

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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MAY 24 2005

STATE OF ILLINOIS
Pollution Control Board

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

Complainant,)

v.)

SKOKIE VALLEY ASPHALT CO., INC.,)
an Illinois Corporation, EDWIN L. FREDERICK,)
JR., Individually and as Owner and President of)
Skokie Valley Asphalt Co., Inc., and)
RICHARD J. FREDERICK, Individually)
and as Owner and Vice President of Skokie)
Valley Asphalt Co., Inc.,)

Respondents.)

PCB 96-98
(Enforcement - RCRA)

NOTICE OF FILING

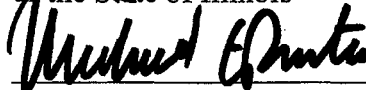
TO: Mr. David S. O'Neill, Esq.
Mr. Michael B. Jawgiel, Esq.
5487 North Milwaukee Avenue
Chicago, Illinois 60630-1249

Ms. Carol Webb, Hearing Officer
Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274

PLEASE TAKE NOTICE that I have today filed Complainant's Answers and Objections to Respondents' First Set of Request for Admission of Facts Regarding Attorneys' Fees and Costs, Complainant's Answers and Objections to Respondents' First Set of Interrogatories Regarding Attorneys' Fees and Costs, Complainant's Answers and Objections to Respondents' First Set of Document Requests Regarding Attorneys' Fees and Costs, and Certification thereof, with the Office of the Clerk of the Illinois Pollution Control Board, true and correct copies of which are attached hereto and herewith served upon you.

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

BY:



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

CERTIFICATE OF SERVICE

It is hereby certified that true and correct copies of the **Notice of Filing, Respondents' First Set of Request for Admission of Facts Regarding Attorneys' Fees and Costs, Complainant's Answers and Objections to Respondents' First Set of Interrogatories Regarding Attorneys' Fees and Costs, Complainant's Answers and Objections to Respondents' First Set of Document Requests Regarding Attorneys' Fees and Costs, and Certification thereof**, were sent by First Class Mail, postage prepaid, to the persons listed on the Notice of Filing on May 24, 2005.

BY: 
MICHAEL C. PARTEE

It is hereby certified that the originals plus nine (9) copies of the foregoing were hand-delivered to the following person on May 24, 2005:

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

BY: 
MICHAEL C. PARTEE

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PCB 96-98
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**COMPLAINANT'S ANSWERS AND OBJECTIONS TO RESPONDENTS' FIRST
REQUEST FOR ADMISSION OF FACTS REGARDING ATTORNEYS' FEES AND
EXPENSES**

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA
MADIGAN, Attorney General of the State of Illinois, and in response to Respondents', SKOKIE
VALLEY ASPHALT CO., INC., EDWIN L. FREDERICK, JR., and RICHARD J.
FREDERICK, First Request for Admission of Facts Regarding Attorneys' Fees and Expenses,
answers and objects as follows:

I. GENERAL OBJECTIONS

1. Complainant objects to Respondents' Requests to Admit Facts ("Requests")
because they violate the Board's Order, dated April 7, 2005, which directed the parties to resolve
this dispute over attorneys' fees and costs in a speedy and final resolution. In allowing limited
discovery on Complainant's request for fees and costs, the Board ordered that "any pleading by
either party not designed to further a speedy and ultimate resolution of this case will not be

tolerated by the hearing officer or the Board.” (See Order, dated April 7, 2005, at 4.) Many of Respondents’ 43 Requests are insulting, harassing, made in bad faith, do not pertain to attorneys’ fees and costs, and are not devised to resolve this in a speedy and final manner.

2. Complainant objects to Request Nos. 3, 11, 12, 13, 15, 16, 17, 18, 19, 20, and 37 on relevance grounds and because they violate the Board’s Order, dated April 7, 2005. These Requests seek admissions regarding Complainant’s request for AAG Joel Sternstein’s fees, which were previously disallowed by the Board. (Id.) The Board expressly ordered that “the parties are not to address [AAG Joel Sternstein’s fees] in conducting discovery or at hearing.” (Id.) For these reasons, Complainant neither admits nor denies these Requests pertaining to AAG Sternstein.

3. Complainant objects to Request Nos. 4, 5, 6, 8, 9, 27, 28, and 30 on relevance and privacy grounds because they seek irrelevant information regarding personal compensation to Assistant Attorneys General in this case. The personal compensation to the Assistant Attorneys General in this case is private information that has no relevance to the reasonableness of their requested fees and costs. For these reasons, Complainant neither admits nor denies these Requests pertaining to personal compensation.

4. Complainant objects to the definition of “State” contained in the Requests as overbroad and unduly burdensome to the extent that it purports to require Complainant to answer on behalf of any office or agency other than the Attorney General’s Office and the Illinois Environmental Protection Agency.

5. Complainant objects to the form of the definitions of “subject matter of this case” and “person” or “people.” Complainant also objects that the definition of “person” or “people” is ambiguous.

II. ANSWERS

Fact No. 1:

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

Response: Subject to its objections, Complainant admits this fact.

Fact No. 2:

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

Response: Subject to its objections, Complainant admits this fact.

Fact No. 3:

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

Response: Subject to its objections and pursuant to the Board's Order, dated April 7, 2005, Complainant neither admits nor denies this fact.

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: Subject to its objections and pursuant to the Board's Order, dated April 7, 2005, Complainant neither admits nor denies this fact.

Fact No. 5:

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

Response: Complainant specifically objects to this request because it assumes facts not in evidence. Whether and how much taxes are paid by Respondents is not a matter of record. Complainant also incorporates its general objections herein. Subject to its objections and pursuant to the Board's Order, dated April 7, 2005, Complainant neither admits nor denies this fact.

Fact No. 6:

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

Response: Subject to its objections and pursuant to the Board's Order, dated April 7, 2005, Complainant neither admits nor denies this fact.

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: Complainant specifically objects that this request is ambiguous. Complainant also specifically objects to this request on relevance grounds. Acceptance of other, unrelated matters is irrelevant to the requested fees and costs in this case. Subject to its objections, Complainant admits this fact.

Fact No. 8:

The Attorney Claiming Fees are [*sic*] 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. [*sic*] and their salary reflects this expertise and experience.

Response: Subject to its objections and pursuant to the Board's Order, dated April 7, 2005, Complainant neither admits nor denies this fact.

Fact No. 9:

The Attorneys Claiming Fees [*sic*] 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: Subject to its objections and pursuant to the Board's Order, dated April 7, 2005, Complainant neither admits nor denies this fact.

Fact No. 10:

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

Response: Subject to its objections, Complainant denies this fact.

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: Subject to its objections and pursuant to the Board's Order, dated April 7, 2005, Complainant neither admits nor denies this fact.

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: Subject to its objections and pursuant to the Board's Order, dated April 7, 2005, Complainant neither admits nor denies this fact.

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: Subject to its objections and pursuant to the Board's Order, dated April 7, 2005, Complainant neither admits nor denies this fact.

Fact No. 14:

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

Response: Complainant specifically objects to this request on relevance grounds. This request is irrelevant to the reasonableness of the requested fees and costs. Complainant also specifically objects that this request is argumentative. Subject to its objections, Complainant admits this fact and states that all attorneys in this case have such a duty.

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: Subject to its objections and pursuant to the Board's Order, dated April 7, 2005, Complainant neither admits nor denies this fact.

Fact No. 16:

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

Response: Subject to its objections and pursuant to the Board's Order, dated April 7, 2005, Complainant neither admits nor denies this fact.

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: Subject to its objections and pursuant to the Board's Order, dated April 7, 2005, Complainant neither admits nor denies this fact.

Fact No. 18:

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

Response: Subject to its objections and pursuant to the Board's Order, dated April 7, 2005, Complainant neither admits nor denies this fact.

Fact No. 19:

Attorney Cohen had a duty to determine if Attorney Cohen [*sic*] 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 [*sic*] to the proper disciplinary boards and to his supervisors at the Illinois Attorney General's Office.

Response: Subject to its objections and pursuant to the Board's Order, dated April 7, 2005, Complainant neither admits nor denies this fact.

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: Subject to its objections and pursuant to the Board's Order, dated April 7, 2005, Complainant neither admits nor denies this fact.

Fact No. 21:

The Attorneys Claiming Fees never prepared a budget for the for [*sic*] 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: Complainant specifically objects to this request on relevance grounds. Whether or not a budget was prepared is irrelevant to the reasonableness of the requested fees and costs. Subject to its objections, Complainant admits this fact.

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: Subject to its objections, Complainant denies this fact.

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: Complainant specifically objects to this request on relevance grounds. Whether or not invoices were submitted is irrelevant to the reasonableness of the requested fees and costs. Subject to its objections, Complainant admits this fact.

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: Complainant specifically objects to this request on relevance grounds. This request is irrelevant to the reasonableness of the requested fees and costs. Complainant also specifically objects to the form of this request. Subject to its objections, Complainant denies this fact.

Fact No. 25:

Throughout the course of efforts to negotiate and settle this matter, the Attorneys Claiming Fees did on more than on 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: Complainant specifically objects to this request on relevance grounds. Complainant specifically objects to this Request because settlement communications are inadmissible. This request is irrelevant to the reasonableness of the requested fees and costs. Subject to its objections, Complainant denies this fact.

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 [*sic*] fees, costs and expenses being claimed.

Response: Complainant specifically objects to this request on relevance grounds. This request is irrelevant to the reasonableness of the requested fees and costs. Complainant specifically objects that settlement communications are inadmissible. Complainant also specifically objects to this Request because it is argumentative. Subject to its objections, Complainant denies this fact.

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: Complainant specifically objects to the form of this Request and because it is ambiguous. Subject to its objections and pursuant to the Board's Order, dated April 7, 2005, Complainant neither admits nor denies this fact.

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: Complainant specifically objects to the form of this Request and because it is ambiguous. Subject to its objections and pursuant to the Board's Order, dated April 7, 2005, Complainant neither admits nor denies this fact.

Fact No. 29:

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

Response: Complainant specifically objects to the form of this Request. Complainant also specifically objects that this Request assumes facts not in evidence. Subject to its objections and pursuant to the Board's Order, dated April 7, 2005, Complainant neither admits nor denies this fact.

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: Complainant specifically objects to the form of this Request. Subject to its objections and pursuant to the Board's Order, dated April 7, 2005, Complainant neither admits nor denies this fact.

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 [*sic*].

Response: Subject to its objections, Complainant denies this fact.

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: Subject to its objections, Complainant admits this fact.

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: Subject to its objections, Complainant admits this fact.

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: Subject to its objections, Complainant admits this fact.

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 cots incurred". [sic]

Response: Subject to its objections, Complainant denies this fact.

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: Complainant specifically objects to this Request because it assumes facts not in evidence. The affidavit did not contain false information. Subject to its objections, Complainant denies this fact.

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: Complainant specifically objects to this Request because it assumes facts not in evidence. Complainant also specifically objects that this Request is argumentative. Subject to its objections and pursuant to the Board's Order, dated April 7, 2005, Complainant neither admits nor denies this fact.

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: Complainant specifically objects to this request on relevance grounds. Whether or not all documents copied at Complainant's expense were admitted into evidence or referred to at a hearing in this matter is irrelevant. Subject to its objections and after a reasonable investigation, Complainant lacks sufficient information to either admit or deny this fact.

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: Complainant specifically objects that this Request is argumentative. Subject to its objections, Complainant denies this fact.

Fact No. 40:

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

Response: Subject to its objections, Complainant admits this fact.

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: Subject to its objections, Complainant denies this fact.

Fact No. 42:

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

Response: Subject to its objections, Complainant admits this fact.

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.

Response: Complainant specifically objects to this Request on relevance grounds. This request is irrelevant to the reasonableness of the requested fees and costs. Subject to its objections, Complainant admits this fact.

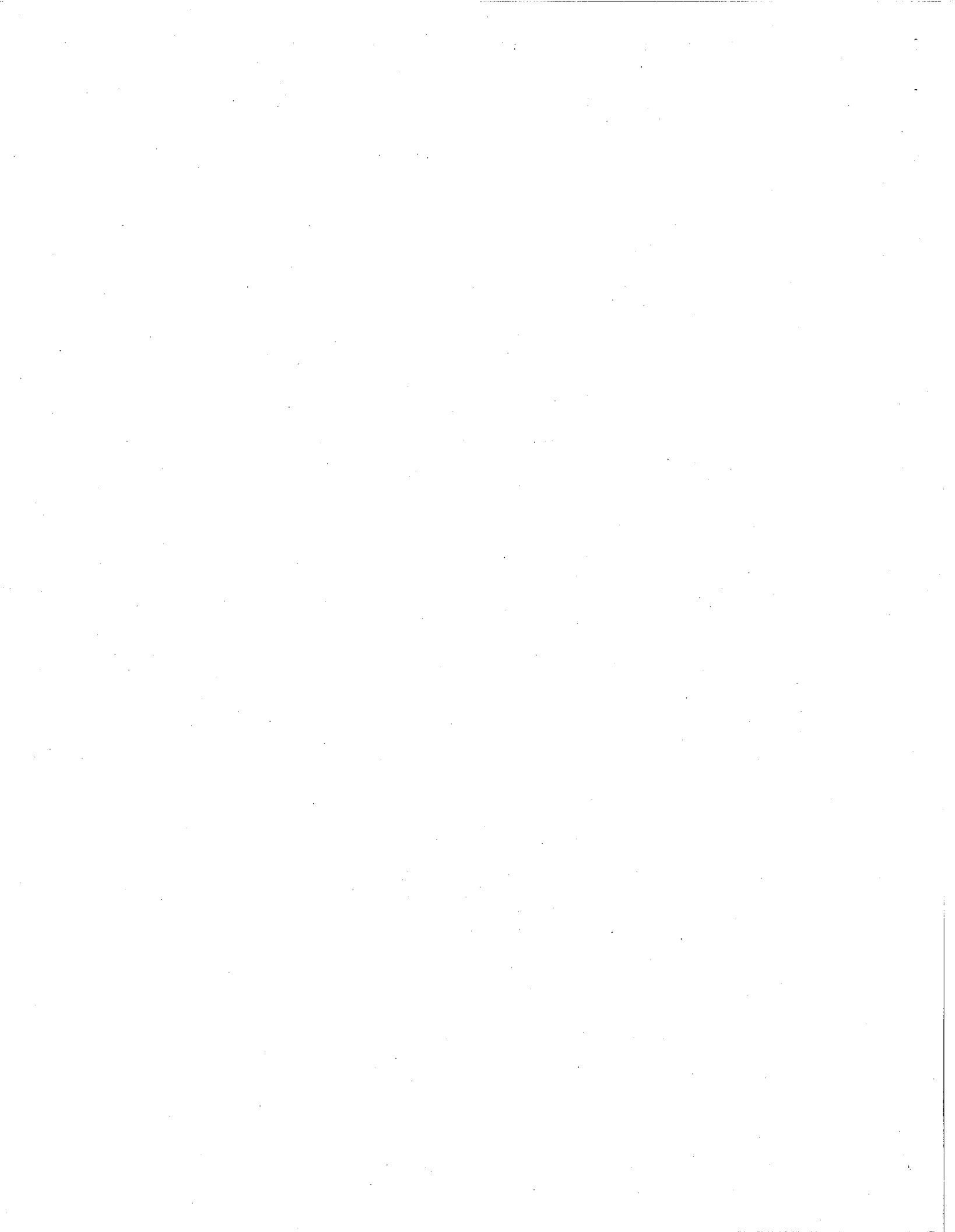
Respectfully submitted,

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

BY:



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



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COMPLAINANT'S ANSWERS AND OBJECTIONS TO RESPONDENTS' FIRST SET OF INTERROGATORIES REGARDING ATTORNEYS' FEES AND EXPENSES

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and in response to Respondents', SKOKIE VALLEY ASPHALT CO., INC., EDWIN L. FREDERICK, JR., and RICHARD J. FREDERICK, First Set of Interrogatories Regarding Attorney's Fees and Expenses, answers and objects as follows:

I. GENERAL OBJECTIONS

1. Complainant objects to First Set of Interrogatories Regarding Attorney's Fees and Expenses ("Interrogatories") because they violate the Board's Order, dated April 7, 2005, which directed the parties to resolve this dispute in a speedy and final resolution. In allowing limited discovery on Complainant's request for fees and costs, the Board ordered that "any pleading by either party not designed to further a speedy and ultimate resolution of this case will not be

tolerated by the hearing officer or the Board.” (See Order, dated April 7, 2005, at 4.)

Respondents’ 50 Interrogatories (including sub-parts) are insulting, harassing, made in bad faith, and are not devised to resolve this in a speedy and final manner.

2. Complainant objects to Interrogatory No. 14 on relevance grounds and because it violates the Board’s Order, dated April 7, 2005. This Interrogatory seeks information regarding Complainant’s request for AAG Joel Sternstein’s fees, which were previously disallowed by the Board. (Id.) The Board expressly ordered that “the parties are not to address [AAG Joel Sternstein’s fees] in conducting discovery or at hearing.” (Id.) For these reasons, Complainant does not answer this Interrogatory pertaining to AAG Sternstein.

3. Complainant objects to Interrogatory Nos. 16 and 23(i) on relevance and privacy grounds because they seek irrelevant information regarding personal compensation to Assistant Attorneys General in this case. The personal compensation to the Assistant Attorneys General in this case is private information that has no relevance to the reasonableness of their requested fees and costs. For these reasons, Complainant does not answer Interrogatories pertaining to personal compensation.

4. Complainant objects to the Interrogatories because they violate Supreme Court Rule 213(c), which provides that a party shall serve no more than 30 interrogatories, including sub-parts. Respondents served 50 interrogatories, including sub-parts.

5. Complainant objects to the definition of “State” contained in the Interrogatories as overbroad and unduly burdensome to the extent that it purports to require Complainant to answer on behalf of any office or agency other than the Attorney General’s Office and the Illinois Environmental Protection Agency.

6. Complainant objects to the form of the definitions of "subject matter of this case" and "person" or "people." Complainant also objects that the definition of "person" or "people" is ambiguous.

II. ANSWERS

Interrogatory No. 1:

Identify the person(s) answering these interrogatories and identify any and all persons who were consulted in formulating answers to these interrogatories.

Response: Subject to its objections, Complainant answers Assistant Attorneys General Mitchell L. Cohen and Michael C. Partee.

Interrogatory No. 2:

Identify any persons with knowledge related to the subject matter of the claims for Attorneys Fees and Costs and describe in detail the subjects of which he has knowledge.

Response: Complainant specifically objects that this request seeks irrelevant information and is overly broad and unduly burdensome because it seeks a virtually endless list of names. Subject to its objections, Complainant answers that Assistant Attorneys General Cohen, Michael C. Partee, and Elizabeth Wallace have such knowledge. Former Assistant Attorneys General Bernard J. Murphy, Jr, Joel Sternstein, Kelly Cartwright, Ellen O'Laughlin and Bradley Halloran also have such knowledge. All of these attorneys have knowledge of the legal work that each attorney respectively performed in this case. Also, please see Complainant's Answers and Objections to Respondents' First Set of Document Requests. Complainant's investigation continues.

Interrogatory No. 3:

Identify any and all witnesses you may or will call at the evidentiary hearing on this matter. For each witness, state the following:

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

Response: Subject to its objections, Complainant answers that it may call AAG Cohen and Partee, 188 West Randolph Street, Suite 2001, Chicago, Illinois. AAG Cohen and Partee have knowledge of the requested attorneys' fees and costs. Complainant may also call Bernard J. Murphy, Jr., Assistant General Counsel, Department of Law, City of Chicago Board of Education, 125 South Clark Street, 7th Floor, Chicago, Illinois. Please see Complainant's Answers and Objections to Respondents' First Set of Document Requests for the documents on which these witnesses may rely. Complainant's investigation continues.

Interrogatory No. 4

Identify any and all opinion witnesses that the Complainant interviewed or expects to call at hearing:

- a. The subject matter on which the opinion witness is expected to testify as well as to conclusions, opinions and/or expected testimony of any such witness;
- b. The qualification, including but not limited to, the opinion witness's educational background, practical experience in the area in which he is expected to testify, any articles or paper he has written, any and all seminars and post graduate training he has received, his experience as a teacher or lecturer and his professional appointments and associations.; [sic]
- c. The identity of each document examined, considered or relied on by him to form his opinion;
- d. All proceedings in which each opinion witness has previously testified as an opinion witness;
- e. Any and all reports of the opinion witness; [sic]

Response: Subject to its objections, Complainant has not interviewed, and does not intend to call, an opinion witness. Complainant's investigation continues.

Interrogatory No. 5:

Identify any and all attorneys that the Complainants [sic] have retained or consulted or expects [sic] to retain or consult in the preparation and conduct of this hearing:

- a. The name of the attorney;
- b. The year the attorney was admitted to the Illinois bar [sic]
- c. The attorney's present place of employment [sic]
- d. The attorney's former employer [sic]
- e. The portions of the case preparation and litigation for which the attorney will be responsible.

Response: Subject to its objections, Complainant answers that AAG Partee has been assigned and consulted in the preparation and conduct of this hearing. Please see Complainant's Answers and Objections to Respondents' First Set of Document Requests for his resume. Complainant's investigation continues.

Interrogatory No. 6:

Describe any and all guidelines and policies that existed at the Illinois Attorney General's Office during the period in which hours were billed under the request for attorneys' fees, costs [sic] and expenses that addressed the topic of billing for attorneys' fees, costs and expenses and any changes to those policies or the guidelines during the same period.

Response: Complainant specifically objects to this request on form and relevance grounds. Subject to its objections, Complainant answers there is no information responsive this Request. Complainant's investigation continues.

Interrogatory No. 7:

Describe any and all review procedures that exist for reviewing and authorizing billed hours and expenses at the Illinois Attorney General's Office.

Response: Complainant specifically objects to this request on form and relevance grounds. Subject to its objections, Complainant answers the Respondents' dispute of Complainant's attorneys' fees and cost request presently before Board is the "review procedure." Complainant's investigation continues.

Interrogatory No. 8:

Give detailed information on any time and materials that were committed to or exerted for the prosecution of this case but were not billed and included in the request for reimbursement of fees, cost and expenses and the reason that thee [sic] items were not included.

Response: Complainant specifically objects on relevance grounds because time that was spent but not billed is irrelevant to Complainant's request for attorneys' fees and costs or the hearing on said request. Complainant also specifically objects to the phrase "time and materials that were committed to or exerted for the prosecution" as vague and ambiguous. Subject to its objections, Complainant answers that AAG Wallace and former AAG Sternstein, Cartwright, O'Laughlin and Halloran each spent significant time on this case that is not included in Complainant's request for attorneys' fees and costs. Numerous administrative staff within the Attorney General's Office also spent significant time on this case that is not included in Complainant's request for attorneys' fees and costs. AAG Partee is now spending significant time on this case, which is not currently included in Complainant's request. Complainant's investigation continues.

Interrogatory No. 9:

Identify any and all hours and expenses that were assigned to this case by the attorneys but were not billed because they were contested by a supervisor reviewing time sheets and expense statements and you were instructed not to bill these items.

Response: Complainant specifically objects on relevance grounds because time that was spent but not billed is irrelevant to Complainant's request for attorneys' fees and costs or the hearing on said request. Subject to its objections, Complainant answers that no time spent on this case was contested by a supervisor. Complainant's investigation continues.

Interrogatory No. 10:

Identify any and all hours and expenses in any matter involving your employment at the Illinois time sheets and expense statements. [sic]

Response: Complainant specifically objects to the form of this request – Complainant does not understand this request. Subject to its objections, Complainant is unable to answer this request as written.

Interrogatory No. 11:

Identify both your personal policy and the policy and procedures of the Illinois Attorney General's Office regarding the assignment of work to staff/non-attorney personnel or to less experienced attorney personnel.

Response: Complainant specifically objects to the form of this request. Complainant objects that the terms "staff/non-attorney personnel" and "less experienced attorney personnel" are vague, ambiguous and undefined. Complainant also objects on relevance grounds because, pursuant to the Board's Order, dated April 7, 2005, the Board is only considering fees and costs for two Assistant Attorneys General that worked on this matter. Subject to its objections, Complainant answers that work related to document production, photocopying, faxing and mailing was assigned to administrative staff within the Attorney General's Office. Complainant's investigation continues.

Interrogatory No. 12:

Identify any and all work in this matter that was assigned to staff or lower billing-rate attorney personnel.

Response: Complainant specifically objects to the form of this request. Complainant also specifically objects that the terms "staff or lower-billing rate attorney personnel" is vague, ambiguous and undefined. Subject to its objections, please see Complainant's answer to Request No. 11. Complainant's investigation continues.

Interrogatory No. 13:

Identify all attorneys' fees that were submitted for cost recovery in this matter that involved work to renew, redraft, correct errors, review the work of other attorneys, review files, perform legal research, request extension of time for filing, correct a document that was not filed correctly or in a timely manner or respond to motions by opposing counsel that were filed because the attorneys for the Illinois Attorney General's office had filed a document in error or after a deadline.

Response: Complainant specifically objects to the form of this request. Complainant specifically objects that this request assumes facts not in evidence. Complainant also specifically objects that the terms "cost recovery" is vague, ambiguous and undefined. Please see Complainant's Answers and Objections to Respondents' First Set of Document Requests for time records. Complainant's investigation continues.

Interrogatory No. 14:

Identify all hours billed or expenses incurred in reviewing the work of Attorney Joel Sternstein or to respond to motions of opposing counsel contesting Mr. Sternstein's, your and the Attorney General's Office ethical lapses and compliance with the Board's procedural rules in practicing before the Board in this matter.

Response: Complainant specifically objects that this Request assumes facts not in evidence. For the reasons stated in its general objections and pursuant to the Board's Order, dated April 7, 2005, Complainant will not answer this Request.

Interrogatory No. 15:

For all expenses related to copying, identify all pages of documents that were actually used in the presentation of the case at hearing and specifically referenced at the hearing and entered into evidence at the hearing.

Response: Complainant specifically objects to this interrogatory on relevance grounds.

Whether or not a particular document was actually used at hearing and entered into evidence is not the determining factor for whether copying costs may be assessed against Respondents. Subject to its objections, please see the documents that were actually used in the presentation of the case at hearing and specifically referenced at the hearing and entered into evidence at the hearing. Complainant's investigation continues.

Interrogatory No. 16:

Identify any and all attorney's [*sic*] fees ever paid to any of the attorneys requesting attorneys' fees including the time period of the work, the method of maintaining records of the hours worked and charged, the determination of the hourly rate, the hourly rate charged, and number of hours, the client, the nature of the work, the total amount bill [*sic*] and the total amount collected.

Response: Complainant specifically objects to this Request on relevance grounds. Complainant also specifically objects that this request is over broad and unduly burdensome. Subject to its objections, please see Complainant's Answers and Objections to Respondents' First Set of Document Requests. Complainant's investigation continues.

Interrogatory No. 17:

Identify on the methodology used to determine the hourly rate to be used to bill the attorneys' hours in this matter and the name of the supervisory personnel who were consulted and/or approved of the hourly rate to be charged.

Response: Subject to its objections, Complainant answers that Board has previously determined the hourly rate to be used. See e.g., People v. J & F Hauling, Inc., PCB 2002-21 (May 1, 2003). Also, please see Complainant's Answers and Objections to Respondents' First Set of Document Requests. Complainant's investigation continues.

Interrogatory No. 18:

Identify the Illinois Attorney General's Office policy on travel, hotel stays, hotel selection, and other expenses incurred by the attorneys during the period of the hearing before the Board.

Response: Subject to its objections, Complainant answers that Assistant Attorneys General go through a travel coordinator who utilizes State-approved hotels and other accommodations, mileage fees and *per diem* rates. Please see Complainant's Answers and Objections to Respondents' First Set of Document Requests. Complainant's investigation continues.

Interrogatory No. 19:

Identify any progress billings, periodic billing or intermediate billing that was prepared for this case.

Response: Complainant specifically objects on relevance grounds. Subject to its objections, Complainant answers that are no progress billings, periodic billings or intermediate billings that were prepared for this case. Complainant's investigation continues.

Interrogatory No. 20:

Identify information pertaining to any review, approval and payment of any progress bills, periodic bills or intermediate bills submitted for approval and/or payment.

Response: Please see Complainant's answer to Request No. 20.

Interrogatory No. 21:

Identify any budget prepared for attorneys' fees, costs and expenses related to this case and any information pertaining to the tracking and compliance to the budget and any adjustments made to the budget.

Response: Complainant specifically objects on relevance grounds. Subject to its objections, Complainant answers that is no budget prepared for attorneys' fees, costs and expenses related to this case and any information pertaining to the tracking and compliance to the budget and any adjustments made to the budget. Complainant's investigation continues.

Interrogatory No. 22:

Identify concerning the review and approval of any budget prepared for this case [*sic*], the review of any reports tracking compliance with the budget and the approval of any adjustments made to the budget.

Response: Complainant specifically objects to the form of this Request. Subject to its objections, please see Complainant's answer to Request No. 21.

Interrogatory No. 23:

For any case in which the Illinois Attorney General's Office has previously or is presently seeking attorneys' fees, costs and expenses under the same legal authority it is seeking attorneys' fees costs [*sic*] and expenses in this matter, please supply the following information:

- a. The parties involved in the litigation;
- b. The court and jurisdiction in which the claim was filed;
- c. The file number of the case;
- d. The subject matter of the case;
- e. The violations alleged in the case;
- f. The final judgment against the Respondents in the case;
- g. The names of the attorneys from the Illinois Attorney General's Office requesting fees;
- f [*sic*]. The number of hours requested in fees by each attorney;
- h. The hourly rate for fees requested by each attorney;
- i. The annual salary paid to each attorney by the Illinois Attorney General's Office during the year in which the attorney claimed attorneys' fees;
- j. The actual attorneys' fees costs and expenses awarded in each case;
- k. The basis for awarding attorneys' fees, cost and expenses different than the amount requested in each case where the amounts were different.

Response: This Request literally encompasses every case ever handled by the so-called Attorneys Claiming Fees because the Attorney General request fees and costs in every case filed under the Environmental Protection Act. Therefore, Complainant specifically objects on relevance grounds. Complainant specifically objects that this Request is overly broad and unduly burdensome because this Request is without any limitation. Complainant specifically objects that this Request seeks information that is publicly-available and can be obtained from public sources, including the Board. Complainant also specifically objects to the form of sub-parts (f) (second sub-part (f)) and (k) of this Request.

For the reasons stated in its general objections and pursuant to the Board's Order, dated April 7, 2005, Complainant will not answer subpart (i) of this Request.

Based on its objections, Complainant is unable to comply with the balance of this request.

Interrogatory No. 24:

Supply information for the period during which attorneys' fees, cost [*sic*] and expenses are being requested on [*sic*] the Illinois Attorney General's Office for preparing, reviewing and executing affidavits and any changes to this policy during the same period.

Response: Complainant specifically objects to this request on relevance grounds. Complainant also specifically objects to the form of this request – Complainant does not understand this request. Subject to its objections, Complainant is unable to answer this request as written.

Interrogatory No. 25:

Supply information for the period during which attorneys' fees, cost [*sic*] and expenses are being requested on [*sic*] the Illinois Attorney General's Office for reprimanding or disciplining employees that prepare and execute false affidavits.

Response: Complainant specifically objects to this request on relevance grounds. Complainant also specifically objects to the form of this request. Subject to its objections, Complainant answers none.

Respectfully submitted,

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

BY:



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

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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MAY 24 2005

STATE OF ILLINOIS
Pollution Control Board

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

Complainant,)

v.)

SKOKIE VALLEY ASPHALT CO., INC.,)
an Illinois Corporation, EDWIN L. FREDERICK,)
JR., Individually and as Owner and President of)
Skokie Valley Asphalt Co., Inc., and)
RICHARD J. FREDERICK, Individually)
and as Owner and Vice President of Skokie)
Valley Asphalt Co., Inc.,)

Respondents.)

PCB 96-98
(Enforcement - RCRA)

COMPLAINANT'S ANSWERS AND OBJECTIONS TO RESPONDENTS' FIRST SET OF DOCUMENT REQUESTS REGARDING ATTORNEYS' FEES AND EXPENSES

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and in response to Respondents', SKOKIE VALLEY ASPHALT CO., INC., EDWIN L. FREDERICK, JR., and RICHARD J. FREDERICK, First Set of Document Requests Regarding Attorneys' Fees and Expenses, answers and objects as follows:

I. GENERAL OBJECTIONS

1. Complainant objects to Respondents' First Set of Document Requests Regarding Attorneys' Fees and Expenses ("Requests") because they violate the Board's Order, dated April 7, 2005, which directed the parties to resolve this dispute in a speedy and final resolution. In allowing limited discovery on Complainant's request for fees and costs, the Board ordered that "any pleading by either party not designed to further a speedy and ultimate resolution of this case

will not be tolerated by the hearing officer or the Board.” (See Order, dated April 7, 2005, at 4.) Many of Respondents’ 24 Requests are insulting, harassing, made in bad faith, do not pertain to attorneys’ fees and costs, and are not devised to resolve this in a speedy and final manner.

2. Complainant objects to Request Nos. 6, 7, 10, 11, 12, 17 and 21 on relevance grounds and because they violate the Board’s Order, dated April 7, 2005. These Requests seek documents regarding Complainant’s request for AAG Joel Sternstein’s fees, which were previously disallowed by the Board. (Id.) The Board expressly ordered that “the parties are not to address [AAG Joel Sternstein’s fees] in conducting discovery or at hearing.” (Id.) For these reasons, Complainant will not produce documents pertaining to AAG Sternstein.

3. Complainant objects to Request Nos. 5, 7, 8 and 9 on relevance and privacy grounds because they seek irrelevant information regarding personal compensation to Assistant Attorneys General in this case. The personal compensation to the Assistant Attorneys General in this case is private information that has no relevance to the reasonableness of their requested fees and costs. For these reasons, Complainant will not produce documents pertaining to personal compensation.

4. Complainant objects to the definition of “State” contained in the Requests as overbroad and unduly burdensome to the extent that it purports to require Complainant to answer on behalf of any office or agency other than the Attorney General’s Office and the Illinois Environmental Protection Agency.

5. Complainant objects to the phrase “Attorneys Claiming Fees” used in these Requests as ambiguous.

II. ANSWERS

Document Request No. 1:

All Documents Related to the subject matter of this case.

Response: Complainant specifically objects to this request on relevance grounds and that this Request is overly broad and unduly burdensome because this Request is without any limitation. "All documents related to the subject matter of this case" encompasses every document ever produced in this case by any party, most of which are irrelevant to the requested fees and costs in this case. Complainant also specifically objects that this Request violates the Board's Order, dated April 7, 2005, which limits discovery to the reasonableness of the requested fees and costs. Subject to its objections, Complainant directs Respondents to all previously produced documents in this case.

Document Request No. 2:

All Documents Related to work performed by the Attorneys Claiming Fees in the prosecution of this case.

Response: Complainant specifically objects to the form of this Request and that it is ambiguous. Subject to its objections, please see Complainant's answer to Request No. 1.

Document Request No. 3:

All Documents Related to education and legal training for the Attorneys Claiming Fees.

Response: Subject to its objections, Complainant answers that resumes for the Assistant Attorneys General requesting fees and costs will be produced.

Document Request No. 4:

All Documents Related to legal experience for the Attorneys Claiming Fees.

Response: Subject to its objections, please see Complainant's answer to Request No. 3.

Document Request No. 5:

All Documents Related to guidelines for pay rates and compensation for Assistant Attorney Generals [*sic*] at the Illinois Attorney General's Office.

Response: For the reasons stated in its general objections and pursuant to the Board's Order, dated April 7, 2005, Complainant will not produce documents in response to this Request.

Document Request No. 6:

All Documents Related to performance reviews, evaluations, personnel records and professional capabilities for the Attorneys Claiming Fees by the State from the date this case was filed with the Board until the present (including said Documents for Joel Sternstein from the Board).

Response: Except for the “professional capabilities” of Assistant Attorneys General in this case (except for AAG Sternstein), Complainant objects on relevance and privacy grounds to this Request. Complainant objects to the request for documents pertaining to professional capabilities because it is vague, ambiguous, and violates the Board’s Order, dated April 7, 2005. Subject to its objections, please see Complainant’s answer to Request No. 3.

Document Request No. 7:

All Documents Related to pay rate and total compensation per year and the history of any compensation increases and the basis for these compensation increases for the Attorneys Claiming Fees by the State from the date this case was filed with the Board until the present (including said Documents for Joel Sternstein from the Board).

Response: For the reasons stated in its general objections and pursuant to the Board’s Order, dated April 7, 2005, Complainant will not produce documents in response to this Request.

Document Request No. 8:

All Documents Related to, and copies of, the Federal and State Income Tax Returns and Amended Returns filed for the Attorneys Claiming Fees from the date this case was filed with the Board until the present.

Response: For the reasons stated in its general objections and pursuant to the Board’s Order, dated April 7, 2005, Complainant will not produce documents in response to this Request.

Document Request No. 9:

All Documents Related to the employment history of the Attorneys Claiming Fees, both with the State and other employment throughout their lifetime, including information on pay rates and compensation.

Response: For the reasons stated in its general objections and pursuant to the Board’s Order, dated April 7, 2005, Complainant will not produce documents regarding pay rates and compensation in response to this Request. Regarding the requested Assistant Attorneys General employment history “throughout their lifetime,” Complainant objects that this Request is overbroad and unduly burdensome and seeks irrelevant information. Subject to its objections, please see Complainant’s answers to Request Nos. 3 and 4.

Document Request No. 10:

All Documents Related to Mr. Joel Sternstein’s work related to the subject matter of this case including work performed while an employee of the Board.

Response: For the reasons stated in its general objections and pursuant to the Board’s Order, dated April 7, 2005, Complainant will not produce documents in response to this Request.

Document Request No. 11:

All Documents Related to the procedure and decision related to the hiring of Mr. Joel Sternstein by the Illinois Attorney General's Office.

Response: For the reasons stated in its general objections and pursuant to the Board's Order, dated April 7, 2005, Complainant will not produce documents in response to this Request.

Document Request No. 12:

All Documents brought by Mr. Joel Sternstein from the Board to the Illinois Attorneys General's Office.

Response: Complainant specifically objects that this Request assumes facts not in evidence. For the reasons stated in its general objections and pursuant to the Board's Order, dated April 7, 2005, Complainant will not produce documents in response to this Request.

Document Request No. 13:

All Documents Related to telephone conversations between the Attorneys Claiming Fees and the Board and information on the subject matter of the conversations from the date this case was filed with the Board until the present.

Response: Complainant specifically objects that this Request assumes facts not in evidence. Subject to its objections, Complainant answers that there are no non-privileged documents.

Document Request No. 14:

All Documents Related to meetings and conversations between the Attorneys Claiming Fees and the Board and information on the subject matter of the conversations from the date this case was filed with the Board until the present.

Response: Complainant specifically objects that this Request assumes facts not in evidence. Complainant also specifically objects that the term "meetings" is vague and ambiguous. Subject to its objections, please see the Board's docket, including Hearing Officer and Board Orders, in this matter.

Document Request No. 15:

All Documents Related to the selection and/or determination of the "reasonable hourly rate" stated on page 3 of the People of the State of Illinois Attorney Fees and Costs Petition filed with the Board on September 17, 2004.

Response: Complainant specifically objects that this Request seeks documents that are publicly-available and can be obtained from public sources, including the Board. Subject to its objections, Complainant answers that the Board's decision in People v. J & F Hauling, Inc., PCB 2002-21 (May 1, 2003), and the cases cited therein, are responsive to this request.

Document Request No. 16:

All Documents Related to the selection and/or determination of the "reasonable cost" stated on page 3 of the People of the State of Illinois Attorneys Fees and Costs Petition filed with the Board on September 17, 2004.

Response: Subject to its objections, Complainant answers that receipts will be produced.

Document Request No. 17:

All Documents Related to the selection and/or determination of the "the number of hours AAGs Cohen, Sternstein and Murphy spent prosecuting this case" stated on page 2 of the People of the State of Illinois Attorney Fees and Costs Petition filed with the Board on September 17, 2004.

Response: Subject to its objections, Complainant answers that, except for AAG Sternstein, available time records will be produced. For the reasons stated in its general objections and pursuant to the Board's Order, dated April 7, 2005, Complainant will not produce documents in response to this Request as it pertains to AAG Sternstein.

Document Request No. 18:

All Documents Related to any other cases in which any of the Attorneys Claiming Fees sought cost and attorneys' fees.

Response: This Request literally encompasses every case ever handled by the so-called Attorneys Claiming Fees because the Attorney General request fees and costs in every case filed under the Environmental Protection Act. Therefore, Complainant specifically objects on relevance grounds. Complainant specifically objects that this Request is overly broad and unduly burdensome because this Request is without any limitation. Complainant also specifically objects that this Request seeks documents that are publicly-available and can be obtained from public sources, including the Board. Complainant is unable to comply with this Request.

Document Request No. 19:

All Documents Related to any other cases in which any of the Illinois Attorney General's Office sought cost [*sic*] and attorneys' fees.

Response: Subject to its objections, please see Complainant's answer to Request No. 18.

Document Request No. 20:

All Documents Related to the preparation of the Affidavit of Bernard Murphy attached to the People of the State of Illinois Attorneys Fees and Costs Petition filed with the Board on September 17, 2004.

Response: Subject to its objections, Complainant will provide documents in response to this Request.

Document Request No. 21:

All Documents Related to the preparation of the Affidavit of Joel Sternstein attached to the People of the State of Illinois Attorney Fees and Costs Petition filed with the Board on September 17, 2004.

Response: For the reasons stated in its general objections and pursuant to the Board's Order, dated April 7, 2005, Complainant will not produce documents in response to this Request.

Document Request No. 22:

All Documents Related to the preparation of the Affidavit of Mitchell Cohen attached to the People of the State of Illinois Attorney Fees and Costs Petition filed with the Board on September 17, 2004.

Response: Subject to its objections, Complainant will provide documents in response to this Request.

Document Request No. 23:

All Documents Related to the selection and/or determination of the costs stated in the People of the State of Illinois Closing Rebuttal Argument and Reply Brief and filed with the Board on April 15, 2004..[sic]

Response: Subject to its objections, Complainant will provide documents in response to this Request.

Document Request No. 24:

All Documents Related to State's and the Office of the Attorney General's guidelines and procedures for assuring against and disciplining [sic] for the filing of false statements with the Board or the State.

Response: Complainant specifically objects to the form of this Request. Complainant also specifically objects to this Request on relevance grounds. This Request seeks documents that are irrelevant to the requested fees and costs. Subject to its objections and pursuant to the Board's Order, dated April 7, 2005, Complainant will not provide documents in response to this Request.

Respectfully submitted,

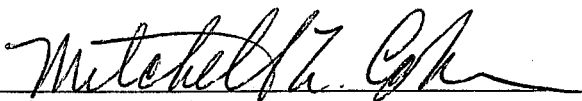
PEOPLE OF THE STATE OF ILLINOIS,
by LISA MADIGAN, Attorney General
of the State of Illinois

BY: 

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

CERTIFICATION

I, Mitchell L. Cohen, being duly sworn under oath state that I have read the foregoing Complainant's Answers and Objections to Respondents' First Request for Admission of Facts Regarding Attorneys' Fees and Expenses, First Set of Document Requests Regarding Attorneys' Fees and Expenses, and First Set of Interrogatories Regarding Attorneys' Fees and Expenses. I and am aware of the contents thereof, and they are true and correct to the best of my knowledge and belief.



Mitchell L. Cohen

Subscribed and sworn to
before me this 23 day of
May 2005

