

ILLINOIS POLLUTION CONTROL BOARD
June 5, 2008

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

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

On May 1, 2008, United City of Yorkville City Council (Yorkville) filed a motion (Mot.) to dismiss this pollution control facility siting appeal. On May 20, 2008, Fox Moraine, LLC (Fox Moraine) filed a response to the motion (Resp.). For the reasons articulated below, the Board denies the motion to dismiss.

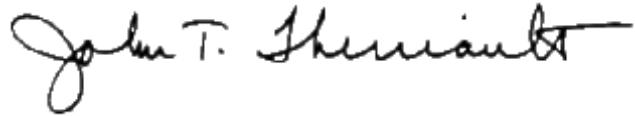
Yorkville's basis for the motion to dismiss is that Fox Moraine has failed to pay for the cost of preparing and certifying the record. Mot. at 1. Yorkville maintains that pursuant to Section 39.2(n) of the Environmental Protection Act (Act) (415 ILCS 5/39.2(n) (2006)), Fox Moraine is required to make such payment and if the payment is not made, the Board has the authority to dismiss the proceeding. Mot. at 2. Yorkville asserts that the payment should have been made six months ago. Mot. at 3.

Fox Moraine provided a copy of a check, paying the costs on May 6, 2008. Resp. at 2. Fox Moraine argues that as payment has been made, the motion should be dismissed as moot. *Id.*

The Board is concerned that the payment of the costs for preparing and certifying the record was not timely. However, at this time, the costs have been paid. Therefore, the Board denies the motion to dismiss.

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 June 5, 2008, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board