

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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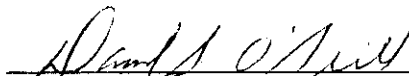
DEC 19 2005

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)	
Complainant,)	
)	PCB 96-98
)	
v.)	Enforcement
)	
)	
SKOKIE VALLEY ASPHALT, CO., INC.,)	
EDWIN L. FREDERICK, JR., individually and as)	
owner and President of Skokie Valley Asphalt)	
Co., Inc., and RICHARD J. FREDERICK,)	
individually and as owner and Vice President of)	
Skokie Valley Asphalt Co., Inc.,)	
Respondent.)	

NOTICE OF FILING

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the RESPONDENTS' RESPONSE TO COMPLAINANT'S OBJECTIONS TO RESPONDENTS' FIRST SET OF REQUEST FOR ADMISSION OF FACTS REGARDING ATTORNEYS' FEES AND EXPENSES, RESPONDENTS' RESPONSE TO COMPLAINANT'S ANSWERS AND OBJECTIONS TO RESPONDENTS' FIRST SET OF INTERROGATORIES REGARDING ATTORNEYS' FEES AND EXPENSES, RESPONDENTS' RESPONSE TO COMPLAINANT'S ANSWERS AND OBJECTIONS TO RESPONDENTS' FIRST SET OF DOCUMENT REQUESTS REGARDING ATTORNEYS' FEES AND EXPENSES , copies of which is hereby served upon you.


David S. O'Neill

December 19, 2005

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(773) 792-1333

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
Complainant,)
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SKOKIE VALLEY ASPHALT, CO., INC.,)
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**RESPONDENTS' RESPONSE TO COMPLAINANT'S OBJECTIONS TO
RESPONDENTS' FIRST SET OF REQUEST FOR ADMISSION OF FACTS
REGARDING ATTORNEYS' FEES AND EXPENSES**

The Respondents, SKOKIE VALLEY ASPHALT, CO., INC., EDWIN L. FREDERICK, JR., individually and as owner and President of Skokie Valley Asphalt Co., Inc., and RICHARD J. FREDERICK, individually and as owner and Vice President of Skokie Valley Asphalt Co., Inc., by and through their attorney, David S. O'Neill, herein respond to the Complainant's Answers and Objections to Respondents' First Request for Admission of Facts Regarding Attorneys' Fees and Expenses and in support thereof states as follows:

PROCEDURAL BACKGROUND

1. On April 7, 2005, the Board issued an Order in the above-captioned matter. In this Order, the Board granted the Respondents' motion for extension of time to allow for limited discovery.
2. The Order specifically states that "the Board will grant the respondents additional time in order to conduct discovery...". Order of April 7, 2005 at 3. In the Conclusion of the

Order, the Board “grants respondents’ motion for extension of time and authorizes respondents to conduct discovery on the attorney fees issue”. Id at 4.

3. On April 25, 2005, the Respondents filed with the Board and served upon the Complainant the Respondents’ First Request for Admission of Facts regarding Attorneys’ Fees, Costs and Expenses.
4. On May 24, 2005, Complainant filed its Answer and Objections to Respondents’ First Request for Admission of Facts regarding Attorneys’ Fees, Costs and Expenses.
5. In the Order of November 17, 2005, the Respondents were directed to respond to the Complainant’s Answer and Objections to Respondents’ First Request for Admission of Facts regarding Attorneys’ Fees, Costs and Expenses within thirty days of the date of the Order.

RESPONSE TO COMPLAINANT’S OBJECTIONS

I. RESPONSE TO GENERAL OBJECTIONS

The Illinois Supreme Court Rules do not provide for general objections to discovery. The Complainant is required to respond to each item in discovery individually and is not allowed to apply general objections to various items requested by the Respondents. As such, the Respondents move to strike the Complainant’s general objections as improper and non-responsive.

The provisions for requests to admit are well established and have been said to apply in all civil actions unless there is a special statute to the contrary. (*Wintersteen v. National Cooperage & Woodenware Co.* (1935), 361 Ill. 95, 109-110, 197 N.E. 578). The purpose of these provisions is to expedite litigation, to obviate the difficulty and expense in procuring evidence, and to compel an admission by the adverse party of evidence which is generally of incontrovertible character.. (*Wintersteen v. National Cooperage & Woodenware Co.* (1935), 361 Ill. 95, 108, 110, 197 N.E. 578). The request for admission of facts enables “the parties and the court to limit the issues and to reduce the production of unnecessary proof at trial” (*Smoot v.*

Knott (1990), 200 Ill.App.3d 1082, 1097-1098, 146 Ill.Dec. 831, 558 N.E. 2d, 794. See People v. Mindham, 253 Ill App. 3d 792 at 797, 625 N.E. 2d 835 at 839, 192 Il.Dec. 680 at 684 (2nd Dist 1993)).

1. The Complainant's objection that the Respondent's Request to Admit Facts is contrary to the Board's order of April 7, 2005 requesting a resolution of the issue of attorney's fees and cost in a speedy and ultimate resolution is baseless. The purpose of the request to admit facts is to identify items that are not in dispute and eliminate these issues from the discovery process, therefore shortening the time needed for discovery. A thorough request for admission of facts is consistent with the Board's order to resolve the issue of attorneys' fees and costs in a speedy manner. It is the Complainant's failure to answer the request for admission of facts in good faith that is contrary to the Board's Order of April 25, 2007. The Respondents also take exception to the Complainant's position that the interrogatories are "insulting, harassing, made in bad faith, do not pertain to attorneys' fees and costs". In fact, the interrogatories are designed to address issues that the Respondents intend to raise in its arguments against attorneys' fees including arguments involving the Complainant and its attorneys unethical behavior, fraudulent filings, falsification of documents and intentional and knowing violation of Board procedural rules. The fact that the Complainant feels insulted and harassed because of inquiries into their conduct is not grounds for failing to respond to discovery.
2. The Complainant's are not attempting to address the issue of Mr. Sternstein's misconduct in Requests No. 3, 11, 12, 13, 15, 16, 17, 18, 19, 20 and 37. Instead, Respondents are inquiring into the culpability of Mr. Cohen, his office and others representing the Complainant for the actions of Mr. Sternstein. The Respondents need to know if Mr. Sternstein was instructed to violate the Board's procedural rules, who supervised Mr. Sternstein during the period the violations occurred, who had knowledge of the violation, if the Complainant knew or had a duty to know the Board's procedural rules and if the Complainant is claiming fees for work done while participating in violations of the Board's procedural rules. The Respondents need this information in order to prepare

arguments that the Complainant should not be compensated for attorneys' fees and expenses incurred in performing, condoning or allowing the type of work previously disallowed for recovery by the Board.

3. The Respondents disagree that the compensation received by the Assistant Attorneys General is irrelevant or private. The compensation of Assistant Attorney General's is a matter of public record. Therefore, any claim of privacy is disingenuous. Any argument that the compensation of the Assistant Attorneys General is irrelevant to determining the proper compensation for legal fees to be paid for work done by Assistant Attorneys General is almost too illogical to even allow a response. The Complainant desires to force the Board and the Respondents to accept their fabricated hourly billing rate even though it has no basis in the actual fee the attorneys are able to secure in the open market. Respondents are seeking information concerning the compensation of the Assistant Attorneys General to prepare arguments that any payment above the fees actually paid to and agreed to prior to judgment by the Assistant Attorneys General would result in a windfall profit to the Complainant that is not anticipated and allowed by the statutory language relevant to attorneys fees and costs.

In previous responses to discovery, the Complainant used an argument of irrelevance to avoid answering inquiries into the previous employment of the Assistant Attorney General working on behalf of the Complainant. As a result, the Complainant was able to conceal the fact that Mr. Sternstein had previous been employed by the Board and was acting in violation of Board procedural rules. Therefore, any argument of relevance by the Complainant is circumspect. If the request for discovery meets the threshold standard of being "reasonably calculated to lead to admissible evidence at trial" it should be answered by the Complainant.

4. The Respondents are allowed to define terms in their discovery as they deem necessary and are not subject to the review of the Complainants. If the Complainant is of the opinion that it needs to limit its response to individual items based on the definitions provided, it may properly do so in its individual responses to an item. The Respondents request the Board to strike this objection both because it is improper as a general

objection and because the Complainant is not of the privilege to determine the appropriateness of the Respondents definitions.

5. The Respondents are allowed to define terms in their discovery as they deem necessary and are not subject to the review of the Complainants. If the Complainant is of the opinion that it needs to limit its response to individual items based on the definitions provided, it may properly do so in its individual responses to an item. The Respondents request the Board to strike this objection both because it is improper as a general objection and because the Complainant is not of the privilege to determine the appropriateness of the Respondents' definitions.

II. RESPONSE TO ANSWERS

- Fact No. 1: The reliance on general objections is improper and should be stricken. The Complainant needs to either object to or answer this request. In light of the answer offered, the objection should be stricken.
- Fact No. 2: The reliance on general objections is improper and should be stricken. The Complainant needs to either object to or answer this request,. In light of the answer offered, the objection should be stricken.
- Fact No. 3: The reliance on general objections is improper and should be stricken. The request is reasonably calculated to lead to admissible evidence at trial. The Complainant should be instructed to answer this request.
- Fact No. 4: The reliance on general objections is improper and should be stricken. The request is reasonably calculated to lead to admissible evidence at trial. The Complainant should be instructed to answer this request.
- Fact No. 5: The reliance on general objections is improper and should be stricken. The request is reasonably calculated to lead to admissible evidence at trial. The request does not assume facts not in evidence. Evidence presented at hearing shows the Respondents have and do pay taxes in the state of Illinois. The Complainant should be instructed to answer this request.
- Fact No. 6: The reliance on general objections is improper and should be stricken. The

request is reasonably calculated to lead to admissible evidence at trial. The Complainant should be instructed to answer this request.

Fact No. 7: The reliance on general objections is improper and should be stricken. The request is reasonably calculated to lead to admissible evidence at trial. There is no ambiguity in this request. The Complainant should be instructed to answer this request.

Fact No. 8: The reliance on general objections is improper and should be stricken. The request is reasonably calculated to lead to admissible evidence at trial. The Complainant should be instructed to answer this request.

Fact No. 9: The reliance on general objections is improper and should be stricken. The request is reasonably calculated to lead to admissible evidence at trial. The Complainant should be instructed to answer this request.

Fact No. 10: The reliance on general objections is improper and should be stricken. The Complainant needs to either object to or answer this request. In light of the answer offered the objection should be stricken.

Fact No. 11: The reliance on general objections is improper and should be stricken. The request is reasonably calculated to lead to admissible evidence at trial. The Complainant should be instructed to answer this request.

Fact No. 12: The reliance on general objections is improper and should be stricken. The request is reasonably calculated to lead to admissible evidence at trial. The Complainant should be instructed to answer this request.

Fact No. 13: The reliance on general objections is improper and should be stricken. The request is reasonably calculated to lead to admissible evidence at trial. The Complainant should be instructed to answer this request.

Fact No. 14: The reliance on general objections is improper and should be stricken. The Complainant needs to either object to or answer this request. The Complainant's objection based on reasonableness of the requested fees and costs are incomprehensible and impossible to respond to. The argument that the request is argumentative is baseless. This information is required to prevent arguments

made in previous pleadings by the Complainants that their failure to comply with procedural rules are minor and unintentional and should be excused by the Board. However, the intentionally insulting statement by the Complainant that “all attorney in this case have such a duty” to comply with Procedural Rules of the Board is, in fact, argumentative and improper. The Respondents ask that this statement be stricken and that the Complainants be admonished by the Board as the Board deems appropriate consistent with the Board’s Order of November 17, 2005. In light of the answer offered, the objection should be stricken.

Fact No. 15: The reliance on general objections is improper and should be stricken. The request is reasonably calculated to lead to admissible evidence at trial. The Complainant should be instructed to answer this request.

Fact No. 16: The reliance on general objections is improper and should be stricken. The request is reasonably calculated to lead to admissible evidence at trial. The Complainant should be instructed to answer this request.

Fact No. 17: The reliance on general objections is improper and should be stricken. The request is reasonably calculated to lead to admissible evidence at trial. The Complainant should be instructed to answer this request.

Fact No. 18: The reliance on general objections is improper and should be stricken. The request is reasonably calculated to lead to admissible evidence at trial. The Complainant should be instructed to answer this request.

Fact No. 19: The reliance on general objections is improper and should be stricken. The request is reasonably calculated to lead to admissible evidence at trial. The Complainant should be instructed to answer this request.

Fact No. 20: The reliance on general objections is improper and should be stricken. The request is reasonably calculated to lead to admissible evidence at trial. The Complainant should be instructed to answer this request.

Fact No. 21: The reliance on general objections is improper and should be stricken. The Complainant needs to either object to or answer this request. In light of the answer

offered, the objection should be stricken.

- Fact No. 22: The reliance on general objections is improper and should be stricken. The Complainant needs to either object to or answer this request. In light of the answer offered, the objection should be stricken.
- Fact No. 23: The reliance on general objections is improper and should be stricken. The request is relevant in that it is reasonably calculated to lead to admissible evidence at trial. The Complainant needs to either object to or answer this request. In light of the answer offered, the objection should be stricken.
- Fact No. 24: The reliance on general objections is improper and should be stricken. The request is relevant in that it is reasonably calculated to lead to admissible evidence at trial. The Complainant needs to either object to or answer this request. In light of the answer offered, the objection should be stricken.
- Fact No. 25: The reliance on general objections is improper and should be stricken. The request is relevant in that it is reasonably calculated to lead to admissible evidence at trial. The Complainant needs to either object to or answer this request. In light of the answer offered, the objection should be stricken.
- Fact No. 26: The reliance on general objections is improper and should be stricken. The request is relevant in that it is reasonably calculated to lead to admissible evidence at trial. The Complainant needs to either object to or answer this request. In light of the answer offered, the objection should be stricken.
- Fact No. 27: The reliance on general objections is improper and should be stricken. The request is relevant in that it is reasonably calculated to lead to admissible evidence at trial. The Complainant needs to either object to or answer this request. In light of the answer offered, the objection should be stricken.
- Fact No. 28: The reliance on general objections is improper and should be stricken. The request is reasonably calculated to lead to admissible evidence at trial. There is no ambiguous statement in this request. The Complainant should be instructed to answer this request.
- Fact No. 29: The reliance on general objections is improper and should be stricken. The

request is reasonably calculated to lead to admissible evidence at trial. The Complainant should be instructed to answer this request.

Fact No. 30: The reliance on general objections is improper and should be stricken. The request is reasonably calculated to lead to admissible evidence at trial. The Complainant should be instructed to answer this request.

Fact No. 31: The reliance on general objections is improper and should be stricken. The Complainant needs to either object to or answer this request. In light of the answer offered the objection should be stricken.

Fact No. 32: The reliance on general objections is improper and should be stricken. The Complainant needs to either object to or answer this request. In light of the answer offered the objection should be stricken.

Fact No. 33: The reliance on general objections is improper and should be stricken. The Complainant needs to either object to or answer this request. In light of the answer offered the objection should be stricken.

Fact No. 34: The reliance on general objections is improper and should be stricken. The Complainant needs to either object to or answer this request. In light of the answer offered the objection should be stricken.

Fact No. 35: The reliance on general objections is improper and should be stricken. The Complainant needs to either object to or answer this request. In light of the answer offered, the objection should be stricken.

Fact No. 36: The reliance on general objections is improper and should be stricken. The request does not assume facts not in evidence. Mr. Cohen has sworn to two affidavits with conflicting statements. One or both affidavits must represent perjured testimony. As such, the objection based on assumption of facts not in evidence should be stricken. The Complainant needs to either object to or answer this request. In light of the answer offered, the objection should be stricken.

Fact No. 37: The reliance on general objections is improper and should be stricken. The request does not assume facts not in evidence. Mr. Cohen has sworn to two affidavits with conflicting statements. One or both affidavits must represent

perjured testimony. As such, the objection based on assumption of facts not in evidence should be stricken. The Complainant should be instructed to answer this request.

Fact No. 38: The reliance on general objections is improper and should be stricken. The request is reasonably calculated to lead to admissible evidence at trial. There is no ambiguous statement in this request. The Complainant should be instructed to answer this request.

Fact No. 39: The reliance on general objections is improper and should be stricken. The Complainant needs to either object to or answer this request. There is nothing argumentative in this request. In light of the answer offered, the objection should be stricken.

Fact No. 40: The reliance on general objections is improper and should be stricken. The Complainant needs to either object to or answer this request. In light of the answer offered the objection should be stricken.

Fact No. 41: The reliance on general objections is improper and should be stricken. The Complainant needs to either object to or answer this request. In light of the answer offered, the objection should be stricken.

Fact No. 42: The reliance on general objections is improper and should be stricken. The Complainant needs to either object to or answer this request. In light of the answer offered, the objection should be stricken.

Fact No. 43: The reliance on general objections is improper and should be stricken. The request is relevant in that it is reasonably calculated to lead to admissible evidence at trial. The Complainant needs to either object to or answer this request. In light of the answer offered, the objection should be stricken.

Wherefore, the Respondents respectfully request that the Board strike the Complainants objections and instruct the Complainants to completely respond to Respondents' request for facts, not subject to objections.


David S. O'Neill

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Co., Inc., and RICHARD J. FREDERICK,)
individually and as owner and Vice President of)
Skokie Valley Asphalt Co., Inc.,)
Respondents)

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

The Respondents, SKOKIE VALLEY ASPHALT, CO., INC., EDWIN L. FREDERICK, JR., individually and as owner and President of Skokie Valley Asphalt Co., Inc., and RICHARD J. FREDERICK, individually and as owner and Vice President of Skokie Valley Asphalt Co., Inc., by and through their attorney, David S. O'Neill, herein respond to Complainant's Answers and Objections to Respondents' First Set of Interrogatories Regarding Attorneys' Fees and Expenses and in support thereof states as follows:

PROCEDURAL BACKGROUND

1. On April 7, 2005, the Board issued an Order in the above-captioned matter. In this Order, the Board granted the Respondents' motion for extension of time to allow for limited discovery.
2. The Order specifically states that "the Board will grant the respondents additional time in order to conduct discovery...". Order of April 7, 2005 at 3. In the Conclusion of the Order, the Board "grants respondents' motion for extension of time and authorizes

respondents to conduct discovery on the attorney fees issue”. Id at 4.

3. On April 25, 2005, the Respondents filed with the Board and served upon the Complainant the Respondents’ First Set of Interrogatories regarding Attorneys’ Fees, Costs and Expenses.
4. On May 24, 2005, Complainant filed its Answer and Objections to Respondents’ First Set of Interrogatories regarding Attorneys’ Fees, Costs and Expenses.
5. In the Order of November 17, 2005, the Respondents were directed to respond to the Complainant’s Answer and Objections to Respondents’ First Set of Interrogatories regarding Attorneys’ Fees, Costs and Expenses within thirty days of the date of the Order.

RESPONSE TO COMPLAINANT’S OBJECTIONS

I. RESPONSE TO GENERAL OBJECTIONS

The Illinois Supreme Court Rules do not provide for general objections to discovery. The Complainant is required to respond to each item in discovery individually and is not allowed to apply general objections to various items requested by the Respondents. As such, the Respondents move to strike the Complainant’s general objections as improper and non-responsive.

1. The Complainant’s objection that the Respondent’s Set of Interrogatories is contrary to the Board’s order of April 7, 2005 requesting a resolution of the issue of attorney’s fees and cost in a speedy and ultimate resolution is baseless. The purpose of the request to admit facts is to expedite the discovery. A complete first set of interrogatories that are completely and honestly answered would eliminate the need for answers to objections and a second set of interrogatories and would consequently result in a speedy and ultimate resolution. It is the Complainant’s failure to respond to the interrogatories in good faith that is contrary to the Board’s Order of April 25, 2007. The Respondents also take exception to the Complainant’s position that request are “insulting, harassing, made in bad faith, do not pertain to attorneys’ fees and costs”. In fact, the interrogatories are designed to address issues that the Respondents intend to raise in its arguments against attorneys’ fees including arguments involving the Complainant and its attorneys unethical

behavior, fraudulent filings, falsification of documents and intentional and knowing violation of Board procedural rules. The fact that the Complainant feels insulted and harassed because of inquiries into their conduct is not grounds for failing to respond to discovery.

2. The Complainant's are not attempting to address the issue of Mr. Sternstein's misconduct in Interrogatory 14. Instead, Respondents are inquiring into the culpability of Mr. Cohen, his office and others representing the Complainant for the actions of Mr. Sternstein. The Respondents need to know if Mr. Sternstein was instructed to violate the Board's procedural rules, who supervised Mr. Sternstein during the period the violations occurred, who had knowledge of the violation, if the Complainant knew or had a duty to know the Board's procedural rules and if the Complainant is claiming fees for work done while participating in violations of the Board's procedural rules. The Respondents need this information in order to prepare arguments that the Complainant should not be compensated for attorneys' fees and expenses incurred in performing, condoning or allowing the type of work previously disallowed for recovery by the Board.
3. The Respondents disagree that the compensation received by the Assistant Attorneys General is irrelevant or private. The compensation of Assistant Attorney General's is a matter of public record. Therefore, any claim of privacy is disingenuous. Any argument that the compensation of the Assistant Attorneys General is irrelevant to determining the proper compensation for legal fees to be paid for work done by Assistant Attorneys General is almost too illogical to even allow a response. The Complainant desires to force the Board and the Respondents to accept their fabricated hourly billing rate even though it has no basis in the actual fee the attorneys are able to secure in the open market. Respondents are seeking information concerning the compensation of the Assistant Attorneys General to prepare arguments that any payment above the fees actually paid to and agreed to prior to judgment by the Assistant Attorneys General would result in a windfall profit to the Complainant that is not anticipated and allowed by the statutory language relevant to attorneys fees and costs.

In previous responses to discovery, the Complainant used an argument of irrelevance to avoid answering inquiries into the previous employment of the Assistant Attorney General working on behalf of the Complainant. As a result, the Complainant was able to

conceal the fact that Mr. Sternstein had previously been employed by the Board and was acting in violation of Board procedural rules. Therefore, any argument of relevance by the Complainant is circumspect. If the request for discovery meets the threshold standard of being “reasonably calculated to lead to admissible evidence at trial” it should be answered by the Complainant.

4. Twenty four interrogatories are presented in the request. The inclusion of subparts is for the convenience of the Complainant. It is designed to allow the Complainant to know more precisely what information the Respondents require and to format that information to allow the parties to more readily determine if all of the requested information is being supplied. This request does not violate the letter or the spirit of Supreme Court Rule 213(c).
5. The Respondents are allowed to define terms in their discovery as they deem necessary and are not subject to the review of the Complainants. In the titling of their complaint the Complainant pompously purports itself to be representing the People of the State of Illinois. Now, in an effort to avoid its responsibility to respond to interrogatories, it claims to lack authority to represent that same party. The Respondents would appreciate a clarification of this position and respectfully requests the Board to seek the same from the Complainant.

If the Complainant is of the opinion that it needs to limit its response to individual items based on the definitions provided, it may properly do so in its individual responses to an item. The Respondents request the Board to strike this objection both because it is improper as a general objection and because the Complainant is not of the privilege to determine the appropriateness of the Respondents’ definitions.

6. The Respondents are allowed to define terms in their discovery as they deem necessary and are not subject to the review of the Complainants. If the Complainant is of the opinion that it needs to limit its response to individual items based on the definitions provided, it may properly do so in its individual responses to an item. The Respondents request the Board to strike this objection both because it is improper as a general objection and because the Complainant is not of the privilege to determine the appropriateness of the Respondents’ definitions.

II. RESPONSE TO ANSWERS

Interrogatory No. 1: The reliance on general objections is improper and should be stricken. The Complainant needs to either object to or answer this request. In light of the answer offered, the objection should be stricken.

Interrogatory No. 2: The reliance on general objections is improper and should be stricken. The request is relevant in that it is reasonably calculated to lead to admissible evidence at trial. The Complainant needs to either object to or answer this request. In light of the answer offered, the objection should be stricken.

Interrogatory No. 3: The reliance on general objections is improper and should be stricken. The Complainant needs to either object to or answer this request. In light of the answer offered, the objection should be stricken.

Interrogatory No. 4: The reliance on general objections is improper and should be stricken. The Complainant needs to either object to or answer this request. In light of the answer offered, the objection should be stricken.

Interrogatory No. 5: The reliance on general objections is improper and should be stricken. The Complainant needs to either object to or answer this request. In light of the answer offered, the objection should be stricken.

Interrogatory No. 6: The reliance on general objections is improper and should be stricken. The request is relevant in that it is reasonably calculated to lead to admissible evidence at trial. The Complainant needs to either object to or answer this request. In light of the answer offered, the objection should be stricken.

Interrogatory No. 7: The reliance on general objections is improper and should be stricken. The request is relevant in that it is reasonably calculated to lead to admissible evidence at trial. The Complainant needs to either object to or answer this request. In light of the answer offered, the objection should be stricken.

Interrogatory No. 8: The reliance on general objections is improper and should be stricken. The request is relevant in that it is reasonably calculated to lead to

admissible evidence at trial. The Complainant needs to either object to or answer this request. In light of the answer offered, the objection should be stricken.

Interrogatory No. 9: The reliance on general objections is improper and should be stricken. The request is relevant in that it is reasonably calculated to lead to admissible evidence at trial. The Complainant needs to either object to or answer this request. In light of the answer offered, the objection should be stricken.

Interrogatory No. 10: The Interrogatory was intended to read "Identify any and all hours and expenses in any matter involving your employment at the Illinois Attorney General's office that were recorded on time sheets and expense statements." The Complainant should be instructed to answer this request.

Interrogatory No. 11: The reliance on general objections is improper and should be stricken. The request is relevant in that it is reasonably calculated to lead to admissible evidence at trial. The terms contested by the Complainant as vague and ambiguous are terms commonly used in the legal and business community and do not require definition. If Complainant desires to further define the terms to clarify its response, it may do so in its answer. The Complainant needs to either object to or answer this request. In light of the answer offered, the objection should be stricken.

Interrogatory No. 12: The reliance on general objections is improper and should be stricken. The terms contested by the Complainant as vague and ambiguous are terms commonly used in the legal and business community and do not require definition. If Complainant desires to further define the terms to clarify its response, it may do so in its answer. The Complainant needs to either object to or answer this request. In light of the answer offered, the objection should be stricken.

Interrogatory No. 13: The file in this matter before the Board is loaded with documents that were incorrectly or not timely filed. The Complainant can not sustain an argument that this fact is not in evidence. The terms contested by the Complainant as vague and ambiguous are terms commonly used in the

legal and business community and do not require definition. If Complainant desires to further define the terms to clarify its response, it may do so in its answer. The Complainant needs to either object to or answer this request. In light of the answer offered, the objection should be stricken.

Interrogatory No. 14: The Respondents did contest Mr. Sternstein's activities in this case and the Complainant did respond. The Board found that Mr. Sternstein's and the Attorney General's office activity was improper. The Complainant can not sustain an argument that this fact is not in evidence. The Complainant needs to either object to or answer this request. The Complainant should be instructed to answer this interrogatory.

Interrogatory No. 15: The reliance on general objections is improper and should be stricken. The request is relevant in that it is reasonably calculated to lead to admissible evidence at trial. The Complainant needs to either object to or answer this request. In light of the answer offered, the objection should be stricken.

Interrogatory No. 16: The reliance on general objections is improper and should be stricken. The request is relevant in that it is reasonably calculated to lead to admissible evidence at trial. The Complainant needs to either object to or answer this request. In light of the answer offered, the objection should be stricken.

Interrogatory No. 17: The reliance on general objections is improper and should be stricken. The Complainant needs to either object to or answer this request. In light of the answer offered, the objection should be stricken.

Interrogatory No. 18: The reliance on general objections is improper and should be stricken. The Complainant needs to either object to or answer this request. In light of the answer offered, the objection should be stricken.

Interrogatory No. 19: The reliance on general objections is improper and should be stricken. The request is relevant in that it is reasonably calculated to lead to admissible evidence at trial. The Complainant needs to either object to or answer this request. In light of the answer offered, the objection should be

stricken.

Interrogatory No. 20: Complainant's response to this interrogatory is vague and ambiguous. The Complainant should be instructed to answer this interrogatory.

Interrogatory No. 21: The reliance on general objections is improper and should be stricken. The request is relevant in that it is reasonably calculated to lead to admissible evidence at trial. The Complainant needs to either object to or answer this request. In light of the answer offered, the objection should be stricken.

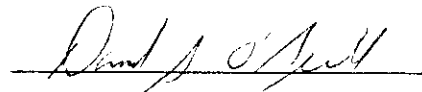
Interrogatory No. 22: The form of the Interrogatory is sufficient to allow the Complainant to respond to the request. The response offered is non-responsive and the Complainant should be instructed to answer this interrogatory.

Interrogatory No. 23: The reliance on general objections is improper and should be stricken. The request is relevant in that it is reasonably calculated to lead to admissible evidence at trial. The Complainant needs to either object to or answer this request. The Complainant should be instructed to answer this interrogatory.

Interrogatory No. 24: The Interrogatory was intended to read "Supply information for the period of time during which attorneys' fees, costs and expenses are being requested on the Attorney General's Office's policy for preparing, reviewing and executing affidavits and any changes to this policy during the same period." The Complainant should be instructed to answer this request.

Interrogatory No. 25: The Interrogatory was intended to read "Supply information for the period of time during which attorneys' fees, costs and expenses are being requested on the Attorney General's Office's policy for reprimanding or disciplining employees that prepare and execute false affidavits." The request is relevant in that it is reasonably calculated to lead to admissible evidence at trial. The response offered by the Complainant to this interrogatory is vague and ambiguous. The Complainant should be instructed to answer this interrogatory.

Wherefore, the Respondents respectfully request that the Board strike the Complainants objections and instruct the Complainants to completely respond to Respondents' Interrogatories, not subject to objections.



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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

DEC 19 2005

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)

Complainant,)

) PCB 96-98

v.)

) Enforcement

SKOKIE VALLEY ASPHALT, CO., INC.,)

EDWIN L. FREDERICK, JR., individually and as)

owner and President of Skokie Valley Asphalt)

Co., Inc., and RICHARD J. FREDERICK,)

individually and as owner and Vice President of)

Skokie Valley Asphalt Co., Inc.,)

Respondents)

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

The Respondents, SKOKIE VALLEY ASPHALT, CO., INC., EDWIN L. FREDERICK, JR., individually and as owner and President of Skokie Valley Asphalt Co., Inc., and RICHARD J. FREDERICK, individually and as owner and Vice President of Skokie Valley Asphalt Co., Inc., by and through their attorney, David S. O'Neill, herein respond to the Complainant's Answers and Objections to Respondents' First Set of Document Requests Regarding Attorneys' Fees and Expenses and in support thereof states as follows:

PROCEDURAL BACKGROUND

1. On April 7, 2005, the Board issued an Order in the above-captioned matter. In this Order, the Board granted the Respondents' motion for extension of time to allow for limited discovery.
2. The Order specifically states that "the Board will grant the respondents additional time in order to conduct discovery...". Order of April 7, 2005 at 3. In the Conclusion of the Order, the Board "grants respondents' motion for extension of time and authorizes respondents to conduct discovery on the attorney fees issue". Id at 4.
3. On April 25, 2005, the Respondents filed with the Board and served upon the Complainant the Respondents' First Set of Document Request regarding Attorneys' Fees, Costs and Expenses.
4. On May 24, 2005, Complainant filed its Answer and Objections to Respondents' First Set of Document Requests regarding Attorneys' Fees, Costs and Expenses.
5. In the Order of November 17, 2005, the Respondents were directed to respond to the Complainant's Answer and Objections to Respondents' First Request for Admission of Facts regarding Attorneys' Fees, Costs and Expenses within thirty days of the date of the Order.

RESPONSE TO COMPLAINANT'S OBJECTIONS

I. RESPONSE TO GENERAL OBJECTIONS

The Illinois Supreme Court Rules do not provide for general objections to discovery. The Complainant is required to respond to each item in discovery individually and is not allowed to apply general objections to various items requested by the Respondents. As such, the Respondents move to strike the Complainant's general objections as improper and non-responsive.

1. The Complainant's objection that the Respondent's First Set of Document Requests is contrary to the Board's order of April 7, 2005 requesting a resolution of the issue of attorney's fees and cost in a speedy and ultimate resolution is baseless. A complete first set of document requests that are completely and honestly answered would eliminate the

need for answers to objections and a second set of document requests and would consequently result in a speedy and ultimate resolution. It is the Complainant's failure to answer the request for admission of facts in good faith that is contrary to the Board's Order of April 25, 2007. The Respondents also take exception to the Complainant's position that the document requests are "insulting, harassing, made in bad faith, do not pertain to attorneys' fees and costs". In fact, the document requests are designed to address issues that the Respondents intend to raise in its arguments against attorneys' fees including arguments involving the Complainant and its attorneys unethical behavior, fraudulent filings, falsification of documents and intentional and knowing violation of Board procedural rules. The fact that the Complainant feels insulted and harassed because of inquiries into their conduct is not grounds for failing to respond to discovery.

2. The Complainant's are not attempting to address the issue of Mr. Sternstein's misconduct in Requests No. 6, 7, 10, 11, 12, 17 and 21. Instead, Respondents are inquiring into the culpability of Mr. Cohen, his office and others representing the Complainant for the actions of Mr. Sternstein. The Respondents need to know if Mr. Sternstein was instructed to violate the Board's procedural rules, who supervised Mr. Sternstein during the period the violations occurred, who had knowledge of the violation, if the Complainant knew or had a duty to know the Board's procedural rules and if the Complainant is claiming fees for work done while participating in violations of the Board's procedural rules. The Respondents need this information in order to prepare arguments that the Complainant should not be compensated for attorneys' fees and expenses incurred in performing, condoning or allowing the type of work previously disallowed for recovery by the Board.
3. The Respondents disagree that the compensation received by the Assistant Attorneys General is irrelevant or private. The compensation of Assistant Attorney General's is a matter of public record. Therefore, any claim of privacy is disingenuous. Any argument that the compensation of the Assistant Attorneys General is irrelevant to determining the proper compensation for legal fees to be paid for work done by Assistant Attorneys General is almost too illogical to even allow a response. The Complainant desires to force the Board and the Respondents to accept their fabricated hourly billing rate even though it has no basis in the actual fee the attorneys are able to secure in the open market. Respondents are seeking information concerning the compensation of the Assistant

Attorneys General to prepare arguments that any payment above the fees actually paid to and agreed to prior to judgment by the Assistant Attorneys General would result in a windfall profit to the Complainant that is not anticipated and allowed by the statutory language relevant to attorneys fees and costs.

In previous responses to discovery, the Complainant used an argument of irrelevance to avoid answering inquiries into the previous employment of the Assistant Attorney General working on behalf of the Complainant. As a result, the Complainant was able to conceal the fact that Mr. Sternstein had previously been employed by the Board and was acting in violation of Board procedural rules. Therefore, any argument of relevance by the Complainant is circumspect. If the request for discovery meets the threshold standard of being “reasonably calculated to lead to admissible evidence at trial” it should be answered by the Complainant.

4. The Respondents are allowed to define terms in their discovery as they deem necessary and are not subject to the review of the Complainants. If the Complainant is of the opinion that it needs to limit its response to individual items based on the definitions provided, it may properly do so in its individual responses to an item. The Respondents request the Board to strike this objection both because it is improper as a general objection and because the Complainant is not of the privilege to determine the appropriateness of the Respondents definitions.

When initiating this complaint, the Complainant represented itself as the “People of the State of Illinois”. Now, in an effort to avoid its responsibility to respond to interrogatories, it claims to lack authority to represent that same party. The Respondents would appreciate a clarification of this position and respectfully requests the Board to seek the same from the Complainant.

5. The Respondents are allowed to define terms in their discovery as they deem necessary and are not subject to the review of the Complainants. If the Complainant is of the opinion that it needs to limit its response to individual items based on the definitions provided, it may properly do so in its individual responses to an item. The Respondents request the Board to strike this objection both because it is improper as a general objection and because the Complainant is not of the privilege to determine the appropriateness of the Respondents’ definitions.

II. RESPONSE TO ANSWERS

Document Request No. 1:

The request is relevant in that it is reasonably calculated to lead to admissible evidence at trial. The Complainant can not sustain an argument that a request for documents related to the entire case is overly broad when the Complainant is requesting attorneys' fees and expenses for the entire case. It is the Complainant that has moved for attorneys fees and expenses in this matter and not the Respondents. If the Complainant at this time no longer wish to participate in the necessary arduous process of determining the proper attorneys' fees and expenses, the Complainant should withdraw its motion. However, arguments that the process is too difficult for the Complainant are not relevant. The Complainant should be instructed to fully respond to this request.

Document Request No. 2:

The request is relevant in that it is reasonably calculated to lead to admissible evidence at trial. The Complainant can not sustain an argument that a request for documents related to the entire case is overly broad when the Complainant is requesting attorneys' fees and expenses for the entire case. It is the Complainant that has moved for attorneys fees and expenses in this matter and not the Respondents. If the Complainant at this time no longer wishes to participate in the necessary arduous process of determining the proper attorneys' fees and expenses, the Complainant should withdraw its motion. However, arguments that the process is too difficult for the Complainant are not relevant. The Complainant has failed to specify its grounds for stating that the request is ambiguous outside of the argument made in its general objections. The reliance on general objections is improper and should be stricken. Respondents are unaware of any ambiguity in this request. The Complainant should be instructed to fully respond to this request.

Document Request No. 3:

The reliance on general objections is improper and should be stricken. The request is relevant in that it is reasonably calculated to lead to admissible evidence at trial. The Complainant needs to either object to or answer this request. In light of the answer offered, the objection should be stricken.

Document Request No. 4:

The reliance on general objections is improper and should be stricken. The request is relevant in that it is reasonably calculated to lead to admissible evidence at trial. The Complainant needs to either object to or answer this request. In light of the answer offered, the objection should be stricken.

Document Request No. 5:

The reliance on general objections is improper and should be stricken. The request is reasonably calculated to lead to admissible evidence at trial. The Complainant should be instructed to respond to this request.

Document Request No. 6:

The request is relevant in that it is reasonably calculated to lead to admissible evidence at trial. The information requested required by the Respondents to present arguments regarding the appropriate hourly fee that each attorney should charge. If the Complainant desire to pursue attorneys' fees and expenses in this matter, it must be willing to participate in the discovery process. If the Complainant's interest in privacy outweighs its interest in fully adjudicating its claim for attorneys' fees and cost, it should withdraw its petition for the attorneys' fees and expenses. Absent such a withdrawal, the Complainant should be instructed to respond to this request.

Document Request No. 7:

The reliance on general objections is improper and should be stricken. The request is reasonably calculated to lead to admissible evidence at trial. The Complainant should be instructed to answer this request.

Document Request No. 8:

The reliance on general objections is improper and should be stricken. The request is reasonably calculated to lead to admissible evidence at trial. The Complainant should be instructed to fully answer this request.

Document Request No. 9:

The reliance on general objections is improper and should be stricken. The request is relevant in that it is reasonably calculated to lead to admissible evidence at trial. The Complainant can not sustain an argument that a request for documents related to the entire case is overly broad when the Complainant is requesting attorneys' fees and expenses for the entire case. It is the Complainant that has moved for attorneys fees and

expenses in this matter and not the Respondents. If the Complainant at this time no longer wish to participate in the necessary arduous process of determining the proper attorneys' fees and expenses, the Complainant should withdraw its motion. However, arguments that the process is too difficult for the Complainant are not relevant. The Complainant should be instructed to respond to this request.

Document Request No. 10:

The reliance on general objections is improper and should be stricken. The request is reasonably calculated to lead to admissible evidence at trial. The Complainant should be instructed to respond to this request.

Document Request No. 11:

The reliance on general objections is improper and should be stricken. The request is reasonably calculated to lead to admissible evidence at trial. The Complainant should be instructed to respond to this request.

Document Request No. 12:

The reliance on general objections is improper and should be stricken. If no such documents exist the Complainant can respond accordingly. The Complainant should be instructed to respond to this request.

Document Request No. 13:

The reliance on general objections is improper and should be stricken. The request is reasonably calculated to lead to admissible evidence at trial. The Complainant should be instructed to respond to this request.

Document Request No. 14:

The reliance on general objections is improper and should be stricken. The request is reasonably calculated to lead to admissible evidence at trial. The term "meetings" contains no ambiguity but Complainant can explain any limitations it found in the term in its response to the request. If no such documents exist, the Complainant can respond accordingly. The Complainant should be instructed to fully respond to this request.

Document Request No. 15:

The Complainant's answer is not responsive to the document request. The Complainant should be instructed to respond to this request.

Document Request No. 16:

The reliance on general objections is improper and should be stricken. The Complainant needs to either object to or answer this request. In light of the answer offered, the objection should be stricken.

Document Request No. 17:

The reliance on general objections is improper and should be stricken. The request is relevant in that it is reasonably calculated to lead to admissible evidence at trial. The time records of Mr. Sternstein are relevant because the Respondents need to determine if either Mr. Cohen or Mr. Murphy are claiming fees for work that was previously billed by Mr. Sternstein and disallowed by the Board. The Board also desires to review Mr. Sternstein's records to determine what work he may have performed in conjunction with the Attorneys Claiming Fees to prepare arguments that these attorneys may not claim fees when working with or supervising an attorney that was acting in knowing and willful violation of Board Procedural Rules. The Complainant should be instructed to fully answer this request.

Document Request No. 18:

The request is relevant in that it is reasonably calculated to lead to admissible evidence at trial. The Complainant can not sustain an argument that a request for documents related to the entire case is overly broad when the Complainant is the party requesting attorneys' fees and expenses for these attorneys. It is the Complainant that has moved for attorneys fees and expenses in this matter and not the Respondents. If the Complainant at this time no longer wishes to participate in the necessary, arduous process of determining the proper attorneys' fees and expenses, the Complainant should withdraw its motion. However, arguments that the process is too difficult for the Complainant are not relevant. The Respondents are not in a position to determine if all of the requested documents are publicly available. Additional documents may only be in the possession of the Complainant. Therefore, the Respondents have the right to request that the Complainant produce the documents. The Complainant should be instructed to respond to this request.

Document Request No. 19:

The reliance on general objections is improper and should be stricken. The request is relevant in that it is reasonably calculated to lead to admissible evidence at trial. The Complainant can not sustain an argument that a request for documents related to the

entire case is overly broad when the Complainant is the party requesting attorneys' fees and expenses for these attorneys. It is the Complainant that has moved for attorneys fees and expenses in this matter and not the Respondents. If the Complainant at this time no longer wishes to participate in the necessary, arduous process of determining the proper attorneys' fees and expenses, the Complainant should withdraw its motion. However, arguments that the process is too difficult for the Complainant are not relevant. The Respondents are not in a position to determine if all of the requested documents are publicly available. Additional documents may only be in the possession of the Complainant. Therefore, the Respondents have the right to request that the Complainant produce the documents. The Complainant should be instructed to respond to this request.

Document Request No. 20:

The reliance on general objections is improper and should be stricken. The Complainant needs to either object to or answer this request. In light of the answer offered, the objection should be stricken.

Document Request No. 21:

The reliance on general objections is improper and should be stricken. The Complainant should be instructed to answer this request.

Document Request No. 22:

The reliance on general objections is improper and should be stricken. The Complainant needs to either object to or respond to this request. In light of the answer offered, the objection should be stricken.

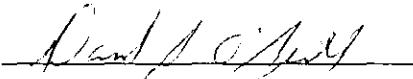
Document Request No. 23:

The reliance on general objections is improper and should be stricken. The Complainant needs to either object to or respond to this request. In light of the answer offered, the objection should be stricken.

Document Request No. 24:

The reliance on general objections is improper and should be stricken. The request is relevant in that it is reasonably calculated to lead to admissible evidence at trial. The form of the request is adequate to allow the Complainants to respond to the request. The Complainant should be instructed to answer this request.

Wherefore, the Respondents respectfully request that the Board strike the Complainants objections and instruct the Complainants to completely respond to Respondents' document requests, not subject to objections.

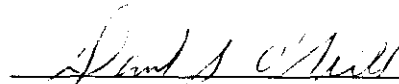

David S. O'Neill

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CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached RESPONDENTS' RESPONSE TO COMPLAINANT'S OBJECTIONS TO RESPONDENTS' FIRST SET OF REQUEST FOR ADMISSION OF FACTS REGARDING ATTORNEYS' FEES AND EXPENSES, RESPONDENTS' RESPONSE TO COMPLAINANT'S ANSWERS AND OBJECTIONS TO RESPONDENTS' FIRST SET OF INTERROGATORIES REGARDING ATTORNEYS' FEES AND EXPENSES, RESPONDENTS' RESPONSE TO COMPLAINANT'S ANSWERS AND OBJECTIONS TO RESPONDENTS' FIRST SET OF DOCUMENT REQUESTS REGARDING ATTORNEYS' FEES AND EXPENSES by hand delivery on December 19, 2005, upon the following party:

Mitchell Cohen
Environmental Bureau
Assistant Attorney General
Illinois Attorney General's Office
188 W. Randolph, 20th Floor
Chicago, IL 60601


David S. O'Neill

NOTARY SEAL

SUBSCRIBED AND SWORN TO ME this 17

day of Dec, 20 05


Notary Public

