

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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APR 25 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.,)

PCB 96-98

Respondents.)

NOTICE OF DISCOVERY

TO: See Certificate of Service

PLEASE TAKE NOTICE that I have today caused to be filed with the Office of the Clerk of the Pollution Control Board the **Complainant's Interrogatories, Document Requests and Deposition Notices to Respondents Regarding Complainant's Fee Petition**, true and correct copies of which are herewith served upon you.

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

CERTIFICATE OF SERVICE

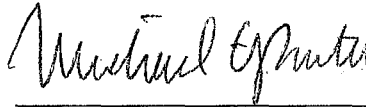
It is hereby certified that true and correct copies of the foregoing **Notice and Complainant's Interrogatories, Document Requests and Deposition Notices to Respondents Regarding Complainant's Fee Petition** were mailed, first class postage prepaid, to each of the following on April 25, 2005:

Carol Webb, Hearing Officer
Illinois Pollution Control Board
1021 N. Grand Ave. E.
P.O. Box 19274
Springfield, IL 62794-9274

David S. O'Neill, Esq.
5487 N. Milwaukee Ave.
Chicago, IL 60630

Michael B. Jawgiel, Esq.
5487 N. Milwaukee Ave.
Chicago, IL 60630

BY:

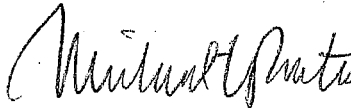


MICHAEL C. PARTEE

It is hereby certified that the original plus nine (9) true and correct copies of the foregoing **Notice and Complainant's Interrogatories, Document Requests and Deposition Notices to Respondents Regarding Complainant's Fee Petition** were also hand-delivered to the following on April 25, 2005:

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

BY:



MICHAEL C. PARTEE

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COMPLAINANT'S INTERROGATORIES TO RESPONDENTS
REGARDING COMPLAINANT'S FEE PETITION

Pursuant to Illinois Pollution Control Board Rule 101.620, 35 Ill. Adm. Code 101.620, and Illinois Supreme Court Rule 213, Complainant, PEOPLE OF THE STATE OF ILLINOIS, requests that Respondents, SKOKIE VALLEY ASPHALT CO., INC., EDWIN L. FREDERICK, JR., and RICHARD J. FREDERICK, answer in writing, under oath, on or before May 25, 2005, the following interrogatories:

I. INSTRUCTIONS

1. The Respondents are required, in answering these interrogatories to furnish all information available to the Respondents or their attorneys, employees, agents, contractors, experts, or consultants, or which is ascertainable by reasonable inquiry whether or not the requested information might be available from another entity.

2. If an interrogatory has subparts, the Respondents are required to answer each part separately and in full.

3. If the Respondents cannot answer an interrogatory in full, they are required to answer all parts of the interrogatory to the extent possible and specify the reason for their inability to provide additional information.

4. As to each interrogatory, or portion thereof, identify in the answer every oral communication, document or writing which relates to the interrogatory or response, whether or not such identification is specifically requested by the interrogatory.

5. In answering each interrogatory, identify each document, person, communication or meeting which relates to, corroborates, or in any way forms the basis for the answer given.

6. The Respondents shall make the requested documents available for inspection and copying at the Office of the Illinois Attorney General, 188 West Randolph Street, Suite 2001, Chicago, Illinois.

7. Pursuant to Illinois Supreme Court Rule 213(e), the Respondents are requested to serve upon Complainant corrected, supplemented or augmented answers hereto, documents or other forms of information from whatever source, which arguably tends to show that Respondents' prior answers are, might be, were or might have been in a sense incorrect, incomplete, potentially misleading or less than fully responsive or truthful.

8. The Respondents shall supplement its answers and responses as new information and documents become available.

9. If dates are requested, the exact date should be given if possible. However, if the exact date cannot be determined due to absence or inadequacy of records, the best estimate should be given as to the interrogatory and labeled as such.

10. In construing these interrogatories:
 - a. The singular shall include the plural and the plural shall include the singular; and
 - b. A masculine, feminine or neuter pronoun shall not exclude the other genders.

11. If you encounter any ambiguity in construing any interrogatory or any definition or instruction pertaining to any interrogatory, set forth the matter deemed ambiguous and the construction chosen or used in responding to the interrogatory.

12. In producing documents, you are requested to furnish all documents or things in your actual or constructive possession, custody or control, or known or available to you, regardless of whether such documents or things are possessed directly by you or by your attorneys, agents, employees, representatives or investigators.

13. This discovery is deemed continuing, necessitating supplemental answers by the Respondent, or anyone acting on its behalf, when or if it obtains additional information which supplements or alters the answers now provided.

II. CLAIMS OF PRIVILEGE

1. With respect to any interrogatory which Respondents refuse to answer on a claim of privilege, provide a statement signed by an attorney representing the Respondents setting forth for each such assertion of privilege:
 - a. The name and job title of every person involved in the conversation or communication;
 - b. The nature of the information disclosed;
 - c. All facts relied upon in support of the claim of privilege;

- d. All documents related to the claim of privilege;
 - e. All events, transactions or occurrences related to the claim of privilege;
- and
- f. The statute, rule or decision which is claimed to give rise to the privilege or the reason for its unavailability.

If the objection relates to only part of an interrogatory, the balance of the interrogatory should be answered in full.

2. If you claim the attorney-client privilege or any other privilege is applicable to any document, with respect to that document:

- a. State the date of the document;
- b. Identify each and every author of the document;
- c. identify each and every other person who prepared or participated in the preparation of the document;
- d. identify each and every person for whom the document was received;
- e. identify each and every person from whom the document was received;
- f. State the present location of the document and all copies thereof;
- g. Identify each and every person having custody or control of the document and all copies thereof; and
- h. Provide sufficient further information concerning the document to explain the claim of privilege and to permit adjudication of the propriety of that claim.

III. DEFINITIONS

1. "Attorney fee issue" means the attorney fee issue referenced in the Board's Order in this case, dated April 7, 2005, which involves Respondents' objection to Complainant's petition for attorney's fees and costs.
2. This "case" encompasses the first Violation Notice from the Illinois EPA until the present time.
3. "Communication" shall mean, without limitation, any and all forms of transferring information, including discussions, conversations, meetings, conferences, interviews, negotiations, agreements, understandings, inquiries, correspondence, documents, or other transfers of information whether written or oral or by any other means, and includes any document which abstracts, digests, transcribes or records any communication.
4. "Document" shall be construed in its customary broad sense and shall include, but is not limited to, the original and any non-identical copy, whether different from the original because of notes made on said copy or otherwise, or any agreement; bank record or statement; book of account, including any ledger, sub-ledger, journal, or sub-journal; brochure; calendar; chart; check; circular; communication (intra- or inter-company or governmental entity or agency or agencies); contract; copy; correspondence; diary; draft of any document; graph; index; instruction; instruction manual or sheet; invoice; job requisition; letter; license; manifest; manual; memorandum; minutes; newspaper or other clipping; note; note book; opinion; pamphlet; paper; periodical or other publication; photograph; print; receipt; record; recording report; statement; study; summary including any memorandum, minutes, note record, or summary of any (a) telephone, videophone or intercom conversation or message, (b) personal conversation or interview, or (c) meeting or conference; telegram; telephone log; travel or

expense record; voucher; worksheet or working paper; writing; any other handwritten, printed, reproduced, recorded, typewritten, or otherwise produced graphic material from which the information inquired of may be obtained, or any other documentary material of any nature, in the possession, custody or control of Respondent.

5. "Identification" or "identify" shall mean:

- a. As to an individual, stating his or her:
 - i. Full and customarily used names;
 - ii. Present business and residence addresses;
 - iii. Business or profession during the relevant time period;
 - iv. Every office, title, or position held during the relevant time period;and
 - v. Every employer during the relevant time period.
- b. As to any person other than an individual, stating:
 - i. Its legal name and any other name used by it;
 - ii. The form or manner of its organization (*e.g.*, partnership, corporation, etc.); and
 - iii. The state of its incorporation (if it is incorporated) and the address of its principal place of business.
- c. As to a document, stating:
 - i. The date of its creation, execution, and receipt;
 - ii. Its author or signatory;
 - iii. Its addressee and any other recipient;
 - iv. Its type or nature (*e.g.*, letter, memorandum, etc.);

- v. The identity of the custodian;
 - vi. The identity of the document; and
 - vii. The present location of the document.
- d. As to any event, incident, conversation, transaction or occurrence, stating:
- i. The date;
 - ii. The place where it took place and the manner of its occurrence;
 - iii. Identification of all the participants;
 - iv. Its purpose and subject matter; and
 - v. A description of what transpired.

6. The term "knowledge" means first hand information and/or information derived from any other source, including hearsay.

7. "Person" shall include, but is not limited to, any natural person; business or corporation, whether for profit or not; firm, partnership, or other non-corporate business organization; charitable, religious, educational, governmental, or other non-profit institution, foundation, body, or other organization; or employee, agent, or representative of any of the foregoing.

8. "Or" shall mean and/or wherever appropriate.

9. "Related to" or "relating to" shall mean anything which, directly or indirectly, concerns, consists of, pertains to, reflects, evidences, describes, sets forth, constitutes, contains, shows, underlies, supports, refers to in any way, is or was used in the preparation of, is appended to, is legally logically or factually connected with, proves, disproves, or tends to prove or disprove.

10. "Relied upon" shall mean being or having been depended upon or referred to or being or having been arguably appropriate for such reliance.

11. "Respondents" shall mean SKOKIE VALLEY ASPHALT CO., INC., EDWIN L. FREDERICK, JR., and RICHARD J. FREDERICK D'Angelo Enterprises, Inc., and any of Respondents' attorneys, employees, agents, representatives, successors or assigns, or any other person acting or believed by Respondents to have acted on their behalf.

IV. INTERROGATORIES

Interrogatory #1

Identify the individual(s) answering these interrogatories on behalf of the Respondents, including his relationship to the Respondents, and how long he has been associated with the Respondents. Specify the particular interrogatories to which each such person contributed.

Answer:

Interrogatory #2

With respect to any witnesses that Respondents may call at a hearing on the attorney fee issue, state the following:

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

testimony of said witness.

Answer:

Interrogatory #3

Identify any and all opinion witnesses that Respondents interviewed and/or expects to call at a hearing on the attorney fee issue. Specify:

- a. The subject matter on which the opinion witness is expected to testify as well as the conclusions, opinions and/or expected testimony of any such witness;
- b. The qualifications, including, but not limited to, the opinion witness' educational background, practical experience in the area in which he is expected to testify, any articles or papers he has written, any and all seminars and post graduate training he has received, his experience, if any, as a teacher or lecturer, and his professional appointments and associations;
- c. The identity of each document examined, considered, or relied upon by him to form his opinions;
- d. All proceedings in which each opinion witness has previously testified as an opinion witness;
- e. Any and all reports of the opinion witness; and
- f. Whether or not each such person viewed, examined, inspected or conducted any tests at or concerning the site in issue and, if so, state:
 - i. The date of each such viewing, examining, inspecting or testing;

- ii. The location at which each such viewing, examining, inspecting or testing took place;
- iii. The nature of each such viewing, examining, inspecting or testing (*i.e.*, visual, photographic, etc.);
- iv. The names, addresses, titles, and capacities of all persons present during each such viewing, examining, inspecting or testing; and
- v. Whether notes, calculations, reports or other documents were prepared or made during or as a result of any such examination, inspection or test, and identify same.

Answer:

Interrogatory #4

For each attorney that has provided legal services to Respondents related to this case, list all of their hours spent on such services, as well as the corresponding activity performed, regardless of whether all such hours and activities were actually billed to Respondents.

Answer:

Interrogatory #5

For each attorney that has provided legal services to Respondents related to this case, describe the attorney fee arrangement with Respondents and as between attorneys in this case (e.g., flat fee arrangement, hourly billing arrangement).

Answer:

Interrogatory #6

For each attorney that has provided legal services to Respondents related to this case, list all of their hours spent on such services, as well as the corresponding activity performed, that were billed to Respondents.

Answer:

Interrogatory #7

For each attorney that has provided legal services to Respondents related to this case, list their hourly billing rate while providing such services, and list any changes in hourly billing rates during the pendency of this case.

Answer:

Interrogatory #8

Itemize all costs, on a daily basis, that were billed to Respondents and/or accrued by Respondents' attorneys related to this case.

Answer:

Interrogatory #9

For each attorney that has provided legal services to Respondents related to this case, describe their education and legal experience and expertise relevant to this case.

Answer:

Interrogatory #10

For each attorney that has provided legal services to Respondents related to this case, list their hourly rate billed in all other similar cases during the same time frame of this case.

Answer:

Interrogatory #11

Identify the name, address and telephone number for the attorney(s) that will be representing attorneys David S. O'Neill and Michael B. Jawgiel when they give deposition and hearing testimony on the attorney fee issue.

Answer:

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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Respondents.)

COMPLAINANT'S DOCUMENT REQUESTS TO RESPONDENTS
REGARDING COMPLAINANT'S FEE PETITION

Pursuant to Illinois Pollution Control Board Rule 101.620, 35 Ill. Adm. Code 101.620, and Illinois Supreme Court Rule 214, Complainant, PEOPLE OF THE STATE OF ILLINOIS, requests that Respondents, SKOKIE VALLEY ASPHALT CO., INC., EDWIN L. FREDERICK, JR., and RICHARD J. FREDERICK, produce, under oath, on or before May 25, 2005, following documents for inspection and copying at the Office of the Attorney General, 188 West Randolph Street, Suite 2001, Chicago, Illinois:

I. INSTRUCTIONS

1. If any requested document is not or cannot be produced in full, produce it to the extent possible, indicating with particularity what documents or portion of any such documents is not or cannot be produced and the reason therefore.

2. If no documents ever existed that address the subject of any request, please state so affirmatively for each applicable request.

3. If a document responsive to any request existed in the past, but does not currently exist, Respondent is instructed to provide all available information about the author and contents of that document and the circumstances of its destruction.

4. In producing documents, you are requested to produce the original of each document requested together with all non-identical copies and drafts of that document.

5. All documents should be produced in the same order as they are kept or maintained by you.

6. All documents should be produced in a file, folder, envelope, or other container in which the documents are kept or maintained by you. If for any reason the container cannot be produced, please produce copies of all labels or other identifying markings.

7. Documents attached to each other should not be separated.

8. Documents not otherwise responsive to this request shall be produced if such documents refer to, relate to, or explain the documents called for by this request and constitute routing slips, transmittal memoranda or letters, comments, evaluations, or similar documents.

9. Each document request should be construed and responded to independently from each other request. The scope of any requests should not be construed to limit or narrow the scope of any other request.


10. Complainant incorporates by reference herein the Instructions, Claims of Privilege and Definitions sections of Complainant's Interrogatories to Respondent Regarding Complainant's Fee Petition.

II. DOCUMENT PRODUCTION REQUEST

1. A daily accounting of all hours, as well as the corresponding activity performed, for each attorney that has provided legal services to Respondents related to this case, regardless of whether all such hours and activities were actually billed to Respondents.
2. All time records for each attorney that has provided legal services to Respondents related to this case.
3. A daily accounting of all costs incurred by each attorney that has provided legal services to Respondents related to this case, regardless of whether all such costs were actually billed to Respondents.
4. All invoices for attorney's fees from Respondents' attorneys related to this case.
5. All invoices for costs incurred by each of Respondents' attorneys related to this case.
6. A daily accounting of all costs directly incurred by Respondents related to this case.
7. All documents identified, relating to, and/or referred to in Respondents' or Respondents' attorneys' answers to Complainant's Interrogatories to Respondent Regarding Complainant's Fee Petition.

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
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Tel: 312-814-2069

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COMPLAINANT'S DEPOSITION NOTICES TO RESPONDENTS
REGARDING COMPLAINANT'S FEE PETITION

To: See Certificate of Service

PLEASE TAKE NOTICE that counsel for Complainant shall, pursuant to Illinois Pollution Control Board Rule 101.622, 35 Ill. Adm. Code 101.622, and Illinois Supreme Court Rule 206, take the discovery depositions of the following persons commencing on the dates and times indicated at the Attorney General's Office, Environmental Bureau North, 188 West Randolph Street, Suite 2001, Chicago, Illinois 60601:

1. David S. O'Neill beginning at 9:30 a.m. on June 16, 2005; and
2. Michael B. Jawgiel beginning at 1:30 p.m. on June 16, 2005.

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
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