

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

ROXANA LANDFILL, INC.

Petitioner,

vs.

VILLAGE BOARD OF THE VILLAGE OF  
CASEYVILLE, ILLINOIS;  
VILLAGE OF CASEVILLE, ILLINOIS; and  
CASEYVILLE TRANSFER STATION, L.L.C.

Respondents.

No. PCB 15-65

(Pollution Control Facility Siting Application)

**PETITIONER ROXANA LANDFILL, INC.'S RESPONSE TO THE VILLAGE OF  
CASEYVILLE'S OBJECTIONS TO WRITTEN DISCOVERY**

**TO:** Village Clerk  
Village of Caseyville  
909 S. Main Street  
Caseyville, Illinois 62232

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Hearing Officer Carol Webb  
*Via email*

The Petitioner Roxana Landfill, Inc., by and through its attorney, Jennifer J. Sackett Pohlenz, at Clark Hill, PLC, responds to the Village of Caseyville and Village Board of the Village of Caseyville (collectively "Village of Caseyville") objections to the Petitioner's Document Production Requests and Interrogatories.

PETITIONER ROXANA LANDFILL, INC.

Clark Hill PLC  
150 N. Michigan Ave., Suite 2700  
Chicago, Illinois 60601  
Phone: 312-985-5912

BY: /s/ Jennifer J. Sackett Pohlenz

One of its attorneys

**PROOF OF SERVICE**

I, Jennifer J. Sackett Pohlenz an attorney, certify<sup>1</sup> that I served the foregoing document on the parties identified above by e-mail from before 5:30 p.m. on this 14<sup>th</sup> day of October 2014.

/s/ Jennifer J. Sackett Pohlenz

Jennifer J. Sackett Pohlenz

**INTRODUCTION**

<sup>1</sup> Under penalties as provided by law pursuant to Illinois Rev. Stat. Chap. 110-, Sec. 1-109, I do certify that the statements set forth herein are true and correct.

The Village Board of the Village of Caseyville and the Village of Caseyville (collectively "Village of Caseyville") sent certain Requests for Production and Interrogatories to the Petitioner Roxana Landfill, Inc. For convenience, these objections addresses and lists each discovery request to which an objection is made, followed by the objection and Petitioner's response to the objection in numeric order, with Interrogatories first, then Document Production Requests.

### **INTERROGATORIES**

The Village of Caseyville objects to Interrogatories 6 and 7. The objections should be overruled for the reasons stated.

**Interrogatory No. 6.** Please identify all persons with the Village Board or Village of Caseyville who were subject to *ex parte* rules during the siting process, by providing their name and position with the Village of Caseyville.

***Village of Caseyville's Objection:*** The interrogatory is vague and ambiguous as to the *ex parte* rules being referenced. The interrogatory improperly calls for a legal conclusion as to who is subject to "*ex parte* rules."

**PETITIONER'S RESPONSE:** There is nothing vague or ambiguous about asking the Village of Caseyville what persons it designated on the adjudicatory side of the siting process, subject to *ex parte* rule. Indeed, something is vague if its meaning is not understood and ambiguous if it is capable of being understood by reasonably well-informed persons in two or more different ways." *See, Krohe v. City of Bloomington*, 204 Ill. 2d 392, 395-96, 789 N.E.2d 1211, 273 Ill. Dec. 779 (2003). Section 39.2 siting proceedings are adjudicative proceedings and, as such, courts have long recognized that the decision makers of the local siting authority are subject to *ex parte* rules. *See, E & E Hauling, Inc., et al. v. Pollution Control Board, et al.*, 116 Ill. App. 3d 586, 606, 451 N.E.2d 555, 571 (2<sup>nd</sup> Dist 1983). Further, *ex parte* is not an ambiguous or vague term and, in fact, the Illinois Pollution Control Board Rule 101.202 contains a definition of the term. (35 IAC 101.202) Finally, there is nothing about asking what persons the Village of Caseyville identified as being on the adjudicatory side of the process that calls for a legal conclusion.

**Interrogatory No. 7.** Please identify any and all communications that occurred between the date on which Caseyville Transfer Station, L.L.C. alleges it filed its siting application with the Village of Caseyville and the date the Village Board of the Village of Caseyville voted to approve that siting application, between Caseyville Transfer Station, L.L.C. and the Village of Caseyville subject to *ex parte* rules during the siting process, including but not limited to the Village Board Members or Trustees of the Village of Caseyville and the Mayor of the Village of Caseyville. In answering this Interrogatory, please identify the following:

- a. The persons participating in the communication;
- b. The date(s) of each communication;
- c. The form of the communication (e.g., email, telephone call, in person meeting, fax, written correspondence, etc.); and
- d. The subject matter of the communication.

***Village of Caseyville's Objection:*** The interrogatory is vague and ambiguous as to the *ex parte* rules being referenced. The Interrogatory improperly calls for a legal conclusion as to who is subject to “*ex parte* rules.”

**PETITIONER'S RESPONSE:** “*Ex parte*” as explained above in Response to the Village of Caseyville's Objections to Interrogatory No. 6, is neither a vague nor ambiguous term and no legal conclusions are sought by the Interrogatory. The Petitioner repeats and incorporates its Response to the Village of Caseyville's Objection to Interrogatory No. 6 as for its Response to the Village of Caseyville's Objection to Interrogatory No. 7.

**Document Production Request No. 6:** Please produce all documents concerning, relating to, or documenting communications between the Village of Caseyville staff and Village of Caseyville Board Members or Mayor from the date the Caseyville Transfer Station, L.L.C. siting application is alleged to be filed to the date of the Village the Village Board of the Village of Caseyville's decision on that application.

***Village of Caseyville's Objection:*** The production request is vague, overly broad, unduly burdensome and not reasonably calculated to lead to relevant information.

**PETITIONER'S RESPONSE:** The Request is amended to read as follows. To the extent this does not resolve the Village of Caseyville's objections, those objections have no basis as: the scope of the request is well defined with subject matter and timeframe, and the Request is relevant to the fundamental unfairness of *ex parte* communications between the adjudicators and staff. For example, an applicant should not be allowed to utilize staff members of a decision maker local government as a “straw man” for *ex parte* communication.

Please produce all documents concerning, relating to, or documenting communications between the Village of Caseyville staff and Village of Caseyville Board Members or Mayor concerning or relating to the Caseyville Transfer Station, L.L.C. from the date the Caseyville Transfer Station, L.L.C. siting application is alleged to be filed to the date of the Village Board of the Village of Caseyville's decision on that application.

**Document Production Request No. 7:** Please produce all documents concerning, relating to, or documenting communications between Caseyville Transfer Station, I.L.C. and Village of Caseyville Board members or Mayor from January 2013 to present, unless otherwise produced pursuant to Request No. 6, above.

***Village of Caseyville's Objection:*** The production request is vague, overly broad, unduly burdensome and not reasonably calculated to lead to relevant discovery.

**PETITIONER'S RESPONSE:** The Request is specific in scope, identifies who is involved in the communications sought, and identifies a timeframe for the communications. The timeframe is relevant to the Petitioner's appeal on the ground of pre-judgment. Pre-judgment cannot be reviewed from a fundamental fairness perspective unless such documentation is revealed. Finally, the Village of Caseyville has failed to identify what it does not understand

about the Request, or the volume documents it has to produce, that such production is so burdensome to it.

Dated: October 14, 2014

Respectfully submitted,

PETITIONER ROXANA LANDFILL, INC.

Clark Hill PLC  
150 N. Michigan Ave., Suite 2700  
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Phone: 312-985-5912

BY: /s/ Jennifer J. Sackett Pohlenz  
One of its attorneys

**CERTIFICATION**

Under penalties of perjury, as provided by law pursuant to Section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109), the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and, as to such matters, the undersigned certifies as aforesaid that they believe the same to be true.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2012.

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