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.,	)	PCB 96-98 (Enforcement – RCRA)
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 Response to Respondents' Second Motion for Sanctions**, 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: 

MICHAEL C. PARTEE
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Respondents.	)	

COMPLAINANT'S RESPONSE TO RESPONDENTS' SECOND MOTION FOR SANCTIONS

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, Second Motion for Sanctions. In support of their response, the People state as follows:

1. Respondents' Second Motion for Sanctions should be stricken on procedural grounds or denied on substantive grounds, which are the same reasons that Respondents' October 10, 2006 Motion for Sanctions ("First Motion for Sanctions") was denied. Procedurally, the Second Motion for Sanctions does not comport with the clear and unambiguous pre-hearing schedule established in the Board's September 7, 2006 Order and the requirement to attempt to informally resolve discovery disputes before seeking Board intervention established in the

Hearing Officer's February 8, 2006 Order. Substantively, the Motion for Sanctions seeks extraordinary relief without stating any legal or factual basis and should be denied because it is without merit.

Relevant Procedural History

2. The "Procedural History" set forth in Respondents' Second Motion for Sanctions (Second Motion at ¶¶ 1-16) is highly selective and omits a controlling Hearing Officer Order and numerous, ignored attempts by this writer to informally resolve with Respondents' attorneys the same discovery dispute brought to the Board in the Second Sanctions Motion.

3. On April 25, 2005, the People served Respondents with interrogatories pertaining to the Respondents' objection to the People's September 17, 2004 fee petition. The People's Interrogatory #2 requested a list of witnesses that Respondents may call at the hearing on the fee petition. In part, Respondents listed me as a potential hearing witness. I will be representing the People at the hearing on the fee petition, and my fees and costs are not included in the fee petition.

4. On December 28, 2005, due to the myriad discovery disputes being brought by Respondents directly to the Board without any prior attempt to informally resolve differences with the People, the People filed a second motion for protective order asking that Respondents' attorneys be required to participate in a full and good faith conference with the People's attorneys regarding any further discovery dispute prior to seeking Board intervention.

5. On February 8, 2006, the Hearing Officer granted the People's second motion for protective order and required the following (Feb. 8, 2006 Order at 1-2 (underline added)):

> Complainant's motion for protective order asks that respondents' attorneys be required to participate in a full and good faith conference with complainant's attorneys regarding any further discovery dispute prior to seeking Board

> intervention. Respondents' motion to strike offered no compelling argument on which to grant that motion, thus the motion to strike is denied. The parties are directed to make every effort to get through the discovery process with no further involvement from the Board or the hearing officer. Accordingly, the hearing officer grants the motion for protective order. In any motion, objection, or other filing related to any discovery problem, respondents' attorneys must relate the measures taken to resolve the problem with complainant's attorneys before the filing of the motion.

6. On December 15, 2005, I wrote to Respondents' attorneys pursuant to Illinois Supreme Court Rule 201(k) in a full and good faith attempt to resolve my expressly stated objection to being listed a potential hearing witness. (*See* Exhibit A hereto.) My December 15, 2005 letter to Respondents' attorneys provided, in relevant part (underline added):

> In answer to Interrogatory #2, the Respondents listed me as a potential witness at hearing. I am the attorney representing Complainant at hearing. Further, none of my fees and costs are included in Complainant's fee petition. Thus, I will not be testifying at the hearing. In order to informally resolve this potential dispute, please contact me within 14 days of this letter if you disagree. If you disagree, we will obviously need to seek a protective order. If we do not hear from you within 14 days, we will reasonably assume that you agree with our position.

7. Respondents' attorneys failed to respond my December 15, 2005 letter and I reasonably assumed my objection was resolved.

8. On September 18, 2006, as part of another Rule 201(k) letter to Respondents' attorneys regarding other depositions in this case, I further wrote, in relevant part (*See* Exhibit B hereto (underline added)):

> Per my December 15, 2005 Rule 201(k) letter, your listing me as a witness is improper for the reasons stated in that letter and I do not intend to submit to a deposition or to testify at a hearing. Because I never heard anything further from you on this and because I have not amended the People's fee petition to include my own time, I assume that this objection is resolved.

9. Respondents' attorneys also failed to respond to my September 18, 2006 letter.

10. On October 10, 2006, Respondents filed their First Motion for Sanctions against the People pursuant to Illinois Supreme Court Rule 219, to which the People responded on

October 13, 2006. Respondents' First Motion for Sanctions alleged unspecified and unsubstantiated discovery violations by the People, and Respondents' attorneys failed to relate any measures taken to resolve the alleged discovery dispute with the People's attorneys before filing the First Motion for Sanctions.

11. On October 18, 2006, Respondents served the People with notices for Assistant Attorney General Mitchell Cohen's and my depositions. (*See* Group Exhibit C.) Also on October 18, 2006, Respondents served a "notice of subpoena" on former Assistant Attorney General Bernard Murphy for his deposition, which was improper in both form and manner of service. (*See* Exhibit D.)

12. Despite having previously resolved my objection to being deposed or to testifying, I took seriously the deposition notice issued to me and, on October 23, 2006, promptly issued a strongly-worded Rule 201(k) letter on the issue, reiterating for a third time the position set forth in my letters of December 15, 2005 and September 18, 2006. (*See* Exhibit E hereto.)

13. Respondents' attorneys also failed to respond to my October 23, 2006 letter.

14. On November 2, 2006, the Board denied Respondents' First Motion for Sanctions, holding that the People did not fail to comply with any discovery order, Respondents have had ample opportunity to pursue their claims on the fee petition, and any perceived failure of the Respondents to fully address the People's fee petition during the course of the last two years is a problem solely of the Respondents' own making. (Nov. 2, 2006 Order at 3.)

15. On November 8 and 14, 2006, Respondents' attorneys took three-hour depositions of Messrs. Cohen and Murphy, respectively. Because argument over the defective subpoena to Mr. Murphy would have been unproductive, Mr. Murphy and I waived the defects in order to allow Mr. Murphy's deposition to go forward.

16. On November 15, 2006, Respondents filed their Second Motion for Sanctions pursuant to Rule 219. In a willful, knowing and repeated violation of the Hearing Officer's February 8, 2006 Order, Respondents' attorneys do not relate in their Second Motion for Sanctions any measures taken to resolve the alleged discovery dispute with the People's attorneys before filing, nor did Respondents' attorneys take any such measures.

17. The stated basis for Respondents' Second Motion for Sanctions is that Respondents served a notice for my deposition, I did not file an objection to that notice with the Board, and I did not appear for my deposition at the requested date and time. (Second Motion for Sanctions at ¶¶ 12, 14 and 17.) The Respondents then claim an unspecified and unsubstantiated, but somehow material prejudice.

18. It is against this procedural history that the Respondents yet again seek the extraordinary remedy of sanctions against the People.

19. Respondents' Second Motion for Sanctions suffers from the same defects as their First Motion for Sanctions and should be denied for the same reasons.

Applicable Legal Standard for the Imposition of Sanctions

20. Respondents' Second Motion for Sanctions does not set forth the correct legal standard for sanctions and is not supported by any Board precedent. The authority cited in Respondents' Second Motion for Sanctions is Rule 219, which is not the controlling rule on sanctions in this proceeding. (Second Motion for Sanctions at ¶ 25.)

21. The Board (and Courts, for that matter) has "broad discretion" in determining the imposition of sanctions. *See Freedom Oil Co. v. IEPA*, PCB 03-54, 2006 WL 391850, at *8 (Feb. 2, 2006). In exercising this broad discretion, the Board considers such factors as the relative severity of the refusal or failure to comply; the past history of the proceeding; the degree

to which the proceeding has been delayed or prejudiced; and the existence or absence of bad faith on the part of the offending party or person. *Id.* These factors are contained in Board Procedural Rule 101.800(c) (35 Ill. Adm. Code 101.800(c)), which is the controlling rule in deciding whether to impose sanctions in a Board proceeding. *See People v. Skokie Valley Asphalt Co., Inc., et al.*, PCB 03-54,2006 WL 3265926, at *3 (Nov. 2, 2006).

Respondents' Second Motion for Sanctions Should Be Stricken On Procedural Grounds

22. Respondents' Second Motion for Sanctions is based on alleged discovery violations and, therefore, it is a discovery pleading. The Board's September 7, 2006 Order establishes how such pleadings are to be treated. The Board ruled that "[d]iscovery pleadings, including replies to the objections, that are not addressed by the schedule will not be allowed." (Sept. 7, 2006 Order at 8.)

23. Therefore, as a procedural matter, Respondents' Second Motion for Sanctions is not addressed by the pre-hearing schedule established by the Board and should be stricken.

24. In addition, Respondents' Second Motion for Sanctions once again violates the Hearing Officer's February 8, 2006 Order requiring, "[i]n any motion, objection, or other filing related to any discovery problem, respondents' attorneys must relate the measures taken to resolve the problem with complainant's attorneys before the filing of the motion." (Feb. 8, 2006 Order at 2.) Respondents' attorneys took no steps to resolve the problem with me before filing the Second Motion for Sanctions (they even ignored my own attempts to informally resolve the problem) and, therefore, related no such measures therein. The Second Motion for Sanctions should also be stricken because it violates the Hearing Officer's February 8, 2006 Order.

Respondents' Second Motion for Sanctions Is Completely Without Merit and Should Be Denied On Substantive Grounds

25. Viewed in light of the Rule 101.800(c) factors to be considered in imposing sanctions, Respondent's Second Motion for Sanctions is completely without merit.

26. The Rule 101.800(c) factors include (a) the relative severity of the refusal or failure to comply, (b) the past history of the proceeding, (c) the degree to which the proceeding has been delayed or prejudiced, and (d) the existence or absence of bad faith on the part of the offending party or person. Each of these factors weigh heavily against the imposition of sanctions against the People:

a. *The relative severity of the refusal or failure to comply*. In terms of the relative severity of the People's alleged refusal or failure to comply, the People have not improperly refused or failed to comply with any deposition request. In terms of depositions, Respondents already took three-hour depositions of Messrs. Cohen and Murphy, the attorneys whose time is sought in the People's fee petition. As to my own deposition, I timely and repeatedly objected. Respondents' attorneys never contacted me and, therefore, my objection was resolved. Additionally, Respondents do not now identify any specific reason or need to depose me.

When the Respondents' attorneys were themselves served with deposition notices earlier in this proceeding, they objected and argued that it is well established that the attorney-client relationship makes it ethically improper for an attorney to testify in most matters in which he is counsel, and they would need to withdraw if required to testify. (*See* Sept. 7, 2006 Order at 4.) Respondents' attorneys further argued that courts have found that the practice of deposing opposing counsel is disruptive of the adversarial

process and lowers the standards of the legal profession. (*Id.*) There is no distinction between the deposition notices to trial counsel for either party. Therefore, Respondents' Second Motion for Sanctions is also illogical and unreasonable in light of Respondents' attorneys' previous arguments on the issue of deposition notices to opposing counsel in this same case.

b. *The past history of the proceeding.* The Board previously found that the Respondents committed knowing, willful or repeated violations of the Act and associated regulations and ordered them to pay a civil penalty and the People's reasonable attorneys' fees and costs. Relative to Respondents' objection to the People's fee petition, Respondents have, for more than two years now, failed to fully address the People's fee petition. Therefore, there is nothing in the past history of this proceeding that supports Respondents' Second Motion for Sanctions.

c. *The degree to which the proceeding has been delayed or prejudiced.* The People have done nothing to delay or prejudice the Respondents in this proceeding, nor do Respondents make any specific or substantiated allegations of delay or prejudice in their Second Motion for Sanctions. On the other hand, since the Respondents themselves initiated this dispute over the People's fee petition more than two years ago, Respondents have delayed entry of a final order by filing at least ten discovery pleadings with the Board (all of which were denied) without ever attempting to informally resolve differences with the People before seeking Board intervention. The delay in resolving this proceeding is a problem solely of the Respondents' own making.

Respondent's abusive discovery motion practice was recently exposed. Respondents' requested Messrs. Cohen's and Murphy's personal tax returns and internal

employee evaluations through discovery on the People's fee petition. On July 6, 2005, after the People properly objected to such requests, the Respondents went so far as to move to compel the information. Respondents' motion to compel was denied. Very recently, on November 15, 2006, Respondents' own purported expert on fee petitions testified that she has never requested such information and that it is irrelevant, which shows that the Respondents improperly requested it in the first place. (*See* Nov. 12, 2005 Order at 8 and Feb. 8, 2006 Order at 2-3; *see also* Nov. 15, 2006 Stonich Dep. Transcr. at 115-121 (Exhibit F hereto).)

Respondents' abusive discovery motion practice has even resulted in the entry of a protective order against Respondents' attorneys requiring that they relate the measures taken to resolve the problem with the People's attorneys before the filing of any further discovery pleadings (*see* Feb. 8, 2006 Order at 2), which Respondents' attorneys have willfully, knowingly and repeatedly violated. Therefore, this factor also does not support the imposition of sanctions against the People.

d. *The existence or absence of bad faith on the part of the offending party or person.* Lastly, there is no evidence of any bad faith on the part of the People in this case. To the contrary, the People have repeatedly attempted to resolve discovery disputes informally pursuant to Rule 201(k) and without Board intervention. The Respondents have ignored all such attempts, even after their attorneys were ordered through the Hearing Officer's February 8, 2006 Order to participate in such efforts. As to specific issue of Respondents' deposition notice to me, I first notified Respondents' attorneys, in writing, on December 15, 2005 of my objection to being deposed in this proceeding, as well as the grounds for my objection. Based on Respondents' attorneys failure to respond

to my letter I reasonably assumed the objection resolved. Since then, Respondents' attorneys have themselves argued against the practice of deposing opposing counsel. (*See* Sept. 7, 2006 Order at 4.) The only bad faith here is on the part of the Respondents and their attorneys.

27. There is nothing in or out of the record relative to the Rule 101.800(c) factors that supports imposition of sanctions against the People. Respondents' vague, unsubstantiated and inconsistent argument that they were somehow materially prejudiced by their inability to depose opposing counsel falls far short of satisfying any of the Rule 101.800(c) factors.

28. Respondents' Second Motion for Sanctions does not specifically allege any conceivable way in which my objection to being deposed could prevent them from properly preparing for hearing on December 12, 2006. If Respondents had a legitimate need for my deposition, they would have responded to one of my three, past letters on the issue.

29. For all of these reasons, Respondents' Second Motion for Sanctions should be denied because it is completely without merit.

The Board Should Enter a Final Order In This Case

30. On March 20, 2006, the People filed a Motion for Final Order in this case. On September 7, 2006, the Board found that the People's Motion for Final Order was an attempt to achieve resolution of a matter that has been pending for a considerable amount of time, but denied it because the record on the issue of attorney fees and costs remains incomplete and found that a hearing to resolve these issues is necessary." (Sept. 7, 2006 Order at 7-8.)

31. The Respondents' and their attorneys' obstructionist and delay tactics are prejudicing the People's ability to properly prepare for the December 12, 2006 hearing on the fee

petition, and are causing the People to incur even further attorney fees and costs in reaching a final order in this case.

32. The People again respectfully request that the Board enter a final order in this case due to the Respondents' continued attempt to improperly delay the entry of a final order. The change in circumstances since the People's first request for a final order on March 20, 2006, which include the Respondents' filing of two unsupported motions for sanctions and Respondents' own expert recently testifying that Respondents sought (and even moved to compel) irrelevant information, gives the Board ample basis to issue a final order.

Conclusion

33. Respondents' Second Motion for Sanctions once again violates the pre-hearing schedule established in the Board's September 7, 2006 Order and the requirement that Respondents' attorneys must relate the measures taken to resolve the problem with the People's attorneys before the filing another discovery pleading in the Hearing Officer's February 8, 2006 Order. The Second Motion for Sanctions should be stricken on these procedural grounds.

34. Respondents' Second Motion for Sanctions is also unsupported by any facts or law and, therefore, is completely without merit. None of the Rule 101.800(c) factors support the Second Motion for Sanctions, nor did Respondents even address any of these factors. If the Second Motion for Sanctions is not stricken on procedural grounds, it should be denied on substantive grounds. Moreover, given Respondents' and their attorneys' tactics, the Board should enter a final order in this case.

WHEREFORE, the People respectfully request that the Board deny Respondents' Second Motion for Sanctions and for any further relief that is fair and just under the circumstances, including entry of a final order resolving this case.

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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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 15, 2005

Sent Via First Class Mail
and Facsimile (773.792.8358)

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

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

Dear Mr. O'Neill:

The purpose of this letter is to initiate a conference in the spirit of Illinois Supreme Court Rule 201(k) to informally resolve potential disputes over Respondents' answers to Complainant's interrogatories and document requests prior to seeking Board intervention. These written discovery requests were served on Respondents on April 25, 2005, and were answered on December 5, 2005. The following is a full explanation of our position on each potential dispute. Please respond to this letter as requested within 14 days by providing the requested discovery or explaining your position so that we can make a fully informed and joint decision whether it is absolutely necessary to seek Board intervention regarding these potential disputes. On a related note, regarding Respondents' written discovery requests to Complainant, the Board granted Respondents until December 3, 2005, to provide additional responses to Complainant's discovery objections. As of today, I have not heard from you and assume that any potential differences over Complainant's answers are resolved.

Respondents' Answers to Complainant's Interrogatories

Complainant served Respondents with 11 interrogatories requesting information regarding Respondents' hearing plans (*e.g.*, the identity of any witnesses to be called at hearing) and attorneys' fees and costs. The Respondents each elected to answer the interrogatories separately, but their answers are all the same, with the exception of Skokie Valley Asphalt's ("SVA") answer to Interrogatory #1.

In answer to Interrogatory #1, which requests the identity of the individual answering the interrogatories, SVA answered that it "is no longer a legal entity under the laws of the State of Illinois" and "Therefore, [it] is incapable of responding to these interrogatories." However, SVA is one of the Respondents that moved to stay Complainant's fee petition in the first place. More

EXHIBIT
A

significantly, SVA is also one of the Respondents that served discovery requests on Complainant. Rhetorically, how can SVA oppose Complainant's fee petition and serve discovery, but cannot answer discovery? In addition, under Illinois law, a corporation can be sued (and must have a registered agent for a period of five years) even after dissolution. Given the circumstances, SVA's answer to Interrogatory #1 is unacceptable. In order to informally resolve this dispute, we require SVA to answer Interrogatory #1 within 14 days of this letter.

In answer to Interrogatory #2, the Respondents listed me as a potential witness at hearing. I am the attorney representing Complainant at hearing. Further, none of my fees and costs is included in Complainant's fee petition. Thus, I will not be testifying at the hearing. In order to informally resolve this potential dispute, please contact me within 14 days of this letter if you disagree. If you disagree, we will obviously need to seek a protective order. If we do not hear from you within 14 days, we will reasonably assume that you agree with our position.

In answer to Interrogatory #3, which requests information regarding any opinion witness to be called by Respondents at hearing, Respondents identified Deborah A. Stonich, but did not provide any other requested information because she apparently has not completed her case assessment. However, it is not necessary to wait for her case assessment in order to provide information regarding her qualifications and previous opinion testimony, as specifically requested in subparts (b) and (d) of Interrogatory #3. In order to informally resolve this dispute, we require Respondents to answer Interrogatory #3(b) and (d) within 14 days of this letter.

In answer to Interrogatory #4, Respondents provided none of the requested information. Instead, Respondents all objected on the same grounds and as follows:

> Objection. This interrogatory is not calculated to be to [*sic*] admissible evidence at the time of the hearing. Furthermore, this interrogatory asks for irrelevant information and violates the attorney-client privilege between the Respondent and the Respondent's attorneys. The Respondent has not placed his attorney's fees or its expenses at issue in this matter.

First, absent some direction from the Board, the objections based upon admissibility and relevance are not grounds to withhold information (or documents as discussed below). Respondents' attorneys' fees and costs were, in fact, placed at issue through their "Initial Response to and Motion to Stay and/or Extend Time to Respond to Complainant's Petition for Attorneys' Fees and Costs," which contains numerous and specific factual allegations regarding the Respondents' attorneys' fees and costs. (See, *e.g.*, Initial Response at ¶ 17 ("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" and "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").) In opposing Complainant's Petition for Attorneys' Fees and Costs, Respondents drew a direct comparison between the parties' attorneys'

fees and costs, yet Respondents now refuse to disclose their own attorneys' fees and costs.

Second, regarding the attorney-client privilege asserted, our interrogatories contain an entire section, Section II, titled "Claims of Privilege," wherein we specifically requested that Respondents identify the "statute, rule or decision which is claimed to give rise to the privilege or the reason for its unavailability." Respondents did not object to this instruction or provide us with the legal basis for the asserted privilege. Frankly, our research indicates that attorneys' fees and costs are not privileged in a dispute over attorneys' fees and costs. Furthermore, and even if there was such a privilege, Respondents waived it by previously requesting (and obtaining) the very same information from Complainant.

Third, the Board ruled that " . . . the People must be allowed to conduct discovery on the reasonableness of the attorney fees and costs." (Order at 3 (Nov. 17, 2005).) "To allow the respondent to conduct discovery on this matter and not allow the People the opportunity to conduct similar discovery would place the People on unequal footing, and would not serve the best interests of administrative justice."

For all of these reasons, in order to informally resolve this dispute over Interrogatory #4, we require Respondents to provide the requested information within 14 days of this letter.

In answer to Interrogatories #5 through #11, Respondents again provided none of the requested information and repeated their previous objection to Interrogatory #4. As with Interrogatory #4, in order to informally resolve this dispute, we require Respondents to provide the requested information within 14 days of this letter.

Respondents' Answers to Complainant's Document Requests

Through seven document requests, Complainant requested documents relevant to Respondents' attorneys' fees and costs. In answer to our document requests, Respondents did not produce any documents whatsoever. Instead, the Respondents stated the following objection to each document request:

> Objection. This interrogatory is not calculated to be admissible evidence at the time of the hearing. Furthermore, this interrogatory asks for irrelevant information and violates the attorney-client privilege between the Respondent and the Respondent's attorneys. The attorneys for the Respondent has not placed his or, in the case of Skokie Valley Asphalt Company, Inc., its attorney's fees at issue nor has the Respondent placed his or, in the case of Skokie Valley Asphalt Company, Inc., its expenses at issue in this matter.

For all of the same reasons that Respondents' answers to Interrogatories #4 through #11 are unacceptable, Respondents' answers to all document requests are unacceptable. Again, these reasons include that the Board has already ruled that Complainant is entitled to conduct discovery

on this issue. Also, we are not aware of any legal basis to assert a privilege under the circumstances, but regardless, Respondents clearly waived any privilege by previously requesting (and obtaining) the very same information from Complainant. Further, pursuant to specific instructions in Complainant's discovery requests (See Instruction 2 in our Interrogatories), Respondents were asked to provide a detailed privilege log for withheld documents. We did not receive any privilege log. Essentially, Respondents have refused to disclose any documents and, at the same time, failed to adequately assert and define the basis for their refusal.

In order to informally resolve this dispute, we require Respondents to produce the requested documents within 14 days of this letter.

Again, please respond to this letter within 14 days. Please contact me with any questions in the interim.

Sincerely,

Michael C. Partee
Assistant Attorney General
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cc: Carol Webb, Hearing Officer *(Via First Class Mail)*
Michael B. Jawgiel, Esq. *(Via First Class Mail)*

Confirmation Report – Memory Send

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OFFICE OF THE ILLINOIS ATTORNEY GENERAL

Lisa Madigan
Attorney General

ENVIRONMENTAL ENFORCEMENT/ASBESTOS LITIGATION DIVISION

ATTENTION:	David S. O'Neill
PHONE:	773-792-1333
FAX:	773-792-8358
FROM:	Michael C. Partee, Assistant Attorney General
PHONE:	312-814-2069
FAX:	312-814-2347
DATE:	December 15, 2005
NUMBER OF PAGES:	5 (including cover)
COMMENTS:	**Please see the following letter in the People v. Skokie Valley Asphalt, et al., matter.**

NOTICE

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

September 18, 2006

Sent Via First Class Mail
and Facsimile (773.792.8358)

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

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

Dear Mr. O'Neill:

This is in response to your letter objecting to my contacting Ms. Deborah Stonich last week. I also take this opportunity to revisit the remaining discovery disputes in this matter.

I. Stonich Witness Disclosure

On December 5, 2005, you disclosed Ms. Stonich as an "opinion witness" in response to the People's Interrogatory No. 3, but not a "controlled" opinion witness. Indeed, you only provided her name and address, which would indicate that I was supposed to contact her. However, in an abundance of caution, I then wrote you pursuant to Rule 201(k) on December 15, 2005 to specifically request, among a whole host of information, Ms. Stonich's expert report. You never responded to my December 15, 2006 letter. Additionally, when I spoke with Ms. Stonich last week, she did not voice any objection to my contacting her. This all supports the fact that Ms. Stonich was not disclosed as a controlled witness and that there is nothing improper or prohibited about my contacting her.

If you continue to disagree with my position, I expect both a telephone call from you and an amended answer to the People's Interrogatory No. 3 and Document Request No. 7 before September 21, 2006 pursuant to the Board's September 7, 2006 Order. Given the tight schedule within which we are required to complete depositions (between November 1 and December 1, 2006), I will be issuing either a deposition subpoena or deposition notice to Ms. Stonich by October 1, 2006, depending upon whether and how you amend the Respondents' answer to the People's Interrogatory No. 3 and Document Request No. 7.

II. Other Depositions

Per my May 24, 2005 Rule 201(k) letter, you will need to issue a deposition subpoena to former AAG Bernard Murphy if you intend to depose him. I am willing to assist you in scheduling his deposition, but he is no longer a State employee and I cannot produce him.

EXHIBIT
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500 South Second Street, Springfield, Illinois 62706 • (217) 782-1090 • TTY: (217) 785-2771 • Fax: (217
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1001 East Main, Carbondale, Illinois 62901 • (618) 529-6400 • TTY: (618) 529-6403 • Fax: (618) 529

If you need to depose AAG Mitchell Cohen, at this point, he is available for a deposition on November 6, 8, 9, 13, 14, 20-22, 28 or 30, 2006.

Per my December 15, 2005 Rule 201(k) letter, your listing me as a witness is improper for the reasons stated in that letter and I do not intend to submit to a deposition or to testify at a hearing. Because I never heard anything further from you on this and because I have not amended the People's fee petition to include my own time, I assume that this objection is resolved.

III. Additional, Remaining Written Discovery Disputes

Finally, on September 7, 2006, the Board ruled that "although the respondents have raised arguments concerning their attorney fees and costs, the Board finds those arguments irrelevant as well" and "[t]he arrangement made by the respondents and their attorneys regarding representation does not impact the Board's decision on the appropriateness of the People's fee petition." (Sept. 7, 2006 Order at 5.) This resolves the State's concern regarding the Respondents' arguments as to their own attorneys' fees and costs in relation to the People's attorneys' fees and costs. Therefore, as far as the People are concerned, the only remaining written discovery disputes are as follows:

- People's Interrogatory No. 1: Per my December 15, 2005 Rule 201(k) letter, Skokie Valley must answer Interrogatory No. 1 and certify its answers by September 21, 2006 pursuant to the Board's September 7, 2006 Order; and

- People's Interrogatory No. 3 and Document Request No. 7: Per my December 15, 2005 Rule 201(k) letter (and as discussed above), the Respondents must amend their answers to Interrogatory No. 3 and Document Request No. 7 (with respect to witness disclosures) by September 21, 2006 pursuant to the Board's September 7, 2006 Order.

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 *(Via First Class Mail)*
Michael B. Jawbiel, Esq. *(Via First Class Mail)*

Confirmation Report – Memory Send

Page : 001
Date & Time: Sep-18-06 01:24pm
Line 1 : +3128142347
Machine ID : IAGO-ENVIRONMENTAL BUREAU

Job number	:	527
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To	:	☎917737928358
Number of pages	:	003
Start time	:	Sep-18 01:22pm
End time	:	Sep-18 01:24pm
Pages sent	:	003
Status	:	OK

Job number : 527 *** SEND SUCCESSFUL ***

OFFICE OF THE ILLINOIS ATTORNEY GENERAL

Lisa Madigan
Attorney General

ENVIRONMENTAL ENFORCEMENT/ASBESTOS LITIGATION DIVISION

ATTENTION: David S. O'Neill
PHONE: 773-792-1333
FAX: 773-792-8358

FROM: Michael C. Partee, Assistant Attorney General
PHONE: 312-814-2069
FAX: 312-814-2347

DATE: September 18, 2006

NUMBER OF PAGES: 3 (including cover)

COMMENTS: **Please see the following Rule 201(k) letter regarding discovery in People v. Skokie Valley Asphalt, *et al.***

NOTICE

THIS IS A FAX TRANSMISSION OF ATTORNEY PRIVILEGED AND/OR CONFIDENTIAL INFORMATION. IT IS INTENDED FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY THE SENDER AT THE ABOVE TELEPHONE NUMBER AND DESTROY THIS TRANSMITTAL.

IF YOU ARE NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY RETENTION OR DISSEMINATION OF THIS INFORMATION IS STRICTLY PROHIBITED.

BEFORE THE 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' SECOND DEPOSITION NOTICE TO COMPLAINANT REGARDING COMPLAINANT'S FEE PETITION, a copy of which is hereby served upon you.

David S. O'Neill

October 25, 2006

David S. O'Neill, Attorney at Law
5487 N. Milwaukee Avenue
Chicago, IL 60630-1249
(773) 792-1333

EXHIBIT
C

BEFORE THE 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' SECOND DEPOSITION NOTICE TO COMPLAINANT REGARDING COMPLAINANT'S FEE PETITION

Please take notice that counsel for the Respondents shall, pursuant to Illinois Supreme Court Rule 206 and Illinois Pollution Control Board Rule 101.622, take the discovery deposition of Mitchell Cohen, Esq. commencing at 2:00 p.m. on Tuesday November 14, 2006 at 5487 N. Milwaukee Avenue, Chicago, Illinois. Mr. Cohen is instructed to bring with him documents relevant to the matter under consideration.

Respectfully submitted,

David S. O'Neill

David S. O'Neill, Attorney at Law
5487 N. Milwaukee Avenue
Chicago, Illinois 60630-1249
(773) 792-1333

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached RESPONDENTS' SECOND DEPOSITION NOTICE TO COMPLAINANT REGARDING COMPLAINANT'S FEE PETITION by hand delivery on October 25, 2006, upon the following party:

Mitchell Cohen, Esq
and Mr. Michael Partee, Esq.
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 24th

day of October, 20 06

Notary Public

OFFICIAL SEAL
DENNIS R O'NEILL
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:09/20/07

BEFORE THE 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' DEPOSITION NOTICE TO COMPLAINANT REGARDING COMPLAINANT'S FEE PETITION, a copy of which is hereby served upon you.

David S. O'Neill

October 18, 2006

David S. O'Neill, Attorney at Law
5487 N. Milwaukee Avenue
Chicago, IL 60630-1249
(773) 792-1333

BEFORE THE 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' DEPOSITION NOTICE TO COMPLAINANT REGARDING COMPLAINANT'S FEE PETITION

Please take notice that counsel for the Respondents shall, pursuant to Illinois Supreme Court Rule 206 and Illinois Pollution Control Board Rule 101.622, take the discovery deposition of Michael C. Partee, esq. commencing at 2:00 p.m. on Friday November 10, 2006 at 5487 N. Milwaukee Avenue, Chicago, Illinois. Mr. Partee is instructed to bring with him documents relevant to the matter under consideration.

Respectfully submitted,

David S. O'Neill

David S. O'Neill, Attorney at Law
5487 N. Milwaukee Avenue
Chicago, Illinois 60630-1249
(773) 792-1333

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached RESPONDENTS' DEPOSITION NOTICE TO COMPLAINANT REGARDING COMPLAINANT'S FEE PETITION by hand delivery on October 18, 2006, upon the following party:

Mitchell Cohen, Esq
and Mr. Michael Partee, Esq.
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 18th

day of October, 2006

Notary Public

OFFICIAL SEAL
RITA LOMBARDI
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:09/08/07

BEFORE THE 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	)	

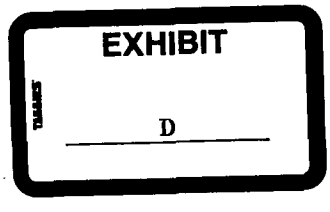
NOTICE OF FILING

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the RESPONDENTS' SUBPOENA FOR DEPOSITION, a copy of which is hereby served upon you.

David S. O'Neill

October 18, 2006

David S. O'Neill, Attorney at Law
5487 N. Milwaukee Avenue
Chicago, IL 60630-1249
(773) 792-1333



BEFORE THE 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	)	

SUBPOENA FOR DEPOSITION

Pursuant to Section 5(e) of the Environmental Protection Act (415 ILCS 5/5(e) (2002)) and 35 Ill. Adm. Code 101, Subpart F, you are ordered to attend and give testimony at the hearing/deposition in the above captioned matter at 5487 N. Milwaukee Avenue, Chicago, Illinois at 2:30 p.m. on November 8, 2006.

Your are ordered to bring with you documents relevant to the matter under consideration.

David S. O'Neill

David S. O'Neill, Attorney at Law
5487 N. Milwaukee Avenue
Chicago, Illinois 60630-1249
(773) 792-1333

Failure to comply with this subpoena will subject you to sanctions under 35 Ill. Adm. Code 101.622(g) and 101802.

ENTER:

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Pollution Control Board

Date: February 13, 2003

I served this subpoena for deposition by handing a copy to Bernard Murphy on October 18, 20 06.

Auth. Process Server?

Subscribed and sworn to before me this 18th day of October, 20 06.

Notary Public

OFFICIAL SEAL
RITA LOMBARDI
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:09/08/07

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached RESPONDENTS' SUBPOENA FOR DEPOSITION by hand delivery on October 18, 2006, upon the following party:

Mitchell Cohen, Esq
and Mr. Michael Partee, Esq.
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 18th

day of October, 20 06

Notary Public

OFFICIAL SEAL
RITA LOMBARDI
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:09/08/0

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 23, 2006

Sent Via First Class Mail
and Facsimile (773.792.8358)

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

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

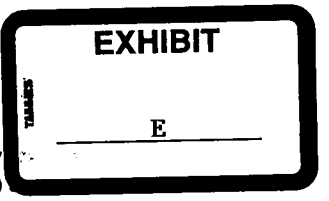
Dear Mr. O'Neill:

I write you – for a third time – pursuant to Rule 201(k) regarding your attempt to depose me in this case.

On December 15, 2005, I wrote you pursuant to Rule 201(k) to object to your taking my deposition in this case. (*See* attached.) At that time, I advised that I will be representing the People at the hearing on our fee petition, and that none of my fees and costs are included in the fee petition. I advised that I will not be testifying at the hearing and specifically asked you to contact me within 14 days (or by December 29, 2005) if you disagreed. I further advised that, if I did not hear from you within 14 days, I would reasonably assume that you agreed with our position. You never responded to my December 15, 2005 letter.

On September 18, 2006, I again wrote you pursuant to Rule 201(k), to advise that your listing me as a witness was improper for the reasons stated in that letter and that I did not intend to submit to a deposition or to testify at a hearing. (*See* attached.) I further advised that, because I had never heard anything further from you on this and because I had not amended the People's fee petition to include my own time, I assumed that this potential dispute was resolved. You also never responded to my September 18, 2006 letter.

Once again, the deposition notice that you issued to me is improper and I object to it. Given your extreme bad faith, I would be justified in allowing you and your court reporter to sit in some conference room on November 10, 2006, for as long as it takes you to realize that I will not be showing up for my deposition. However, I cannot bring myself to stoop to your level. Therefore, I am giving you the courtesy of once again advising you that I object to your taking my deposition and I will not be attending my deposition on November 10, 2006.



500 South Second Street, Springfield, Illinois 62706 • (217) 782-1090 • TTY: (217) 785-2771 • Fax: (217
100 West Randolph Street, Chicago, Illinois 60601 • (312) 814-3000 • TTY: (312) 814-3374 • Fax: (312)
1001 East Main, Carbondale, Illinois 62901 • (618) 529-6400 • TTY: (618) 529-6403 • Fax: (618) 529-6416

I assume your contacting me pursuant to Rule 201(k) to attempt to informally resolve this dispute is out of the question, but if you have a change of heart, I welcome a telephone call, letter, e-mail or whatever to discuss it.

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 *(Via First Class Mail)*
Michael B. Jawbiel, Esq. *(Via First Class Mail)*

Confirmation Report – Memory Send

Page : 001
Date & Time: Oct-23-06 10:41am
Line 1 : +3128142347
Machine ID : IAGO-ENVIRONMENTAL BUREAU

Job number	:	821
Date	:	Oct-23 10:35am
To	:	☎917737928358
Number of pages	:	009
Start time	:	Oct-23 10:35am
End time	:	Oct-23 10:41am
Pages sent	:	009
Status	:	OK

Job number : 821 *** SEND SUCCESSFUL ***

OFFICE OF THE ILLINOIS ATTORNEY GENERAL

Lisa Madigan
Attorney General

ENVIRONMENTAL ENFORCEMENT/ASBESTOS LITIGATION DIVISION

ATTENTION: David S. O'Neill
PHONE: 773-792-1333
FAX: 773-792-8358

FROM: Michael C. Partee, Assistant Attorney General
PHONE: 312-814-2069
FAX: 312-814-2347

DATE: October 23, 2006

NUMBER OF PAGES: 9 (including cover)

COMMENTS: **Please see the following Rule 201(k) letter in People v. Skokie Valley Asphalt, *et al.***

NOTICE

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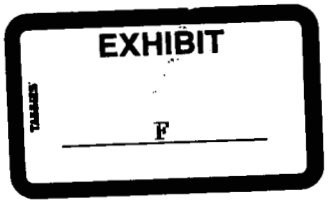
IF YOU ARE NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY RETENTION OR DISSEMINATION OF THIS INFORMATION IS STRICTLY PROHIBITED.

STATE OF ILLINOIS)
) ss.
COUNTY OF C O O K)

BEFORE THE POLLUTION CONTROL BOARD
STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff,	)	
vs.	)	No. PCB 96-98
SKOKIE VALLEY ASPHALT, CO., INC., et al., Defendants.	)	

This is the expert deposition of DEBORAH STONICH, called by the Plaintiff for examination, taken before Megan M. Reed, a Notary Public within and for the County of Cook, State of Illinois, and a Certified Shorthand Reporter of said state, at Suite 2000, 188 West Randolph Street, Chicago, Illinois, on the 15th, day of November A.D. 2006, at 1:00 o'clock p.m.



A P P E A R A N C E S:

THE LAW OFFICES OF:
ILLINOIS ATTORNEY GENERAL

BY: MR. MICHAEL C. PARTEE
188 West Randolph Street
20th Floor
Chicago, Illinois 60601

Appeared on behalf of the
Plaintiff;

THE LAW OFFICES OF:
DAVID S. O'NEILL

BY: MR. DAVID S. O'NEILL
5487 North Milwaukee Avenue
Chicago, Illinois 60630

Appeared on behalf of the
Defendants.

FURTHER EXAMINATION

BY MR. PARTEE:

Q Ms. Stonich, you said that you did not receive employment records from the Assistant Attorney Generals that worked on this case; is that correct?

A Correct.

Q Have you ever been given the employment records of an attorney that you retained?

A No.

Q Have you ever been given the opportunity to review employment records for an attorney that worked for CNA?

A Other than a resumé, no.

Q Have you ever requested employment records for an attorney working for CNA in order to approve their fees and costs?

A No.

Q You were also asked whether you were given performance reviews and employee evaluations in order to prepare your expert reported; and I believe you said no, correct?

A Yes, that's correct.

Q Have you ever been given performance reviews or employee evaluations for an attorney that you retained?

A Yes.

Q Who?

A I can't state with any specificity, but I can state that we do evaluate certain members on our panel and review those evaluations in order to determine if they should remain on panel.

Q So these are your own evaluations?

A Evaluations from colleagues at CNA.

Q These are CNA evaluations?

A Yes.

Q These aren't internal law firm evaluations?

A No.

Q Lastly, you were asked whether you were given federal and state income tax returns for the Assistant Attorneys General that worked on this case. Were you asked that question?

A Yes.

Q Is it fair to say that you did not receive federal and state income tax returns

for Assistant Attorneys General working on this case?

A That is correct.

Q Have you ever been given federal and state income tax returns for an attorney that you retained?

A No.

Q Have you ever been given such tax documentation for an attorney that was retained by CNA?

A No.

Q Would you require that sort of documentation to approve fees and costs?

A No.

Q Then how would you have been prejudiced in preparing your expert report by not having such documentation?

A In this case, I can't speculate without seeing the documents. There may have been some information on those documents that would have related in terms of the hours spent working on the case; but that is only speculation.

Q Not to mince words, you said you were

prejudiced. That was your testimony. Is it now your testimony that you may have been prejudiced? You are not sure?

A If the documents were relevant and had some bearing to my analysis on what was spent on fees and costs, then yes, I would have been prejudiced. If they don't, then I would not have been prejudiced.

Q You have never deemed such documents relevant enough to request them before approving fees and costs in the past, correct?

A I have never requested such documents in other matters, no.

Q Finally, Mr. O'Neill either alluded to or specifically asked about the Assistant Attorneys General take-home pay in this case. Why would you need to know our take-home pay?

A That would go to the issue as to what the hourly billing rate was. If you have some statute or regulation, as I said before, or policy or guideline supporting an hourly rate, that would be justification for that attorney charging the hourly rate. If there is no precedent for that, it would seem to me that

the attorney can only be reimbursed for the compensation he is receiving. In other words, if he is spending a certain amount of time on the case and is being paid a certain amount for those hours, that's what he should be reimbursed. Otherwise, the Attorney General's Office, if it is charging a far higher amount without support for that amount, is basically obtaining a windfall.

Q In the absence of any regulation or statute, as you say, does an attorney's take-home pay equal his hourly rate?

A I think that would be a matter of opinion. Some people would say possibly that it would be. Other people would say no because there are deductions taken for health insurance as well as 401K money and other employee benefits.

Q What would you say?

A Personally, I would make an allowance for those deductions in that I would not -- I would calculate the attorney's hourly rate based upon his salary broken down -- his annual salary broken down into the number of hours

that he is to work during a workweek.

Q Is that what you do at CNA?

A I am a little unclear on the question because we are dealing with attorneys working for firms that do have an established billing rate.

Q Let's talk about those for a second. You mentioned a low end for that established billing rate of about $150 earlier, correct?

A In some cases, it is could be lower. When I refer to the $150, I believe we were talking about Piper -- the Piper Rudnick firm, and that was based upon my personal experience.

Q Let's use that example, $150, for -- $150 an hour for a Piper Rudnick attorney. Does a Piper Rudnick attorney actually take home $150 an hour?

A In some cases, they may take home quite a bit more than that per hour.

Q What would someone who actually takes home $150 or more per hour, what would their billing rate be?

A That I do not know, but it would be more than $150 possibly.

Q Why?

A Just based upon the fact that higher paid attorney probably charges more per hour.

Q Is it fair to say that Piper's attorneys have to pay rent?

A Yes.

Q And there is healthcare costs?

A Yes.

Q And secretarial costs?

A Yes.

Q Cleaning crew costs?

A Yes.

Q What other types of overhead costs can you think of that would be billed into an hourly billing rate?

A Utility costs, for example, staff costs, LexisNexis costs, costs of maintaining a legal library are just a few examples.

Q Would the Attorney General have the same sort of overhead costs?

A Yes, it would.

MR. PARTEE: I have no further questions.

CERTIFICATE OF SERVICE

It is hereby certified that true and correct copies of the **Notice of Filing** and **Complainant's Response to Respondents' Second Motion for Sanctions**, were sent by First Class Mail, postage prepaid, to the persons listed on the Notice of Filing on November 29, 2006.

BY: 

MICHAEL C. PARTEE

It is hereby certified that the above documents were electronically filed with the following person on November 29, 2006:

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

BY: 

MICHAEL C. PARTEE