

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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JUL 20 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

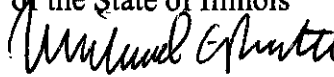
TO: Mr. David S. O'Neill, Esq.
Mr. Michael B. Jawgiel, Esq.
5487 North Milwaukee Avenue
Chicago, Illinois 60630-1249

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 Response to Respondents' Motions to Strike Complainant's Letters of May 24, 2005 and June 14, 2005 Regarding Discovery and Complainant's Motion for Protective Order and Response to Respondents' Motion to Strike Complainant's Objections to Discovery and Respondents' Motion to Compel Complainant's Response to Discovery Request** 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, Complainant's Response to Respondents' Motions to Strike Complainant's Letters of May 24, 2005 and June 14, 2005 Regarding Discovery and Complainant's Motion for Protective Order and Response to Respondents' Motion to Strike Complainant's Objections to Discovery and Respondents' Motion to Compel Complainant's Response to Discovery Request**, were sent by First Class Mail, postage prepaid, to the persons listed on the Notice of Filing on July 20, 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 July 20, 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 RESPONSE TO RESPONDENTS' MOTIONS TO STRIKE
COMPLAINANT'S LETTERS OF MAY 24, 2005 AND JUNE 14, 2005 REGARDING
DISCOVERY**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, hereby responds to Respondents', SKOKIE VALLEY ASPHALT CO., INC., EDWIN L. FREDERICK, JR., and RICHARD J. FREDERICK, Motions to Strike Complainant's Letters of May 24, 2005 and June 14, 2005 Regarding Discovery. In support of its response, Complainant states as follows:

RELEVANT CASE HISTORY

1. The relevant case history regarding Respondents' dispute of what constitutes reasonable attorneys' fees and costs to Complainant was outlined in Complainant's Response to Respondent's Motion to Strike Discovery Related to Attorneys' Fees and Costs ("Complainant's Response to the First Motion to Strike"), filed on June 1, 2005. (See Exhibit A.)

2. As explained in Complainant's Response to the First Motion to Strike, on May 24, 2005, Complainant's attorney sent Respondents' attorney a letter pursuant to Illinois Supreme Court Rule 201(k) in an attempt to informally resolve any differences over Respondents' discovery requests to Complainant. (See Exhibit B.) A copy of this Rule 201(k) letter was also sent to the Hearing Officer in order to keep her apprised. Respondents' attorney did not respond to this Rule 201(k) letter.

3. Since the filing of Complainant's Response to the First Motion to Strike, a telephone status conference with the Hearing Officer in this case took place on June 9, 2005, pursuant to notice. Respondents' attorney failed to appear for the status conference on June 9, 2005.

4. On June 14, 2005, Complainant's attorney sent Respondents' attorney a second letter pursuant to Rule 201(k) regarding Respondents' deposition notices. (See Exhibit C.) Complainant's attorney advised Respondents' attorney that disputes over written discovery should be resolved before starting depositions and, accordingly, scheduled depositions should be postponed until that occurs. A copy of this second Rule 201(k) letter was also sent to the Hearing Officer in order to keep her apprised. Respondents' attorney also did not respond to this second Rule 201(k) letter.

5. Instead, on July 6, 2005, Respondents filed three more motions to strike: "Respondents' Motion to Strike Complainant's Letter of May 24, 2005 Regarding Discovery," "Respondents' Motion to Strike Complainant's Letter of June 14, 2005 Regarding Discovery," and "Respondent's Motion to Strike Complainant's Objections to Discovery and Motion to Compel Complainant's Response to Discovery Request." Complainant responds to Respondents' Motions to Strike Complainant's Letters of May 24, 2005 and June 14, 2005

Regarding Discovery (collectively referred to as “Respondents’ Motions to Strike the Letters”) herein. Complainant responds to Respondent’s Motion to Strike Complainant’s Objections to Discovery and Motion to Compel Complainant’s Response to Discovery Request in a separate pleading.

6. Respondents’ Motions to Strike the Letters, like its other recent discovery motions, are remarkably strident given that Respondents’ attorney brought a discovery dispute to the Board without contacting Complainant’s attorney regarding the discovery disputes and without appearing for the June 9, 2005 status conference. Respondents’ Motions to Strike the Letters reach the unsupported conclusion that Complainant’s Rule 201(k) letters constituted ex parte communications with a Board employee and should be stricken. This conclusion is unsupported because it is without any legal or factual basis. The Rule 201(k) letters were sent directly to Respondents’ attorney. Respondents’ attorney had notice and the opportunity to respond. Therefore, the Rule 201(k) letters were not ex parte communications by definition, but even if they were, have been made part of the record on a number of occasions.

7. Respondents’ Motions to Strike the Letters also violate Rule 201(k) and fly in the face of Board’s April 7, 2005 Order, which unequivocally advised against the filing of “[a]ny pleading by either party not designed to further a speedy and ultimate resolution of this case . . .” (April 7, 2005 Order at 4.) Respondents’ attorney made no attempt to resolve the discovery questions without Board intervention, despite invitations from Complainant’s attorney.

RELEVANT LEGAL STANDARD REGARDING EX PARTE COMMUNICATIONS

8. Ex parte communications with Board members and employees in pending adjudicatory proceedings are prohibited. See 35 Ill. Adm. Code 101.114. Section 101.114 of the Board’s Procedural Rules provides, in relevant part, as follows regarding ex parte

communications:

Ex parte Communications

- (a) **Adjudicatory Proceedings.** Board members and employees are prohibited from engaging in ex parte communications with respect to a pending adjudicatory proceeding. (See definition of “ex parte communication” in Section 101.202 of this Part.) For purposes of this Section, Board employee means a person the Board employs on a full-time, part-time, contract, or intern basis.

* * *

- (d) In the event that an ex parte communication occurs, the Board Member or Board employee will make that communication part of the record of the proceeding. To make an oral ex parte communication part of the record, the substance of the oral communication, along with the identity of each person involved in the communication, will be either set forth in a memorandum and placed in the record or announced on the record at a public hearing.

9. “Ex parte communication” is defined in Section 101.202 of the Board’s

Procedural Rules, 35 Ill. Adm. Code 101.202, as follows (emphasis in original):

“Ex parte communication” means a communication between a person who is not a Board Member or Board employee and a Board Member or Board employee that reflects on the substance of a pending Board proceeding and that takes place outside the record of the proceeding. *Communications regarding matters of procedure and practice, such as the format of pleadings, number of copies required, manner of service, and status of proceedings, are not considered ex parte communications* [5 ILCS 100/10-60(d)]. For purposes of this definition, “Board employee” means a person the Board employs on a full-time, part-time, contract or intern basis. (See Section 101.114 of this Part.)

10. Black’s Law Dictionary (8th Edition 2004) defines “ex parte” as follows

(emphasis added):

Ex Parte. [Latin “from the part”] On or from one party only, usu. *without notice to or argument from the adverse party* <the judge conducted the hearing *Ex parte*>.

Done or made at the instance and for the benefit of one party only, and *without notice to, or argument by, any person adversely interested*; of or relating to court action taken by one party without notice to the other, usu. for temporary or emergency relief <an ex parte hearing> <an ex parte injunction>. Despite the traditional one-sidedness

of ex parte matters, some courts now require notice to the opposition before what they call an “ex parte hearing.”

Communication . . . ex parte communication. A communication between counsel and the court *when opposing counsel is not present*. Such communications are ordinarily prohibited.

RESPONDENTS’ MOTIONS TO STRIKE THE LETTERS MUST BE DENIED

11. Respondents’ Motions to Strike the Letters are frivolous and must be denied on at least six grounds.

12. First, the Rule 201(k) letters were sent directly to Respondents’ attorney. He had timely notice of these letters. Respondents’ attorney does not contend that he did not receive the letters. Only copies of the letters were sent to the Hearing Officer in order to keep her apprised of the discovery disputes. Because the letters were sent directly to Respondents’ attorney, by definition, they were not ex parte communications with a Board employee. See 35 Ill. Adm. Code 101.202; see also Stephen Drake v. Illinois EPA, PCB 81-54, 1981 WL 21592, at *1 (Dec. 17, 1981) (Letter sent by complainant to the Board *without serving respondents* was an ex parte communication); Village of Sauget v. Illinois EPA, PCB 86-57 and 86-62 (consolidated), 1989 WL 74542, at *1 (Jan. 19, 1989) (A copy of a letter sent to the Board by a third party concerning a pending case *without any indication that said letter was sent to all parties* can be viewed as an ex parte communication).

13. Furthermore, the May 24, 2005 Rule 201(k) letter states, “we invite you to contact us pursuant to Rule 201(k).” (May 24, 2005 Letter at 3 (Exhibit B).) In addition, the June 14, 2005 Rule 201(k) letter begins, “To date, I have not received any response to my May 24, 2005 letter” and ends “As always, please contact me with any questions or concerns.” (June 14, 2005 Letter at 1 and 2 (Exhibit C).) Respondents’ attorney had the opportunity and invitation to

respond to the Rule 201(k) letters, but chose not to do so. Respondents' attorney's failure to respond does not transform the Rule 201(k) letters into ex parte communications. By the same token, had Complainant chosen not to respond to Respondents' Motions to Strike the Letters, those Motions would not be transformed into ex parte communications with the Board.

14. Second, the Board's rules state that the Hearing Officer has authority to order discovery or deny discovery "if the parties cannot agree on the scope of discovery." 35 Ill. Adm. Code 101.616(b). This rule clearly anticipates an informal dispute resolution process between the parties before discovery disputes are brought to the Hearing Officer or the Board. The Board also looks to the Supreme Court Rules for guidance in discovery, which include the informal discovery dispute resolution rule in Rule 201(k). Id. Illinois' rules "contemplate that discovery will proceed without judicial intervention and that the great majority of discovery questions will be resolved by counsel themselves." Williams v. A.E. Staley Mfg. Co., 83 Ill.2d 559, 563, 416 N.E.2d 252, 254 (Ill. 1981). The increasing complexity and volume of present-day litigation involves frequent recourse to discovery and seeking judicial intervention in discovery before consultation between counsel and good faith efforts to resolve differences would only serve to increase the burden on courts and thwart administration of justice. Id. at 564, 416 N.E.2d at 255. "Discovery is not a tactical game," but rather it "is intended as, and should be, a cooperative undertaking by counsel and the parties, conducted largely without court intervention . . ." Id. at 566, 416 N.E.2d at 256.

15. Respondents' attorney's decision to communicate with Complainant's attorney only through Board filings violates both the letter and spirit of Rule 201(k). It exceeds the boundaries of fairness that Respondents' attorney intentionally ignored Complainant's attorney's good faith efforts to informally resolve discovery disputes and now seeks to strike those good

faith efforts since they have become a matter of public record.

16. Respondents argue that “the provisions of Supreme Court Rule 201(k) do not apply to this situation because the Complainant was never given leave to conduct discovery by the Board.” (Motions to Strike Letters at ¶3.) This is nonsensical as the requirements of Rule 201(k) apply to, and are incumbent upon, the parties serving *and* answering discovery. Rule 201(k) states, in part, that the “*parties*” (plural) shall attempt to resolve differences over discovery prior to judicial intervention. Respondents’ argument in this regard is an admission that they themselves failed to follow Rule 201(k) and is an indication of how unreasonable they have acted in this phase of the litigation.

17. It is a duty of the Hearing Officer to handle “all discovery disputes.” 35 Ill. Adm. Code 101.616. Hearing Officers can and do advise parties to utilize Rule 201(k) to informally resolve discovery disputes, which is the informal process by which parties should resolve discovery disputes. See, e.g., People v. John Chalmers, PCB 96-111 (Hearing on July 16, 1998, Transcr. at 66-67) (Exhibit D). In this context, it was entirely appropriate for Complainant’s attorney to provide the Hearing Officer in this case with copies of the Rule 201(k) letters in order to keep her apprised, particularly when Respondents’ attorney refused to respond to the letters and then failed to appear at a status conference when discovery was to be discussed with the Hearing Officer.

18. Third, the letters formed part of the Complainant’s discovery requests and answers. Therefore, apprising the Hearing Officer of the discovery disputes was consistent with the Board’s April 7, 2005 Order, which directed the parties to file and serve discovery requests and answers.

19. Fourth, discovery correspondence sent to the Board does not constitute ex parte communication. See White Glove of Morton Grove Twp. v. Amoco Oil Co., PCB 95-113, 1995 WL 447370, at *3 (July 20, 1995). In White Glove, the complainant sent the respondent letters regarding discovery. Id. at *2. These letters set forth facts and legal argument. Id. The complainant also sent copies of the letters to a Board Member's attorney. Id. Respondent objected and argued that sending the Board copies of communication between parties constituted ex parte communications. Id. However, the letters were filed stamped by the Board and the respondent did not contend that it did not receive the letters. Id. at *3. The Board found that "such correspondence in this case is not tantamount to ex parte communication and it did not prejudice the respondent." Id.

20. Under White Glove, even if the Rule 201(k) letters in the present case were sent directly to the Board, they would not be tantamount to ex parte communications. Of course, the Rule 201(k) letters in the present case were not sent directly to the Board. They were sent directly to Respondents' attorney with copies to the Hearing Officer, who is responsible for handling all discovery disputes. In addition, the letters have now been filed with the Board on a number of occasions, thereby making them part of the record.

21. Fifth, assuming *arguendo* that the letters were ex parte communications, which they were not, they are no longer ex parte communications since they were filed with the Board. This is the appropriate remedy rather than striking them. 35 Ill. Adm. Code 101.114(d) (In the event that an ex parte communication occurs, the communication will be made part of the record of the proceeding); Sauget at *1 (In order to cure any potential taint in the record from an ex parte communication, the appropriate remedy is to make that communication a part of the record).

22. Last, and again assuming *arguendo* that the Rule 201(k) letters were ex parte communications, which they were not, there resulted no prejudice to Respondents from the letters because Respondents caused the letters to be superseded by a Board pleading. The Rule 201(k) letters explained the Complainant's position on potential discovery disputes. Instead of responding to the Rule 201(k) letters, Respondents filed a Motion to Strike Complainant's Objections to Discovery and Respondents' Motion to Compel Complainant's Response to Discovery Request. Complainant's response to that Motion, which of course was filed with the Board (simultaneous with the instant response), incorporates the sum and substance of the Rule 201(k) letters, thereby superseding them. In other words, the Rule 201(k) letters are now moot because their sum and substance was reiterated in a responsive pleading to the Board that was precipitated by Respondents' own actions.

CONCLUSION

23. Therefore, based on numerous grounds stated above, the Rule 201(k) letters were not ex parte communications with a Board employee. Furthermore, although ex parte communications with a Board employee did not occur in this case, the remedy for ex parte communications is to make them part of the record rather than to strike them. For all of these reasons, Respondents' Motions to Strike the Letters must be denied.

Respectfully submitted,

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

BY: 

MICHAEL C. PARTEE
MITCHELL L. COHEN
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Chicago, Illinois 60601
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TO: Mr. David S. O'Neill, Esq.
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Ms. Carol Webb, Hearing Officer
Pollution Control Board
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P.O. Box 19274
Springfield, Illinois 62794-9274

PLEASE TAKE NOTICE that I have today filed Complainant's Response to Respondents' Motion to Strike Discovery Related to Attorneys' Fees and Costs, 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

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 and Complainant's Response to Respondents' Motion to Strike Discovery Related to Attorneys' Fees and Costs, were sent by First Class Mail, postage prepaid, to the persons listed on the Notice of Filing on June 1, 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 June 1, 2005:

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BY: 
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**COMPLAINANT'S RESPONSE TO RESPONDENTS' MOTION TO STRIKE
DISCOVERY RELATED TO ATTORNEYS' FEES AND COSTS**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, hereby responds to Respondents', SKOKIE VALLEY ASPHALT CO., INC., EDWIN L. FREDERICK, JR., and RICHARD J. FREDERICK, Motion to Strike Complainant's Interrogatories, Document Requests and Deposition Notices to Respondents Regarding Complainant's Fee Petition. In Response, Complainant states as follows:

I. INTRODUCTION

A. Relevant Case History

On September 2, 2004, the Illinois Pollution Control Board ("Board") found, in relevant part, that "... respondents committed willful, knowing or repeated violations in this case." (Order at 6 (September 2, 2004).) Accordingly, the Board authorized Complainant to file a petition for attorneys' fees and costs. On September 17, 2004, Complainant filed its Attorneys'

Fees and Costs Petition.

On September 28, 2004, Respondents filed a pleading, titled "Initial Response to and Motion to Stay and/or Extend Time to Respond to Complainant's Petition for Attorneys' Fees and Costs" (hereafter referred to as "Initial Response"). In their Initial Response, Respondents made numerous, specific, unsupported, factual allegations regarding Complainant's Attorneys' Fees and Costs Petition. None of these allegations are a matter of record. Following are a few examples of Respondents' factual allegations:

- "The pay rate for the Complainant's attorneys is obviously fabricated." (Initial Response at ¶ 16.)
- "It is hard to justify a claim for attorneys' fees and cost [*sic*] by the Illinois Attorney General's office that is approximately ten times the amount that three Respondents combined paid to defend themselves against frivolous claims." (Initial Response at ¶ 17.)
- "It is also hard to justify an hourly fee for public service that is greater than the weighted-average fee charged by the Respondents' attorney even though the Respondents' attorneys [*sic*] fees include costs." (Id.)

On January 10, 2005, Respondents filed another pleading, titled "Motion to Establish Discovery Schedule and Motion for Extension of Time to Respond Under Board Order of December 16, 2004" (hereafter referred to as the "Discovery Schedule Motion").

On April 7, 2005, the Board granted Respondents' Discovery Schedule Motion and directed Respondents to file and serve limited and focused discovery requests by April 25, 2005, Complainant to file and serve answers to said discovery requests by May 25, 2005, and the Hearing Officer to proceed to hearing on the issue as expeditiously as possible. The April 7,

2005 Order did not address Respondents' allegations regarding Complainant's Attorneys' Fees and Costs Petition and did not prohibit Complainant from serving discovery requests regarding these allegations.

Thereafter, Respondents filed and served discovery requests by April 25, 2005, and Complainant filed and served its answers to said discovery requests by May 25, 2005. Complainant also filed and served discovery requests (interrogatories, document requests and deposition notices) by April 25, 2005. (See Exhibit A to this Response.) Complainant then sent Respondents a letter, dated May 24, 2005, pursuant to Rule 201(k) regarding Complainant's discovery requests, among other issues. (See Exhibit B to this Response.)

Rather than contact Complainant pursuant to Rule 201(k) or answer Complainant's discovery requests, on May 18, 2005, Respondents filed yet another pleading, titled "Respondents' Motion to Strike Complainant's Interrogatories, Document Request and Deposition Notices to Respondents Regarding Complainant's Fee Petition" (hereafter referred to as "Motion to Strike"). Respondents' Motion to Strike seeks to strike Complainant's interrogatories, document requests and deposition notices in their entirety on the grounds that the April 7, 2005 Order did not grant Complainant additional time to conduct discovery; that the Complainant "has not been authorized to conduct discovery and has no legal basis for which to do so;" and that "Respondents have no legal obligation to respond to Complainant's discovery requests and do not desire to do so on a voluntary basis." (Motion to Strike at ¶¶ 3, 6 and 7.)

II. RELEVANT LEGAL STANDARD

The purpose of discovery is to enable attorneys to better prepare and evaluate their cases. See Carlson v. General Motors Corp., 289 N.E.2d 439, 449 (Ill. App. 1st Dist. 1972); see also Terry v. Fisher, 145 N.E.2d 588, 593 (Ill. 1957). In Carlson, the Court reiterated the purpose of

discovery: "the principle is now well established that the purposes of litigation are best served when each party knows as much about the controversy as is reasonably practicable." 289 N.E.2d at 449. The Supreme Court Rules specifically provide that a party is entitled to full disclosure regarding "any matter relevant to the subject matter." Ill. Sup. Ct. R. 201(b)(1). Courts have further held that discovery presupposes a range of relevance and materiality that includes not only what is admissible at trial, but also that which leads to what is admissible at the trial. See Krupp v. Chicago Transit Auth., 132 N.E.2d 532, 535 (Ill. 1956). The Illinois Supreme Court has expressed its preference for extensive disclosure through discovery. People v. Williford, 649 N.E.2d 941, 944 (Ill.App. 5th Dist.1995). *Thus, discovery for each party is favored and should not be denied without just cause. Id.*

III. RESPONDENTS' MOTION TO STRIKE MUST BE DENIED

A. Complainant's Discovery Requests Are Directly Relevant to the Numerous, Factual Allegations Made by Respondents

Respondents introduced bald factual allegations into this proceeding concerning the reasonableness of Complainant's Attorneys' Fees and Costs Petition in light of the Respondents' own attorneys' fees and costs. Notwithstanding the irrelevance of Respondents' allegations, *Respondents made these allegations, none of which are a matter of record*, and Complainant is entitled to full disclosure regarding the factual bases for them under the principles of discovery.

Discovery is a two-way street, and the standard for discoverability is extremely broad. It is a well-established principle that the purposes of litigation are best served when each party knows as much about the controversy as is reasonably practicable. Carlson, 289 N.E.2d at 449. Complainant (and the Board) knows *nothing* about Respondents' attorneys' fees and costs. Therefore, Complainant served timely, focused and limited interrogatories, document requests

and notices of deposition regarding Respondents' attorneys' fees and costs.

Respondents do not argue that Complainant's discovery requests seek privileged or confidential information such that Respondents need not answer. Respondents do not raise just cause for entirely striking Complainant's discovery requests. Instead, Respondents have introduced bald allegations into this proceeding and now seek to prevent Complainant from conducting any discovery into these allegations. Respondents' Motion to Strike rests solely on the April 7, 2005 Order, which does not support the extraordinary relief sought in their Motion to Strike. Indeed, that Order neither addresses Respondents' factual allegations nor prohibits Complainant's discovery requests. Respondents interpret this silence as support for their Motion to Strike. This interpretation is unfounded. Obviously, the April 7, 2005 Order does not contradict the basic discovery concept of full disclosure. For these reasons, Respondents' Motion to Strike must be denied.

B. Complainant Will Be Severely Prejudiced If Respondents Do Not Answer Its Discovery Requests

Respondents also do not argue that they will be prejudiced in any way by answering Complainant's discovery requests. On the other hand, Complainant will be severely prejudiced if Respondents do not fully disclose the factual bases for their allegations.

Without full disclosure, Complainant cannot be fully apprised of the factual bases for Respondents' allegations, none of which are a matter of record. Complainant will be unprepared and severely prejudiced at a hearing on the reasonableness of the Attorney's Fees and Costs Petition if it is denied such information. Again, the purpose of discovery is to enable attorneys to better prepare and evaluate their cases. See Carlson, 289 N.E.2d at 449; Terry, 145 N.E.2d at 593. Absence full disclosure by Respondents, Complainant cannot be adequately apprised or

prepare for hearing, which will result in severe prejudice to Complainant. For these reasons, Respondents' Motion to Strike must be denied.

C. Respondents Also Failed to Comply With Rule 201(k)

Respondents also failed to comply with Rule 201(k). Neither of Respondents' attorneys even telephoned Complainant's attorneys prior to filing the Motion to Strike. (See Exhibit B at 3.) Had Respondents initiated a conference pursuant to Rule 201(k) to informally resolve differences, their frivolous Motion to Strike could have been avoided. To date, Complainant's attorneys still have not heard from Respondents' attorneys, despite Complainant's letter, dated May 24, 2005. (Id.) Respondents' failure to contact Complainant regarding a discovery dispute prior to filing yet another pleading violates Rule 201(k) and the letter and spirit of the April 7, 2005 Order, which expressly discouraged pleadings that are not designed to further a speedy and ultimate resolution of this case. (Order at 4 (April 7, 2005).) Both Rule 201(k) and the April 7, 2005 Order required an informal dispute resolution process between the parties prior to filing further pleadings. Respondents refused to participate in that process. This provides yet another basis to deny their Motion to Strike.

IV. CONCLUSION

Respondents placed their attorneys' fees and costs at issue. However, Respondents' bald allegations regarding their own attorneys' fees and costs are not a matter of record. Complainant (and the Board) knows nothing about Respondents' attorneys' fees and costs. Without just cause, Respondents now seek the extraordinary relief of a Board Order preventing full disclosure regarding the bases for their bald allegations.

Respondents have not objected to the substance of Complainant's discovery requests or claimed any privilege. Complainant will be severely prejudiced if it must proceed to hearing

without being adequately apprised of Respondents' allegations through limited and focused discovery. Discovery is a two-way street and Complainant is entitled to full disclosure under the rules of discovery. Contrary to the Respondents' contention, the April 7, 2005 Order does not support the extraordinary relief sought.

Lastly, Respondents also failed to comply with Rule 201(k) and the April 7, 2005 Order prior to filing yet another pleading with the Board. Had Respondents attempted to resolve their differences informally with Complainant prior to filing another pleading, their Motion to Strike could have been avoided. For each of these reasons, Respondents' Motion to Strike must be denied, and Respondents must be ordered to answer Complainant's discovery requests regarding attorneys' fees and costs.

Respectfully submitted,

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

BY: 

MICHAEL C. PARTEE (Tel 312/814-2069)
MITCHELL L. COHEN (Tel 312/814-5282)
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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 24, 2005

Sent Via First Class Mail

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5487 North Milwaukee Avenue
Chicago, Illinois 60630-1249

Re: Discovery – People v. Skokie Valley Asphalt Co., Inc., et al., PCB 96-98

Dear Mr. O'Neill:

I enclose Complainant's answers to Respondents' requests to admit facts, interrogatories and document requests pertaining to the petition for fees and costs. The purpose of this letter is to initiate a conference pursuant to Illinois Supreme Court Rule 201(k) to resolve any potential differences over Respondents' requests. This letter also addresses Respondents' deposition notice for former Assistant Attorney General Bernard Murphy. Lastly, this letter addresses Respondents' failure to comply with Rule 201(k) prior to filing their Motion to Strike Complainant's discovery requests pertaining to the petition for fees and costs.

Complainant's Three Main Objections to Respondents' Discovery Requests

Categorically, we object to Respondents' requests for three main reasons. First, and most troubling, your discovery requests contain inflammatory allegations and insinuations of perjury, unethical conduct, over-billing and other improprieties by the Attorney General's Office, particularly by former Assistant Attorney General Joel Sternstein. None of these allegations and insinuations has any thread of truth. These are attacks on Complainant's attorneys and have no application to any issue in the case. It is truly a sad chapter in any case when an opposing attorney resorts to this sort of bully tactic.

Properly conducted, this should be a dignified procedure. As attorneys, we are officers of the court – in this case the Board – and we owe a professional duty to the Board and to each other. Your allegations and insinuations clearly exceed all bounds. In any other case, we would file a motion for a protective order and sanctions. However, given the letter and spirit of the Board's last order, dated April 7, 2005, which expressly directed us to resolve this in a speedy manner, we decided to write you instead. Frankly, we hope that the problem ends with this letter. The Attorney General's Office has acted in an above-board and professional manner in this case. We expect the same in return. I know that the Board is loathe to hear another discovery dispute.

EXHIBIT

B

but we will bring this problem to the Board's attention if it continues.

Second, Complainant objects to Request to Admit Fact Nos. 3, 11, 12, 13, 15, 16, 17, 18, 19, 20, and 37, Interrogatory No. 14, and Document 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 information regarding Complainant's request for AAG Sternstein's fees, which were previously disallowed by the Board. The Board expressly ordered that "the parties are not to address [AAG Sternstein's fees] in conducting discovery or at hearing." (Id.) For these reasons, Complainant does not answer these particular requests.

Third, Complainant objects to Request to Admit Fact Nos. 4, 5, 6, 8, 9, 27, 28, and 30, Interrogatory Nos. 16 and 23(i), and Document Request Nos. 5, 7, 8 and 9 on relevance and privacy grounds because they seek information regarding personal compensation to the Assistant Attorneys General in this case. An Assistant Attorney General's personal compensation has no bearing on the petition for fees and costs. These requests regarding personal compensation are harassing and made in bad faith, and are not designed to resolve this dispute in a speedy and final manner. Your transparent attempt to develop the argument that our billing rate does not reflect our salary is not only irrelevant under the legal standard, but it is so vastly oversimplified as to have no validity. You fail to recognize that our billing rate would not reflect our salary because employee benefits, employer's liability insurance, overhead costs (rent, office equipment, support staff, etc.) and many, many other distributions and costs, are also included in that billing rate. You also fail to acknowledge that, as governmental attorneys, our billing rate is already well below that of a similarly experienced environmental attorney in private practice in downtown Chicago. That said, this is not an invitation to audit the Attorney General's Office. The point is that no attorney "takes home" his hourly billing rate, so his salary is irrelevant to the reasonableness of his requested fees.

We did not locate any Board or court precedent where personal compensation was allowed or even considered in determining the reasonableness of a petition for fees and costs. It is simply not a factor considered by the Board or courts. The Board has previously found that an hourly of \$150.00 per hour is reasonable for an Assistant Attorney General. See e.g., People v. J & F Hauling, Inc., PCB 02-21 (May 1, 2003). Therefore, the *only* relevant issue is the reasonableness of the amount of hours billed and the costs incurred. For these reasons, Complainant does not answer these particular requests.

Respondents' Deposition Notice for Former AAG Murphy

We received Respondents' deposition notice for former AAG Murphy's deposition on June 24, 2005. Please be advised that AAG Murphy left the Attorney General's Office (on good terms) last year. If you need to depose him, please contact him directly. Mr. Murphy now serves as Assistant General Counsel, Department of Law, City of Chicago Board of Education, 125 South Clark Street, 7th Floor, Chicago, Illinois.

Respondents' Failure to Comply With Rule 201(k)
Prior to Filing Their Motion to Strike

Lastly, you failed to comply with Rule 201(k) prior to filing Respondents' Motion to Strike Complainant's discovery requests. We did not even receive a telephone call from you (or Michael Jawgiel) in this regard. Had you contacted us, we may have been able to resolve this dispute informally and without further, needless litigation.

We served you with discovery requests because you made numerous, factual allegations concerning the petition for fees and costs that are not a matter of record. As one example, in paragraph 17 of "Respondents' Initial Response To And Motion To Stay And/Or Extend Time To Respond To Complainant's Petition For Attorneys' Fees And Costs," you alleged the following:

It is hard to justify a claim for attorneys' fees and cost [*sic*] by the Illinois Attorney General's office that is approximately ten times the amount that three Respondents combined paid to defend themselves against frivolous claims.

Respondents' legal fees and costs are not a matter of record. Your dispute of the petition for fees and costs is based, in part, on a comparison between Complainant's and Respondents' fees and costs and we are entitled to conduct discovery on it. You also made numerous other factual allegations that are not a matter of record. Furthermore, there is no prejudice or hardship to you in answering our discovery requests. On the other hand, we cannot be adequately apprised of your allegations if you refuse to answer our limited and focused discovery requests. In order to resolve this dispute, we invite you to contact us pursuant to Rule 201(k).

Sincerely,



Michael C. Partee
Assistant Attorney General
Environmental Bureau
188 West Randolph Street, Suite 2001
Chicago, Illinois 60601
Tel: (312)814-2069
Fax: (312)814-2347
E-Mail: mpartee@atg.state.il.us

cc: Carol Webb, Hearing Officer
Michael B. Jawgiel, Esq.



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 14, 2005

Sent Via First Class Mail

Mr. David S. O'Neill, Esq.
5487 North Milwaukee Avenue
Chicago, Illinois 60630-1249

Re: **Discovery – People v. Skokie Valley Asphalt Co., Inc., et al., PCB 96-98**

Dear Mr. O'Neill:

The purpose of this letter is to initiate another conference pursuant to Illinois Supreme Court Rule 201(k) to resolve any potential differences over Respondents' notices of deposition. Respondents noticed the depositions of AAG Mitchell Cohen and former AAG Bernard Murphy for June 24, 2005, at 9:00 a.m. and 1:00 p.m., respectively. We intended to take this up with you during our case status conference on June 9, 2005, but you failed to appear.

As I explained in my first Rule 201(k) letter, dated May 24, 2005, Mr. Murphy left the Attorney General's Office last year, which means that we are unable to produce him for a deposition. To date, I have not received any response to my May 24, 2005 letter, so I assume that our concern regarding Mr. Murphy's deposition notice is resolved.

In light of Respondents' recent, unresolved Motion to Strike the State's discovery requests regarding attorneys' fees and costs, we now object to producing Mr. Cohen for a deposition on June 24, 2005. First, depositions should not begin until we complete written discovery. Mr. Cohen (or any other potential witness) should have the benefit of reviewing all written discovery before submitting to a deposition. Moreover, beginning depositions before completing written discovery is not conducive to orderly discovery. Second, as you pointed in Respondents' Motion to Strike, the Board's April 7, 2005 Order only provides that "Respondent is directed to file the outstanding discovery requests with the Board . . . ; [and] the People's response must be filed on respondents and served with the Board" (Order at 4.) The Board's reference to the "filing" of discovery requests and answers can only mean written discovery. As you argued in your Motion to Strike, the April 7, 2005 Order does not authorize the State's written discovery requests. By the same token, the Order does not authorize the Respondents' notices of depositions. Therefore, applying your argument, the Respondents are not entitled to conduct depositions because the April 7, 2005 Order does not so provide.

EXHIBIT

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While we believe that the Board intended full disclosure by both sides, we do not plan to submit Mr. Cohen for a deposition until the Board clarifies the scope of discovery regarding attorneys' fees and costs. As always, please contact me with any questions or concerns.

Sincerely,



Michael C. Partee
Assistant Attorney General
Environmental Bureau
188 West Randolph Street, Suite 2001
Chicago, Illinois 60601
Tel: (312)814-2069
Fax: (312)814-2347
E-Mail: mpartee@atg.state.il.us

cc: Carol Webb, Hearing Officer
Michael B. Jawgiel, Esq.
Bernard Murphy, Jr., Esq.

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

2

3

4 PEOPLE OF THE STATE OF ILLINOIS,

5 Complainant,

6 vs. No. PCB 96-111

7 JOHN CHALMERS, INDIVIDUALLY AND

8 D/B/A JOHN CHALMERS HOG FARM,

9 Respondent.

10

11

12

13 Proceedings held on July 16, 1998 at 10:35 a.m.,

14 at the Illinois Pollution Control Board, 600 South

15 Second Street, Suite 402, Springfield, Illinois,

16 before the Honorable Jack Burds, Hearing Officer.

17

18

19

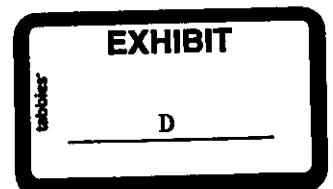
20

21 Reported by: Darlene M. Niemeyer, CSR, RPR
22 CSR License No.: 084-003677

23 KEEFE REPORTING COMPANY
24 11 North 44th Street
25 Belleville, IL 62226
(618) 277-0190

1

KEEFE REPORTING COMPANY
Belleville, Illinois



1 your decision.

2 MS. PERI: It depends on the scope of the
3 interrogatory.

4 (Ms. Peri and Ms. Glatz confer briefly.)

5 MS. PERI: The State has a concern about whether
6 Mr. Tice's revised interrogatory may be expanded to
7 include cases that were resolved prior to referral to
8 the Attorney General's office during the Section 31
9 process, because that would open up a can of worms
10 that would involve a significant amount of time.

11 HEARING OFFICER BURDS: Well, as I have indicated,
12 I think the question is a different question than what
13 he has posed in the interrogatory. I can only go by
14 what he is seeking to determine. I really can't
15 prejudge what affect that might have or how broad the
16 request is until I see it. The one that I have before
17 me is until 1990 related to a proceedings brought
18 before the Board. I think we all agree here that that
19 is ascertainable independently by all of us. However,
20 it seems to be something else that Mr. Tice is after,
21 based on his representations, and that is to determine
22 those types of cases that were not necessarily brought
23 before the Board, and I don't want to prejudge what
24 that is. Maybe Mr. Tice has not fully articulated
25 what it is he is looking for. But based on his

1 representations it does not seem like an unreasonable
2 request at this time.

3 However, I cannot prejudge that it is unreasonable
4 or predetermine that any objections you may have may
5 be unreasonable either. I would encourage you to do
6 what you have done in this case. I want to make clear
7 that I appreciate both Counsel first trying to resolve
8 the difference before coming to me. I know that that
9 is not a specific Board requirement, but as you both
10 have pointed out, we do allow the Civil Procedure
11 Rules to apply and to come under a 201(k) auspices,
12 and that's what I prefer. I would like that
13 documented, that same approach taken in the future and
14 always, because that is where discovery should be
15 resolved, in my opinion.

16 However, I know that that is part of my role here,
17 and I don't want to try to duck any responsibility of
18 my own. That's what I hope to do here and hope to
19 have to you next week. Now as far as -- I am going to
20 allow him to revise that request. I am going to deem
21 his motion to compel related to interrogatory number
22 one as moot based on the revisions that he has
23 indicated.

24 Now, Mr. Tice, I don't know. That may be
25 something that you want to address. I don't know.

JUL 20 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 MOTION FOR PROTECTIVE ORDER AND RESPONSE TO
RESPONDENTS' MOTION TO STRIKE COMPLAINANT'S OBJECTIONS TO
DISCOVERY AND RESPONDENTS' MOTION TO COMPEL COMPLAINANT'S
RESPONSE TO DISCOVERY REQUEST**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney
General of the State of Illinois, hereby moves for a protective order against Respondents',
SKOKIE VALLEY ASPHALT CO., INC., EDWIN L. FREDERICK, JR., and RICHARD J.
FREDERICK, abusive discovery tactics. Complainant also hereby responds to Respondents'
Motion to Strike Complainant's Objections to Discovery and Respondents' Motion to Compel
Complainant's Response to Discovery Request. In support of its motion and response,
Complainant states as follows:

INTRODUCTION

Relevant Case History

1. The relevant case history regarding Respondents' dispute of what constitutes reasonable attorneys' fees and costs to Complainant was outlined in Complainant's Response to Respondent's Motion to Strike Discovery Related to Attorneys' Fees and Costs ("Complainant's Response to the First Motion to Strike"), filed on June 1, 2005. (See Exhibit A.)

2. As explained in Complainant's Response to the First Motion to Strike, on May 24, 2005, Complainant's attorney sent Respondents' attorney a letter pursuant to Illinois Supreme Court Rule 201(k) in an attempt to informally resolve any differences over Respondents' discovery requests to Complainant. (See Exhibit B.) A copy of this Rule 201(k) letter was also sent to the Hearing Officer in order to keep her apprised. Respondents' attorney did not respond to this Rule 201(k) letter.

3. Since the filing of Complainant's Response to the First Motion to Strike, a telephone status conference with the Hearing Officer in this case took place on June 9, 2005, pursuant to notice. Respondents' attorney failed to appear for the status conference on June 9, 2005.

4. On June 14, 2005, Complainant's attorney sent Respondents' attorney a second letter pursuant to Rule 201(k) regarding Respondents' deposition notices. (See Exhibit C.) Complainant's attorney advised Respondents' attorney that disputes over written discovery should be resolved before starting depositions and, accordingly, scheduled depositions should be postponed until that occurs. A copy of this second Rule 201(k) letter was also sent to the Hearing Officer in order to keep her apprised. Respondents' attorney also did not respond to this second Rule 201(k) letter.

5. Instead, on July 6, 2005, Respondents filed three more motions to strike: “Respondents’ Motion to Strike Complainant’s Letter of May 24, 2005 Regarding Discovery,” “Respondents’ Motion to Strike Complainant’s Letter of June 14, 2005 Regarding Discovery,” and “Respondent’s Motion to Strike Complainant’s Objections to Discovery and Motion to Compel Complainant’s Response to Discovery Request” (“Motion to Compel”). Complainant responds to Respondents’ Motion to Compel herein. Complainant responds to Respondents’ Motions to Strike Complainant’s Letters of May 24, 2005 and June 14, 2005 Regarding Discovery (collectively referred to as “Respondents’ Motions to Strike the Letters”) in a separate pleading.

6. Respondents’ Motion to Compel, like Respondents’ Motions to Strike the Letters, is remarkably strident given that Respondents’ attorney brought discovery disputes to the Board without contacting Complainant’s attorney regarding the discovery disputes and without appearing for the June 9, 2005 status conference. Furthermore, the request for blanket relief sought by the Respondents, including striking all of Complainant’s objections and ordering Complainant to answer all discovery requests, is supported by rhetoric (*e.g.*, “the time it would take the Complainant to respond to Respondent’s requests for discovery is inconsequential compared to the delay now caused by the Complainant’s failure to comply with the Board discovery schedule”) and misstatements of the law (*e.g.*, “the very purpose of discovery is to allow for the exchange of personal information”). (Motion to Compel at ¶¶ 18 and 27, respectively.)

7. Respondents’ Motion to Compel does not respond to each of the discovery objections that it asks the Board to strike. Even as to the few objections to which they respond, Respondents resort to generalizing the specific. Respondents utterly fail to address how or why

each of Complainant's objections should be stricken, which should be a threshold requirement for striking an objection. This in itself is fatal to the Motion to Compel.

8. Moreover, given the circumstances, Respondents' Motion to Compel violates Rule 201(k) and flies in the face of Board's April 7, 2005 Order, which unequivocally advised against the filing of "[a]ny pleading by either party not designed to further a speedy and ultimate resolution of this case . . ." (April 7, 2005 Order at 4.) Respondents' attorney refused to even attempt to resolve the discovery disputes prior to Board intervention, despite invitations from Complainant's attorney.

Respondents' Discovery Requests to Complainant

9. Respondents' Motion to Compel minimizes the massive scope and objectionable substance of their discovery requests. However, it is necessary to address each of Respondents' discovery requests, and Complainant's objections thereto, in order to grant the blanket relief sought in the Motion to Compel. Respondents' discovery requests regarding the narrow issue of the reasonableness of Complainant's claimed attorneys' fees and costs consist of 43 Requests to Admit Facts, 50 Interrogatories including subparts, 24 Document Requests and two deposition notices. (See Group Exhibit D.) In comparison, Respondents served a total of only 16 Interrogatories and 14 Document Requests prior to the trial on all issues in October 2003.

10. In terms of scope, Respondents discovery requests regarding attorneys' fees and costs are overly broad and unduly burdensome. In terms of substance, they are insulting, harassing, made in bad faith, irrelevant, and not calculated to lead to relevant information or designed to resolve this dispute in a speedy and final manner.

(a) Requests to Admit Facts: Respondents served 43 Requests to Admit Facts. In many instances, Respondents have masqueraded insults directed at

Complainant's attorneys as requests to admit facts. For example, Request to Admit Fact #37 states as follows:

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.

This Request to Admit Fact exemplifies not only the insulting nature of Respondents' requests, but also Respondents' attempt to delve into the irrelevant subject of Assistant Attorney General ("AAG") Joel Sternstein's fees. Many other Requests to Admit Facts are equally as offensive and irrelevant. On these grounds, Complainant objected to, and neither admitted nor denied, Request to Admit Facts #3, 11, 12, 13, 15, 16, 17, 18, 19, 20, and 37. In order to get to the issue of AAG Sternstein's fees, Respondents argue that the "Board's attempt to limit discovery the [sic] with respect to the conflict of Mr. Sternstein should not be interpreted to prevent the Respondents from investigating Complainant and its attorneys [sic] other misconduct and ethical breaches." (Motion to Compel at ¶ 21.)

As another example, Request to Admit Fact #27, states as follows:

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.

This Request to Admit Fact exemplifies Respondents' attempt to delve into the personal compensation or "take home pay" of the AAGs involved in the case, which is irrelevant and private information. On these grounds, Complainant objected to, and neither admitted nor denied, Request #4, 5, 6, 8, 9, 27, 28, and 30. In order to obtain

information regarding personal compensation, Respondents argue that “the very purpose of discovery is to allow for the exchange of personal information.” (Motion to Compel at ¶ 27.)

Complainant answered the remaining Requests to Admit, subject to additional objections.

(b) Interrogatories: Respondents served Complainant with a “first set” of Interrogatories as if there will be additional sets to follow. While Respondents first set consists of 50 interrogatories including sub-parts, only 30 interrogatories are allowed under Supreme Court Rule 213(c). Nevertheless, in order to avoid a discovery dispute, Complainant went to great lengths to address each interrogatory in a timely manner. Some of the Interrogatories also sought information regarding AAG Sternstein’s fees (Interrogatory #14) and personal compensation to AAGs in this case (Interrogatory #16 and 23(i)). Complainant objected to, and did not answer, these Interrogatories. Other Interrogatories were also objectionable, but for a whole host of other reasons ranging from Complainant’s inability to understand a request (*e.g.*, Interrogatory #10) to its inability to comply with a request (*e.g.*, Interrogatory #23). Respondent’s Motion to Compel does not address the balance of these objections.

(c) Document Requests: Respondents also served Complainant with a “first set” of 24 Document Requests as if there will be additional sets to follow. Complainant again went to great lengths to address each Document Request in a timely manner. Some of the Document Requests also sought information regarding AAG Sternstein’s fees (Document Request #6, 7, 10, 11, 12, 17 and 21) and personal compensation to AAGs in this case (Document Request #5, 7, 8 and 9). Complainant objected to, and did not

answer, these Document Requests. Other Document Requests were also objectionable, but for other reasons, including that they were overly broad (*e.g.*, Document Request #1 requesting “All Documents Related to the subject matter of this case”). Based on these additional objections, Complaint answered most of the Document Requests, but did not answer some (*e.g.*, Document Request #1). Again, Respondent’s Motion to Compel does not address these additional objections.

(d) Deposition Notices: Respondents also served Complainant with notices for the depositions on AAG Mitchell Cohen and former AAG Bernard Murphy. Complainant’s second Rule 201(k) letter addresses the scheduling of these depositions and explains that written discovery should be completed before conducting depositions.

RELEVANT LEGAL STANDARDS

11. The Board limited the inquiry into the reasonableness of Complainant’s claimed attorneys’ fees and costs as follows (Board’s Order at 3 (April 7, 2005)):

In determining this reasonableness, the Board will be guided by the factors set out in long-established precedent. The Board will consider, among other factors, the nature of the cause and the novelty and difficulty of the questions at issue, the amount and importance of the subject matter, the degree of responsibility involved in the management of the cause, the time and labor required, the usual and customary charge in the community, and the benefits resulting to the client. [citations omitted].

12. The Board further limited this inquiry by disallowing AAG Sternstein’s claimed fees and ordering that “the parties are not to address [AAG Sternstein’s fees] in conducting discovery or at hearing.” (*Id.* at 4.)

13. In conducting discovery relative to the factors outlined by the Board, several considerations determine whether information is discoverable. Only relevant information or

information calculated to lead to relevant information is discoverable. 35 Ill. Adm. Code 101.616(a).

14. Pursuant to Illinois Supreme Court Rule 201(c) and 35 Ill. Adm. Code 101.616(d), the Hearing Officer has broad discretion to fashion a protective order that denies, limits, conditions or regulates discovery to prevent unreasonable expense, or harassment, or to expedite resolution of the proceeding. There is no specific requirement for protective orders; there is only the broad standard "as justice requires." Statland v. Freeman, 112 Ill.2d 494, 499, 493 N.E.2d 1075, 1077 (Ill. 1986) (Interpreting Rule 201(c)).

RESPONDENTS' MOTION TO COMPEL MUST BE DENIED AND THE BOARD SHOULD ISSUE A PROTECTIVE ORDER AGAINST RESPONDENTS' ABUSIVE DISCOVERY TACTICS

15. Respondents' attorney has served highly inappropriate and objectionable discovery requests, refused to contact Complainant's attorney regarding discovery, failed to participate in a case status conference on discovery, and filed numerous and frivolous motions, including the instant Motion to Compel. The Board should not tolerate Respondents' abusive discovery tactics. Respondent's Motion to Compel must be denied for the following reasons and the Board should issue a protective order against Respondents' abusive discovery tactics.

Respondent's Motion to Compel Must Be Denied Because Respondents' Attorney Made No Attempt to Informally Resolve Differences Over Discovery Prior to Seeking Board Intervention

16. Prior to seeking Board intervention regarding a discovery dispute, Respondents failed to make a good faith attempt, much less any attempt, to informally resolve differences over discovery. Complainant's attorney initiated good faith attempts through two Rule 201(k) letters, but Respondents' attorney refused to participate in a Rule 201(k) conference. This constitutes not only a violation of Rule 201(k), but also constitutes a violation of the Board's April 7, 2005

Order, which unequivocally advised against the filing of “[a]ny pleading by either party not designed to further a speedy and ultimate resolution of this case . . .” (Board’s Order at 4 (April 7, 2005).) Respondents’ attorney also failed to participate in a status conference with the Hearing Officer on June 9, 2005, when discovery disputes could have been discussed and potentially resolved. Respondents’ attorney’s failure to comply with Rule 201(k) and the Board’s April 7, 2005 Order, and failure to appear for a case status conference, all before seeking Board intervention on a discovery dispute is entirely unreasonable and provides a basis to deny Respondents’ Motion to Compel without even getting to the merits.

Respondents’ Motion to Compel Must Be Denied Because It Fails to Meet the Threshold Requirement of Addressing Each Objection to Be Stricken

17. The Motion to Compel addresses only three of Complainant’s numerous, timely and specific objections: (1) that the Requests violate the Board’s April 7, 2005 Order, which directed the parties to resolve this dispute in a speedy and final resolution, (2) that AAG Sternstein’s fees and costs are irrelevant, and (3) that the personal compensation of AAGs involved in this case is irrelevant. As to the remaining objections, Respondents do not even address them.

18. Respondents’ Motion to Compel offers no response to the remainder of Complainant’s valid objections. As an example, Complainant objected to, and did not answer Interrogatory #10, which states, “Identify any and all hours and expenses in any matter involving your employment at the Illinois time sheets and expense sheets.” Complainant answered, “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 #10 is truly incomprehensible, yet Respondents do not even mention this.

problematic Request, or Complainant's objections thereto, in their Motion to Compel.

19. As another example, Respondents' Document Request #1 seeks "All Documents Related to the subject matter of this case." In conjunction with Document Request #1, Respondents' Interrogatory #23 states, only in part, "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, . . ." As explained in Complainant's objections, not only does Document Request #1 encompass every piece of paper in the present case without limitation, but Interrogatory #23 literally encompasses every case ever handled by the Attorney General's Office as the Attorney General seeks his or her fees and costs in every case filed under the Illinois Environmental Protection Act. Document Request #1 and Interrogatory #23 seek irrelevant information and are so overly broad and unduly burdensome as to be absurd yet, again, Respondents do even mention these problematic Requests, or Complainant's objections thereto, in their Motion to Compel.

20. As to the remaining objections, Respondents' Motion to Compel argues that they "defy response by the Respondents." (Motion to Compel at ¶ 28.) "Defy" means to challenge, resist or elude. It is unlikely that Respondents meant that Complainant's objections challenged, resisted or eluded their Motion to Compel, thus, it is unclear what Respondents meant. In any event, Respondents seek a blanket order striking all of Complainant's objections, but fail to even respond to all of these objections in their Motion to Compel. Because Respondents' Motion to Compel does not support the relief requested, the Motion to Compel must be denied.

On the Merits, Respondents' Motion to Compel Must Be Denied Even As to the Few Objections to Which It Responds

21. Respondents' Motion to Compel addresses only three of Complainant's objections. However, even as to these three objections, Respondents failed to show why they should be stricken.

22. First, Respondents argue that Complainant's objection based on Respondents' violation of the Board's April 7, 2005 Order, which directed the parties to resolve this dispute in a speedy and final resolution and not to file anything inconsistent with that goal, should be stricken. However, Respondents have sought discovery that is not at all designed to resolve this matter in a speedy and final resolution.

23. On this point, Respondents argue that "Discovery is a tool that allows for the exchange of information needed to help resolve legal disputes." (Motion to Compel at ¶ 16.) While Complainant agrees that discovery should involve an *exchange* rather than a one-way flow of information, the scope and substance of Respondents' discovery is not justified by this awkward statement.

24. Respondents Document Request #1, which seeks "All documents Related to the subject matter of this case," is not designed to resolve this matter in a speedy or final manner. Rather, it seeks to re-open discovery as to every issue in this case. The scope of many other requests is inconsistent with the Board's April 7, 2005 Order. Accordingly, Complainant's objection on this ground is entirely appropriate.

25. In addition to being objectionable in scope, many of Respondents' Requests are objectionable on grounds that they are harassing, insulting and offensive. In that regard, they violated the Board's April 7, 2005 Order, as well. Respondents' discovery requests contain

inflammatory allegations and insinuations of perjury, unethical conduct, over-billing and other improprieties by the Attorney General's Office are nothing more than attacks on Complainant's attorneys and have no application to any issue in the case. Such allegations and insinuations clearly exceed all bounds. Complainant's objection that the discovery requests are inconsistent with the Board's April 7, 2005 Order is also supported on this ground.

26. Second, Respondents argue that Complainant should be ordered to produce information concerning AAG Sternstein's fees and costs because the "Board's attempt to limit discovery" by ordering the parties not to address AAG Sternstein's fees and costs should not prevent Respondents' "from investigating Complainant and its attorneys [*sic*] other misconduct and ethical breaches." (Motion to Compel at ¶ 21.)

27. However, Complainant's request for AAG Sternstein's fees was previously disallowed by the Board and, accordingly, the parties were ordered not address it in discovery. The Board expressly ordered that "the parties are not to address [AAG Sternstein's fees] in conducting discovery or at hearing." (Board's Order at 4 (Apr. 7, 2005).) The Board left nothing to interpretation on this issue. Based on this clear limitation, Complainant objected to the relevance of Respondents' requests for information concerning AAG Sternstein's fees and costs.

28. The argument that Respondents need to conduct an "investigation" of Complainant's other attorneys is patent harassment and is well beyond the scope of the limited inquiry into the reasonableness of Complainant's claimed attorneys' fees and factors.

29. Third, Respondents attempted to delve into the personal compensation of the AAGs involved in the case. Complainant objected on relevance and privacy grounds to this sort of request. Respondents offer no response to Complainant's relevance objection. In response to Complainant's privacy objection, Respondents argue that "the very purpose of discovery is to

allow for the exchange of personal information.” (Motion to Compel at ¶ 27.)

30. This purported rule statement is not supported by any legal authority because it is incorrect. While Complainant agrees that discovery should involve an *exchange* rather than a one-way flow of information, its very purpose is hardly to exchange personal information.

31. An AAG’s personal compensation has no bearing on the petition for fees and costs before the Board. Respondents’ requests regarding personal compensation are harassing and made in bad faith, and are not designed to resolve this dispute in a speedy and final manner. Respondents’ transparent attempt to develop the argument that an AAG’s billing rate does not reflect his salary is not only irrelevant under the legal standard, but it is so vastly oversimplified as to have no validity.

32. Respondents’ fail to recognize that an AAG’s billing rate would not reflect his salary because employee benefits, employer’s liability insurance, overhead costs (rent, office equipment, support staff, etc.) and many, many other distributions and costs, are also included in that billing rate. No attorney “takes home” his hourly billing rate, so his salary is irrelevant to the reasonableness of his requested fees. Respondents also fail to acknowledge that, as a governmental attorney, an AAG’s billing rate is already well below that of a similarly qualified and experienced environmental attorney in private practice in downtown Chicago.

33. Complainant did not locate any Board or court precedent where personal compensation was even considered in determining the reasonableness of a petition for fees and costs. It is simply not a factor considered by the Board or courts. The Board has previously found that an hourly of \$150.00 per hour is reasonable for an AAG. See, e.g., People v. J & F Hauling, Inc., PCB 02-21 (May 1, 2003). Therefore, the only relevant issue is the reasonableness of the amount of hours billed and the costs incurred.

The Board Must Also Deny Respondents' Motion to Compel As It Pertains to Depositions

34. Regarding depositions, Respondents argue "The Complainants [*sic*] should be compelled to produce [AAGs Cohen and Murphy] for deposition, or at a minimum, cooperate with the Respondents in scheduling said depositions to allow for the speedy and ultimate resolution of this case." (Motion to Compel at ¶ 43.)

35. Complainant objected to the Respondents' deposition notice for former AAG Murphy because he no longer works in the Attorney General's Office. Complainant provided Respondents with AAG Murphy's current contact information. In light of Respondents' unresolved First Motion to Strike (the State's discovery requests), Complainant objected to Respondents' deposition notice to AAG Cohen because that deposition should not begin until written discovery is completed. AAG Cohen (or any other potential witness) should have the benefit of reviewing all written discovery before submitting to a deposition. Moreover, beginning depositions before completing written discovery is not conducive to orderly discovery.

36. Respondents' Motion to Compel is non-responsive to these objections and should be denied it pertains to depositions.

The Board Should Issue a Protective Order Against Respondents' Abusive Discovery Tactics

37. It is abundantly clear that Respondents' are using discovery as a weapon in this case. Respondents' discovery tactics in this case are abusive and should not be tolerated by the Board.

38. Discovery is a serious phase of litigation and not an exercise in tactics. Complainant's attorneys have gone to great lengths to answer Respondents' discovery requests and informally resolve differences, but at each juncture, have been met with personal insults and

frivolous pleadings.

39. The Hearing Officer or the Board should issue a protective order pursuant to Rule 101.616(d) of the Board's Procedural Rules against Respondents' bad faith and irrelevant discovery requests, including those discovery requests addressed in Complainant's Rule 201(k) letters.

Respectfully submitted,

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

BY: 

MICHAEL C. PARTEE
MITCHELL L. COHEN
Assistant Attorneys General
Environmental Bureau/North
188 West Randolph, Suite 2001
Chicago, Illinois 60601
Tel: (312)814-2069
Fax: (312)814-2347

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

JUN 01 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 Response to Respondents' Motion to Strike Discovery Related to Attorneys' Fees and Costs, 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

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 and Complainant's Response to Respondents' Motion to Strike Discovery Related to Attorneys' Fees and Costs, were sent by First Class Mail, postage prepaid, to the persons listed on the Notice of Filing on June 1, 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 June 1, 2005:

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

BY: 
MICHAEL C. PARTEE

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

JUN 01 2005

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
by LISA MADIGAN, Attorney General)
of the State of Illinois,)
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SKOKIE VALLEY ASPHALT CO., INC.,)
an Illinois Corporation, EDWIN L. FREDERICK,)
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RICHARD J. FREDERICK, Individually)
and as Owner and Vice President of Skokie)
Valley Asphalt Co., Inc.,)
)
Respondents.)

PCB 96-98
(Enforcement - RCRA)

**COMPLAINANT'S RESPONSE TO RESPONDENTS' MOTION TO STRIKE
DISCOVERY RELATED TO ATTORNEYS' FEES AND COSTS**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, hereby responds to Respondents', SKOKIE VALLEY ASPHALT CO., INC., EDWIN L. FREDERICK, JR., and RICHARD J. FREDERICK, Motion to Strike Complainant's Interrogatories, Document Requests and Deposition Notices to Respondents Regarding Complainant's Fee Petition. In Response, Complainant states as follows:

I. INTRODUCTION

A. Relevant Case History

On September 2, 2004, the Illinois Pollution Control Board ("Board") found, in relevant part, that "... respondents committed willful, knowing or repeated violations in this case." (Order at 6 (September 2, 2004).) Accordingly, the Board authorized Complainant to file a petition for attorneys' fees and costs. On September 17, 2004, Complainant filed its Attorneys'

Fees and Costs Petition.

On September 28, 2004, Respondents filed a pleading, titled "Initial Response to and Motion to Stay and/or Extend Time to Respond to Complainant's Petition for Attorneys' Fees and Costs" (hereafter referred to as "Initial Response"). In their Initial Response, Respondents made numerous, specific, unsupported, factual allegations regarding Complainant's Attorneys' Fees and Costs Petition. None of these allegations are a matter of record. Following are a few examples of Respondents' factual allegations:

- "The pay rate for the Complainant's attorneys is obviously fabricated." (Initial Response at ¶ 16.)
- "It is hard to justify a claim for attorneys' fees and cost [*sic*] by the Illinois Attorney General's office that is approximately ten times the amount that three Respondents combined paid to defend themselves against frivolous claims." (Initial Response at ¶ 17.)
- "It is also hard to justify an hourly fee for public service that is greater than the weighted-average fee charged by the Respondents' attorney even though the Respondents' attorneys [*sic*] fees include costs." (Id.)

On January 10, 2005, Respondents filed another pleading, titled "Motion to Establish Discovery Schedule and Motion for Extension of Time to Respond Under Board Order of December 16, 2004" (hereafter referred to as the "Discovery Schedule Motion").

On April 7, 2005, the Board granted Respondents' Discovery Schedule Motion and directed Respondents to file and serve limited and focused discovery requests by April 25, 2005, Complainant to file and serve answers to said discovery requests by May 25, 2005, and the Hearing Officer to proceed to hearing on the issue as expeditiously as possible. The April 7,

2005 Order did not address Respondents' allegations regarding Complainant's Attorneys' Fees and Costs Petition and did not prohibit Complainant from serving discovery requests regarding these allegations.

Thereafter, Respondents filed and served discovery requests by April 25, 2005, and Complainant filed and served its answers to said discovery requests by May 25, 2005. Complainant also filed and served discovery requests (interrogatories, document requests and deposition notices) by April 25, 2005. (See Exhibit A to this Response.) Complainant then sent Respondents a letter, dated May 24, 2005, pursuant to Rule 201(k) regarding Complainant's discovery requests, among other issues. (See Exhibit B to this Response.)

Rather than contact Complainant pursuant to Rule 201(k) or answer Complainant's discovery requests, on May 18, 2005, Respondents filed yet another pleading, titled "Respondents' Motion to Strike Complainant's Interrogatories, Document Request and Deposition Notices to Respondents Regarding Complainant's Fee Petition" (hereafter referred to as "Motion to Strike"). Respondents' Motion to Strike seeks to strike Complainant's interrogatories, document requests and deposition notices in their entirety on the grounds that the April 7, 2005 Order did not grant Complainant additional time to conduct discovery; that the Complainant "has not been authorized to conduct discovery and has no legal basis for which to do so;" and that "Respondents have no legal obligation to respond to Complainant's discovery requests and do not desire to do so on a voluntary basis." (Motion to Strike at ¶¶ 3, 6 and 7.)

II. RELEVANT LEGAL STANDARD

The purpose of discovery is to enable attorneys to better prepare and evaluate their cases. See Carlson v. General Motors Corp., 289 N.E.2d 439, 449 (Ill. App. 1st Dist. 1972); see also Terry v. Fisher, 145 N.E.2d 588, 593 (Ill. 1957). In Carlson, the Court reiterated the purpose of

discovery: "the principle is now well established that the purposes of litigation are best served when each party knows as much about the controversy as is reasonably practicable." 289 N.E.2d at 449. The Supreme Court Rules specifically provide that a party is entitled to full disclosure regarding "any matter relevant to the subject matter." Ill. Sup. Ct. R. 201(b)(1). Courts have further held that discovery presupposes a range of relevance and materiality that includes not only what is admissible at trial, but also that which leads to what is admissible at the trial. See Krupp v. Chicago Transit Auth., 132 N.E.2d 532, 535 (Ill. 1956). The Illinois Supreme Court has expressed its preference for extensive disclosure through discovery. People v. Williford, 649 N.E.2d 941, 944 (Ill.App. 5th Dist.1995). *Thus, discovery for each party is favored and should not be denied without just cause. Id.*

III. RESPONDENTS' MOTION TO STRIKE MUST BE DENIED

A. Complainant's Discovery Requests Are Directly Relevant to the Numerous, Factual Allegations Made by Respondents

Respondents introduced bald factual allegations into this proceeding concerning the reasonableness of Complainant's Attorneys' Fees and Costs Petition in light of the Respondents' own attorneys' fees and costs. Notwithstanding the irrelevance of Respondents' allegations, *Respondents made these allegations, none of which are a matter of record*, and Complainant is entitled to full disclosure regarding the factual bases for them under the principles of discovery.

Discovery is a two-way street, and the standard for discoverability is extremely broad. It is a well-established principle that the purposes of litigation are best served when each party knows as much about the controversy as is reasonably practicable. Carlson, 289 N.E.2d at 449. Complainant (and the Board) knows *nothing* about Respondents' attorneys' fees and costs. Therefore, Complainant served timely, focused and limited interrogatories, document requests

and notices of deposition regarding Respondents' attorneys' fees and costs.

Respondents do not argue that Complainant's discovery requests seek privileged or confidential information such that Respondents need not answer. Respondents do not raise just cause for entirely striking Complainant's discovery requests. Instead, Respondents have introduced bald allegations into this proceeding and now seek to prevent Complainant from conducting any discovery into these allegations. Respondents' Motion to Strike rests solely on the April 7, 2005 Order, which does not support the extraordinary relief sought in their Motion to Strike. Indeed, that Order neither addresses Respondents' factual allegations nor prohibits Complainant's discovery requests. Respondents interpret this silence as support for their Motion to Strike. This interpretation is unfounded. Obviously, the April 7, 2005 Order does not contradict the basic discovery concept of full disclosure. For these reasons, Respondents' Motion to Strike must be denied.

B. Complainant Will Be Severely Prejudiced If Respondents Do Not Answer Its Discovery Requests

Respondents also do not argue that they will be prejudiced in any way by answering Complainant's discovery requests. On the other hand, Complainant will be severely prejudiced if Respondents do not fully disclose the factual bases for their allegations.

Without full disclosure, Complainant cannot be fully apprised of the factual bases for Respondents' allegations, none of which are a matter of record. Complainant will be unprepared and severely prejudiced at a hearing on the reasonableness of the Attorney's Fees and Costs Petition if it is denied such information. Again, the purpose of discovery is to enable attorneys to better prepare and evaluate their cases. See Carlson, 289 N.E.2d at 449; Terry, 145 N.E.2d at 593. Absence full disclosure by Respondents, Complainant cannot be adequately apprised or

prepare for hearing, which will result in severe prejudice to Complainant. For these reasons, Respondents' Motion to Strike must be denied.

C. Respondents Also Failed to Comply With Rule 201(k)

Respondents also failed to comply with Rule 201(k). Neither of Respondents' attorneys even telephoned Complainant's attorneys prior to filing the Motion to Strike. (See Exhibit B at 3.) Had Respondents initiated a conference pursuant to Rule 201(k) to informally resolve differences, their frivolous Motion to Strike could have been avoided. To date, Complainant's attorneys still have not heard from Respondents' attorneys, despite Complainant's letter, dated May 24, 2005. (Id.) Respondents' failure to contact Complainant regarding a discovery dispute prior to filing yet another pleading violates Rule 201(k) and the letter and spirit of the April 7, 2005 Order, which expressly discouraged pleadings that are not designed to further a speedy and ultimate resolution of this case. (Order at 4 (April 7, 2005).) Both Rule 201(k) and the April 7, 2005 Order required an informal dispute resolution process between the parties prior to filing further pleadings. Respondents refused to participate in that process. This provides yet another basis to deny their Motion to Strike.

IV. CONCLUSION

Respondents placed their attorneys' fees and costs at issue. However, Respondents' bald allegations regarding their own attorneys' fees and costs are not a matter of record. Complainant (and the Board) knows nothing about Respondents' attorneys' fees and costs. Without just cause, Respondents now seek the extraordinary relief of a Board Order preventing full disclosure regarding the bases for their bald allegations.


Respondents have not objected to the substance of Complainant's discovery requests or claimed any privilege. Complainant will be severely prejudiced if it must proceed to hearing

without being adequately apprised of Respondents' allegations through limited and focused discovery. Discovery is a two-way street and Complainant is entitled to full disclosure under the rules of discovery. Contrary to the Respondents' contention, the April 7, 2005 Order does not support the extraordinary relief sought.

Lastly, Respondents also failed to comply with Rule 201(k) and the April 7, 2005 Order prior to filing yet another pleading with the Board. Had Respondents attempted to resolve their differences informally with Complainant prior to filing another pleading, their Motion to Strike could have been avoided. For each of these reasons, Respondents' Motion to Strike must be denied, and Respondents must be ordered to answer Complainant's discovery requests regarding attorneys' fees and costs.

Respectfully submitted,

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

BY: 
MICHAEL C. PARTEE (Tel 312/814-2069)
MITCHELL L. COHEN (Tel 312/814-5282)
Assistant Attorneys General
Environmental Bureau/North
188 West Randolph, Suite 2001
Chicago, Illinois 60601



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 24, 2005

Sent Via First Class Mail

Mr. David S. O'Neill, Esq.
5487 North Milwaukee Avenue
Chicago, Illinois 60630-1249

Re: Discovery -- People v. Skokie Valley Asphalt Co., Inc., et al., PCB 96-98

Dear Mr. O'Neill:

I enclose Complainant's answers to Respondents' requests to admit facts, interrogatories and document requests pertaining to the petition for fees and costs. The purpose of this letter is to initiate a conference pursuant to Illinois Supreme Court Rule 201(k) to resolve any potential differences over Respondents' requests. This letter also addresses Respondents' deposition notice for former Assistant Attorney General Bernard Murphy. Lastly, this letter addresses Respondents' failure to comply with Rule 201(k) prior to filing their Motion to Strike Complainant's discovery requests pertaining to the petition for fees and costs.

Complainant's Three Main Objections to Respondents' Discovery Requests

Categorically, we object to Respondents' requests for three main reasons. First, and most troubling, your discovery requests contain inflammatory allegations and insinuations of perjury, unethical conduct, over-billing and other improprieties by the Attorney General's Office, particularly by former Assistant Attorney General Joel Sternstein. None of these allegations and insinuations has any thread of truth. These are attacks on Complainant's attorneys and have no application to any issue in the case. It is truly a sad chapter in any case when an opposing attorney resorts to this sort of bully tactic.

Properly conducted, this should be a dignified procedure. As attorneys, we are officers of the court -- in this case the Board -- and we owe a professional duty to the Board and to each other. Your allegations and insinuations clearly exceed all bounds. In any other case, we would file a motion for a protective order and sanctions. However, given the letter and spirit of the Board's last order, dated April 7, 2005, which expressly directed us to resolve this in a speedy manner, we decided to write you instead. Frankly, we hope that the problem ends with this letter. The Attorney General's Office has acted in an above-board and professional manner in this case. We expect the same in return. I know that the Board is loathe to hear another discovery dispute.

EXHIBIT

B

but we will bring this problem to the Board's attention if it continues.

Second, Complainant objects to Request to Admit Fact Nos. 3, 11, 12, 13, 15, 16, 17, 18, 19, 20, and 37, Interrogatory No. 14, and Document 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 information regarding Complainant's request for AAG Sternstein's fees, which were previously disallowed by the Board. The Board expressly ordered that "the parties are not to address [AAG Sternstein's fees] in conducting discovery or at hearing." (Id.) For these reasons, Complainant does not answer these particular requests.

Third, Complainant objects to Request to Admit Fact Nos. 4, 5, 6, 8, 9, 27, 28, and 30, Interrogatory Nos. 16 and 23(i), and Document Request Nos. 5, 7, 8 and 9 on relevance and privacy grounds because they seek information regarding personal compensation to the Assistant Attorneys General in this case. An Assistant Attorney General's personal compensation has no bearing on the petition for fees and costs. These requests regarding personal compensation are harassing and made in bad faith, and are not designed to resolve this dispute in a speedy and final manner. Your transparent attempt to develop the argument that our billing rate does not reflect our salary is not only irrelevant under the legal standard, but it is so vastly oversimplified as to have no validity. You fail to recognize that our billing rate would not reflect our salary because employee benefits, employer's liability insurance, overhead costs (rent, office equipment, support staff, etc.) and many, many other distributions and costs, are also included in that billing rate. You also fail to acknowledge that, as governmental attorneys, our billing rate is already well below that of a similarly experienced environmental attorney in private practice in downtown Chicago. That said, this is not an invitation to audit the Attorney General's Office. The point is that no attorney "takes home" his hourly billing rate, so his salary is irrelevant to the reasonableness of his requested fees.

We did not locate any Board or court precedent where personal compensation was allowed or even considered in determining the reasonableness of a petition for fees and costs. It is simply not a factor considered by the Board or courts. The Board has previously found that an hourly of \$150.00 per hour is reasonable for an Assistant Attorney General. See e.g., People v. J & F Hauling, Inc., PCB 02-21 (May 1, 2003). Therefore, the *only* relevant issue is the reasonableness of the amount of hours billed and the costs incurred. For these reasons, Complainant does not answer these particular requests.

Respondents' Deposition Notice for Former AAG Murphy

We received Respondents' deposition notice for former AAG Murphy's deposition on June 24, 2005. Please be advised that AAG Murphy left the Attorney General's Office (on good terms) last year. If you need to depose him, please contact him directly. Mr. Murphy now serves as Assistant General Counsel, Department of Law, City of Chicago Board of Education, 125 South Clark Street, 7th Floor, Chicago, Illinois.

Respondents' Failure to Comply With Rule 201(k)
Prior to Filing Their Motion to Strike

Lastly, you failed to comply with Rule 201(k) prior to filing Respondents' Motion to Strike Complainant's discovery requests. We did not even receive a telephone call from you (or Michael Jawgiel) in this regard. Had you contacted us, we may have been able to resolve this dispute informally and without further, needless litigation.

We served you with discovery requests because you made numerous, factual allegations concerning the petition for fees and costs that are not a matter of record. As one example, in paragraph 17 of "Respondents' Initial Response To And Motion To Stay And/Or Extend Time To Respond To Complainant's Petition For Attorneys' Fees And Costs," you alleged the following:

It is hard to justify a claim for attorneys' fees and cost [sic] by the Illinois Attorney General's office that is approximately ten times the amount that three Respondents combined paid to defend themselves against frivolous claims.

Respondents' legal fees and costs are not a matter of record. Your dispute of the petition for fees and costs is based, in part, on a comparison between Complainant's and Respondents' fees and costs and we are entitled to conduct discovery on it. You also made numerous other factual allegations that are not a matter of record. Furthermore, there is no prejudice or hardship to you in answering our discovery requests. On the other hand, we cannot be adequately apprised of your allegations if you refuse to answer our limited and focused discovery requests. In order to resolve this dispute, we invite you to contact us pursuant to Rule 201(k).

Sincerely,



Michael C. Partee
Assistant Attorney General
Environmental Bureau
188 West Randolph Street, Suite 2001
Chicago, Illinois 60601
Tel: (312)814-2069
Fax: (312)814-2347
E-Mail: mpartee@atg.state.il.us

cc: Carol Webb, Hearing Officer
Michael B. Jawgiel, Esq.



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 14, 2005

Sent Via First Class Mail

Mr. David S. O'Neill, Esq.
5487 North Milwaukee Avenue
Chicago, Illinois 60630-1249

Re: **Discovery – People v. Skokie Valley Asphalt Co., Inc., et al., PCB 96-98**

Dear Mr. O'Neill:

The purpose of this letter is to initiate another conference pursuant to Illinois Supreme Court Rule 201(k) to resolve any potential differences over Respondents' notices of deposition. Respondents noticed the depositions of AAG Mitchell Cohen and former AAG Bernard Murphy for June 24, 2005, at 9:00 a.m. and 1:00 p.m., respectively. We intended to take this up with you during our case status conference on June 9, 2005, but you failed to appear.

As I explained in my first Rule 201(k) letter, dated May 24, 2005, Mr. Murphy left the Attorney General's Office last year, which means that we are unable to produce him for a deposition. To date, I have not received any response to my May 24, 2005 letter, so I assume that our concern regarding Mr. Murphy's deposition notice is resolved.

In light of Respondents' recent, unresolved Motion to Strike the State's discovery requests regarding attorneys' fees and costs, we now object to producing Mr. Cohen for a deposition on June 24, 2005. First, depositions should not begin until we complete written discovery. Mr. Cohen (or any other potential witness) should have the benefit of reviewing all written discovery before submitting to a deposition. Moreover, beginning depositions before completing written discovery is not conducive to orderly discovery. Second, as you pointed in Respondents' Motion to Strike, the Board's April 7, 2005 Order only provides that "Respondent is directed to file the outstanding discovery requests with the Board . . . ; [and] the People's response must be filed on respondents and served with the Board" (Order at 4.) The Board's reference to the "filing" of discovery requests and answers can only mean written discovery. As you argued in your Motion to Strike, the April 7, 2005 Order does not authorize the State's written discovery requests. By the same token, the Order does not authorize the Respondents' notices of depositions. Therefore, applying your argument, the Respondents are not entitled to conduct depositions because the April 7, 2005 Order does not so provide.

EXHIBIT

C

While we believe that the Board intended full disclosure by both sides, we do not plan to submit Mr. Cohen for a deposition until the Board clarifies the scope of discovery regarding attorneys' fees and costs. As always, please contact me with any questions or concerns.

Sincerely,



Michael C. Partee
Assistant Attorney General
Environmental Bureau
188 West Randolph Street, Suite 2001
Chicago, Illinois 60601
Tel: (312)814-2069
Fax: (312)814-2347
E-Mail: mpartee@atg.state.il.us

cc: Carol Webb, Hearing Officer
Michael B. Jawgiel, Esq.
Bernard Murphy, Jr., Esq.

MAY 24 2005

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

Complainant,)

v.)

PCB 96-98
(Enforcement - RCRA)

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.)

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

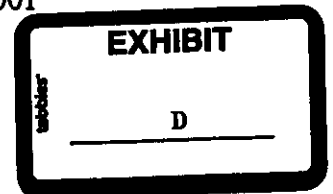
PLEASE TAKE NOTICE that I have today filed Complainant's Answers and Objections to Respondents' First Set of Request for Admission of Facts Regarding Attorneys' Fees and Costs, Complainant's Answers and Objections to Respondents' First Set of Interrogatories Regarding Attorneys' Fees and Costs, Complainant's 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

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 ParTEE*
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 ParTEE*
MICHAEL C. PARTEE

BEFORE THE 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.,)
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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.)

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MAY 24 2005

STATE OF ILLINOIS
Pollution Control Board

PCB 96-98
(Enforcement - RCRA)

**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
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Environmental Bureau
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Chicago, Illinois 60601
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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 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
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Chicago, Illinois 60601
Tel: 312-814-2069

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

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

