their closing rebuttal argument and reply brief.

I. FACTS

Rather than address each and every misstatement of fact contained in Respondents' Closing Argument and Post Trial Brief ("RCA"), the People of the State of Illinois ("People") rely on the facts contained in the Trial Record made October 30th and 31st, 2003. The People will, however, point out a few errors in RCA because their facts or statements have no basis in the record. For example:

A. RESPONDENTS REPEATEDLY VIOLATE PERMIT REQUIREMENTS

In RCA, they claim "[t]here were a few violations for total suspended solids."[1] Respondents' actual number of NPDES permit discharge violations for Total Suspended Solids ("TSS") will never really be known, but it is clear from the record that they violated the TSS concentration limits more than a dozen times.[2] The 30 day average concentration for storm water discharges SVA reported in the Discharge Monitoring Report ("DMR") form submitted to the Illinios EPA for August, September, and October, 1991; February, November, and December, 1992; May and June, 1993; and April, 1995 were in excess of the concentration limits allowed in their NPDES permit.[3] The daily maximum discharge concentration SVA reported for August and October 1991, June 1993, and April 1995 also were in excess of the concentration limits allowed in their NPDES permit.[4]

These TSS concentration limit violations were submitted on DMR forms to the Illinois EPA by SVA. Respondents failed to submit any DMRs in accordance with their NPDES permit for years.[5] Even though SVA's NPDES permit became effective in May of 1986 and required

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[1] RAC at 4. (Note: the first 8 pages of RAC are not numbered in the People's copy. The People added the numbers for easier reference.)

[2] Tr. at 53 - 58; Compl. Exh.s 1, 9, 10, 11, 12, 13, 14, 15, 16 and 17.Obviously Respondents knew they were required to submit monthly DMRs, but chose to ignore the permit requirement.

[3] Tr. at 53 - 58; Comp. Exhs. 1, 9, 10, 11, 12, 13, 14, 15, 16 and 17.

[4] Tr. at 53 - 58; Comp. Exhs. 1, 9, 11, 16 and 17.

[5] Compl. Exh.s 8 and 26.

that they submit DMRs beginning in June, 1986, SVA did not submit any DMRs that year.[6] Likewise, SVA did not submit any DMRs in 1987.[7] In a March 13, 1987, letter to the Illinois EPA, Respondents admit not only that they failed to submit their DMRs, but also that they discharged from their site without any monitoring.[8] The letter is in response to an Illinois EPA letter dated March 6, 1997.[9] The Illinois EPA explained in that letter that Respondents were required to submit DMRs on a monthly basis.[10] Yet, a year and a half later explaining why they still have not submitted any reports, Respondents incredibly claim they " . . . did not know that we were under an obligation . . ." to file monthly DMRs.[11] Obviously Respondents knew they were required to submit monthly DMRs, but willfully chose to ignore the permit requirement.[12]

SVA submitted only two DMRs, rather than the twelve required by their permit, for year 1988.[13] Respondents admit they did not submit any earlier DMRs in a letter written to the Illinois

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[6] Tr. at 49 and Comp. Exh.s 1 and 26.

[7] Tr. at 50; Comp. Exhs. 1 and 8A.

[8] Compl. Exh. 34. SVA's March 13, 1987, letter is attached as an exhibit to the Huff Site Investigation and Work Plan. See also, the Illinois EPA letter dated March 6, 1997, and SVA's November 9, 1988, letter attached as exhibits in front of and behind SVA's 3/13/87 letter.

[9] Compl. Exh. 34. The Illinois EPA letter is also attached as an exhibit in front of SVA's 3/13/87, letter.

[10] Compl. Exh. 34. The Illinois EPA letter is also attached as an exhibit in front of SVA's 3/13/87, letter.

[11] Compl. Exh.s 26 and 34. SVA's November 9, 1988, letter attached as exhibit after SVA's 3/13/87 letter in Compl. Exh. 34.

[12] Compl. Exh.s 1, 8 and 34 (March 6, 1987, Illinois EPA letter attached as an exhibit).

[13] Tr. at 51, 52; Comp. Exhs. 1 ,8B, and 26.

EPA signed by Richard Frederick.[14] In the same letter, Respondents state they will now submit DMR reports as required.[15] Nevertheless, in 1989, SVA failed to submit DMRs for the months of April, June, August, September, October, November, and December.[16] Again, in a January 1990 letter Respondents admit that they failed to submit DMRs as required by their NPDES permit and assure the Illinois EPA that DMR omissions will not occur again.[17] Yet, in that same year, SVA failed to submit a DMR for the month of September.[18] And again, in 1992, SVA failed to submit their DMR for the month of July.[19]

Whether SVA committed additional TSS concentration limit violations during the many months they failed to submit DMRs is not known. SVA repeatedly failed to submit their DMRs possibly because they did not want to submit TSS concentration limit violations to the Illinois EPA.

Also, it is not known whether Respondents filed false DMRs to the Illinois EPA because of TSS concentration limit violations. Remember, if SVA submitted their DMRs, they were sometimes late and false.[20] For example, SVA did not submit their December 1990 DMR, which

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[14] Tr. at 289 - 91; Comp. Exh. 26.

[15] Comp. Exh. 26.

[16] Tr. at 52; Comp. Exh. 8C.

[17] Comp. Exh. 27.

[18] Tr. at 52; Comp. Exh. 8D. Note: the question in the transcript indicates 1999; however, the answer by the witness, and the exhibit refers to 1990. 1999 appears to be a typographical error, or a mistatement by Assistant Attorney General Cohen.

[19] Tr. at 53; Comp. Exh. 8F.

[20] Tr. at 37 - 41; Comp. Exhs. 1, 2, 3, 4, 5 and 8.

was due January 1991, until April 25, 1991.[21] It was signed and certified by Richard J. Frederick.[22] Other than the date SVA put on the December 1990 DMR, the data and document are identical to the data and document SVA submitted for its November 1990 DMR.[23] This is not the only time Respondents committed the "photocopy the form-change the date-resubmit" deception. They repeated it again in 1991. SVA's January 1991 DMR was due February 15, 1991.[24] Respondents did not submit it to the Illinois EPA until April 25, 1991.[25] The Illinois EPA received SVA's February 1991 DMR before their January DMR.[26] Other than the dates Respondents wrote in, the data and document in the January and February 1991 DMRs are identical.[27]

Respondents admit in RCA that they willfully and knowingly submitted the data from one month's test to the Illinois EPA for two separate months.[28] Respondents then claim that at some

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[21] Tr. at 37; Comp. Exhs. 1, 3 and 8D.

[22] Tr. at 37; Comp. Exh. 3.

[23] Tr. at 37, 38; Comp. Exhs. 2 and 3. Note: the line of questioning related to Complainant's Exh. 2 is missing from the transcript. It should appear approximately at the end of page 36 before the questions related to Complainant's Exh. 3. Comp. Exh. 2 was admitted into evidence and questions linking Comp. Exhs. 2 and 3 are in the transcript.

[24] Tr. at 39; Comp. Exh. 4.

[25] Tr. at 39; Comp. Exh. 4 and 8E.

[26] Tr. at 39; Comp. Exh. 4, 5 and 8E.

[27] Tr. at 40; Comp. Exh. 4 and 5.

[28] RCA at 5 - 6. Respondents concede they filed false reports to the Illinois EPA. Other than Respondents admission found in the factual background section of RCA, Respondents choose to ignore the issue in the "Analysis of the Culpability of the Respondents" section. RCA at 21- 22. Later in their Section 42(h) analysis, Respondents again change their position arguing for no penalty because it is the Illinois EPA's fault that they filed false reports. RCA at 39 - 41.

unknown point in the future they corrected the false filing.[29] In doing so, Respondents cite to page 485 of the Trial Transcript.[30] There Respondent Edwin Frederick testifies that Respondents' Exhibit 4 is a letter with corrected reports explaining misplaced, or mis-sent DMRs.[31] Respondents' Exhibit 4 is a letter from Respondent Richard Frederick to their attorney dated May 13, 1993. In that letter Respondents give a completely different explanation about their DMR submissions than the one they provide this Board.[32] It also contradicts an explanation SVA gave to the Illinois EPA about failing to submit DMRs in 1990.[33] Were the false reports submitted to the Illinois EPA because of TSS concentration limit violations?

Consider this too; up until at least May of 1991, the whole time period their NPDES permit was in force and months after it expired, SVA did not have an accessible effluent discharge sampling point.[34] Where or how SVA took the samples is unknown. Without a representative discharge sampling point all of SVA's DMR submissions are suspect.[35] Chris Kallis, Illinois EPA Field Inspector, noted this in 1991 when he wrote " . . . due to inadequate sampling points the accuracy of these reports is in serious question . . . ."[36]

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[29] RCA at 6.

[30] RCA at 6.

[31] RCA at 6.

[32] RCA at 5 - 6; Resp. Exh. 4.

[33] Pl. Exh. 27.

[34] Tr at 139 - 42; Compl. Exh.s 1 and 19.

[35] Compl. Exh. 19.

[36] Compl. Exh. 19.

No one will ever know how many times Respondents violated the TSS concentration limits. However, it is clear based on Respondents own submissions that they violated their NPDES permit by discharging in excess of their TSS concentration limits many times.[37]

B. RESPONDENTS KNOWINGLY CAUSE WATER POLLUTION EVENT TO LAST LONGER

In discussing the water pollution in the Avon-Fremont Drainage Ditch in 1994 and 1995, RCA states that "[t]he IEPA, USEPA and others failed to determine the source of the discharge."[38] That statement, like many others in RCA, ignores the evidence in the record.[39] The Illinois EPA with the help of the United States Environmental Protection Agency ("USEPA") and Respondents' own environmental consultant determined that SVA was the source of the water pollution discharged into the Avon-Fremont Drainage Ditch.[40] Respondents should have prevented this water pollution incident by remediating their site years earlier. Since they did not remediate before December, 1994, Respondent should have at least assisted in the water pollution investigation and admitted there were underground storage tanks on their site so the oily discharge could be cut off sooner.

The USEPA determined that the oily discharge polluting the water in the Avon-Fremont

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[37] Tr. at 53 - 58; Compl. Exh.s 1, 9, 10, 11, 12, 13, 14, 15, 16 and 17.

[38] RCA at 7.

[39] See, for example, Compl. Exh.s 23, 24 (and USEPA POLREP of May 3, 1995, and Huff letter of May 4, 1995 attached), 25 and 34; Resp. Exh. 6.

[40] See, for example, Compl. Exh.s 23, 24 (and USEPA POLREP of May 3, 1995, and Huff letter of May 4, 1995, attached), 25 and 34; Resp. Exh. 6.

Drainage Ditch came from the SVA site.[41] Respondents obviously agreed.[42] On April 25, 1995, while the USEPA was again investigating the oily discharge, Respondents admitted to Betty Lavis, USEPA On-Scene Coordinator ("OSC"), that " . . . they had found the leak and would address the problem."[43] In terms of enforcement with the USEPA, Respondents signed a "Notice of Federal Interest in an Oil Pollution Incident."[44] Respondents agreed to submit a clean-up project plan to the USEPA for review.[45] Respondents agreed to dispose of the used oil absorbing boom in the Avon-Fremont Drainage Ditch, install and continue to monitor a new boom, plug the field tiles, and search for other sources of the release.[46] The USEPA required SVA to search for additional sources for the release on their site because the leaking storage tank did not contain enough oil to explain the extent of the continued release into the Avon-Fremont Drainage Ditch.[47] The USEPA suspected that, based on SVA's past practices, there might be a pool of oil product accumulated under the SVA site.[48]

Again in 2000, Betty Lavis of the USEPA wrote another Pollution Report related to the

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[41] Compl. Exh. 25; Resp. Exh. 6.

[42] Compl. Exh. 25.

[43] Compl. Exh. 25.

[44] Compl. Exh. 25.

[45] Compl. Exh. 25.

[46] Compl. Exh. 25.

[47] Compl. Exh. 25.

[48] Compl. Exh. 25.

SVA site in Grayslake.[49] Besides referencing a SVA oil release affecting Grays Lake in 1975, SVA's discharge limits under a required NPDES permit, and the reason the SVA site was placed on the CERCLA list, she also summarized the 1995 SVA water pollution incident affecting the Avon-Fremont Drainage Ditch.[50] "In April, 1995, a petroleum release occurred from the SVA site into the Avon-Fremont Drainage ditch."[51] Ms. Lavis ". . . traced the release back to a leaking underground heating oil tank on the SVA site."[52] The USEPA determined the source of the 1995 oily discharge to be the SVA site.[53]

The Illinois EPA worked with the USEPA during the 1995 SVA water pollution investigation.[54] Their determination was the same; the source of the oily discharge into the Avon-Fremont Drainage Ditch was the SVA site.[55]

When Respondents finally took responsibility for the oily discharge into the Avon-Fremont Drainage Ditch and the contaminated condition of their site, their consultant, James

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[49] Resp. Exh. 6. A copy is also included in Compl. Exh. 34 as an attachment to Huff's Site Investigation and Work Plan.

[50] Resp. Exh. 6. A copy is also included in Compl. Exh. 34 as an attachment to Huff's Site Investigation and Work Plan.

[51] Resp. Exh. 6. A copy is also included in Compl. Exh. 34 as an attachment to Huff's Site Investigation and Work Plan.

[52] Resp. Exh. 6. A copy is also included in Compl. Exh. 34 as an attachment to Huff's Site Investigation and Work Plan.

[53] Compl. Exh. 25; Resp. Exh. 6. A copy of Resp. Exh. 6 is also included in Compl. Exh. 34 as an attachment to Huff's Site Investigation and Work Plan.

[54] Compl. Exh.s 22, 23, 24 and 25; Compl. Exh. 6.

[55] Compl. Exh.s 23, 24, 25 and 34 (See CERCLA Report, Site Team Evaluation Prioritization, attached as an exhibit, p. 4).

Huff, also determined that the source of the discharge was the SVA site.[56]

Nothing, especially oil, should have been discharged into the Avon-Fremont Drainage Ditch from the SVA site given the terms of their NPDES permit and SVA's history of repeated water quality violations.[57] SVA's NPDES permit, when it was in force, allowed them to discharge storm water into Grays Lake via a storm sewer.[58] The Avon-Fremont Drainage Ditch does not flow into Grays Lake; it flows to the north into Third Lake.[59]

The SVA site had years worth of water quality issues and oil releases known to the Respondents starting long before the 1994/1995 release into the Avon-Fremont Drainage Ditch.[60] For example: In July of 1975, SVA " . . . released oily wastes into Grays Lake via a tile system that empties into the lake. SVA conducted a limited cleanup of the release."[61] In the late 1970s,

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[56] Compl. Exh.s 23, 24 (see also letter from James E. Huff, P.E. dated May 4, 1995, attached as exhibit), and 34 (see, for example, pp. 14 - 17, 69, and the CERCLA Report, Site Team Evaluation Prioritization, attached as an exhibit, p. 6).

[57] Compl. Exh. 1, 6, 18, 19, 20, 22, 24, 34 and Resp. Exh. 6.

[58] Compl. Exh.s 1, 19, 20, 22, 24 and 34.

[59] Compl. Exh.s 18, 19 (see June 4, 1991, memo to Bill Busch attached), 22, 23, 24, 25 and 34.

[60] Compl. Exh.s 7 (see p. 3, Item No. 7), 18, 19 (see June 4, 1991, memo and D.L.P.C. Complaint Investigation Form attached), 22, 24, 34 (see, for example, pp. 10 - 12; Jan. 2, 1985, letter from Donald Manhard Associates, Inc. Consulting Civil Engineers; CERCLA Report, Site Team Evaluation Prioritization pp. 3 - 4; CERCLA Screening Site Inspection Report, pp. 2-9 to 2-11; USEPA Pollution Report of June 13, 2000; and Letter Report prepared for the USEPA by Ecology and Environment, Inc. May 23, 2000, p. 3 attached as exhibits) and Resp. Exh. 6.

[61] Compl. Exh. 34: CERCLA Screening Site Inspection Report, pp. 2-9 to 2-11; USEPA Pollution Report of June 13, 2000; and Letter Report prepared for the USEPA by Ecology and Environment, Inc. May 23, 2000, p. 3 attached. Resp. Exh. 6.

SVA had a practice of disposing of liquid asphalt on their unpaved site.[62] When it rained, oily matter would wash away into waters of the State.[63] Several years before 1985, years worth of residue from SVA's operations caused oil wastes to be discharged into Grays Lake.[64] In May of 1985, oil contaminating the Avon-Fremont Drainage Ditch originated from SVA.[65] Based on SVA's water quality violations, the Illinois EPA (and the Village of Grayslake) required SVA to obtain a NPDES permit that set discharge limits for the retention basins.[66]

In 1988, the Illinois EPA investigated the SVA site for groundwater and soil contamination from their surface impoundments, or retention basins, and discovered that SVA's waste possessed hazardous constituents including (crude oil or refined petroleum product components) toluene, ethylbenzene, and xylene.[67]

As a result of SVA's site history, in 1990 it was placed on the Comprehensive Environmental Response, Compensation and Liability Inventory System ("CERCLIS").[68] This led

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[62] Compl. Exh. 24.

[63] Compl. Exh. 24.

[64] Compl. Exh. 34: Jan. 2, 1985, letter from Donald Manhard Associates, Inc. Consulting Civil Engineers.

[65] Compl. Exh. 34: CERCLA Screening Site Inspection Report, pp. 2-9 to 2-11.

[66] Compl. Exh. 24 and 34 (p. 11 and CERCLA Report,Site Team Evaluation Prioritization, pp. 3 - 4; USEPA Pollution Report of June 13, 2000; and Letter Report prepared for the USEPA by Ecology and Environment, Inc. May 23, 2000, p. 3 attached as exhibits); Resp. Exh. 6.

[67] Compl. Exh.s 22, 24 and 34 (CERCLA Screening Site Inspection Report, pp. 2-9 to 2-11 attached as an exhibit).

[68] Compl. Exh.s 22, 24 and 34: p. 10 and CERCLA Report, Site Team Evaluation Prioritization, p. 1; CERCLA Screening Site Inspection Report, p. 1-1; USEPA Pollution Report of June 13, 2000; and Letter Report prepared for the USEPA by Ecology and Environment, Inc.

to a 1991 Comprehensive Environmental Response Compensation Liability Act ("CERCLA") Screening Site Inspection Report.[69] Respondents were well aware of these oil discharges and Illinois EPA, USEPA activities. In fact, the Illinois EPA, on behalf of the USEPA, interviewed Respondent Larry Frederick while preparing the CERCLA Screening Site Inspection Report.[70]

Yet, not once, with all of these environmental issues, did Respondents investigate their own site to determine the extent of contamination for possible remediation. But, in December, 1991, Respondents had the audacity to write to the Illinois EPA claiming to be ". . . partners in protecting the environment . . . ."[71] They go on to state that "[f]or us, a clean environment and good housekeeping are just plain good business" and express interest ". . . in a clean, neat and environmentally sound operation . . . ."[72] If Respondents meant what they said, they would have remediated their site long before the 1994/1995 oil release into the Avon-Fremont Drainage Ditch.

Partners in protecting the environment do not lie to the government environmental protection agencies investigating another oil release near the SVA site. But that is exactly what

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May 23, 2000, p. 3 attached as exhibits; and Resp. Exh. 6.

[69] Compl. Exh.s 22, 24 and 34: p. 10. A complete copy of the report is attached to the Site Investigation Work Plan Respondents' consultant James Huff submitted to the Illinois EPA, Compl. Exh. 22, 24 and 34. See also, USEPA Pollution Report of June 13, 2000; and Letter Report prepared for the USEPA by Ecology and Environment, Inc. May 23, 2000, p. 3 attached as exhibits to Compl. Exh. 34 and Resp. Exh. 6.

[70] Compl. Exh. 34, CERCLA Screening Site Inspection Report, p. 2 - 4. Though Respondents consultant, James Huff, prepared Compl. Exh. 34 for submission to the Illinois EPA in 2000, he learned about the site's "[e]nvironmental issues" including ". . . oil releases, and the placement of the facility on the CERCLA list in 1990" through a FOIA request ". . . and interviews with Edwin L. and Richard J. Frederick." Compl. Exh. 34, pp. 8 - 10.

[71] Compl. Exh. 7.

[72] Compl. Exh. 7.

Respondents did. The Illinois EPA began investigating this particular oil release into the Avon-Fremont Drainage Ditch in December 1994.[73] The Illinois EPA went to the area many times to investigate the complaints of oil in the ditch.[74] On March 22, 1995, Illinois EPA Field Inspector, Chris Kallis discussed the oil discharge with Respondent Richard Frederick and asked him whether there were any underground storage tanks ("UST") on the SVA site.[75] Richard Frederick said no.[76]

A month later Respondents' story changed.[77] On April 18th while discussing the spill in the ditch with USEPA OSC Betty Lavis, Respondents Richard and Larry Frederick admitted there are USTs on site, but denied that they leaked or were in use.[78] On April 25th, however, Respondents admitted to finding a leak which turned out to be in a unregistered leaking UST.[79] Two LUST incidents followed.[80]

Did Respondents know about the underground storage tanks on SVA's site in December 1994, or March and April 1995? Of course they did.[81] Edwin and Richard Frederick know the site

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[73] Compl. Exh. 22.

[74] Compl. Exh. 22.

[75] Compl. Exh. 22.

[76] Compl. Exh. 22. See also Compl. Exh. 23.

[77] Compl. Exh.s 24 and 25.

[78] Compl. Exh. 25. See also Compl. Exh.s 23 and 24.

[79] Compl. Exh.s 24, 25 and 34.

[80] Compl. Exh. 34.

[81] Compl. Exh. 34, beginning p. 6.

history.[82] Their family owned Liberty Asphalt before SVA and operated the site for decades.[83] The Frederick brothers worked for Liberty Asphalt.[84] They told their consultant James Huff that SVA acquired the assets from Liberty in approximately 1975.[85] Respondents Edwin and Richard Frederick are the only SVA shareholders and owners; they have always run the company and been the corporate officers.[86] The three USTs that had to be removed after the April 1995 LUST incident were installed in 1978.[87]

"Partners in protecting the environment" claiming to be interested in an environmentally sound operation would not willfully, knowingly, and intentionally lie about a potential pollution source on their site during an oil pollution incident and investigation. Respondents did.

Even without remediating their site before this water pollution incident, Respondents could have shortened the time oil was released into the Avon-Fremont Drainage Ditch by more than thirty days, from late April to March 22nd, had they not lied about the USTs on site. Real partners in protecting the environment would have stopped the oil release in December of 1994, or January 1995 when the complaints and investigation started.[88]

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[82] Compl. Exh. 34.

[83] Tr. at 279, 432 -33; Compl. Exh. 34.

[84] Tr. at 279, 432 - 33.

[85] Compl. Exh. 34, p. 7.

[86] Tr. at 277, 436; Compl. Exh. 35.

[87] Compl. Exh. 34, p. 8.

[88] Compl. Exh. 22.

C. THE FACTS ARE IN THE RECORD

There is no way to know how many times Respondents violated their NPDES permit by exceeding the TSS concentration limits. The record is clear, however, that Respondents repeatedly violated the terms of their NPDES permit by filing false DMRs, failing to file DMRs, and exceeding the TSS concentration limits.

Respondents also caused or allowed many water pollution incidents. The water pollution event charged in this case was easily preventable. Since they did not remediate the site before December 1994, Respondents had a duty to assist in the water pollution investigation.[89] Instead, Respondents willfully, knowingly and intentionally mislead the environmental protection agencies causing the water pollution event to last much longer than necessary.

The People of the State of Illinois stand by the facts that are in the record.

II. WHAT IS RESPONDENTS' DEFENSE?

The People asked this question earlier in its' "Closing Argument" because Respondents had pending the affirmative defenses of laches and equitable estoppel, but failed to allege any facts, or introduce any evidence in support. Now, in RCA they state that Respondents Edwin Frederick and Richard Frederick should be dismissed under the doctrines of laches and equitable estoppel.[90] The basis for Respondents' statement appears to be that they lost their records many years after this case was filed because the records were thrown out by the company that bought

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[89] The Constitution of the State of Illinois, Article XI, Section 1, states that it is the public policy of this ". . . State and the duty of each person to provide and maintain a healthful environment . . . ."

[90] RCA at 14.

SVA's assets for over $8.2 million.[91]

A. RESPONDENTS CANNOT CLAIM LACHES BECAUSE THEY LOST THEIR OWN RECORDS

The People of the State of Illinois filed the Complaint for environmental violations in this case in November, 1995.[92] SVA retained counsel David O'Neill, the same attorney who represents Respondents Edwin and Richard Frederick, by at least March, 1996.[93] Respondents, Edwin and Richard Frederick, the only SVA shareholders, sold SVA's assets in 1998 for over $8.2 million.[94] In 1998, this case was still pending, and David O'Neill represented the Respondent.[95]

In 1998, Respondents were represented by counsel in their multi-million dollar sale of assets.[96] Respondents and their counsel knew this case was pending.[97] They specifically listed this case within the Asset Purchase Agreement.[98] Respondents and their counsel agreed " . . . to indemnify or defend and hold buyer harmless from all such liabilities . . ." relating to their site or business including the failure to comply with statutes and regulations relating to water and liquid

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[91] RCA at 10 - 11; Compl. Exh. 35.

[92] RCA at 8; PCB docket.

[93] PCB Docket: 3/12/96. David O'Neill continues to represent all Respondents.

[94] RCA at 10; Compl. Exh. 35 (Vol. 1).

[95] PCB Docket.

[96] Compl. Exh. 35, p. 20. Section 10.C. of Respondents Asset Purchase Agreement is titled "Approval of Proceedings and Legal Matters by Sellers' Counsel" and provides that all the legal matters and documents related to the Asset Purchase Agreement shall be approved by, or found satisfactory to Seller's counsel.

[97] Compl. Exh. 35, p. 14 and Schedule 6(M).

[98] Compl. Exh. 35, p. 14 and Schedule 6(M). "Schedule 6(M) Litigation and Arbitration . . . 2. Illinois Attorney General enforcement action filed in November, 1995 . . . ."

waste pollution.[99] And, Respondents agreed to obtain, at their expense after closing, a "no further action" letter from the Illinois EPA pertaining to the environmental conditions existing at their site.[100] The Asset Purchase Agreement also gave Respondents access to the site at all times after the closing for the purpose of obtaining the "no further action" letter.[101]

In 1998, all the parties to the Asset Purchase Agreement and their counsel knew the environmental condition of the site and knew there was an environmental enforcement action pending.[102]

RCA claims that SVA's records were included as part of the $8.2 million sale of assets.[103] It is difficult to determine whether that is true, or not.[104] It is not difficult to determine that Respondents had access to, and were responsible for, their own records.[105]

The Asset Purchase Agreement gave full access to the property and records belonging, or relating to Respondents.[106] The Asset Purchase Agreement also provided Respondents with the use of at least one office at the site through April 30, 2000.[107] And, the Asset Purchase Agreement

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[99] Compl. Exh. 35, p. 21 - 22.

[100] Compl. Exh. 35, p. 26.

[101] Compl. Exh. 35, pp. 26 and 29.

[102] Compl. Exh. 35.

[103] RCA at 10, Compl. Exh. 35.

[104] Compl. Exh. 35.

[105] Compl. Exh. 35, p. 29.

[106] Compl. Exh. 35, p. 29.

[107] Compl. Exh. 35, p. 29.

required all Respondents records to be removed before April 30, 2000, by the Respondents.[108]

RCA states that Respondents "Edwin and Richard Frederick had no control over the new owners decision to dispose of these records and also had no reason to suspect that these records would be of value to them."[109] That is not believable. Respondents have an $8.2 million agreement that gives them full access to the records and the right and obligation to remove their records.[110] From November 1995 through April 2000 SVA was in litigation for environmental violations.[111] In January 2000, Edwin and Richard Frederick, with full knowledge of their counsel, listed themselves not only as witnesses in this case, but also as the two people responsible for the entire SVA operation.[112] How could Respondents and their counsel have no reason to suspect their records would be of value to them?

If, the new owners disposed of SVA's records, it is because Respondents chose not to take responsibility for their records, just as they chose not to take responsibility for complying with their NPDES permit, for remediating their site before 1994, and for their leaking underground storage tank.

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[108] Compl. Exh. 35, p. 29.

[109] RCA at 10.

[110] Compl. Exh. 35, p. 29.

[111] PCB Docket.

[112] RCA at 8 - 9; PCB Docket, January 21, 2000; Response to Complainant's First Set of Interrogatories to Skokie Valley Asphalt, Inc., see responses to interrogatories no. 1, 7 and 19. A copy of the Response to Complainant's First Set of Interrogatories is attached to Complainant's "Motion to Strike Respondents' Motion to Dismiss Edwin L. Frederick, Jr., and Richard J. Frederick or, in the Alternative, Complainant's Response to and Request to Deny Respondents' Motion to Dismiss Edwin L. Frederick and Richard J. Frederick" filed May 7, 2003.

In light of these facts, Respondents have the temerity to assert the affirmative defense of laches against the Illinois EPA.

B. RESPONDENTS CANNOT CLAIM LACHES AGAINST THE ILLINOIS EPA

Laches cannot be invoked against a governmental body, like the Illinois EPA, that is attempting to perform its duties, or in actions involving public rights.[113] The Illinois EPA has a duty to enforce the Illinois environmental laws and regulations, and the public has a right to a healthy and safe environment.[114]

1. The Frederick Brothers were Named Over a Year Before the Hearing.

The People of the State of Illinois properly added the Frederick Brothers as Respondents in a Second Amended Complaint during the summer of 2002.[115] After they were properly named as Respondents, the Frederick Brothers were allowed to, and did, conduct discovery.[116] The hearing took place at the end of October, 2003.[117]

RCA claims that ". . . the Respondents Richard Frederick and Edwin Frederick have been prejudiced in their ability to produce records, recall witnesses and remember events relevant to

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[113] Cook County v. Chicago Magnet Wire Corp., 152 Ill. App.3d 726, 727-28, 504 N.E.2d 904, 905 (1st Dist. 1987).

[114] 415 ILCS 5/4 (2002), The Constitution of the State of Illinois, Article XI, and Pielet Bros. Trading Inc. v. Illinois Pollution Control Board, 110 Ill. App. 3d 752, 758, 442 N.E. 2d 1374, 1379 (5th Dist. 1982).

[115] RCA at 9; PCB Docket for July 26, 2002.

[116] PCB Docket.

[117] PCB Docket and Trial Transcript.

their defense in this matter."[118]

2. The Frederick Brothers Were Not Prejudiced.

The Respondents had the ability to, but chose not to, produce records.[119] In 2000, the Frederick Brothers and David O'Neill listed the witnesses who would testify on behalf of SVA.[120] They listed Edwin L. Frederick, Richard J. Frederick, and James Huff.[121] Who testified at the hearing about the environmental violations relevant to this case on behalf of all Respondents? Edwin L. Frederick, Richard J. Frederick, and James Huff.[122] There was never any indication that because the only two SVA shareholders, the two corporate officers responsible for the entire SVA operation, were named as individual Respondents, that they needed any other evidence to defend themselves. They are the same two witnesses for SVA defending themselves and the corporation against the same environmental violations.

Respondents claim of prejudice is baseless.

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[118] Respondents' Closing Argument, p. 10.

[119] Compl. Exh. 35, p. 29. See also Section IIA above.

[120] Response to Complainant's First Set of Interrogatories to Skokie Valley Asphalt, Inc., see responses to interrogatories no. 1 and 19.

[121] Response to Complainant's First Set of Interrogatories to Skokie Valley Asphalt, Inc., see response to interrogatory no. 19.

[122] See trial transcript.

C. RESPONDENTS' LACHES DEFENSE MUST FAIL

Laches is a doctrine which states that Complainant's cause of action is barred because Respondent has been misled or prejudiced due to Complainant's delay in asserting a right.[123] RCA does not claim that laches applies to SVA because of the Illinois EPA's delay in asserting the environmental violations.[124] RCA implies the doctrine of laches should benefit the Frederick Brothers only because there are compelling circumstances and they were somehow misled.[125] If Respondents can prove there are compelling, or extraordinary circumstances, then, and only then, can laches be invoked against a governmental body, like the Illinois EPA, attempting to perform its function, or in actions related to public rights, like a healthy and safe environment.[126]

There are no such circumstances in this case.

The People amended the Complaint in 1997 to add counts, not Respondents, for additional environmental violations. Neither party did any discovery before the People filed the First Amended Petition.[127] After the Frederick Brothers admitted in discovery that they were the two people responsible for the entire SVA operation, the People filed the Second Amended Complaint adding them as Respondents.[128] Respondents claim the compelling circumstances which prevented

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[123] City of Rochelle v. Suski, 206 Ill. App. 3d 497, 501, 564 N.E.2d 933, 936 (2d Dist. 1990).

[124] RCA at 8.

[125] RCA at 8 - 14.

[126] Cook County v. Chicago Magnet Wire Corp., 152 Ill. App.3d 726, 727-28, 504 N.E.2d 904, 905 (1st Dist. 1987).

[127] PCB Docket.

[128] RCA at 8 - 9. PCB Docket. This case was transferred to me, AAG Cohen, from AAG Cartwright who resigned from the office, in June, 2002. Sometime during June or July, 2002, I

them from defending themselves, but not from defending the corporation, include the following: the violations occurred a long time ago, they no longer work for the dissolved corporation, and they finished the corporations' discovery responses years ago.[129]

Respondents did have to defend themselves against environmental violations that occurred a long time ago. They are the same exact violations Respondents had to defend on behalf of the corporation.

Respondents chose to sell SVA's assets for more than $8.2 million, dissolve the corporation, and retire. In doing so, Respondents knew they would still have to defend the corporation against the environmental violations already charged; the same exact violations Respondents had to defend on their own behalf.

Respondents completed some discovery for SVA years ago; the additional discovery necessary for all parties related to the same exact environmental violations Respondents were defending on behalf of the corporation and themselves.

There are no circumstances whatsoever to indicate Respondents were misled, or prejudiced by the Illinois EPA.

Respondents' claim of laches must fail. Complainant is not barred from naming the Fredericks as Respondents more than a year before the hearing. The Fredericks were not misled or

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learned from Respondents' counsel, David O'Neill, that even though the case was set for hearing, no depositions had been taken yet. Upon review of the large case file, I learned that the Frederick Brothers admitted to running the entire SVA operation and that the Complaint had not yet been amended to add them as Respondents in accordance with, among other law, People v. CJR Processing, Inc., 269 Ill.App.3d 1013, 647 N.E.2d 1035 (3rd Dist. 1995). I filed the Second Amended Complaint in July, 2002. This all happened before Joel Sternstein entered his appearance in the case.

[129] RCA at 13 - 14.

prejudiced by being named as Respondents, or by the Illinois EPA. The Illinois EPA was and is a governmental body performing its function which involves public rights, namely protecting the right of the public to have a clean and safe environment. The Illinois EPA did not create any extraordinary or compelling circumstances that would invoke laches.

The Respondents have no defense.

III. EDWIN & RICHARD FREDERICK ARE PERSONALLY LIABLE FOR THE ENVIRONMENTAL VIOLATIONS

In RCA, Edwin and Richard Frederick admit they are personally liable for the environmental violations charged in this case. They don't really come out and say they are liable. In fact, they try to deny liability. But in doing so, they describe some of their responsibilities as the shareholders and corporate officers running SVA and explain that they had the ability and authority to prevent the violations.

Fortunately, in Illinois environmental law, corporate officers are personally liable for their company's environmental violations if they actively participated in the violation, or had the authority to prevent the violation.[130] All parties agree that the standard for corporate officer liability in environmental enforcement actions is set forth in People v. C.J.R. *et al.*[131] As stated before, a corporate officer can be held personally liable for his company's environmental violations if he was personally involved in *or* actively participated in a violation of the Act, *or* if

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[130] People v. C.J.R. Processing, Inc., *et al.*, 269 Ill. App. 3d 1013, 647 N.E.2d 1035 (3d Dist. 1995) and People v. Agpro, Inc. and David J. Schulte, 281 Ill.Dec. 386, ___, 803 N.E.2d 1007, 1019 (2nd Dist. 2004).

[131] Id. See RCA at 15.

he had the ability or authority to control the acts or omissions that gave rise to the violation.[132]

In People v. Agpro, Inc., the Court relied on the CJR case and found the President of the corporation personally liable for the company's environmental violations in part because he did not take precautions to prevent the pollution, he ran the operations at the site, spent time at the site, and supervised employees.[133] In this case, the Frederick Brothers did not take precautions to prevent pollution, ran the entire SVA operation, worked at the site, supervised employees, and much more.

Edwin Frederick consulted with SVA foremen and acted as the liaison with government officials.[134] He signed the late NPDES permit application, other documents, and letters submitted to the Illinois EPA.[135] He was present at the site during environmental protection agencies' inspections and investigations.[136]

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[132] Id. at 1018, 647 N.E.2d at 1038. The C.J.R. Court relied upon the Eighth Circuit's decision in United States v. Northeastern Phar. And Chem. Co., Inc., *et al.*, 810 F.2d 726 (8th Cir. 1986). In Northeastern Pharmaceutical, the federal government sought to have a corporation's president and vice-president held personally liable for their company's improper hazardous waste disposal. In holding these corporate officers personally liable, the Eighth Circuit noted, that while the president of the corporation was not involved in the actual day-to-day decisions to transport and dispose of the hazardous waste, he "was the individual in charge of and directly responsible for all of [his company's] operations, including those at the [subject] plant, and he had the ultimate authority to control the disposal of [his company's] hazardous substances." 810 F.2d at 745 (underline added).

[133] People v. Agpro, Inc. and David J. Schulte, 281 Ill.Dec. 386, ___, 803 N.E.2d 1007, 1019 (2nd Dist. 2004).

[134] RCA at 2.

[135] Compl. Exh.s 6, 7, 19 (April 22, 1991, and May 7, 1991, letters attached), 28, 29 and 34 (Site Remediation Program Application and Services Agreement).

[136] Compl. Exh.s 19 (June 1, 1991, memo attached), 23, 24, 25 and 34 (Letter Report prepared for the USEPA by Ecology and Environment, Inc. May 23, 2000 attached as exhibit).

Richard Frederick also dealt with SVA foremen, hired and controlled the employees, and approved the payment of invoices.[137] He signed and certified SVA's DMRs submitted to the Illinois EPA whether they were late, false, or indicated other NPDES permit violations.[138] He too was present at the site during environmental protection agencies' inspections and investigations.[139]

In RCA, Respondents admit that both "Edwin and Richard Frederick made major management decisions and decisions on spending large amounts of money on behalf of SVA."[140] Edwin and Richard Frederick finally contacted the consulting firm of Huff and Huff, Inc. to try and control the oily discharge into the Avon-Fremont Drainage Ditch.[141] And "[i]t is Edwin and Richard Frederick who continue this effort . . ." to this day to get site closure.[142]

Edwin and Richard Frederick are personally liable for the environmental violations of their company because they were personally involved in *or* actively participated in the violations of the Act, *or* they had the ability or authority to control the acts or omissions that gave rise to the violations .[143] They could have complied with the NPDES requirements. They had the ability and authority to prevent the 1994/1995 water pollution incident from ever happening by remediating

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[137] RCA at 2.

[138] Compl. Exh.s 2, 3, 4, 5, 9, 10, 12, 13, 14, 15, 16 and 17.

[139] Compl. Exh.s 18, 19 (June 1, 1991, memo and D.L.P.C. Complaint Investigation Form attached), 22, 23, 24, 25 and 34 (Letter Report prepared for the USEPA by Ecology and Environment, Inc. May 23, 2000 attached as exhibit).

[140] RCA at 3.

[141] RCA at 33.

[142] RCA at 34.

[143] C.J.R. at 1018, 647 N.E.2d at 1038 and Agpro, 281 Ill.Dec. 386, ___, 803 N.E.2d 1007, 1019 (2nd Dist. 2004).

the site beforehand. And, they could have shortened the water pollution incident. They are both individually liable.

IV. WHAT PENALTY IS APPROPRIATE?

Any person who violates any provision of the Act shall be liable for a civil penalty.[144] SVA, Edwin Frederick, and Richard Frederick are all persons who repeatedly violated provisions of the Act and therefore, are liable for a civil penalty.

Section 42 provides the law for civil penalties when the Act is violated.[145] Section 42(a) states that any person that violates any provision of this Act shall be liable for a civil penalty not to exceed $50,000 for the violation and an additional civil penalty not to exceed $10,000 for each day during which the violation continues.[146] Since the evidence established that Defendants knowingly and repeatedly violated sections of the Act, they are liable for a significant civil penalty.[147]

"The statutory maximum penalty is a natural or is the logical benchmark from which to begin considering factors in aggravation or mitigation of the penalty amounts. This is consistent with the discussion in the U.S. Supreme Court Tull and Gwaltney decisions, with U.S. EPA Penalty Policy, and with Illinois decisions discussing a maximum penalty."[148]

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[144] 415 ILCS 5/42(a) (2002).

[145] 415 ILCS 5/42 (2002).

[146] 415 ILCS 5/42(a) (2002).

[147] 415 ILCS 5/12(a), 12(f) and 42(a) (2002).

[148] Illinois EPA v. Barry, PCB 88 - 71 (May 10, 1990); see also People v. Gilmer, PCB 99 - 27 (August 24, 2000) and People v. Panhandle Eastern Pipe Line Company, PCB 99 - 191

In determining the appropriate civil penalty, according to Section 42(h) of the Act, this Board can consider any matters of record in mitigation or aggravation of penalty, including those listed factors.[149]

A. DURATION & GRAVITY

Respondents never complied with their NPDES permit. They failed to submit any DMRs for the first month, May 1986, and many years to come. That violation alone lasted for years. After admitting they did not file any DMRs, Respondents agreed to submit them as required. From 1989 through 1992, Respondents failed to submit nine more DMRs: duration more than 2 years plus 9 more times over the next three years. Respondents never had a representative discharge sampling point through at least May, 1991: duration 5 years (more than 1825 days), gravity immeasurable - who knows what and how much was discharged from their site. They violated their TSS concentration limit requirements more than a dozen times that we know of. Respondents were supposed to submit their NPDES permit renewal application to the Illinois EPA around September 1, 1990, 180 days before March 1, 1991. Respondents continued to discharge after March 1st and did not submit it until June of 1991: duration 270 days, gravity severe - Respondents were never in compliance with their permit.

Respondents filed false reports with the Illinois EPA. This has nothing to do with the fact that Respondents never had a representative discharge sampling point and all their data is suspect; and it has nothing to do with the fact that they continued to discharge from their site after their permit expired. This has to do with the fact that Respondents intentionally photocopied DMRs

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(November 15, 2001).

[149] 415 ILCS 5/42(h) (2002).

from one month, changed the date, and submitted it to the Agency charged with monitoring and protecting our environment. Nothing, in terms of permit compliance, can represent a more serious violation.

The only thing that could be more serious than intentionally filing false reports with an environmental protection agency, would be to lie to their representatives investigating a water pollution incident. Respondents did that too. The 1994/1995 water pollution in the Avon-Fremont Drainage Ditch, another oily discharge, was easily preventable. Nevertheless, it happened, and it happened for over 5 months. Respondents could have shortened it by at least a month if not more.

B. PRESENCE OR ABSENCE OF DUE DILIGENCE

Respondents consistently demonstrated a complete lack of due diligence.

Even though Respondents' initial NPDES permit went in to effect in May 1986 and required monthly submission of DMRs, Respondents failed to submit any DMRs to the Illinois EPA until November 1988.[150] After admitting the violations and agreeing to correct it, Respondents neglected to submit DMRs many more times over the next four years.[151] Rather than take a sample from a representative discharge point, submit it for analysis, fill out a simple DMR, and mail it to the Illinois EPA, Respondents submitted false reports. They did not have a representative discharge sampling point for years. They had numerous TSS concentration limit violations. They failed to submit their NPDES permit renewal application on time. It wasn't a few days late; it was 9 months late, and they continued to discharge.

By the time the source of the water pollution in the Avon-Fremont Drainage Ditch was

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150 Tr. at 32, 33, 49-51; Comp. Exhs. 1, 8A, 8B and 26.

151 See Tr. 48-53; Comp. Exhs. 1, 8A, 8B, 8C, 8D and 8E.

determined, Respondents site had a twenty year history of water quality and oil contamination issues. If they were diligent, Respondents would have at least started remediating their site before December 1994. If they were diligent, they would have at least stepped up and helped with the investigation on March 22nd, 1995, if not months earlier.

C. HOW MUCH DID RESPONDENTS BENEFIT BY REPEATEDLY FAILING TO COMPLY WITH THE ACT?

Although it may be difficult to quantify in a precise manner how much economic benefit Respondents derived by repeatedly failing to comply with the Act, it is clear the amount is significant. All that is known for sure is that in 1998 the Respondents were able to sell SVA's assets for over $8.2 million. Respondents committed the violations beginning a decade earlier. The most expensive violation, water pollution, started in 1994.

The cost of submitting an NPDES permit on time, installing a representative discharge sampling point, taking samples, analyzing the samples, and submitting a DMR to the Illinois EPA is nominal. Nevertheless, over all the years, month after month, that Respondents violated their NPDES permit requirements, they realized an economic benefit. They did not spend money to comply with their NPDES permit requirements.

Respondents also did not spend money to remediate their site before the 1994/1995 water pollution incident. Had Respondents paid to remediate the SVA site years earlier, the oily discharge from their site may not have contaminated the Avon-Fremont Drainage Ditch. Had Respondents paid to remediate the site before the 1994 discharge, the site's contaminated condition may not have taken 10 years to remediate. As of October 31, 2003, there was still

remediation work left to perform in relation to the "no further action' letter.[152]

Respondents' claim that they have since incurred costs and made expenditures related to their discharges into the Avon-Fremont Drainage Ditch and Grays Lake and that those expenditures should be credited against their penalty.[153] Not so. The expense of compliance incurred after an environmental violation, does not offset penalty or economic benefit. In the Panhandle Eastern case, the Board held that the fact "[t]hat a violator will still incur costs to come into compliance does not eliminate the economic benefit of delayed compliance, *i.e.,* funds that should be spent on compliance were available for other pursuits."[154]

The United States Environmental Protection Agency also emphasizes the well-established goal of ensuring that members of the regulated community, like Respondents, have a strong economic incentive to comply with environmental laws through the assessment of a civil penalty that at least recovers the economic benefit of noncompliance.[155] Section 42(h) of the Act was recently amended to emphasize this exact point.[156] The courts employ the concept of economic benefit to level the economic playing field and to prevent violators from gaining an unfair advantage over their compliant competitors.[157] The goal of considering economic benefit is to

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[152] Tr. at 389 - 90. James Huff, Respondents' environmental consultant explained that "[w]e are working on the site investigation completion report. We have an ongoing soil extraction operation at the facility. We have a risk assessment to do and corrective action completion report yet to do."

[153] RCA at 38, 39, 41, 42 and 43.

[154] People v. Panhandle Eastern Pipe Line Company, PCB 99 - 191 (November 15, 2001).

[155] 64 Federal Register at 32948.

[156] 415 ILCS 5/42(h) (2002).

[157] United States v. Smithfield Foods, Inc., 972 F.Supp. 338, 348 (E.D.Va. 1997).

prevent a violator from profiting from its noncompliance and wrongdoing.

Respondents profited. Whether SVA's assets would have been less valuable had Respondents paid to remediate their site and comply with environmental laws before the sale is unknown. Whether SVA would have had fewer assets to sell and Respondents would have profited less each year had they paid to remediate their site and comply with environmental laws is unknown. What is known is that Respondents had the use of that money that should have been spent remediating their site and complying with environmental laws to enhance their business. And, Respondents were able to sell their business assets for more than $8.2 million.

D. WHAT AMOUNT OF PENALTY WILL DETER FURTHER VIOLATIONS AND ENHANCE VOLUNTARY COMPLIANCE BY RESPONDENTS AND OTHERS SIMILARLY SITUATED?

The People of the State of Illinois cannot imagine this situation happening ever again: repeatedly violating NPDES permit requirements, not over a period of months, but years; filing false reports with the Illinois Environmental Protection Agency; obstructing a water pollution investigation knowing a site has a 20 year history of water quality violations and oil contamination issues; and in committing these environmental violations, enhancing a family owned business to sell it for millions of dollars. To enhance voluntary compliance " . . . and to assure that adverse effects upon the environment are fully considered and borne by those who cause them",[158] the People provide the following penalty analysis for Respondents' many violations.

Count I. Respondents intentionally filed false reports with the Illinois EPA two times. The only appropriate penalty is the maximum: $50,000 per violation. Anything less detracts from the

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[158] 415 ILCS 5/1(b) (2002).

purpose of the Act and the Illinois EPA, and compromises the Illinois environment. $100,000.

Count II. Respondents failed to file for their NPDES permit renewal on time. They filed it over 270 days late. They continued to violate the terms of the permit and discharge from their site without a permit. $27,000.

Count III. Respondents failed to submit DMRs in April, June, August, September, October, November, and December, 1989; September, 1990; and July, 1992: nine times. Normally a penalty of $1,000.00 per missed DMR would be appropriate, but not in this case. Respondents also failed to file DMRs in 1986, 1987, and 1988. Plus, two times they wrote to the Illinois EPA acknowledging the fact that they failed to file DMRs and assured the agency they would comply in the future. After that, nine times they failed to file. Aggravating. $3,000.00 per missed DMR. 9 times $3,000.00 equals $27,000.

Respondents never had an accessible representative discharge sampling point while their NPDES permit was in force. What's worse is that Respondents Edwin and Richard Frederick were physically threatening and verbally abusive toward Illinois EPA Field Inspector Chris Kallis when he was trying to do his job as the law and terms of Respondents' NPDES permit clearly allow him to do; to determine whether Respondents had yet to install a representative discharge sampling point. Mr. Kallis was trying to protect the environment.[159] $50,000.

Count IV. The water pollution incident in the Avon-Fremont Drainage Ditch in 1994 that lasted for five months was preventable. Respondents could have shortened the incident and reduced the resulting environmental impact by over thirty days. Environmental protection agency investigators were called out based on complaints of oil in the ditch December 23, 1994, January

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[159] Compl. Exh. 19, see June 4, 1991, memo attached.

5, March 1, March 9, March 22, April 18, and April 25, 1995. Respondents obstructed their investigation. The statutory maximum penalty is $50,000 for December 23rd plus $10,000 per day for the next 123 days through April 25th, or another $1,230,000. The maximum civil penalty for water pollution is $1,280,000. Respondents could have reduced the length of time the oily discharge was released by at least 34 days; and thereby reduced the maximum penalty by $340,000. Respondents' water pollution penalty should be not less than $250,000.

Count V. Respondents violated their TSS concentration limits for the 30 day average concentration for storm water discharges in August, September, and October, 1991; February, November, and December, 1992; May and June, 1993; and April, 1995.[160] They violated the TSS concentration limits for daily maximum discharge concentration in August and October 1991, June 1993, and April 1995.[161] Thirteen times in all. Again, a penalty of $1,000.00 per TSS concentration limits violation would normally be appropriate, but not here. Each of these violations that SVA submitted to the Illinois EPA were after their NPDES permit expired. They continued to discharge without a permit. And, these violations are evident because the Respondents finally have an accessible representative discharge sampling point. All the data submitted while their NPDES permit was in force and without an accessible representative discharge sampling point is suspect. Aggravating. $3,000.00 per TSS concentration limit violation. 13 times $3,000.00 equals $39,000.

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[160] Tr. at 53 - 58; Comp. Exhs. 1, 9, 10, 11, 12, 13, 14, 15, 16 and 17.

[161] Tr. at 53 - 58; Comp. Exhs. 1, 9, 11, 16 and 17.

Total Penalty Summary.

Count I	**Filing False Reports**	**$**	**100,000**
Count II	**Filing NPDES Renewal Late**	**$**	**27,000**
Count III	**Failing to File DMRs**	**$**	**27,000**
	Inaccessible Sampling Point	**$**	**50,000**
Count IV	**Water Pollution**	**$**	**250,000**
Count V	**TSS Violations**	**$**	**39,000**
	TOTAL PENALTY	**$**	**493,000.00**

The People of the State of Illinois acknowledge that the maximum penalty is the appropriate starting point when considering the civil penalty for violations of the Environmental Protection Act. Obviously this case has many factors in aggravation for the Board to consider, and the Respondents sold the assets to their business for many millions of dollars more than the penalty listed in the People's penalty analysis. However, the People of the State of Illinois believe a penalty of at least $493,000.00 will serve to deter future violations, enhance voluntary compliance, and assure that adverse effects upon the environment are fully considered and borne by those persons who cause them.[162]

E. PREVIOUSLY ADJUDICATED VIOLATIONS

The People are not aware of any previously adjudicated violations against any of the Respondents. However, Respondents' site has a history of water quality violations and oil

[162] 415 ILCS 5/1(b) (2002).

contamination issues dating back to 1975, and the violations in this case started in 1980s.

F. SECTION 42(h) FACTORS (6) AND (7)

The People of the State of Illinois do not believe factors 6 and 7 apply in this case. Section 42 of the Act, as noted earlier, was recently amended, but did not take effect until January 1, 2004.[163] The evidence in this case was presented at hearing October 30 and 31, 2003. The evidentiary record was closed at the end of the hearing. However, the People will briefly address factors 6 and 7 here because Respondents' use them in RCA is disingenuous.

1. Whether Respondents Self Disclosed?

RCA states for Count I that "[t]he Respondents were not in a position to self-disclose the violations because they were not aware of the alleged violation . . . ."[164] Regarding the filing false DMRs, Respondents intentionally photocopied another DMR, changed the date, and submitted it to the Illinois EPA. Not only were Respondents in a position to self-disclose, they were in a position not to file false DMRs.

For Count II, RCA states they did self-disclose because they wrote the state about whether they had to file an application.[165] Respondents NPDES application for renewal was due around September 1, 1990.[166] Respondents first wrote to the Illinois EPA in response to a "Failure to File Renewal Application Compliance Inquiry Letter" dated April 22, 1991.[167]

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[163] See Public Act 93-575; 415 ILCS 5/42(h)(6) and (7).

[164] RCA at 38.

[165] RCA at 39.

[166] Compl. Exh. 1.

[167] Compl. Exh. 28.

For Count III, RCA again states that "[t]he Respondents were not in a position to self-disclose the violations because they were not aware of the alleged violation . . . ."[168] That is a blatant lie. Their NPDES permit explained when DMRs were to be submitted and where samples were to be taken.[169] If they did not submit the DMR, or have an accessible discharge sampling point, they knew it. Further, the Illinois EPA notified Respondents at least two times when they were failing to file DMRs. And two times, Respondents admitted to missing DMRs and assured the Illinois EPA that they would not omit DMRs again.[170] They never disclosed the violations.

For Count IV, Respondents have no qualms saying they ". . . did in fact self-disclose the potential source of the release immediately upon discovering the source."[171] Investigators from the USEPA and Illinois EPA were out at the Avon-Fremont Drainage Ditch and SVA numerous times investigating complaints of oil in the ditch beginning in December 1994. The area is surrounded by farm fields, a nearby nursery, and SVA. Respondents hindered the oil pollution investigation when they lied about the USTs on their site. Admitting later, when the same investigators are again approaching the site, and the site is the only likely source of oil contamination in the area, that in fact there are USTs on site and at least one is leaking is not self-disclosure.

2. Did Respondents agree to undertake a SEP?

RCA claims that addressing their discharges into the Avon-Fremont Drainage Ditch and Grays Lake represents ". . . a de facto supplemental environmental project because Respondents -

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[168] RCA at 40 - 41.

[169] Compl. Exh. 1.

[170] Compl. Exh.s 26 and 27.

[171] RCA at 42.

especially Edwin Frederick and Richard Frederick - took actions beyond the actions required to address the discharge from the SVA site."[172] A "supplemental environmental project" or "SEP" is an environmentally beneficial project Respondents agree to do in settlement of an environmental enforcement action that Respondents are not otherwise legally required to perform.[173] "De facto" is not defined.

Remediating a grossly contaminated site that over the years has polluted multiple bodies of waters of the State is an environmentally beneficial project. If Respondents agreed to do such a project in settlement of an environmental enforcement action that they were not otherwise legally obligated to do, it could have been a SEP. They did not.

The fact that the Frederick Brothers are finally remediating the site, after all these years, does not make the project a SEP, de facto, or otherwise. First, it can easily be argued that they have a duty and obligation to clean the waters they contaminated and clean their own site which contributed to the water pollution.[174] Second, Respondents never entered into their remediation project as part of an environmental enforcement settlement; this case went to hearing and is still at issue. Also, based on the fact that Respondents have a responsibility to clean up their discharges and the cause of those discharges, remediating their own site would never qualify as a SEP.

And third, Edwin and Richard Frederick are legally required to perform the site

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[172] RCA at 38, 39, 41, 42 and 44.

[173] 415 ILCS 5/42(h)(7) (2004).

[174] The Constitution of the State of Illinois, Article XI, Section 1, states that it is the public policy of this ". . . State and the duty of each person to provide and maintain a healthful environment . . . ."

remediation for another reason.[175] Edwin and Richard Frederick did not remediate the SVA site before the 1994/1995 water pollution incident, even though the site had a history of water quality violations and oil contamination issues since 1975. Obviously, Respondents did some work off and on site in 1995 when all the evidence showed the SVA site caused the oily discharge in the Avon-Fremont Drainage Ditch. But, the only way they could sell the SVA assets for more than $8.2 million was to agree to remediate the site and get a "no further action" letter from the Illinois EPA.[176] They are legally obligated by contract to remediate the site. The long term project to remediate their site that has been contaminated for decades does not qualify for a SEP.

V. THE PEOPLE OF THE STATE OF ILLINOIS ARE ENTITLED TO THEIR COSTS AND ATTORNEY FEES FROM RESPONDENTS

Section 42 of the Act also explains when the award of attorneys' fees and costs are appropriate.[177] Section 42(f) provides that " . . . the Board, or a court of competent jurisdiction may award costs and reasonable attorney's fees . . . to the State's Attorney, or the Attorney General in a case where he has prevailed against a person who has committed a wilful, knowing or repeated violation of the Act."[178]

Since Respondents' violations of sections 12(a) and (f) of the Act were wilful, knowing, and/or repeated, the People are entitled to attorneys' fees and costs. Respondents intentionally

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[175] Compl. Exh. 35.

[176] Compl. Exh. 35.

[177] 415 ILCS 5/42 (2004).

[178] 415 ILCS 5/42(f) (2004).

photocopied DMRs, changed the date, and submitted them as different DMRs to the Illinois EPA. Respondents wilfully and knowingly failed to submit their NPDES permit on time claiming months later they did not have to. Respondents knowingly and repeatedly failed to submit DMRs. Respondents knowingly failed to have an accessible discharge sampling point while their permit was in force. Respondents, aware of their site's long history of water quality and oil contamination issues, intentionally deceived environmental protection agency investigators causing a water pollution incident to last months longer than necessary. And Respondents repeatedly violated their TSS concentration limits once they installed an accessible representative discharge sampling point.

A. REASONABLE ATTORNEY FEES

Many Assistant Attorney Generals were assigned to represent the People of the State of Illinois over the years this case has been pending: Ellen O'Laughlin, (PCB Hearing Officer) Bradley P. Halloran, Kelly A. Cartwright, Mitchell L. Cohen ("AAG Cohen"), Joel J. Sternstein ("AAG Sternstein"), and Bernard J. Murphy ("AAG Murphy").[179] The People are only seeking attorney fees for the time spent and work performed by AAGs Cohen, Sternstein and Murphy. Based on the Board's Order of October 16, 2003, AAG Sternstein's fee application only goes through that day.[180]

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[179] PCB Docket.

[180] Respondents' counsel David O'Neill used to work for and practices regularly before the PCB. He knew of AAG Sternstein while Sternstein worked for the PCB. O'Neill did not object for over a year to AAG Sternstein's appearance in the case, or any work performed by AAG Sternstein. O'Neill did not object until essentially the eve of trial: September 9, 2003. AAG Sternstein swore in a certified affidavit that he had no personal involvement in this case while working for the PCB. Nevertheless, on October 16, 2003, fourteen days before trial, this Board issued an Order prohibiting AAG Sternstein from further participating in this case. The People

A conservative estimate of time AAG Cohen spent prosecuting this case against Respondents is 509.5 hours.[181] Multiplying the number of hours AAG Cohen spent prosecuting this case times the reasonable hourly rate of $150.00 equals $ 76,425.00 .[182] A conservative estimate of time AAG Sternstein spent prosecuting this case against Respondents is 224.5 hours.[183] Multiplying the number of hours AAG Sternstein spent prosecuting this case times the reasonable hourly rate of $150.00 equals $ 33,675.00. A conservative estimate of time AAG Murphy spent prosecuting this case against Respondents is 136 hours.[184] Multiplying the number of hours AAG Murphy spent prosecuting this case times the reasonable hourly rate of $150.00 equals $ 20,400.00.

The People seek a total of $ 130,500.00 in attorneys' fees to be deposited by Respondents into the "Attorney General's State Projects and Court Ordered Distribution Fund."

B. REASONABLE COSTS

In addition to being entitled to reasonable attorneys' fees in this case, section 42(f) of the Act also allows for payment of, and the People are entitled to, the reasonable costs incurred in prosecuting this case. Therefore, the People of the State of Illinois request an award of $ 5,574.84

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object to the Board's October 16, 2003, Order. Under these circumstances, the People are entitled to attorney fees on behalf of work performed and time spent by AAG Sternstein through October 16, 2003.

[181] See Exhibit A: affidavit and time sheet summary.

[182] The Board has held that $150.00 hourly rate for attorney's fees is reasonable. See People v. J & F Hauling Inc., PCB 02-221 (May 1, 2003), citing Panhandle, slip op. at 37 (Nov. 15, 2001).

[183] See Exhibit B: affidavit and time sheet summary.

[184] See Exhibit C: affidavit and time sheet summary.

for the costs incurred in prosecuting this case against Respondents.[185] The payment for costs from Respondents should also be deposited into the "Attorney General's State Projects and Court Ordered Distribution Fund."

The costs are broken down as follows:

Depositions	$	3,887.65
Off-site Photocopying	$	1,119. 34
AAG Cohen's travel & lodging	$	305.62
AAG Murphy's travel & lodging	$	261.23
TOTAL EXPENSES	$	5,574.84

VI. CONCLUSION

WHEREFORE, Complainant, the People of the State of Illinois, respectfully requests that this Board find that Respondents violated the Act as alleged in each count of the Second Amended Complaint and ask for the following relief: ordering Respondents to immediately cease and desist from further violations of the Act and Board Regulations, assessing a civil penalty against Respondents in an amount of not less than $ 493,000.00 with all fines payable to the "Environmental Protection Trust Fund" to be used for the advancement of environmental protection activities in Illinois, assessing Complainant's attorneys' fees against Respondents in the amount of $ 130,500.00, and assessing costs in the amount of $5,574.84, both attorneys' fees and costs payable to the "Attorney General's State Projects and Court Ordered Distribution Fund", all

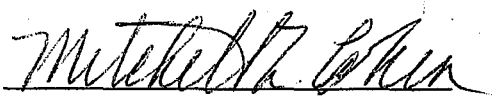
[185] See Exhibit D: affidavit and expense summary.

monies due within thirty (30) days of this judgment, and granting such other relief as this Board deems appropriate and just.

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

MITCHELL L. COHEN
BERNARD MURPHY
Assistant Attorneys General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601
(312) 814-5282/(312) 814-3908

I:\MLC\SkokieValley\ClosingRebuttalArg.wpd

State of Illinois)
) SS
County of Lake)

AFFIDAVIT

I, Mitchell L. Cohen, upon affirmation, state as follows:

1. I am an Assistant Attorney General in the Environmental Bureau North of the Illinois Attorney General's Office and assigned to assist in the representation of the People of the State of Illinois in the case styled, People v. Skokie Valley Asphalt Co., Inc., et al., PCB No. 96-98, filed before the Illinois Pollution Control Board.

2. I have reviewed the hours I spent prosecuting this case and as set forth in the attached summary of work performed, and having personal and direct knowledge of same, the undersigned certifies that the statements set forth in this affidavit and attachment pertaining to the hours spent prosecuting this case are true and accurate.

Further affiant sayeth not.

Mitchell L. Cohen
Assistant Attorney General
Environmental Bureau North

Subscribed to and affirmed before me
this 13th day of April, 2004.

Notary Public

OFFICIAL SEAL
PHYLLIS DUNTON
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 12-7-2004

EXHIBIT
A

Assistant Attorney General
Mitchell L. Cohen
Hours worked related to People v. Skokie Valley Asphalt, Inc., Edwin & Richard Frederick
Case No. PCB 96 - 98

MONTH	HOURS	SUMMARY OF WORK PERFORMED
May, 2002	1 hour	Meeting re: file transfer, call to opposing counsel
June, 2002	13 hours	Subst. of Counsel, Motion to Cancel Hrg, status hrg, and file review
July, 2002	11 hours	File review, draft/file 2nd Amended Complaint
August, 2002	3 hours	File review
September, 2002	1 hour	Rev. Mo. to Strike 2nd Amended Complaint
October, 2002	5 hours	Resp. to Mo. to Strike, Rev. addl. info. re: mo. to strike, Bd. Order
November, 2002	1 hour	PCB Status Hrg
December, 2002	11 hours	Research/ help draft Mo. to deem facts admitted/summ. judg., prep. for filing, rev. D's late answer, and one status hrg
January, 2003	6 hours	Review and Reply to D's Response to Motion to Deem Facts Admitted and Motion for Summary Judgment
March, 2003	3 hours	Review Bd Order and file
April, 2003	19 hours	Motion to Strike Aff. Defenses, Review and Respond to D's Motion to Dismiss Fred. Bros.
May, 2003	16 hours	Discovery and Motion to Strike D's Motion to Dismiss Fred. Bros.
June, 2003	9 hours	Bd. Order, Review and Respond to Motion for Extension of Time, Review Motion for Reconsideration

Assistant Attorney General
Mitchell L. Cohen
Hours worked related to People v. Skokie Valley Asphalt, Inc., Edwin & Richard Frederick
Case No. PCB 96 - 98

MONTH	HOURS	SUMMARY OF WORK PERFORMED
July, 2003	31 hours	Response to Motion to Reconsider, Discovery, Motion to Compel, Deposition preparation
August, 2003	34 hours	Deposition preparation, depositions (Edwin Frederick, Richard Frederick, James Huff, Chris Kallis)
September, 2003	33 hours	PCB status hrg, D's 2nd Mot. to Dismiss, pre-trial memorandum, trial prep.
October, 2003	129 hours	trial preparation, Bd. Order 10 - 16 - 03, Mot. to Bar Testimony, Mot.s in limine, pre-trial hrgs, hearing and travel
December, 2003	47.5 hours	Review hearing transcript and closing argument
January, 2004	40 hours	Closing Argument
March, 2004	3 hours	Read D's Closing Argument
April, 2004	93 hours	Closing Rebuttal Argument
TOTAL HOURS:	**509.5 HOURS**	

This is a conservative summary of hours spent working on this case.

State of Illinois)
) SS
County of Lake)

AFFIDAVIT

I, Joel Sternstein, upon affirmation, state as follows:

1. I am an Assistant Attorney General in the Environmental Bureau North of the Illinois Attorney General's Office and assigned to assist in the representation of the People of the State of Illinois in the case styled, People v. Skokie Valley Asphalt Co., Inc., et al., PCB No. 96-98, filed before the Illinois Pollution Control Board.

2. I have reviewed the hours I spent prosecuting this case and as set forth in the attached summary of work performed, and having personal and direct knowledge of same, the undersigned certifies that the statements set forth in this affidavit and attachment pertaining to the hours spent prosecuting this case are true and accurate.

Further affiant sayeth not.

Joel Sternstein
Assistant Attorney General
Environmental Bureau North

Subscribed to and affirmed before me
this 13th day of April, 2004.

Notary Public

OFFICIAL SEAL
PHYLLIS DUNTON
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 12-7-2004

EXHIBIT
tabbies
B

Assistant Attorney General
Joel J. Sternstein
Hours worked related to People v. Skokie Valley Asphalt Co., Inc., et al.,
PCB Case No. 96-98

MONTH	HOURS	SUMMARY OF WORK PERFORMED
August, 2002	16 hours	Reviewed case file.
September, 2002	16 hours	Drafted Complainant's Response to Respondent's Motion to Strike the 2nd Amended Complaint (Submitted October 1).
October, 2002	.5 hours	Board status call on October 16 (includes preparation and internal follow-up discussion).
November, 2002	.5 hours	Board status call on November 20.
December, 2002	16.5 hours	Board status call on December 23. Drafted Complainant's Motion to Deem Facts Admitted and Motion for Summary Judgment (December 20).
January, 2003	14 hours	Drafted Motion for Leave to File Reply and Reply to Respondent's Response to Complainant's Motion to Deem Facts Admitted and Motion for Summary Judgment (January 17).
February, 2003	.5 hours	Board status call on February 13.
March, 2003	.5 hours	Board status call on March 28.
April, 2003	32 hours	Drafted Complaint's Motion to Strike or Dismiss Respondent's Affirmative Defenses including meeting with AAG Cohen (April 18). Drafted discovery documents served on Respondents (May 7)
May, 2003	26 hours	Continued drafting discovery documents served on Respondents (May 7). Drafted Motion to Strike Respondent's Motion to Dismiss the Frederick Brothers or in the Alternative Complainant's Response and Request to Deny Respondent's Motion to Dismiss the Frederick Brothers (May 7).
June, 2003	.5 hours	Board status call on June 27.

July, 2003	26.5 hours	Board status calls on July 10 and 29 (July 29 - long call). Internal meeting on July 23 to discuss the case. Drafted First Motion to Compel Respondents to Respond to Complainant's Discovery Requests (July 9) Drafted Second Motion to Compel Respondents to Respond to Complainant's Discovery Requests (July 28).
August, 2003	42 hours	Preparing for depositions of Richard and Edwin Frederick and attending depositions of Richard and Edwin Frederick (August 5 and 6). Answered Respondent's discovery requests submitted to Complainant (late August).
September, 2003	24.5 hours	Board status call on September 5. Drafted Complainant's Pre-Hearing Memorandum (Sept. 22). Review Complainant's Response to Motion to Strike Second Amended Complaint and Recuse Attorney Sternstein and draft attached affidavit.
October, 2003	8.5 hours	Trial preparation with witnesses Garretson and Kallis. Board status call on October 7.

(Only includes hours through October 16, 2003)

TOTAL HOURS: 224.5 HOURS

This is a conservative summary of hours spent working on this case. It does not include time that office law clerks spent working on this case during the summer and fall of 2003 under my supervision.

State of Illinois)
) SS
County of Lake)

AFFIDAVIT

I, Bernard J. Murphy, Jr., upon affirmation, state as follows:

1. I am an Assistant Attorney General in the Environmental Bureau North of the Illinois Attorney General's Office and assigned to assist in the representation of the People of the State of Illinois in the case styled, People v. Skokie Valley Asphalt Co., Inc., et al., PCB No. 96-98, filed before the Illinois Pollution Control Board.

2. I have reviewed the hours I spent prosecuting this case and as set forth in the attached, and having personal and direct knowledge of same, the undersigned certifies that the statements set forth in this affidavit and attachment pertaining to the hours spent prosecuting this case are true and accurate.

Further affiant sayeth not.

Bernard J. Murphy, Jr., Asst. Chief
Assistant Attorney General
Environmental Bureau North

Subscribed to and affirmed before me
this 13th day of April, 2004.

Phyllis Dunton
Notary Public

OFFICIAL SEAL
PHYLLIS DUNTON
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 12-7-2004

EXHIBIT
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C

Assistant Attorney General
Bernard J. Murphy, Jr.
Hours worked related to People v. Skokie Valley Asphalt Co., Inc., et al.
PCB No. 96-98

MONTH	HOURS	SUMMARY OF WORK PERFORMED
October, 2003	125.5	Trial preparation, travel and trial.
November, 2003	8	Prepare draft of opening closing statement.
April, 2004	2.5	Review and revise reply in support of closing statement; preparation of fees affidavit and statement of hours worked.

TOTAL HOURS: 136 Hours

This is a conservative summary of the hours spent working on this case.

I:\MLC\SkokieValley\MurphyHours.wpd

State of Illinois)
) SS
County of Lake)

AFFIDAVIT

I, Mitchell L. Cohen, upon affirmation, state as follows:

1. I am an Assistant Attorney General in the Environmental Bureau North of the Illinois Attorney General's Office and assigned to assist in the representation of the People of the State of Illinois in the case styled, People v. Skokie Valley Asphalt Co., Inc., et al., PCB No. 96-98, filed before the Illinois Pollution Control Board.

2. I have reviewed the costs incurred by the State of Illinois prosecuting this case and as set forth in the attached summary of costs incurred, and having personal and direct knowledge of same, the undersigned certifies that the statements set forth in this affidavit and attachment pertaining to the costs incurred in prosecuting this case are true and accurate.

3. The State of Illinois incurred $5,574.84 in costs in prosecuting this case.

Further affiant sayeth not.

Mitchell L. Cohen
Assistant Attorney General
Environmental Bureau North

Subscribed to and affirmed before me
this 13th day of April, 2004.

Phyllis Dunton
Notary Public

OFFICIAL SEAL
PHYLLIS DUNTON
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 12-7-2004

EXHIBIT
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D

People v. Skokie Valley Asphalt Co., Inc., et al.

PCB No. 96-98

Illinois Pollution Control Board

COSTS INCURRED BY THE STATE OF ILLINOIS

Depositions:	$	3,887.65
Photocopying, off-site	$	1,119.34
AAG Cohen Travel & Lodging	$	305.62
AAG Murphy Travel & Lodging	$	261.23
TOTAL COSTS	$	5,574.84

CERTIFICATE OF SERVICE

I, MITCHELL L. COHEN, an Assistant Attorney General, certify that on the 15th day of April, 2004, I caused to be served by First Class Mail, **The People of the State of Illinois' Closing Rebuttal Argument and Reply Brief** to the parties named on the attached service list.

Mitchell L. Cohen

MITCHELL L. COHEN
Assistant Attorney General

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