

RECEIVED  
CLERK'S OFFICE

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JAN 18 2005

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
v. )  
)  
SKOKIE VALLEY ASPHALT, CO., INC., )  
EDWIN L. FREDERICK, JR., )  
individually and as owner and )  
President of Skokie Valley Asphalt )  
Co., Inc., and )  
RICHARD J. FREDERICK, )  
individually and as owner and )  
Vice President of )  
Skokie Valley Asphalt Co., Inc., )  
)  
Respondents. )

No. PCB 96-98

NOTICE OF FILING


TO: See Attached Service List

PLEASE TAKE NOTICE that on January 18, 2005, we filed with the Illinois Pollution Control Board **Complainant's Response and Objection to Respondents' Motion to Establish Discovery Schedule and Complainant's Response and Objection to Respondents' Motion for Extension of Time to Respond Under Board Order of December 16, 2004**, a true and correct copy of each is attached and hereby served upon you.

Respectfully submitted,

LISA MADIGAN  
Attorney General  
State of Illinois

BY:

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

SERVICE LIST

Mr. David O'Neill  
Mr. Michael B. Jagwiel  
Attorneys at Law  
5487 North Milwaukee  
Chicago, Illinois 60630

Ms. Carol Sudman  
Hearing Officer  
Illinois Pollution Control Board  
600 S. Second Street, Suite 402  
Springfield, Illinois 62704

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE

JAN 18 2005

STATE OF 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

COMPLAINANT'S RESPONSE AND OBJECTION TO  
RESPONDENTS' MOTION TO ESTABLISH DISCOVERY SCHEDULE

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, pursuant to Section 101.500 of the Board's Procedural Regulations, 35 Ill. Adm. Code 101.500, responds and objects to Respondents' Motion to Establish a Discovery Schedule. In response and objection to Respondents' Motion, the People state as follows:

INTRODUCTION

1. On September 2, 2004, the Board issued an Opinion and Order ("September Order") finding Respondents violated the Environmental Protection Act and Board Regulations.<sup>1</sup> This

---

<sup>1</sup> People v. Skokie Valley Asphalt Co. et al., PCB 96 - 98 (September 2, 2004).

September Order included a finding " . . . that Edwin and Richard Frederick are personally liable for the activities of Skokie Valley."<sup>2</sup> It also included a finding " . . . that Respondents committed willful, knowing, or repeated violations in this case."<sup>3</sup>

2. Anticipating the finding that Respondents committed willful, knowing, or repeated violations, Complainant sought costs and attorney fees in their closing argument.

3. Respondents objected to the costs and attorney fees evidence provided in part because they did not have an opportunity to respond.<sup>4</sup>

4. The Board, however, allowed the Complainant to rely on the information presented in the closing argument.<sup>5</sup>

5. The Board also allowed Complainant time to file additional information and Respondents time to Respond to the People's request for costs and fees.<sup>6</sup>

6. On September 17, 2004, Complainant filed "The People of the State of Illinois Attorney Fees and Costs Petition." It included supporting affidavits for that portion of the attorney fees and costs the People were seeking.

---

<sup>2</sup> Id. at 11.

<sup>3</sup> Id. at 23.

<sup>4</sup> Id. at 24.

<sup>5</sup> Id. at 6.

<sup>6</sup> Id.

7. On September 28<sup>th</sup>, Respondents filed a Response generically objecting to Complainant's costs and fees petition and asked for more time so that there could be discovery before an evidentiary hearing on the matter.

8. Complainant objected to discovery, more time to respond, and a hearing on costs and fees.

9. On October 21, 2004, the Board it would address the matter again once it was vested of jurisdiction as a result of the Petition for Review Respondents filed with the Appellate Court.<sup>7</sup>

10. On December 16, 2004, after Respondents' appeal was dismissed, the Board ruled that it would " . . . not hold any hearings on the issue of attorney's fees and costs, but will allow Respondents additional time to respond."<sup>8</sup>

11. The board gave Respondents an additional 28 days, until January 13, 2005, to file any additional response they may have had to the People's Petition for Costs and Fees.<sup>9</sup>

12. Respondents chose not to supplement their initial response.

---

<sup>7</sup> People v. Skokie Valley Asphalt Co. et al., PCB 96 - 98 (October 21, 2004).

<sup>8</sup> People v. Skokie Valley Asphalt Co. et al., PCB 96 - 98 (December 16, 2004).

<sup>9</sup> Id. at 3.

NO REASON TO SET DISCOVERY SCHEDULE

13. The People already submitted its evidence for costs and attorneys fees to the Board. Thus, there is no need for Respondents to do any discovery.

14. Respondents chose not to supplement their initial response with any particular objection to entries in the attorneys' time sheets, or with their own evidence as they were allowed to do by the Board. Even if Respondents had filed an additional response, or provided any evidence of their own, the People could not do discovery because there will not be a hearing on the issue.

15. The Board already ruled there will not be a hearing on the costs and fees issue.

16. Obviously, without a hearing to prepare for, there is no need for discovery. See, for example, Rule 101.616(c) of the Board's Procedural Rules that explains that "[a]ll discovery must be completed at least 10 days prior to the scheduled hearing . . .

"<sup>10</sup>

17. And, the Board's December 16<sup>th</sup> Order did not contemplate any discovery given the fact that Respondents time to further respond was limited to 28 days. See, for example, S.Ct.R. 213(d) allowing 28 days to answer, or object to interrogatories,

---

<sup>10</sup> Board's Procedural Regulations, 35 Ill. Adm. Code 101.616(c).

S.Ct.R. 214 allowing not less than 28 days to produce documents, and S.Ct.R. 216(c) allowing 28 days to respond to requests for admissions.

18. There is no need for discovery and to do any at this point in the litigation would cause unnecessary delay in the Board's issuing its final order and needlessly increase the cost of litigation.

19. As such, the People object to Respondents' Motion to Establish Discovery Schedule.

WHEREFORE, Complainant, the People of the State of Illinois, respectfully requests this Board deny Respondents' Motion to Establish Discovery Schedule and issue the final order in this case.

PEOPLE OF THE STATE OF ILLINOIS,  
ex rel. LISA MADIGAN,  
Attorney General of the  
State of Illinois,

By:

  
MITCHELL L. COHEN

Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St. - 20th Fl.  
Chicago, IL 60601  
(312) 814-5282

JAN 18 2005

STATE OF ILLINOIS  
Pollution Control Board

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

**COMPLAINANT'S RESPONSE AND OBJECTION TO  
RESPONDENTS' MOTION FOR EXTENSION OF TIME TO  
RESPOND UNDER BOARD ORDER OF DECEMBER 16, 2004**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, pursuant to Section 101.500 of the Board's Procedural Regulations, 35 Ill. Adm. Code 101.500, responds and objects to Respondents' Motion for Extension of Time to Respond Under Board Order of December 16, 2004. In response and objection to Respondents' Motion, the People state as follows:

1. On September 2, 2004, the Board issued an Opinion and Order ("September Order") finding Respondents violated the Environmental Protection Act and Board Regulations.<sup>1</sup> This

---

<sup>1</sup> People v. Skokie Valley Asphalt Co. et al., PCB 96 - 98 (September 2, 2004).



September Order included a finding " . . . that Edwin and Richard Frederick are personally liable for the activities of Skokie Valley."<sup>2</sup> It also included a finding " . . . that Respondents committed willful, knowing, or repeated violations in this case."<sup>3</sup>

2. Based on that last finding and Section 42(f) of the Act, the Board gave the People 21 days from the date of the Order (until September 23, 2004) to file its Petition for Costs and Fees and gave Respondents 14 days (until October 7, 2004) to respond.<sup>4</sup>

3. The People filed their Petition in accordance with the Board's September 2<sup>nd</sup> Order, and Respondents filed their "Initial" Response September 28<sup>th</sup>.

4. Respondents also asked for more time to conduct discovery in preparation of some future evidentiary hearing and to respond to the People's Petition.

5. On December 16, 2004, the Board denied Respondents' request for additional hearings eliminating further discovery, but granted Respondents an additional 28 days, until January 13, 2005, to further respond to the People's Costs and Fees Petition.<sup>5</sup>

6. Respondents chose not to supplement their initial response in accordance with the Board's December 16<sup>th</sup> Order.

---

<sup>2</sup> Id. at 11.

<sup>3</sup> Id. at 23.

<sup>4</sup> Id.

<sup>5</sup> People v. Skokie Valley Asphalt Co. et al., PCB 96 - 98 (December 16, 2004).

7. Respondents chose not to ask for additional time until January 10, 2005, even though Respondents' first request for additional time to respond to the Petition was pending since last September.

8. Respondents' request is without basis, especially since there will not be further hearing per the Board Order and the Order did not contemplate any more discovery.

9. Therefore, the People object to any further delay by the granting of Respondents' Motion for Extension of Time. The denial of Respondents' Motion does not deprive them of the opportunity to Respond. Respondents already filed a Response last September.

WHEREFORE, Complainant, the People of the State of Illinois, respectfully requests this Board deny Respondents' Motion For Extension Of Time To Respond Under Board Order Of December 16, 2004, and issue the final order in this case.

PEOPLE OF THE STATE OF ILLINOIS,  
ex rel. LISA MADIGAN,  
Attorney General of the  
State of Illinois,

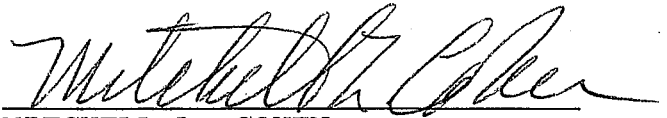
By:



MITCHELL L. COHEN  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St. - 20th Fl.  
Chicago, IL 60601  
(312) 814-5282

CERTIFICATE OF SERVICE

I, MITCHELL COHEN, an Assistant Attorney General, certify that on the 18<sup>th</sup> day of January, 2005, I caused to be served by First Class Mail the foregoing Complainant's Response and Objection to Respondents' Motion to Establish Discovery Schedule and Complainant's Response and Objection to Respondents' Motion for Extension of Time to Respond Under Board Order of December 16, 2004, to the parties named on the attached service list.



MITCHELL L. COHEN  
Assistant Attorney General