

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ROXANA LANDFILL, INC.)
)
Petitioner,)
)
v.)
)
VILLAGE BOARD OF THE VILLAGE)
OF CASEYVILLE, ILLINOIS; VILLAGE)
OF CASEYVILLE, ILLINOIS; and)
CASEYVILLE TRANSFER STATION,)
LLC,)
)
Respondents.)

PCB 15-65
(Third Party Pollution Control
Facility Siting Appeal)

VILLAGE OF FAIRMONT CITY,)
ILLINOIS,)
)
Petitioner,)
)
v.)
)
VILLAGE OF CASYEVILLE, ILLINOIS)
BOARD OF TRUSTEES and)
CASEYVILLE TRANSFER STATION,)
LLC,)
)
Respondents.)

PCB-15-69
(Third Party Pollution Control
Facility Siting Appeal)
(Consolidated)

**RESPONDENT CASEYVILLE TRANSFER STATION, LLC AND RESPONDENT
VILLAGE OF CASEYVILLE, ILLINOIS' JOINT MEMORANDUM IN OPPOSITION
TO VILLAGE OF FAIRMONT CITY'S AND ROXANA LANDFILL, INC.'S
MOTIONS FOR RECONSIDERATION**

Now comes Respondent, Caseyville Transfer Station, LLC ("CTS"), by and through its attorney, Penni Livingston of the Livingston Law Firm, and Respondent Village of Caseyville Illinois, by and through its attorney J. Brian Manion of Weilmunster Law Group, P.C., and hereby states as follows in opposition to Petitioner Village of Fairmont City's Motion for Reconsideration:

1. Introduction

On December 18, 2014, the Illinois Pollution Control Board issued a thirty-six page Opinion and Order which affirmed the Village of Caseyville's approval of CTS's application for local siting approval of a municipal solid waste transfer station. Petitioners Roxana Landfill, Inc. ("Roxana") and the Village of Fairmont City ("Fairmont City") now bring motions to reconsider which simply rehash the same arguments that were duly considered and rejected by the Board. Petitioners cite no new evidence and or changes in the law, nor do they identify any error in the Board's application of existing law. The Motions for Reconsideration should be DENIED.

2. Argument

a. Legal Standard

The Board's procedural rules provide that, "[i]n ruling upon a motion for reconsideration, the Board will consider factors including new evidence, or a change in the law, to conclude that the Board's decision was in error." 35 Ill. Adm. Code 101.902. The Board has stated that "[t]he intended purpose of a motion for reconsideration is to bring to the court's attention newly discovered evidence which was not available at the time of hearing, changes in the law or errors in the court's previous application of the existing law." *Turlek v. Village of Summit* (July 21, 1994, PCB 94-19), citing *Koroghlyan v. Chicago Title & Trust Co.*, 213 Ill. App.3d 622, 572 N.E.2d 1154, 1158 (1st Dist. 1992) (*internal quotations omitted*). Where a party's motion for reconsideration merely contains the same arguments that the party made in previous filings, the Board routinely denies the motion for reconsideration. See, e.g. *State of Illinois v. Community Landfill Co.* (June 21, 2012), PCB 97-193; *Citizens Against Regional*

Landfill v. County Board of Whiteside County (April 22, 1993), PCB 92-156. This is the case here and such motions should be DENIED.

b. Petitioner Fairmont City Cites no New Facts, Changes in Law or New Arguments

In its Motion for Reconsideration, Fairmont City presents two arguments: First, that Petitioners' inability [or failure] to cross examine CTS representative John Siemsen rendered the local siting hearing fundamentally unfair, and second, that approval issued by the Caseyville Board was against the manifest weight of the evidence because the Village relied on information that Fairmont City characterizes as "unsworn statements." (See Fairmont Mot. pp. 2-11.)

i. Right to Cross Examine

With respect to Fairmont City's argument regarding the right to cross examination, the Board's Opinion and Order makes clear that Fairmont City already made this argument and that the argument was duly considered by the Board. (See Opinion and Order p. 20.) In its Motion to Reconsider, Fairmont City relies principally on the cases *Land & Lakes v. PCB*, 319 Ill. App.3d 41 (3d Dist. 2000); *Fox Moraine v. United City of Yorkville*, 2011 IL App. (2d) 100017; and *Stop the Mega-Dump v. County Board of DeKalb County*, 2012 IL App (2d) 110579 (2d Dist. 2012). (See Fairmont Mot. pp. 3-4.) In fact, the Board considered all of these cases in its consideration of the Petitioners' fundamental fairness arguments. (See Opinion and Order pp. 20-22.) After full consideration of Fairmont City's arguments, the Board stated as follows:

Petitioners were able to participate and offer testimony at the Village hearing. Petitioners have presented no evidence that they were unable to submit public comment or testimony in opposition to the Application. The Board is also not convinced that petitioners' inability to cross-examine CTS prejudiced petitioners' ability to present their argument at the Village hearing. The Board finds that

fundamental fairness in a local siting hearing under the Act does not require that the siting applicant testify and be subject to cross-examination.

(Opinion and Order p. 21.) Fairmont City's Motion for Reconsideration cites no new evidence or a change in the law, but instead merely repeats the same cross-examination argument that was already fully considered by the Board.

ii. Unsworn Statements

Petitioner Fairmont City repeats its argument that statements of Mr. Siemsen are "unsworn" and should be given less weight. As noted above, however, the Board specifically concluded that a siting applicant need not testify and be subject to cross-examination. (See Opinion and Order p. 21.) Even Fairmont City acknowledges that so called unsworn statements are considered evidence in a local siting proceeding. (See Fairmont Mot. p. 7.) Fairmont City's argument is essentially that the Board should reweigh the evidence, giving more weight to evidence favored by the Petitioners.

As the Board correctly noted, however, "[t]he local siting authority weighs the evidence, assesses witness credibility, and resolves conflicts in the evidence." (Opinion and Order p. 23, citing *Concerned Adjoining Owners v. PCB*, 288 Ill. App.3d 565, 576 (5th Dist. 1997).) The Board was "not free to reverse merely because the local siting authority credits one group of witnesses and does not credit the other." (Opinion and Order p. 23, citing *Waste Management of Illinois, Inc. v. PCB*, 187 Ill. App. 3d 79, 82 (4th Dist. 1989).) The Board applied the correct legal standard of review which requires that "the Board may not reweigh the evidence on the siting criteria to substitute its judgment for that of the local siting authority." (Opinion and Order p. 23, citing *Fairview Area Citizens Taskforce v. PCB*, 198 Ill. App. 3d 541, 550 (3rd Dist. 1990).)

Fairmont City's argument in its motion regarding "unsworn statements" is merely a request that the Board reweigh the evidence. The Board thoroughly evaluated each of the siting criteria at issue and correctly found that the Village's determinations were not against the manifest weight of the evidence. (*Id.* pp. 23-35.) Fairmont City's Motion for Reconsideration cites no new facts or changes in the law and should be denied. *See Turlek v. Village of Summit* (July 21, 1994, PCB 94-19)

c. Petitioner Roxana also Cites no New Facts, Changes in Law or New Arguments in its Motion for Reconsideration

Like Fairmont City, Roxana simply rehashes arguments that have already been fully considered by the Board. In particular, Roxana once again asserts that CTS's Application for Local Siting Approval was not "filed" on February 10, 2014. (Roxana Mot. p. 4-6.) This exact contention was raised by Roxana and fully considered by the Board. (*See* Opinion and Order pp. 15-17.) As the Board noted, Mr. Siemsen testified that he delivered the application on that date and there is no evidence that it was delivered on any other date. (*See id.* p. 17.) The Board has already concluded that there is no statutory requirement that the Village date stamp the application or that an applicant maintain a written receipt of the filing date. (*See id.*) Based on the evidence in the record, the Board already found that the Application was filed on February 10, 2014. (*See id.*)

Finally, similarly to Fairmont City, Roxana asserts that the Act's public hearing requirements are not met unless there is testimony under oath with the right to cross-examination. (*See* Roxana Mot. pp. 6-8.) Like Fairmont City, Roxana already made this argument in prior pleadings before the Board. (*See* Opinion and Order p. 19.) The Board gave careful consideration to Roxana's argument but concluded that "fundamental fairness in

a local siting hearing under the Act does not require that the siting applicant testify and be subject to cross-examination.” (*See id.* at 21.) Because Roxana merely repeats arguments already made to the Board, and identifies no new facts or changes in the law, Roxana’s Motion for Reconsideration should be denied. *See State of Illinois v. Community Landfill Co.* (June 21, 2012).

WHEREFORE, the Respondents, Caseyville Transfer Station, LLC and Village of Caseyville, Illinois, pray that:

- (1) Petitioner the Village of Fairmont City’s Motion for Reconsideration be DENIED;
- and
- (2) Petitioner Roxana Landfill, Inc.’s Motion for Reconsideration be DENIED.

Respectfully submitted,

CASEYVILLE TRANSFER STATION, LLC
and VILLAGE OF CASEYVILLE, ILLINOIS

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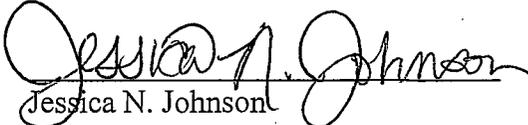
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CERTIFICATE OF SERVICE

I, Jessica N. Johnson, do certify that I caused to be electronically filed on this 5th day of February 2014, the foregoing Respondent Caseyville Transfer Station, LLC. and Respondent Village of Caseyville's Memorandum in Opposition to Petitioners Motions for Reconsideration by depositing the same electronically on the Illinois Pollution Control Board website as well as emailing the Motion to all parties.


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