

ILLINOIS POLLUTION CONTROL BOARD  
December 16, 2004

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
v. ) PCB 96-98  
) (Enforcement – Water)  
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. )

ORDER OF THE BOARD (by T.E. Johnson):

This matter is before the Board on a number of motions filed by the People of the State of Illinois (People) and the Skokie Valley Asphalt Co., Inc., Edwin L. Frederick, Jr., and Richard J. Frederick (respondents). On November 19, 2004, the People filed a motion to void the Board's October 21, 2004 order. On December 1, 2004, the respondents filed a response to the People's motion, a motion to renew their motion to stay or extend time to respond to the petition for attorney's fees and costs, as well as a motion to stay payment of penalty. On December 8, 2004, the People filed a response to the respondents' motions.

**PROCEDURAL BACKGROUND**

On September 2, 2004, the Board issued an order in this matter finding that the respondents violated the Environmental Protection Act (Act) (415 ILCS 5 (2002)) and Board regulations. The Board ordered the respondents to pay a civil penalty of \$153,000, but withheld a decision regarding attorney fees and costs until the matter was fully addressed by the parties. People v. Skokie Valley Asphalt, Co., PCB 96-98, slip op. at 1 (Sept. 2, 2004). On September 28, 2004, the respondents filed a motion to stay or extend the time to respond to the People's petition for attorney fees and costs. Also on September 28, 2004, the respondents filed a petition to review the Board order with the State of Illinois' Second District Appellate Court. See Skokie Valley Asphalt v. PCB, No. 04-0977 (2nd Dist. 2004).

On October 18, 2004, the Board issued an order finding that the Board no longer had jurisdiction of the case in light of the pending appeal and could not, therefore, rule on the petition seeking attorney fees and the accompanying issues. People v. Skokie Valley Asphalt, Co., PCB 96-98, slip op. at 2 (Oct. 18, 2004). The Board only considered that portion of the motion seeking to stay the payment of penalty, and did stay the payment of the penalty imposed in the

September 2, 2004 opinion and order. On November 18, 2004, the appellate court dismissed the respondents' petition for review.

### **MOTIONS**

In the People's motion to void the Board's October 21, 2004 order, the People argue that the Board lost jurisdiction to change its September 2, 2004 order when the respondents filed a petition for review with the appellate court, and did not have the authority to grant relief in the form of staying payment of the civil penalty. Mot. to Void at 9. The People request that the Board void that portion of its order that alters the September 2, 2004 order and require the respondents to pay the civil penalty as initially set forth. Mot. to Void at 9-10. In response to the People's motion, the respondents assert that the motion is a thinly disguised attempt to file a motion to reconsider, and because the Board's October 21, 2004 order is not final should not be considered by the Board. Resp. at 1-2. Further, in the motion to stay payment of penalty, the respondents assert that to protect against the possibility that the Board grants the People's motion to void, the respondents enter a motion to stay enforcement of the penalty imposed in the September 2, 2004 order. Mot. to Stay at 2.

In their motion to renew the motion to stay or extend time to respond to the petition for attorney fees and costs, the respondents assert that with the dismissal of its petition for review by the Appellate Court, the Board has regained jurisdiction over this matter and may again rule on the motions by the parties. Mot. at Renew at 2. The respondents ask that the motion to stay or extend time to respondents to the petition for attorney fees initially filed on September 28, 2004, be renewed. *Id.* In response, the People ask that the Board deny the motion to renew if the Board has previously decided the initial motion to stay, or rule that the motion to renew is not necessary if the Board did not decide the initial motion to stay. Resp. at 5.

### **DISCUSSION**

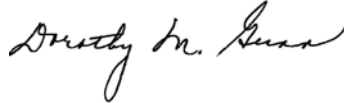
The People's motion to void the Board order of October 21, 2004 is denied. As stated in that order, although Appellate Court jurisdiction attaches when an appeal of a Board decision is properly made, the Board may consider the portion of the motion seeking to stay the payment of penalty. *See, e.g. IEPA v. Piolet Bros. Trading, Inc.*, PCB 80-185 (Feb. 4, 1982) (granting motion for stay of order's provision requiring penalty payment, but denying motion for stay of order's provision requiring respondent to cease and desist from violations), *aff'd sub nom Piolet Bros. Trading, Inc. v. PCB*, 110 Ill. App. 3d 752, 442 N.E.2d 1374 (5th Dist. 1982). The Board considered respondents' motion to stay or extend the time to respond to the petition for attorney fees and costs in part as a motion to stay the civil penalty in light of the appellate review. The Board has the authority to grant such a motion, and appropriately did so in this case. The motion to void the Board's October 21, 2004 order is denied. The stay of the \$153,000 civil penalty imposed in the September 2, 2004 order will remain in effect until the Board issues a final order in this matter. In that final order, the Board will lift the stay, direct the respondents to pay the civil penalty and address the issue of attorney fees and costs.

Because the appellate court has dismissed the appeal, the Board has jurisdiction to rule on the motion to stay or extend the time to respond to the petition for attorney fees and costs. Accordingly, the motion to renew is granted. On September 2, 2004, the People were given an additional 21 days to further plead on the issue of attorney fees and costs, or in the alternate, allowed to rely on the information already presented on that issue. The People submitted an additional filing in the form of an attorney's fees and cost petition on September 17, 2004, resulting in the respondents' motion to stay filed on September 28, 2004.

In the motion to stay, the respondents' assert the need to conduct discovery on the issues of fees and costs, as well as their right to an evidentiary hearing. The motion to stay is granted in part. The Board will not hold any hearings on the issue of attorney's fees and costs, but will allow the respondents additional time to respond. The respondents are hereby given until January 13, 2005, 28 days from the date of this order, to respond to the People's request for attorney fees and costs.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 16, 2004, by a vote of 5-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board