

ILLINOIS POLLUTION CONTROL BOARD
November 20, 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):

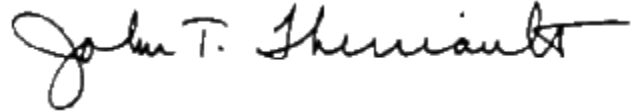
On September 23, 2008, Fox Moraine, LLC (petitioner) filed a “First Amended Petition for Review” and on September 26, 2008, a “Second Amended Petition for Review”. Neither the respondent nor the intervenor has filed a response to either amended petition.

In certain instances the Board allows amended petitions to be filed (*e.g.*, Wei Enterprises v. IEPA, PCB 04-83 (Nov. 20, 2003); Randall Industries, Inc. v. IEPA, PCB 03-129 (Sept. 18, 2003); Landfill 33 LTD. v. Effingham County Board et al., PCB 0-43 (Oct. 17, 2002); St. Clair Properties Development, Inc. v. IEPA, PCB 98-72 (Nov. 20, 1997)). However, the instances where the Board allows for amended petitions are generally instances where the initial petition lacks pertinent information required by Board rules and the Board allows the petitioner a set amount of time to correct the deficiencies. The Board has declined to accept amended petitions that fall outside this narrow exception. *See* XCTC Limited Partnership v. IEPA, PCB 01-46 and PCB 01-51 (consol.) (Feb. 5, 2004).

In this case, the respondent and intervenor have not objected to the amended petitions and thus have waived any objection to the Board allowing the amended petitions. *See* 35 Ill. Adm. Code 101.500(d). Furthermore, a review of both the first and second amended petitions indicate that, while alleging additional facts and circumstances surrounding the grounds for appeal, no new grounds for appeal are cited. Therefore, the Board will accept both the amended petitions. The Board notes that generally the filing of the amended petition for review by the applicant in a landfill siting appeal can recommence the decision period in this matter. *See* 35 Ill. Adm. Code 107.504 (“the Board will issue its decision within 120 days after the proper filing of a petition for review”). However, the decision date has already been waived beyond the decision period to April 16, 2009, and that decision deadline will remain unless waived again by the petitioner.

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 November 20, 2008, by a vote of 5-0.

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