

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD NOV 08 2007

FOX MORAIN, LLC)
)
 Petitioner,)
)
 v.)
)
 UNITED CITY OF YORKVILLE, CITY)
 COUNCIL)
)
 Respondent.)

STATE OF ILLINOIS
Pollution Control Board

PCB No. 07-146
(Pollution Control Facility Siting
Appeal)

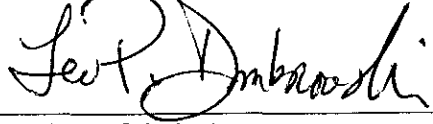
NOTICE OF FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on this 8th day of November, 2007, Leo P. Dombrowski, one of the attorneys for Respondent, United City of Yorkville, filed the original and four (4) copies of the attached **United City of Yorkville's Motion to Compel Return of Document Inadvertently Disclosed by Respondent**, with the Clerk of the Illinois Pollution Control Board, a copy of which is herewith served upon you.

Respectfully submitted,

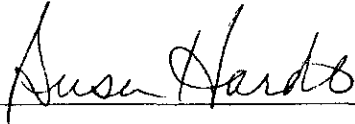
UNITED CITY OF YORKVILLE

By: 
One of their Attorneys

Anthony G. Hopp
Thomas I. Matyas
Leo P. Dombrowski
WILDMAN, HARROLD, ALLEN & DIXON LLP
225 West Wacker Drive, 30th Floor
Chicago, Illinois 60606
Phone: (312) 201-2000
Fax: (312) 201-2555
hopp@wildman.com
matyas@wildman.com
dombrowski@wildman.com

CERTIFICATE OF SERVICE

I, Susan Hardt, a non-attorney, certify that I served a copy of the foregoing **Notice of Filing and United City of Yorkville's Motion to Compel Return of Document Inadvertently Disclosed by Respondent**, to the Hearing Officer and all Counsel of Record listed on the attached Service list, by sending it via Electronic Mail and First Class Mail on November 8, 2007, before 5:00 p.m.



- [x] Under penalties as provided by law pursuant to ILL. REV. STAT. CHAP. 110 – SEC 1-109, I certify that the statements set forth herein are true and correct.

Fox Moraine, LLC v. United City of Yorkville
PCB No. 07-146

SERVICE LIST

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 W. Randolph Street
Chicago, Illinois 60601
hallorab@ipcb.state.il.us

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RECEIVED
CLERK'S OFFICE
NOV 08 2007
STATE OF ILLINOIS
Pollution Control Board

**BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD**

FOX MORaine, LLC)
)
 Petitioner,)
)
 v.) PCB No. 07-146
) (Pollution Control Facility Siting
) Appeal)
 UNITED CITY OF YORKVILLE, CITY)
 COUNCIL)
)
 Respondent.)

**MOTION TO COMPEL RETURN OF DOCUMENT
INADVERTENTLY DISCLOSED BY RESPONDENT**

Respondent, the United City of Yorkville ("Yorkville"), by its undersigned attorneys and pursuant to 35 Ill. Admin. Code §§ 101.500 and 101.502, hereby requests that the Hearing Officer compel Petitioner ("Fox Moraine") and all recipients to return a confidential legal bill that is protected under the attorney-client privilege and the work product doctrine and destroy all copies. In support of its Motion, Respondent states as follows:

BACKGROUND

1. Yorkville hired the law firm of Wildman, Harrold, Allen & Dixon LLP to provide it legal advice regarding the proposed siting of a landfill and to represent it if an appeal were filed.
2. Under Yorkville's Landfill Siting Ordinance, Fox Moraine is required to reimburse Yorkville's costs associated with the landfill siting process, including attorney's fees.
3. From time to time, Yorkville has sent Fox Moraine copies of invoices or other material reflecting siting costs incurred by Yorkville. See Olson Affidavit at ¶ 3, attached as Exhibit A.

4. On or about August 15, 2007, Mr. Bart Olson, Yorkville's Assistant City Administrator, sent several landfill-related invoices to Mr. Don Hamman at Fox Moraine. One of the invoices was a bill from Wildman Harrold, dated June 15, 2007, detailing tasks undertaken on behalf of Yorkville during Wildman's first month of representation (the "Invoice"). This is the only Wildman Harrold invoice Yorkville has sent to Fox Moraine. Olson Affidavit at ¶¶ 4-5, 8.

5. Olson had not been told to send any Wildman invoices to Fox Moraine, nor did he appreciate the possible significance of sharing a law firm invoice. He had no intention of waiving any privilege or protection that may attach to the Invoice. Olson Affidavit at ¶¶ 6-7.

6. On September 21, 2007, Wildman Harrold learned that the Invoice had been included in the mailing to Mr. Hamman. Olson Affidavit at ¶ 9.

7. By letter dated September 28, 2007, Wildman Harrold informed Mr. George Mueller, attorney for Fox Moraine, that the Invoice had been inadvertently sent and demanded its return and the destruction of any copies. (Sept. 28, 2007 letter is attached as Exhibit B.)

8. By letter dated October 10, 2007, Mr. Mueller informed Wildman Harrold that Fox Moraine refused to return the Invoice. (Oct. 10, 2007 letter is attached as Exhibit C.)

9. On October 29, 2007, Fox Moraine produced documents in response to Yorkville's First Set of Document Requests. Although not responsive to any document request, a copy of the Invoice was included in Fox Moraine's response and served on the Hearing Officer and all counsel.

10. By e-mail dated October 30, 2007, Wildman Harrold notified the Hearing Officer and all counsel that despite Yorkville's notification as to the protected and privileged nature of the Invoice, Fox Moraine had nevertheless produced the Invoice in its answers to document requests. Wildman Harrold asked that the recipients destroy any copies of the Invoice

inappropriately received from Fox Moraine. (Wildman Oct. 30, 2007 e-mail is attached as Exhibit D.)

11. Michael Blazer, on behalf of Kendall County, responded that he had assumed the Invoice had been inadvertently produced and had deleted it. (Blazer Oct. 30, 2007 e-mail is attached as Exhibit E.)

ARGUMENT

12. The Hearing Officer has the authority to rule on motions related to the inadvertent disclosure of documents. *See, e.g., Saline County Landfill, Inc. v. Illinois EPA*, PCB No. 04-117, 2004 Ill. Env. LEXIS 255 (May 6, 2004) (upholding, in part, Hearing Officer's ruling related to inadvertently disclosed documents). For the reasons set forth below, the Invoice is privileged and Yorkville's inadvertent and unintentional disclosure did not waive this protection.

A. The Invoice Is Protected as an Attorney-Client Communication and Is also Privileged under the Attorney Work Product Doctrine.

13. The attorney client privilege is applicable to "communications made in confidence by a client seeking legal advice of any kind to a professional legal advisor acting in that capacity." *Regan v. Garfield Ridge Trust & Savings Bank*, 220 Ill. App. 3d 1078, 1090 (2nd Dist. 1991). Billing records "may contain explanations for legal fees and may indicate the type of work done or matters discussed between the attorney and client." *People ex rel. Ulrich v. Stuckel*, 294 Ill. App. 3d 193, 201 (1st Dist. 1997). As such, bills containing explanations for legal fees may reveal the substance of confidential attorney client discussions and are subject to the attorney-client privilege. *Id.*, citing *Matter of Witness Before the Special March 1980 Grand Jury*, 729 F.2d 489, 495 (7th Cir. 1984); *see also In re Grand Jury Witness*, 695 F.2d 359, 362 (9th Cir. 1982) (the attorney-client privilege protects attorney's bills, ledgers, statements, time records and the like which reveal the nature of services provided).

14. The Invoice contains numerous explanations for legal fees that reveal the subject matter and direction of discussions between Yorkville and its attorneys. Further, many entries reveal the substance and nature of work conducted in preparing legal advice for Yorkville. As a result, the contents of the Invoice are protected by the attorney-client privilege.¹

15. Additionally, Supreme Court Rule 201(b)(2) provides that "material prepared by or for a party in the preparation" for litigation is protected work product when it contains the "theories, mental impressions, or litigation plans" of a party's attorney. *See also Mlynarski v. Rush Presbyterian-St. Luke's Medical Ctr.*, 213 Ill. App. 3d 427, 432 (1st 1991). The work-product doctrine is designed to protect the right of an attorney to thoroughly prepare his case and to preclude a less diligent adversary from taking undue advantage of the former's efforts. *Waste Management, Inc. v. International Surplus Lines Ins. Co.*, 144 Ill. 2d 178, 198 (Ill. 1991).

16. During Wildman's first month of representing Yorkville, it was unknown whether an appeal would be filed following Yorkville's approval or denial of Fox Moraine's application. However, appeals are common in landfill siting matters either by the applicant or by third-party objectors, no matter what the decision of the local siting authority. *See* 107.200(a & b) (siting applicants may appeal denial of application; third-party objectors may appeal approval of application).

17. The Invoice reveals the theories, mental impressions, and litigation plans of Yorkville's attorneys should an appeal be filed. It is therefore also protected under the work product doctrine.

¹ As noted, the Invoice has already been served on the Hearing Officer. If the Hearing Officer no longer has a copy, one will be made available for *in camera* inspection.

B. Yorkville's Inadvertent Disclosure of the Invoice Did Not Constitute Waiver.

18. It is undisputed that an employee of Yorkville mailed a copy of the Invoice to Fox Moraine. Mr. Olson's actions however, were taken without knowing that the Invoice was protected and without the intent to waive, on behalf of his employer, the protections afforded by the attorney-client privilege and the work-product doctrine. Submittal of the Invoice in un-redacted form was inadvertent and unintentional.

19. Under either the subjective or balancing tests applied by Illinois courts to inadvertent and unintentional disclosure of protected materials, Yorkville did not waive protection of the Invoice. *See People v. Murry*, 305 Ill. App. 3d 311 (2nd Dist. 1999); *Dalen v. Ozite Corp.*, 230 Ill. App. 3d 18 (2nd Dist. 1992).

20. In *Murry*, the Illinois Appellate Court stated "inadvertent disclosure can never result in a waiver of privilege because the client had no intention of waiving the privilege, and a client must knowingly waive the" protection. 305 Ill. App. 3d at 316.

21. The package in which the Invoice was included was assembled by a Yorkville employee without direction or authority to include the un-redacted Invoice or to waive any privilege associated with it. Since the City employee had no authority to waive the privilege, Yorkville cannot be found to have waived the protections afforded by the work-product doctrine or attorney-client privilege.

22. In *Dalen*, the Illinois Appellate Court applied a balancing test to the inadvertent disclosure, by a client, of its attorney's work product. The *Dalen* court considered the following factors: (1) the reasonableness of the precautions taken to prevent disclosure; (2) the time taken to rectify the error; (3) the scope of discovery; (4) the extent of the disclosure; and (5) the overriding issue of fairness. 230 Ill. App. 3d at 28.

23. The circumstances here show that Yorkville more than satisfies the requirements of the balancing test:

- a. Employees of Yorkville who are in positions of decision making authority are informed of the confidential nature of legal communications and documents. In this limited instance, a top down communication of the confidential nature of the Invoice failed to occur.
- b. Yorkville's attorneys acted rapidly to recover the inadvertently disclosed material as soon as they learned of the disclosure.
- c. The inadvertent initial disclosure was done by an employee acting without knowledge as to the protected nature of the Invoice.
- d. The inadvertent and unintentional disclosure was limited to a handful of pages.
- e. It would be fundamentally unfair to permit Petitioner to keep the Invoice because it reveals the subject matter and direction of discussions between Yorkville and its attorneys and further reveals the theories, mental impressions, and litigation plans of Yorkville's attorneys.²

C. Because the Invoice Is Protected and Its Disclosure Did Not Waive Protection, It Must Be Returned to Yorkville and All Copies Must Be Destroyed.

24. The Invoice submitted by the attorneys for Yorkville contains substantial information protected by both the attorney-client privilege and the work-product doctrine. Yorkville neither intended, nor demonstrated an intent, to purposefully disclose the un-redacted Invoice to Fox Moraine. Yorkville's inadvertent disclosure did not waive protections for the Invoice. It is therefore appropriate to order the return of the inadvertently disclosed Invoice and

² Fox Moraine was made aware of the unintended disclosure on September 28, 2007. Despite its knowledge that the status of the Invoice was in dispute, Fox Moraine, acting in bad faith, disclosed the protected material in its responses to Yorkville's first set of document requests. Yorkville's document requests were limited to items that supported Fox Moraine's petition for review and its contention that Yorkville City Council members conducted an unfair hearing or acted with bias. No part of the Invoice is responsive to Yorkville's document requests. Under the circumstances, Fox Moraine's production of the Invoice was mean-spirited and unprofessional.

destruction of all copies. *See, e.g., Jaffe v. Household Int'l, Inc.*, 237 F.R.D. 176, 185 (N.D. Ill. 2006) (where court granted motion to return inadvertently produced documents).

WHEREFORE, Respondent, United City of Yorkville, respectfully requests that the Hearing Officer grant its motion and order the return or destruction of all physical and electronic copies of the Invoice in the possession of the Petitioner and all recipients, and including:

- 1) Mr. Don Hamman and any other recipients at Fox Moraine;
- 2) Mr. George Mueller and any other recipients at his law firm;
- 3) Mr. Charles Helsten and any other recipients at his law firm;
- 4) Mr. Michael Blazer and any other recipients at his law firm;
- 5) Mr. Eric Weis and any other recipients at the office of the Kendall County State's Attorney;
- 6) The Hearing Officer and any other recipients at the Board;

(collectively, the "Recipients") and furthering ordering the Recipients to retrieve the Invoice from all persons who have been provided with the Invoice or a copy thereof, if any additional such persons exist, and for further relief as the Hearing Officer deems just and fair.

Respectfully submitted,

UNITED CITY OF YORKVILLE, CITY
COUNCIL

By: 
One of their Attorneys

Dated: November 8, 2007

Anthony G. Hopp
Thomas I. Matyas
Leo P. Dombrowski
WILDMAN, HARROLD, ALLEN & DIXON LLP
225 West Wacker Drive
Chicago, Illinois 60606
Telephone: (312) 201-2000
Facsimile: (312) 201-2555
hopp@wildman.com
matyas@wildman.com
dombrowski@wildman.com

EXHIBIT A

Exhibit A

**BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD**

FOX MORAINE, LLC)	
)	
Petitioner,)	
)	PCB No. 07-146
v.)	(Pollution Control Facility Siting
)	Appeal)
UNITED CITY OF YORKVILLE, CITY)	
COUNCIL)	
)	
Respondent.)	

**AFFIDAVIT OF BART OLSON IN SUPPORT OF RESPONDENT'S MOTION TO
COMPEL RETURN OF INADVERTENTLY DISCLOSED DOCUMENT**

Bart Olson, being first duly sworn, deposes and states under oath as follows:

1. I am over 18 years of age. I make this Affidavit upon my own personal knowledge and I believe that I can testify to each and every fact that is contained in this Affidavit under oath. I have carefully reviewed the facts in this Affidavit and state under oath that all of the facts in this Affidavit are true and correct. I have had sufficient time to read, review, consider, and edit this Affidavit and I am signing this Affidavit with the understanding that it will be used in support of a Motion to Compel being filed by the United City of Yorkville ("Yorkville") in this landfill appeal.
2. I have been the Assistant City Administrator for Yorkville since March 2006.
3. On two occasions, I have sent bills showing costs and expenses incurred by Yorkville related to Fox Moraine's landfill siting application to Fox Moraine for payment. The first was in June 2007 and the second was in August 2007.
4. As to the second occasion, in or around August of 2007, I received a request from Fox Moraine asking that recent bills related to its landfill siting application be forwarded to it

for payment. On or around August 15, 2007, I mailed a package of bills to Mr. Don Hamman at Fox Moraine.

5. Included in this package of bills was an invoice from the law firm of Wildman, Harrold, Allen & Dixon LLP, dated June 15, 2007, detailing legal services rendered on behalf of Yorkville with respect to Fox Moraine's landfill siting application (the "Invoice").

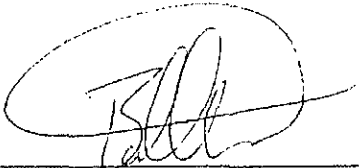
6. I had not been instructed to forward the Invoice to Fox Moraine, and I did this without the knowledge of Wildman Harrold or the Yorkville City Council.

7. I was not aware of either the confidential nature of, or the significance of disclosing, the Invoice to any person or entity, including Fox Moraine. I had no intention of waiving any privilege or protection that may be associated with the Invoice.

8. This is the only invoice from Wildman Harrold that I have sent to Fox Moraine.

9. On September 21, 2007 I informed Wildman Harrold that I had mailed a copy of the Invoice to Don Hamman at Fox Moraine.

AFFIANT SAYETH FURTHER NOT.



Bart Olson

SUBSCRIBED AND SWORN TO
BEFORE ME THIS 8th DAY OF
November, 2007



NOTARY PUBLIC



Exhibit B

Wildman, Harrold, Allen & Dixon LLP
225 West Wacker Drive
Chicago, Illinois 60606-1229
312-201-2000
312-201-2555 fax
www.wildmanharrold.com



Wildman Harrold
Attorneys and Counselors

September 28, 2007

**VIA EMAIL and
REGULAR MAIL**

Mr. George Mueller
Mueller Anderson, P.C.
609 Etna Road
Ottawa, Illinois 61350
george@muelleranderson.com

Re: Return of Invoice

Dear Mr. Mueller:

We have just learned that on or about August 15, 2007, our client, the United City of Yorkville ("Yorkville"), sent several invoices to Don Hamman at Fox Moraine, LLC relating to the landfill siting application. One of the invoices was an un-redacted copy of a legal bill submitted by Wildman Harrold to Yorkville (the "Invoice"). The Invoice was sent inadvertently and without knowledge as to the possible significance of sharing a law firm invoice. It contains confidential information that is protected under the attorney work product and attorney-client privileges.

The accidental disclosure by Yorkville did not waive any privilege. *See, e.g., People v. Murry*, 305 Ill. App. 3d 311, 316 (2nd Dist. 1999) ("[I]nadvertent disclosure can never result in a waiver of the privilege because the client had no intention of waiving the privilege, and a client must knowingly waive the privilege"). Additionally, if Mr. Hamman has not forwarded the Invoice to you, you are hereby placed on notice of its confidential nature and the inadvertence of its disclosure. You are prohibited from reviewing or using its contents.

We ask that you or Mr. Hamman return the Invoice immediately to the undersigned, that no one make any copies, and that any existing copies be destroyed. We also ask that you confirm that you have followed the requests in this letter by Wednesday, October 3, 2007. If Fox Moraine does not agree with our requests, we will present this matter to the Hearing Officer.

Mr. George Mueller
September 28, 2007
Page 2



We look forward to your cooperation on this matter. Please contact me if you have any questions.

Very truly yours,

WILDMAN, HARROLD, ALLEN & DIXON LLP

A handwritten signature in black ink, appearing to read 'Leo P. Dombrowski'. The signature is fluid and cursive, with a prominent initial 'L' and 'P'.

Leo P. Dombrowski

LPD/sh

Exhibit C

George Mueller
Trené Pinnell Anderson

October 10, 2007

Mr. Leo Dombrowski
Wildman, Harrold, Allen & Dixon LLP
225 West Wacker Drive
Chicago, Illinois 60606-1229

RE: City of Yorkville v. Donald Hamman
Kendall County, Illinois 2007 OV 43

Dear Mr. Dombrowski:

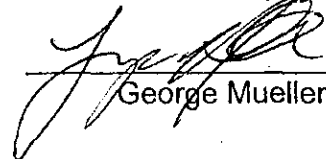
I am in receipt of your letter of September 28, 2007, asking for return of an invoice sent to my client on August 15, 2007. I disagree with you that the invoice was sent inadvertently as it was intentionally sent to Mr. Hamman with a request for payment. It would appear therefore, that your client, the City of Yorkville, waived any privilege that might have existed by requesting payment for this invoice and enclosing a copy of the same as documentation in support of the request. I further believe that People v. Murry is not authority for your proposition as the case was not decided on the issue of whether inadvertent disclosures can be a waiver of privilege.

I also fail to understand what this issue has to do with the hearing officer (presumably the hearing officer in the pending PCB appeal). This is not an issue in the Pollution Control Board case.

Lastly, your letter fails to state whether the City of Yorkville is still looking for payment of this by Mr. Hamman. Can I assume from your failure to address this issue that the city of Yorkville has abandoned its request for payment?

Very truly yours,

Mueller Anderson, P.C.


George Mueller

GM/st
cc: Don Hamman

Exhibit D

Dombrowski, Leo

From: Dombrowski, Leo
Sent: Tuesday, October 30, 2007 3:37 PM
To: 'Charles F. Helsten'; 'bhalloran@atg.state.il.us'; 'mblazer@enviroatty.com'; 'gmueller21@sbcglobal.net'; 'michael.roth@icemiller.com'; 'eweis@co.kendall.il.us'
Cc: Matyas, Thomas; Hopp, Anthony
Subject: RE: Fox Moraine LLC v. United City of Yorkville, City Council (PCB No. 07-146) Answers to Discovery

Hearing Officer and Counsel:

In September 2007, we learned that our client, the United City of Yorkville, sent several invoices to Don Hamman at Fox Moraine, LLC relating to the landfill siting application. One of the invoices was an un-redacted copy of a legal bill submitted by Wildman Harrold to Yorkville. The unredacted invoice was sent inadvertently and without any intent to waive any applicable privilege. The invoice was intended to be confidential and is protected under the attorney work product doctrine and the attorney-client privilege.

We quickly notified counsel for Fox Moraine of the inadvertent disclosure of the invoice and demanded its return. Despite knowledge of the confidential nature of the document and its inadvertent production, Fox Moraine has inappropriately refused to return it.

As part of its answers to the City's document requests, Fox Moraine produced the invoice, despite the City's claim of privilege. We ask that you destroy any electronic or paper copies of the invoice you have inappropriately received from Fox Moraine. We thank you for your cooperation and further ask that you confirm that you have complied with this request.

We will present this matter to the Hearing Officer for resolution as soon as possible.

Leo Dombrowski

Leo P. Dombrowski
Wildman Harrold Allen & Dixon LLP
225 West Wacker Drive
Chicago, IL 60606-1229
(312) 201-2562 (phone)
(312) 416-4735 (direct fax #)
(312) 201-2555 (firm fax #)
dombrowski@wildman.com

(Asst. - Sue Hardt)
(312) 201-2266

-----Original Message-----

From: Joan Lane [mailto:jlane@hinshawlaw.com] On Behalf Of Charles F. Helsten
Sent: Monday, October 29, 2007 3:16 PM

To: bhalloran@atg.state.il.us; mblazer@enviroatty.com; gmueller21@sbcglobal.net; michael.roth@icemiller.com;
eweis@co.kendall.il.us; Dombrowski, Leo
Subject: Fox Moraine LLC v. United City of Yorkville, City Council (PCB No. 07-146) Answers to Discovery

CONFIDENTIAL AND PRIVILEGED

Gentlemen:

Please find attached hereto Petitioner's Answers to United City of Yorkville's First Set of Interrogatories and First Set of Document Requests.

Charles F. Helsten
HINSHAW & CULBERTSON LLP
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389

Phone: 815-490-4906
Fax: 815-490-4901
cheisten@hinshawlaw.com

Exhibit E

Dombrowski, Leo

From: Michael S. Blazer [mblazer@enviroatty.com]
Sent: Tuesday, October 30, 2007 3:43 PM
To: Dombrowski, Leo; Charles F. Helsten; bhalloran@atg.state.il.us; gmueller21@sbcglobal.net; michael.roth@icemiller.com; eweis@co.kendall.il.us
Cc: Matyas, Thomas; Hopp, Anthony
Subject: RE: Fox Moraine LLC v. United City of Yorkville, City Council (PCB No. 07-146) Answers to Discovery

I assumed as much and have deleted it.

Sent via wireless e-mail
Michael S. Blazer
mblazer@enviroatty.com

-----Original Message-----

From: "Dombrowski, Leo" <dombrowski@wildman.com>
To: "Charles F. Helsten" <chelsten@hinshawlaw.com>; bhalloran@atg.state.il.us; mblazer@enviroatty.com; gmueller21@sbcglobal.net; michael.roth@icemiller.com; eweis@co.kendall.il.us
Cc: "Matyas, Thomas" <matyas@wildman.com>; "Hopp, Anthony" <Hopp@wildman.com>
Sent: 10/30/07 1:37 PM
Subject: RE: Fox Moraine LLC v. United City of Yorkville, City Council (PCB No. 07-146) Answers to Discovery

Hearing Officer and Counsel:

In September 2007, we learned that our client, the United City of Yorkville, sent several invoices to Don Hamman at Fox Moraine, LLC relating to the landfill siting application. One of the invoices was an un-redacted copy of a legal bill submitted by Wildman Harrold to Yorkville. The unredacted invoice was sent inadvertently and without any intent to waive any applicable privilege. The invoice was intended to be confidential and is protected under the attorney work product doctrine and the attorney-client privilege.

We quickly notified counsel for Fox Moraine of the inadvertent disclosure of the invoice and demanded its return. Despite knowledge of the confidential nature of the document and its inadvertent production, Fox Moraine has inappropriately refused to return it.

As part of its answers to the City's document requests, Fox Moraine produced the invoice, despite the City's claim of privilege. We ask that you destroy any electronic or paper copies of the invoice you have inappropriately received from Fox Moraine. We thank you for your cooperation and further ask that you confirm that you have complied with this request.

We will present this matter to the Hearing Officer for resolution as soon as possible.

Leo Dombrowski

Leo P. Dombrowski
Wildman Harrold Allen & Dixon LLP
225 West Wacker Drive
Chicago, IL 60606-1229
(312) 201-2562 (phone)
(312) 416-4735 (direct fax #)
(312) 201-2555 (firm fax #)
dombrowski@wildman.com

(Asst. - Sue Hardt)
(312) 201-2266

-----Original Message-----

From: Joan Lane [mailto:jlane@hinshawlaw.com] On Behalf Of Charles F. Helsten
Sent: Monday, October 29, 2007 3:16 PM
To: bhalloran@atg.state.il.us; mblazer@enviroatty.com;
gmuellet21@sbcglobal.net; michael.roth@icemiller.com;
eweis@co.kendall.il.us; Dombrowski, Leo
Subject: Fox Moraine LLC v. United City of Yorkville, City Council (PCB No. 07-146) Answers to Discovery

CONFIDENTIAL AND PRIVILEGED

Gentlemen:

Please find attached hereto Petitioner's Answers to United City of Yorkville's First Set of Interrogatories and First Set of Document Requests.

Charles F. Helsten
HINSHAW & CULBERTSON LLP
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389

Phone: 815-490-4906
Fax: 815-490-4901
chelsten@hinshawlaw.com

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