

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

FOX MORaine, LLC,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB No. 07-146
	)	
UNITED CITY OF YORKVILLE, CITY	)	
COUNCIL,	)	
	)	
Respondent.	)	

**FOX MORaine’S RESPONSE TO YORKVILLE’S MOTION IN LIMINE #7**

NOW COMES Fox Moraine Landfill, LLC, hereinafter (“Fox Moraine”), by its attorneys, George Mueller and Charles Helsten, and in opposition to Yorkville’s Motion in Limine #7, states as follows:

**Introduction**

Yorkville’s Motion #7 seeks to exclude from the hearing, Fox Moraine’s use of pleadings from lawsuits filed by Yorkville or on its behalf, against Fox Moraine or its principals. Although Yorkville acknowledges it initiated the lawsuits against Fox Moraine or its principals, Yorkville nevertheless alleges that the pleadings evidencing those lawsuits “have no relevance to this appeal” and should therefore be excluded. (Motion at ¶¶ 1,2, 3). Because the pleadings at issue provide evidence of the decision-maker’s bias and animus toward the Applicant, they are material and relevant to the appeal and should not be excluded.

**Argument**

Although there is a presumption that administrative decision makers are persons of “conscience and intellectual discipline,” who are able to fairly and objectively judge a matter based on its own facts, and may be presumed to set aside their own personal views, a claimant may nevertheless show bias or prejudice if the evidence might lead a disinterested observer to

conclude that the administrative body, or its members, had in some measure adjudged the facts as well as the law of the case in advance of hearing it. *Rochelle Waste Disposal L.L.C. v. City Council of the City of Rochelle, Illinois*, PCB 03-218 (Apr. 15, 2004); *Danko v. Board of Trustees of City of Harvey Pension Bd.*, 240 Ill.App.3d 633, 642, 608 N.E.2d 333, 339, 181 Ill.Dec. 260, 266 (1<sup>st</sup> Dist. 1992); *see also Waste Management of Illinois, Inc. v. Pollution Control Bd.*, 175 Ill.App.3d 1023, 1040, 530 N.E.2d 682, 696, 125 Ill.Dec. 524, 538 (2 Dist. 1988)(citing *E & E Hauling, Inc. v. Pollution Control Bd.*, 116 Ill.App.3d 586, 598, , 451 N.E.2d 555, 71 Ill.Dec. 587 (2<sup>nd</sup> Dist. 1983), *aff'd* 107 Ill.2d 33, 481 N.E.2d 664, 89 Ill.Dec. 821 (1985)).

At the very heart of this appeal is the question of whether the City Council of Yorkville harbored and in fact demonstrated bias toward Fox Moraine or its principals, or otherwise violated the principles of fundamental fairness with respect to the landfill siting application filed by Fox Moraine.

The rules provide that evidence is admissible if it is “material, relevant, and would be relied upon by prudent persons in the conduct of serious affairs, unless the evidence is privileged.” 35 Ill.Adm.Code 101.626(a). Because the question of bias is front and center in this appeal, evidence that demonstrates a pattern of animus or bias by the decision-maker is clearly material and relevant, and is the kind of evidence that would be relied upon by prudent persons in assessing whether the City Council was impartial and unbiased toward Fox Moraine.

The pleadings listed in Yorkville’s Motion in Limine #7 provide concrete evidence of Yorkville’s pattern of animus and bias toward Fox Moraine and/or its principals, and reveal, in a very tangible way, the extent to which Yorkville has actively pursued a vendetta against Fox Moraine and/or its principals, which has included, but is not limited to, the filing of a series of spurious and baseless lawsuits and claims against a Fox Moraine principal, some of which

actions have already been dismissed as lacking any merit. Evidence of the lawsuits filed by Yorkville against Fox Moraine and/or its principals are, therefore, material and relevant to the question of whether Fox Moraine was denied the opportunity to be heard by an unbiased and impartial decision-maker on its application for siting approval, and whether the proceedings to consider the application met the standards of fundamental fairness.

**Conclusion**

The Act mandates that the Board consider the fundamental fairness of the procedures used by the respondent in reaching its decision. 415 ILCS 5/40.1(a) (2006). In that regard, it is axiomatic that a party appearing before an administrative tribunal has the right to be judged by an unbiased decision-maker. *See, e.g., Ferguson v. Ryan*, 251 Ill.App.3d 1042, 1049, 623 N.E.2d 1004, 1009, 191 Ill.Dec. 414, 419 (3<sup>rd</sup> Dist.1993). Here, a lack of fundamental fairness is at the heart of the appeal, and it is therefore crucial to determine whether there is evidence that the Yorkville City Council was, in fact, a biased decision-maker.

Where, as here, there is evidence that might lead a disinterested observer to conclude that the decision-maker was biased toward the Applicant, and that the decision-maker based its decision not upon the law and the facts, but instead upon bias and personal animus, that evidence will help the trier of fact to decide the core question of fairness.

WHEREFORE, Fox Moraine respectfully requests that the Hearing Officer deny Yorkville's Motion in Limine #7.

Dated: \_\_\_\_\_

Respectfully submitted,  
On behalf of FOX MORaine, LLC

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One of Its Attorneys

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