

**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., )  
 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 today I caused to be filed **Complainant's Response to Respondents' Motion to Strike Complainant's Second Motion for Protective Order** with the Office of the Clerk of the Illinois Pollution Control Board, a true and correct copy of which is attached hereto and herewith served upon you.

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

BY:   
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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 Complainant's Second Motion for Protective Order**, were sent by First Class Mail, postage prepaid, to the persons listed on the Notice of Filing on January 19, 2006.

BY:   
\_\_\_\_\_  
MICHAEL C. PARTEE

It is hereby certified that the foregoing were electronically filed with the Clerk of the Board on January 19, 2006:

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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and as Owner and Vice President of Skokie )  
Valley Asphalt Co., Inc., )  
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Respondents. )

PCB 96-98  
(Enforcement – RCRA)

**COMPLAINANT'S RESPONSE TO RESPONDENTS' MOTION TO STRIKE  
COMPLAINANT'S SECOND MOTION FOR PROTECTIVE ORDER**

Complainant, the PEOPLE OF THE STATE OF ILLINOIS ("People"), 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 Second Motion for Protective Order. In support of their response, the People state as follows:

1. In addition to the procedural history set forth in the People's (combined) Second Motion for Protective Order and Response to Respondents' Motion to Quash Deposition Notices filed on December 28, 2005, and in light of the Respondents' Motion to Strike the People's Second Motion for Protective Order, the People contend that the following procedural history is also relevant:

a. In late 2004, Respondents objected to the People's fee petition and moved to stay payment of the civil penalty assessed by the Board following a hearing on all issues in October 2003.

b. On January 10, 2005, now more than a year ago, Respondents moved for a discovery schedule regarding the People's fee petition. Through an order, dated April 7, 2005, the Board authorized discovery regarding the People's fee petition.

c. Since commencing discovery in April 2005, Respondents have filed eight motions to strike various discovery issues and pleadings. (*See* Respondents' Motions to Strike filed on May 18, 2005; July 6, 2005 (three Motions to Strike filed on this date); August 15, 2005 (two Motions to Strike filed on this date); and January 9, 2006 (two Motions to Strike filed on this date).) Respondents did not attempt to informally resolve any of the discovery disputes presented in their eight motions to strike prior to (or after) seeking Board intervention. The People have incurred substantial fees and costs in having to address the numerous discovery disputes brought to the Board by Respondents since April 2005.

d. During this same time-frame, the People's counsel has written three letters in the spirit of Illinois Supreme Court Rule 201(k) to Respondents' counsel, dated May 24, 2005; June 14, 2005; and December 15, 2005, all in a good faith attempt to expeditiously and informally resolve discovery disputes without Board intervention. Respondents' only response to these letters was to move the Board to strike them. In addition to these letters, immediately prior to the last telephonic status conference with the Hearing Officer, the People's counsel asked Respondents' counsel whether they

wished to informally discuss any discovery disputes. Respondents' counsels' unequivocal answer was "no."

2. On January 9, 2006, after the People filed their Second Motion for Protective Order, Respondents filed two more motions to strike, as mentioned in Paragraph 1(c) above. Respondents' Motion to Strike the People's Motion for Leave to Reply Instantly to Respondents' Responses to Complainant's Discovery Objections is, in effect, a surreply and warrants no further response from the People. Likewise, Respondents' Motion to Strike the People's Second Motion for Protective Order is ("Motion to Strike"), in effect, a response. However, because Respondents' Motion to Strike makes new arguments that have no basis in law or fact, and is identified as a "motion," the People briefly respond herein.

3. In their Motion to Strike, Respondents argue that Complainant's Second Motion for Protective Order "appears to be a continuance of its effort to obviate Board Procedures . . ." (Motion to Strike at ¶ 8.) The only Board Procedure cited in Respondents' Motion to Strike is that which covers the filing of a reply under Section 101.500(e) of the Board's Procedural Rules. (*Id.* at ¶ 9.)

4. Respondents argue there is no reason that the People's Second Motion for Protective Order should have been combined with their Response to Respondents' Motion to Quash Deposition Notices. (*Id.* at ¶ 11.) Respondents argue that, because it is a combined pleading, it should be denied and filed separately "at a later date." (*Id.* at ¶ 12.) Respondents provide no authority for their position regarding combined pleadings.

5. In the alternative, Respondents seek leave under Section 101.500(e) to respond to the Second Motion. (*Id.* at ¶ 15.) Inadequate grounds for granting such leave under Section 101.500(e) are presented in Respondents' Motion to Strike. Respondents' Response also

reiterates many of the same allegations to which the People previously sought leave to reply *instanter*, and further argues that, "if a protective order is issued, it would need to apply to both parties." (*Id.* at ¶ 22.)

6. In response to Respondents' Motion to Strike, the People point out that there is no Board or Civil Procedure Rule prohibiting the combined pleading complained of. The People were also unable to locate any Board or Court decision in support of Respondents' position regarding combined pleadings. Under the circumstances, which include the fact that the combined pleading entirely relates to the same discovery problem, that the People's Response to Respondents' Motion to Quash Deposition Notices is not a pleading on which relief can be granted, and in light of the number of frivolous discovery pleadings filed by Respondents since April 2005, the People contend that their combined pleading was efficient and appropriate.

7. Although inadequate grounds for granting leave to reply under Section 101.500(e) are presented in Respondents' Motion to Strike, no such leave would appear to be necessary as a response (which is not the same as a reply) is automatically allowed by Board rules. (*See* 35 Ill. Adm. Code 101.500(d).)

8. Respondents also fail to provide any authority for denying the People's Second Motion for Protective Order in order to file it at some unspecified "later date" as Respondents suggest. (Motion to Strike at ¶ 12.) The People's Second Motion is well-founded and timely at this juncture.

9. Last, the People agree with the Respondents' alternative argument that the protective order should be reciprocal and require counsel for both parties to engage in a full and good faith attempt to informally resolve any future discovery dispute prior to seeking Board

intervention. The People have no objection to continuing their attempts to informally resolve discovery disputes prior to seeking Board intervention.

WHEREFORE, the People respectfully request that the Board deny Respondents' Motion to Strike, that the Board grant the People's Second Motion for Protective Order, that the Board enter a protective order requiring counsel to engage in a full and good faith attempt to informally resolve any future discovery dispute prior to seeking Board intervention, and for any further relief that is fair and just under the circumstances.

Respectfully submitted,

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

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