

ILLINOIS POLLUTION CONTROL BOARD
July 12, 2007

FOX MORaine, LLC,)	
)	
Petitioner,)	
)	
v.)	PCB 07-146
)	(Pollution Control Facility
UNITED CITY OF YORKVILLE, CITY)	Siting Appeal)
COUNCIL)	
)	
Respondent.)	

ORDER OF THE BOARD (by G.T. Girard):

On June 27, 2007, Fox Moraine, LLC (petitioner) timely filed a petition asking the Board to review a May 24, 2007 decision of United City of Yorkville City Council (Yorkville). Yorkville's decision concerns petitioner's proposed siting of a pollution control facility in Yorkville, Kendall County. For the reasons below, the Board accepts petitioner's petition for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (2006)), before the Illinois Environmental Protection Agency can issue a permit to develop or construct a new or expanding pollution control facility, the permit applicant must obtain siting approval for the proposed facility from the local government (*i.e.*, the county board if in an unincorporated area or the governing body of the municipality if in an incorporated area). If the local government denies siting or approves siting with conditions, the siting applicant may appeal the local government's decision to the Board. *See* 415 ILCS 5/39(c), 40.1(a) (2006); 35 Ill. Adm. Code 107.

In this case, Yorkville denied petitioner's application to site a pollution control facility in Yorkville. Petitioner appeals on the grounds that Yorkville's decision was fundamentally unfair and the findings on criteria i, ii, iii, v, vi, vii, and ix (*see* 415 ILCS 5/39.2 (2006)) were against the manifest weight of the evidence. Petitioner's petition meets the content requirements of 35 Ill. Adm. Code 107.208.

The Board accepts the petition for hearing. Petitioner has the burden of proof. 415 ILCS 5/40.1(a) (2006); *see also* 35 Ill. Adm. Code 105.506. Hearings will be based exclusively on the record before Yorkville. Accordingly, though the Board hearing affords petitioner the opportunity to challenge the local government's reasons for its decision, information developed after the local government's decision typically is not admitted at hearing or considered by the Board. However, if relevant, evidence may be introduced on (1) the local government's jurisdiction over the siting application and (2) the fundamental fairness of the procedures used by the local government in reaching its decision. *See* 415 ILCS 5/40.1(a) (2006); Land & Lakes v. PCB, 319 Ill. App. 3d 41, 48, 743 N.E.2d 188, 194 (3d Dist. 2000).

Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40.1(a) (2006)), which only petitioner may extend by waiver (*see* 35 Ill. Adm. Code 107.504; 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, the petitioner “may deem the site location approved.” 415 ILCS 5/40.1(a) (2006). Currently, the decision deadline is October 25, 2007 (the 120th day after June 27, 2007). *See* 35 Ill. Adm. Code 107.504. The Board meeting immediately before the decision deadline is scheduled for October 18, 2007.

Yorkville must file the entire record of its proceedings within 21 days after the date of this order. *See* 35 Ill. Adm. Code 107.302. The record must comply with the content and certification requirements of 35 Ill. Adm. Code 107.304, 107.308. Petitioner must pay to Yorkville the cost of preparing and certifying the record. *See* 415 ILCS 5/39.2(n) (2006); 35 Ill. Adm. Code 107.306, 107.502(b).

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 12, 2007, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board