

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
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OCT 17 2014

ROXANA LANDFILL, INC.)
)
Petitioner,)
)
v.)
)
VILLAGE BOARD OF THE VILLAGE OF)
CASEYVILLE, ILLINOIS; VILLAGE OF)
CASEYVILLE, ILLINOIS; and)
CASEYVILLE TRANSFER STATION, L.L.C.)
)
Respondents.)
_____)

STATE OF ILLINOIS
Pollution Control Board

No. PCB 15-65
(Third Party Pollution Control
Facility Siting Appeal)

 ORIGINAL

VILLAGE OF FAIRMONT CITY, ILLINOIS,)
)
Petitioner,)
)
v.)
)
VILLAGE OF CASEYVILLE, ILLINOIS BOARD)
OF TRUSTEES and CASEYVILLE TRANSFER)
STATION, L.L.C.)
)
Respondents.)

No. PCB 15-69
(Third Party Pollution Control
Facility Siting Appeal)
(Consolidated)

**RESPONSE TO MOTION TO HEARING OFFICER TO CLARIFY THE
SEPTEMBER 30, 2014 ORDER AND MOTION FOR SANCTIONS**

NOW COMES, Respondent, Village of Caseyville, Illinois, by and through its attorney and for its Response to Motion to Hearing Officer to Clarify the September 30, 2014 Order and Motion for Sanctions, states as follows:

1. During the September 30, 2014 telephone conference, counsel for Roxana Landfill, Inc., stated that the witnesses petitioner intended to depose were Leslie McReynolds, Rob Watt, Trustee Wally Abernathy, and Keri Davis Kary, a village administrative employee. Counsel for the Village of Caseyville, Illinois specifically inquired as to whether petitioner

wanted to depose Ker Davis Cary or Trustee Kerry Davis. Petitioner's counsel responded that she intended to depose Keri Davis Cary.

2. Petitioner's counsel wrongfully suggests that the record on appeal was not timely filed. Petitioner specifically sites rule Illinois Pollution Control Board Rule Section 101.300 for the proposition that if "the postmark date proceeds the filing deadline, the document will be deemed filed on the postmark date..." However, petitioner neglects to site the first part of rule 101.300 which provides "computation of any period of time prescribed in the act, other applicable law, or these rules will begin the first calendar day following the day on which the act, event or development occurs..." Accordingly, the board's order which provided "the Village must file the entire record of its proceeding within 21 days after the date of this order." Required that the record be filed on October 10, 2014 (21 days after September 19, 2014). The record on appeal was in fact deposited in the U.S. Mail on October 9, 2014. See Certificate of Record on Appeal attached hereto as Exhibit A.

3. The hearing officer's order attached as Exhibit A to Petitioner's Motion expressly provides "Depositions will be scheduled for October 16-17, 2014. "This language is mandatory. Despite the order being entered on September 30, 2014, Petitioner failed to issue any subpoenas or take any further action to move forward with depositions. Petitioner failed to act diligently given the short timeframe between the Court scheduling order of September 30, 2014 and the hearing date of October 28, 2014.

4. On Wednesday, October 8, 2014, counsel for Petitioner sent an email seeking to change the dates and the persons to be deposed. See email of Wednesday, October 8, attached as Exhibit B. Respondent's counsel immediately wrote back indicating that the agreed to date for depositions was Friday, October 17.

5. On Wednesday, October 8, 2014, Respondent's attorney also wrote to Petitioner's attorney to ask whether Kerry Davis or Kari Davis Cary was being sought to be deposed. Petitioner's attorney did not respond.

6. On October 9, 2014, Attorney Livingston sent an email to all counsel and the hearing officer. Attorney Livingston's email again reiterated that we did not know which Keri Davis Petitioner was seeking to depose. Again, Petitioner did not respond. On Tuesday, October 14, 2014, Petitioner's counsel contacted Respondent's counsel and for the first time indicated that Petitioner was seeking to depose Trustee Kerry Davis. Shortly thereafter, Respondent's attorney emailed Petitioner's attorney notifying Petitioner's attorney of the unavailability of Trustee Kerry Davis and Rob Watt. The email of Tuesday, October 14, 2014 attached hereto as Exhibit E.

7. That at 8:49 p.m. on Tuesday, October 14, 2014, counsel for Petitioner's sent an email with attached subpoenas for the deposition of Kerry Davis at 11:00 a.m. on October 21, 2014, the deposition of Rob Watt at 9:00 a.m. on October 22, 2014, the deposition of Leslie McReynolds at 11:00 a.m. on October 22, 2014, and the deposition of Walter Abernathy at 9:00 a.m. on October 21, 2014. See attached as Exhibit F.

8. On Wednesday, October 15, 2014, at 7:48 a.m., counsel for Respondent wrote an email to counsel for Petitioner requesting that Petitioner withdraw the subpoenas for discovery depositions because the subpoenas violated the hearing officer's order of September 30, 2014, which provided that the depositions will be done on October 16 and 17, 2014, and the subpoenas violated the Board's Rules. Specifically, Rule 101.616(c) provides, "all discovery must be completed at least ten days prior to the scheduled hearing in the proceeding unless the hearing officer orders otherwise." (Attached hereto as Exhibit G)

9. In this case, there has been no hearing officer order authorizing in discovery within ten days of the hearing. Accordingly, there is absolutely no basis whatsoever for Petitioner to issue subpoenas for discovery after October 18, 2014, unless the hearing officer enters an order allowing such discovery. As of the filing of this response, there has been no such order entered by the hearing officer.

10. Petitioner's counsel has failed to exercise diligence in conducting discovery within the parameters provided by the hearing officer. Petitioner's counsel could have made a timely request to the hearing officer to amend the discovery schedule but Petitioner chose not to do so.

11. Petitioner's counsel has offered no justification or reason why deposition were not conducted during the dates agreed to by the parties and as ordered by the hearing officer.

12. Sanctions should be imposed on Petitioner for the willful and intentional violation of both the hearing officer's order and violation of the Board's Rules. Respondent acted reasonably in calling attention the fact the subpoenas were improper, in violation of the Hearing Officer's September 30, 2014 Order, and in violation of the Board's Rules.

13. Despite allowing Petitioner's counsel the opportunity to withdraw the improper subpoenas, Petitioner does not withdraw the improper subpoenas.

14. Instead, Petitioner's counsel waited until shortly after the noon deadline to withdraw the improper subpoenas to seek an emergency order to allow the improper subpoenas.

15. Petitioner has demonstrated bad faith by wrongfully suggesting that Respondent did not file the Record on Appeal in compliance with the Board's Order.

16. Petitioner has demonstrated bad faith by intentionally and willfully violating the Hearing Officer's Order of September 30, 2014.


17. Petitioner has demonstrated bad faith by failing to withdraw improper subpoenas.

18. Respondent requests that Petitioner be sanctioned for its intentional and willful violation of the hearing officer's September 30, 2014 Order and the Board's Rules, including being barred from conducting any further discovery and being ordered to pay Respondent's attorney's fees and costs incurred to address these matters.

WHEREFORE, the Respondent, Village of Caseyville, Illinois, respectfully requests that Petitioner Roxana Landfill, Inc.'s Motion to Hearing Officer to Clarify the September 30, 2014 Order be denied and that sanctions be imposed against Petitioner, Roxana Landfill, Inc., including Petitioner being barred from conducting any further discovery and that Petitioner be ordered to pay Respondent's reasonable attorney's fees and costs in responding herein, and for any further relief which may be deemed just and equitable under the circumstances.

Respectfully Submitted,

WEILMUNSTER LAW GROUP, P.C.

BY: 
J. Brian Manion
IL No. 06283445

3201 West Main Street
Belleville, IL 62226
(618) 257-2222 – phone
(618) 257-2030 – fax

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above cause by enclosing same in an envelope addressed to such attorneys at their business address as disclosed by the pleadings of record herein, with postage fully prepaid, and by depositing said envelope in a U.S. Post Office Mail Box in Belleville, Illinois, on the 15th day of October, 2014.

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 N. Grand Avenue East
P.O. Box 19274
Springfield, IL 62794-9274

Donald J. Moran
Pedersen & Houpt
161 N. Clark Street
Suite 2700
Chicago, IL 60601

Jennifer J. Sackett Pohlenz
Clark Hill PLC
150 N. Michigan Avenue
Suite 2700
Chicago, IL 60601

Penni S. Livingston
Livingston Law Firm
5701 Perrin Road
Fairview Heights, IL 62208

Robert J. Sprague
Sprague & Urbana
26 E. Washington Street
Belleville, Illinois 62220



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

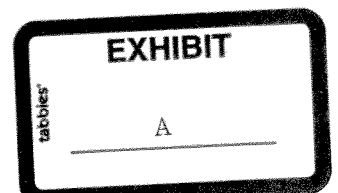
ROXANA LANDFILL, INC.)	
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Petitioner,)	
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v.)	No. PCB 15-65
)	(Third Party Pollution Control
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CASEYVILLE, ILLINOIS; VILLAGE OF)	
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<hr style="border: 0.5px solid black;"/>		
VILLAGE OF FAIRMONT CITY, ILLINOIS,)	
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OF TRUSTEES and CASEYVILLE TRANSFER)	(Consolidated)
STATION, L.L.C.)	
)	
Respondents.)	

CERTIFICATE OF RECORD ON APPEAL

COMES NOW Rob Watt, as the duly elected Village Clerk of the Village of Caseyville, Illinois, and hereby certifies that the record contents as set forth at 35 Ill. Admin. Code 107.304 consist of the following documents:

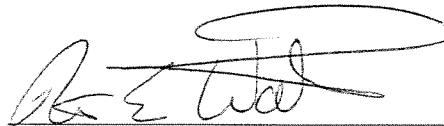
1. Caseyville Waste Transfer Station, LLC. Siting Application
 - Volume 1: A0001-A0100
 - Volume 2: A0101-A0552 (A0327-A0336 intentionally omitted)
 - Volume 3: A0553-A1004 (A0781-A0880 intentionally omitted)
 - Volume 4: A1005-A1565

2. Public Comments
 - B0001-B0024



3. Entry of Appearances
C0001-C0004
4. Caseyville Illinois Public Hearing
E0001-E0329
5. Objection Filings and Rebuttal – Caseyville Waste Transfer Station
F0001-F0208
6. Special Meeting to approve Sitting Application by Caseyville Waste Transfer Station, LLC.
G0001-G0030

On October 9, 2014, I transmitted the original record along with two paper copies and one electronic copy via first class U.S. Mail to John Therriault, Clerk of the Pollution Control Board, James R. Thompson Center, 100 W. Randolph St., Suite 11-500, Chicago, IL 60601.

A handwritten signature in black ink, appearing to read "Rob Watt", written over a horizontal line. The signature is stylized and includes a large loop at the end.

Rob Watt, Village Clerk
Village of Caseyville, Illinois

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above cause by enclosing same in an envelope addressed to such attorneys at their business address as disclosed by the pleadings of record herein, with postage fully prepaid, and by depositing said envelope in a U.S. Post Office Mail Box in Belleville, Illinois, on the 9th day of October, 2014.

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 N. Grand Avenue East
P.O. Box 19274
Springfield, IL 62794-9274

Donald J. Moran
Pedersen & Houpt
161 N. Clark Street
Suite 2700
Chicago, IL 60601

Jennifer J. Sackett Pohlenz
Clark Hill PLC
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Suite 2700
Chicago, IL 60601

Penni S. Livingston
Livingston Law Firm
5701 Perrin Road
Fairview Heights, IL 62208

Robert J. Sprague
Sprague & Urbana
26 E. Washington Street
Belleville, Illinois 62220

Leslie Reynolds

J. Brian Manion

From: J. Brian Manion <jbm@weilmuensterlaw.com>
Sent: Wednesday, October 08, 2014 4:36 PM
To: 'Pohlenz, Jennifer Sackett'; 'penni@livingstonlaw.biz'; 'Donald J. Moran (dmoran@pedersenhoupt.com)'
Subject: RE: Depositions

I believe that we all agreed that depositions would be on Friday October 17th, if any are allowed.

J. Brian Manion
Attorney at Law
Weilmuenster Law Group, P.C.
3201 West Main Street
Belleville IL 62226
(618) 257-2222 - phone
(618) 257-2030 - fax
E-mail: jbm@weilmuensterlaw.com
Website: www.weilmuensterlaw.com

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From: Pohlenz, Jennifer Sackett [<mailto:JPohlenz@ClarkHill.com>]
Sent: Wednesday, October 08, 2014 4:33 PM
To: penni@livingstonlaw.biz; J. Brian Manion <jbm@weilmuensterlaw.com> (jbm@weilmuensterlaw.com); Donald J. Moran (dmoran@pedersenhoupt.com)
Subject: Depositions

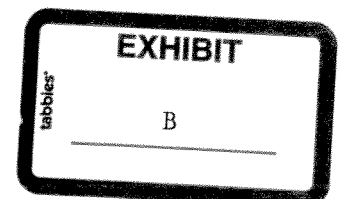
I have not heard back from the Village or Caseyville Transfer Station, LLC concerning deposition dates. I would like to suggest a slight change in the scheduling and ask you to consider it and respond so we can finalize dates on our call tomorrow.

10/21:	9:00 a.m.	Wally Abernathy
	11:00 am	Kerry Davis
	1:00 p.m.	John Siemsen
10/22	9:00 a.m.	Robb Watt
	11:00 a.m.	Leslie McReynolds

I will confirm that I am able to expedite transcripts. The location of the depositions is also "open" at this time. Does the Village want to host and use a conference room? If not, I can locate a space with the court reporter. Please let me know your response.

Regards,

Jennifer



Jennifer J. Sackett Pohlenz

CLARK HILL PLC

150 N Michigan Ave | Suite 2700 | Chicago, Illinois 60601
312.985.5912 (direct) | 312.985.5971 (fax) | 312.802.7810 (cell)
jpohlenz@clarkhill.com | www.clarkhill.com

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J. Brian Manion

From: J. Brian Manion <jbm@weilmuensterlaw.com>
Sent: Wednesday, October 08, 2014 4:37 PM
To: 'Pohlenz, Jennifer Sackett'; 'penni@livingstonlaw.biz'; 'Donald J. Moran (dmoran@pedersenhoupt.com)'
Subject: RE: Depositions

Are you intending to depose Trustee Kerry Davis or village employee Keri Davis Cary?

J. Brian Manion
Attorney at Law
Weilmuenster Law Group, P.C.
3201 West Main Street
Belleville IL 62226
(618) 257-2222 - phone
(618) 257-2030 - fax
E-mail: jbm@weilmuensterlaw.com
Website: www.weilmuensterlaw.com

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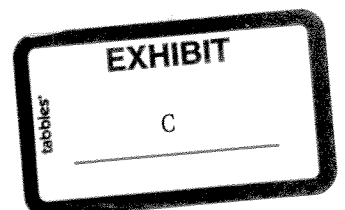
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Regards,

Jennifer



Jennifer J. Sackett Pohlenz

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jpohlenz@clarkhill.com | www.clarkhill.com

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J. Brian Manion

From: Penni Livingston <penni@livingstonlaw.biz>
Sent: Thursday, October 09, 2014 12:00 PM
To: Don' <dmoran@pedersenhoupt.com>, Jennifer Sackett'; J. Brian Manion
Cc: Carol' <Carol.Webb@illinois.gov>
Subject: Request to move call to Friday or Monday
Attachments: Land and Lakes v Romeoville PCB-92-25.pdf; Rochelle Waste Disposal v Rochelle PCB 03-218.pdf; Fox Morraine.pdf

Importance: High

All- I just had a call with Bryan who is working hard to make sure the record gets in today and to work on another important matter with the Village and he is trying to get with all the requested witnesses to see availability. We are both struggling with too much due and to much to do today. We are both suggesting at this time that we reschedule our call for another day- tomorrow or Monday. And we would like to suggest ways to streamline where we are through this summary email.

Bryan has not heard back as to which Cari Davis is wanted for deposition on the dates given and he needs to know that as he is checking dates with all the requested witnesses today. One is a Board member and one works for the clerk's office if the answer could be supplied based on that information- I am not sure which is which and Bryan is off and scrambling with his own set of deadlines but please communicate that to him asap. I think he gets email on his phone.

He also needs to hear back on his objections. Does Roxanna wish to elaborate and "fix" its Interrogatories so they can be answered? ie what is meant by the people subject to what ex parte rule? We may find that if we move this call to tomorrow or Monday we would have less to deal with as we would know where we are on the issues by agreement.

Are there any objections to our interrogatories or requests to produce that we got out late Monday? I believe we got three working days to object so you ought to know by now or before we have a call. Do we have a proposed deadline for answers? I believe we got eight days but got them out in three.

Can we agree to limit the scope of testimony on the depositions? For example, I will not object to the taking of John Seimsen's depo if I know what the line of questions are- so that it is not a fishing expedition but issues raised in the petitions like contacts with decision makers and things about fundamental fairness- not a relitigation of issues presented to the Village.

Bryan has issues wanting to limit the scope of questions due to the deliberative process privilege and asked me to forward the attached case law for consideration. It should make reaching an agreement on limiting the scope of questions of Board members easier as the law is clear that you cannot ask the decision makers what they considered or thought. I personally love the quotations in Land and Lakes on what it means to be against the manifest weight of evidence- an opposite result needing to be clearly apparent- heavy burden there- but at any rate I attached the case law I received as he requested.

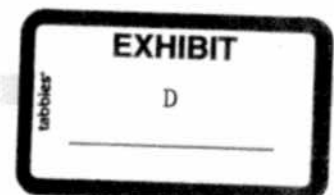
Both Bryan and I can make a call **tomorrow anytime before 3** as I cannot do from 3 to 4 and he has something at 4. Also we could both make **Monday at 11 or 11:30 or at or after 3pm on Monday.**

The one issue we have that will take some time if we do not reach agreement on it is the deliberative process privilege so please take a look at the case law on that. And let's try to reach agreement best we can on the discovery issues as required by 201(k) of the Code of civil procedure. I think agreeing to the depositions and the time and the scope is the best approach but if not, we need real time to go over these issues with the Hearing Officer and both of the Respondents' counsels are in states of overwhelm today to fit in a real discussion.

Thanks for any accommodation. I am available to read email only until 1:30 but can get texts on my cell 618-567-1179 or call me up to 2:15. Hopefully we can work through the issues between now and whenever we have a call and the call will be short because we will all be in agreement. Penni

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

From: "J. Brian Manion"
To: "'Moran, Don'", "'Pohlenz, Jennifer Sackett'"



Sent: 10/09/2014 10:45AM

Subject: RE: PCB 15-65 and 69 - Telephonic Status Conference 3:30 p.m. TODAY

3:30 works for me

J. Brian Manion

Attorney at Law

Weilmuenster Law Group, P.C.

3201 West Main Street

Belleville IL 62226

(618) 257-2222 - phone

(618) 257-2030 - fax

E-mail: jbm@weilmuensterlaw.com

Website: www.weilmuensterlaw.com

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From: Moran, Don [mailto:dmoran@pedersenhoupt.com]

Sent: Thursday, October 09, 2014 10:08 AM

To: 'Pohlenz, Jennifer Sackett'; 'J. Brian Manion <jbm@weilmuensterlaw.com> (jbm@weilmuensterlaw.com)'

Cc: 'Webb, Carol (Carol.Webb@illinois.gov)'; 'penni@livingstonlaw.biz'

Subject: RE: PCB 15-65 and 69 - Telephonic Status Conference 3:30 p.m. TODAY

3:30 p.m. works for me.

Donald J. Moran
Attorney at Law
Pedersen & Houpt

161 North Clark Street, Suite 2700
Chicago, Illinois 60601
312-261-2149
312-261-1149 fax
dmoran@pedersenhoupt.com

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From: Pohlenz, Jennifer Sackett [<mailto:JPohlenz@ClarkHill.com>]
Sent: Thursday, October 09, 2014 9:57 AM
To: Moran, Don; J. Brian Manion <jbm@weilmuensterlaw.com> (jbm@weilmuensterlaw.com)
Cc: Webb, Carol (Carol.Webb@illinois.gov); penni@livingstonlaw.biz
Subject: PCB 15-65 and 69 - Telephonic Status Conference 3:30 p.m. TODAY

Please let me know, Don and Brian, if the 3:30 p.m. time (note the move from our originally scheduled 2:30 p.m. time) works for you.

The Call in number remains the same â€œ 312-985-5991.

Thank you.

Regards,

Jennifer

Jennifer J. Sackett Pohlenz

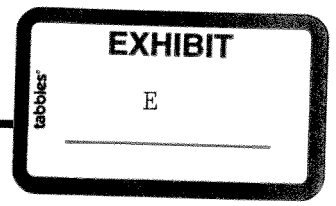
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J. Brian Manion

From: J. Brian Manion <jbm@weilmuensterlaw.com>
Sent: Tuesday, October 14, 2014 2:54 PM
To: 'Pohlentz, Jennifer Sackett'; 'Penni Livingston'; 'Webb, Carol'; 'Donald J. Moran'
Subject: RE: Request to move call to Friday or Monday

Jennifer:

The Hearing Officer's Order requires that you complete depositions on October 16 and 17. I notified you immediately that my position was that those were the dates for your depositions. I am not agreeing to move the depositions. The Village Clerk Rob Watt works a full time job (the clerk position is a part-time job). He is available Friday afternoon but will be at work at his regular job on Monday and Tuesday and unavailable. That is why we originally agreed to those dates for depositions.

I was just notified by you during our phone conversation earlier today for the first time that you wish to depose Trustee Kerry Davis. During the prior phone conference with Hearing Officer Webb, you indicated that you wanted to depose his daughter, Keri Davis Cary, who is a village employee. Trustee Davis is unavailable to give his deposition because his wife is having surgery on Friday and he will be taking care of her as she recovers for the following few weeks. Again, if you would have complied with the Hearing Officer's Order, he could have been deposed on Thursday.

Finally, of course the record was filed as ordered by the Hearing Officer. It was deposited in the mail on Thursday.

J. Brian Manion
Attorney at Law
Weilmuenster Law Group, P.C.
3201 West Main Street
Belleville IL 62226
(618) 257-2222 - phone
(618) 257-2030 - fax
E-mail: jbm@weilmuensterlaw.com
Website: www.weilmuensterlaw.com

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From: Pohlentz, Jennifer Sackett [mailto:JPohlentz@ClarkHill.com]
Sent: Tuesday, October 14, 2014 1:27 PM
To: Penni Livingston; Webb, Carol; 'Donald J. Moran'; J. Brian Manion
Subject: RE: Request to move call to Friday or Monday

I disagree with the fairness of that, given the circumstances, total documents to which at least my client has to respond to (including, but not limited to a motion to strike the complaint that doesn't contain any legal or factual basis), and having no deadline set for discovery responses/objections, since Respondents canceled the telephone conference. That said, it was my goal to get the parties and hearing officer a list of "pending items" and responses to objections by the Village today, and send out subpoenas as well today for depositions and hearing. I am asking that all parties work on completing discovery this week and have depositions 10/20-21 that I've previously sent around by email. I would like to

work cooperatively on the process – understanding of course we all take different positions on the legal issues involved.

Regards,

Jennifer

Jennifer J. Sackett Pohlenz

CLARK HILL PLC

150 N Michigan Ave | Suite 2700 | Chicago, Illinois 60601
312.985.5912 (direct) | 312.985.5971 (fax) | 312.802.7810 (cell)
jpohlenz@clarkhill.com | www.clarkhill.com

From: Penni Livingston [<mailto:penni@livingstonlaw.biz>]
Sent: Tuesday, October 14, 2014 12:09 PM
To: Webb, Carol; 'Donald J. Moran'; J. Brian Manion; Pohlenz, Jennifer Sackett
Subject: RE: Request to move call to Friday or Monday

I cannot read email until tomorrow afternoon after I leave for a depo and have a meeting in Maryville tomorrow that goes to 2:30 but you can get me on my cell too. I can do any of these times but it was my understanding motions would be filed if any issues were going to be raised on discovery. It seems only fair that discovery answers should be due to us today as that would be 8 days from filing- the timeframe we were given- although we actually got answers out three days before the deadline.

I do not know where depositions stand and I do not know the view on the deliberative process privilege for the City voting officials. I received no objections to our discovery requests sent eight days ago and we were given 3 days to object to theirs so I am hoping that means the discovery will get answered.

I am fairly available next week as well. Penni

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

From: "Webb, Carol"
To: 'Penni Livingston' , "'Donald J. Moran'" , "J. Brian Manion"
Sent: 10/14/2014 6:53AM
Subject: RE: Request to move call to Friday or Monday

I am available Wednesday at 3 pm, Thursday morning, or Thursday afternoon at 1:30 pm or 2:30 pm. Alternatively, we could skip a status call this week if written discovery motions are filed and the responding party tells me how quickly they can file a response.

From: Penni Livingston [<mailto:penni@livingstonlaw.biz>]
Sent: Friday, October 10, 2014 11:06 AM
To: Webb, Carol; 'Donald J. Moran'; J. Brian Manion
Subject: RE: Request to move call to Friday or Monday

All- lots of emails and I could not get into the call yesterday nor could Don. Sorry about the logistics on this fast track case. I think it is good that we try to work issues out to the degree we can. I hope we do. I got a message from Don last night about filing motions on anything that cannot be worked out. It would seem that as long as we can get with the Hearing Officer before the dates for anticipated depositions we should be ok. I cannot make Tuesday afternoon. I am in a deposition and in a hearing that morning. I can do a call weds but it would need to be 3pm or so. I can also do Thursday between 10 and 3 and could do Friday anytime before 3. I

would like to get answers to our discovery and hope we can get it timely- within 8 days of service as we were to do. I am available today except from 3 to 4 to discuss anything among ourselves. Penni

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

From: "J. Brian Manion"

To: ""Pohlenz, Jennifer Sackett"" , ""Webb, Carol"" , ""Penni Livingston"" , ""Donald J. Moran""

Sent: 10/09/2014 5:31PM

Subject: RE: Request to move call to Friday or Monday

Tuesday afternoon is not very good for me. I could possibly squeeze it in at 2:45, but on Wednesday I am free all day and that would work much better.

J. Brian Manion

Attorney at Law

Weilmuenster Law Group, P.C.

3201 West Main Street

Belleville IL 62226

(618) 257-2222 - phone

(618) 257-2030 - fax

E-mail: jbm@weilmuensterlaw.com

Website: www.weilmuensterlaw.com

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From: Pohlenz, Jennifer Sackett [<mailto:JPohlenz@ClarkHill.com>]

Sent: Thursday, October 09, 2014 2:32 PM

To: Webb, Carol; 'Penni Livingston'; J. Brian Manion; Donald J. Moran (dmoran@pedersenhoupt.com)

Subject: RE: Request to move call to Friday or Monday

Following up on our Hearing Officer's suggestion, I will make my conference line available for a party-only discussion so we can sort through issues (or we can attempt to do so by email), and I can prepare a draft to circulate to the parties of an agenda to cover with a call with our Hearing Officer on Tuesday. Does 1:00 p.m. work for everyone? Carol is available any time after 11:30. I have two court hearings that should be done at 11:30, but I still need to get back to my office, so any time after noon works for me.

I'll send the agenda around to the parties late tomorrow so we can, hopefully, narrow the outstanding issues.

Regards,

Jennifer

Jennifer J. Sackett Pohlenz

CLARK HILL PLC

150 N Michigan Ave | Suite 2700 | Chicago, Illinois 60601
312.985.5912 (direct) | 312.985.5971 (fax) | 312.802.7810 (cell)
jpohlenz@clarkhill.com | www.clarkhill.com

From: Webb, Carol [<mailto:Carol.Webb@illinois.gov>]

Sent: Thursday, October 09, 2014 1:11 PM

To: 'Penni Livingston'; Pohlenz, Jennifer Sackett; J. Brian Manion

Cc: Webb, Carol

Subject: RE: Request to move call to Friday or Monday

I am not available on Friday or Monday, but I encourage the parties to meet to resolve as many of these issues as possible. I would like to have written motions on any substantive issues you raise, such as privilege, or motions to compel, etc.

-Carol

From: Penni Livingston [<mailto:penni@livingstonlaw.biz>]

Sent: Thursday, October 09, 2014 12:00 PM

To: Don' <dmoran@pedersenhoupt.com>, Jennifer Sackett'; J. Brian Manion
Cc: Carol' <Carol.Webb@illinois.gov>
Subject: Request to move call to Friday or Monday
Importance: High

All- I just had a call with Bryan who is working hard to make sure the record gets in today and to work on another important matter with the Village and he is trying to get with all the requested witnesses to see availability. We are both struggling with too much due and to much to do today. We are both suggesting at this time that we reschedule our call for another day- tomorrow or Monday. And we would like to suggest ways to streamline where we are through this summary email.

Bryan has not heard back as to which Cari Davis is wanted for deposition on the dates given and he needs to know that as he is checking dates with all the requested witnesses today. One is a Board member and one works for the clerk's office if the answer could be supplied based on that information- I am not sure which is which and Bryan is off and scrambling with his own set of deadlines but please communicate that to him asap. I think he gets email on his phone.

He also needs to hear back on his objections. Does Roxanna wish to elaborate and "fix" its Interrogatories so they can be answered? ie what is meant by the people subject to what ex parte rule? We may find that if we move this call to tomorrow or Monday we would have less to deal with as we would know where we are on the issues by agreement.

Are there any objections to our interrogatories or requests to produce that we got out late Monday? I believe we got three working days to object so you ought to know by now or before we have a call. Do we have a proposed deadline for answers? I believe we got eight days but got them out in three.

Can we agree to limit the scope of testimony on the depositions? For example, I will not object to the taking of John Seimsen's depo if I know what the line of questions are- so that it is not a fishing expedition but issues raised in the petitions like contacts with decision makers and things about fundamental fairness- not a relitigation of issues presented to the Village.

Bryan has issues wanting to limit the scope of questions due to the deliberative process privilege and asked me to forward the attached case law for consideration. It should make reaching an agreement on limiting the scope of questions of Board members easier as the law is clear that you cannot ask the decision makers what they considered or thought. I personally love the quotations in Land and Lakes on what it means to be against the manifest weight of evidence- an opposite result needing to be clearly apparent- heavy burden there- but at any rate I attached the case law I received as he requested.

Both Bryan and I can make a call **tomorrow anytime before 3** as I cannot do from 3 to 4 and he has something at 4. Also we could both make **Monday at 11 or 11:30 or at or after 3pm on Monday.**

The one issue we have that will take some time if we do not reach agreement on it is the deliberative process privilege so please take a look at the case law on that. And let's try to reach agreement best we can on the discovery issues as required by 201(k) of the Code of civil procedure. I think agreeing to the depositions and the time and the scope is the best approach but if not, we need real time to go over these issues with the Hearing Officer and both of the Respondents' counsels are in states of overwhelm today to fit in a real discussion.

Thanks for any accommodation. I am available to read email only until 1:30 but can get texts on my cell 618-567-1179 or call me up to 2:15. Hopefully we can work through the issues between now and whenever we have a call and the call will be short because we will all be in agreement. Penni

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

From: "J. Brian Manion"

To: "Moran, Don" , "Pohlenz, Jennifer Sackett"

Sent: 10/09/2014 10:45AM

Subject: RE: PCB 15-65 and 69 - Telephonic Status Conference 3:30 p.m. TODAY

3:30 works for me

J. Brian Manion

Attorney at Law

Weilmuenster Law Group, P.C.

3201 West Main Street

Belleville IL 62226

(618) 257-2222 - phone

(618) 257-2030 - fax

E-mail: jbm@weilmuensterlaw.com

Website: www.weilmuensterlaw.com

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From: Moran, Don [<mailto:dmoran@pedersenhoupt.com>]
Sent: Thursday, October 09, 2014 10:08 AM
To: 'Pohlenz, Jennifer Sackett'; 'J. Brian Manion <jbm@weilmuensterlaw.com> (<jbm@weilmuensterlaw.com>)'
Cc: 'Webb, Carol (<Carol.Webb@illinois.gov>); 'penni@livingstonlaw.biz'
Subject: RE: PCB 15-65 and 69 - Telephonic Status Conference 3:30 p.m. TODAY

3:30 p.m. works for me.

Donald J. Moran
Attorney at Law
Pedersen & Houpt
161 North Clark Street, Suite 2700
Chicago, Illinois 60601
312-261-2149
312-261-1149 fax
dmoran@pedersenhoupt.com

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From: Pohlenz, Jennifer Sackett [<mailto:JPohlenz@ClarkHill.com>]
Sent: Thursday, October 09, 2014 9:57 AM
To: Moran, Don; J. Brian Manion <jbm@weilmuensterlaw.com> (<jbm@weilmuensterlaw.com>)

Cc: Webb, Carol (Carol.Webb@illinois.gov); penni@livingstonlaw.biz
Subject: PCB 15-65 and 69 - Telephonic Status Conference 3:30 p.m. TODAY

Please let me know, Don and Brian, if the 3:30 p.m. time (note the move from our originally scheduled 2:30 p.m. time) works for you.

The Call in number remains the same ??? 312-985-5991.

Thank you.

Regards,

Jennifer

Jennifer J. Sackett Pohlenz

CLARK HILL PLC
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J. Brian Manion

From: Pohlenz, Jennifer Sackett <JPohlenz@ClarkHill.com>
Sent: Tuesday, October 14, 2014 8:49 PM
To: rwatt@caseyville.org; leslie01@caseyville.org
Cc: penni@livingstonlaw.biz; J. Brian Manion <jbm@weilmuensterlaw.com> (jbm@weilmuensterlaw.com); Donald J. Moran (dmoran@pedersenhoupt.com)
Subject: FW: Subpoenas for Deposition and Public Hearing
Attachments: Subpoena - Kerry Davis.pdf; Subpoena - Rob Watt.pdf; Subpoena - Leslie McReynolds.pdf; Subpoena - Wally Abernathy, (3).pdf; Subpoena for public hearing- Wally Abernathy.pdf; Subpoena for public hearing- Kerry Davis.pdf; Subpoena for public hearing- Rob Watt.pdf; Subpoena for public hearing- Leslie McReynolds.pdf

Please see attached subpoenas for Mr. Watt and Ms. McReynolds.

Regards,

Jennifer

Jennifer J. Sackett Pohlenz

CLARK HILL PLC

150 N Michigan Ave | Suite 2700 | Chicago, Illinois 60601
312.985.5912 (direct) | 312.985.5971 (fax) | 312.802.7810 (cell)
jpohlenz@clarkhill.com | www.clarkhill.com

From: Pohlenz, Jennifer Sackett
Sent: Tuesday, October 14, 2014 4:23 PM
To: penni@livingstonlaw.biz; J. Brian Manion <jbm@weilmuensterlaw.com> (jbm@weilmuensterlaw.com)
Cc: Donald J. Moran (dmoran@pedersenhoupt.com)
Subject: Subpoenas for Deposition and Public Hearing

I am enclosing subpoenas for depositions and, separately, for the public hearing.

Regards,

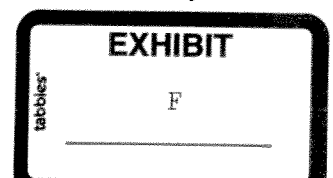
Jennifer

Jennifer J. Sackett Pohlenz

CLARK HILL PLC

150 N Michigan Ave | Suite 2700 | Chicago, Illinois 60601
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Before the Illinois Pollution Control Board

ROXANNA LANDFILL, INC.)
)
)
Complainant/Petitioner,) PCB PCB 15-65
)
v.)
)
VILLAGE BOARD OF THE VILLAGE OF)
CASEYVILLE, ILLINOIS; VILLAGE OF)
CASEYVILLE ILLINOIS; and CASEYVILLE)
TRANSFER STATION, LLC)
)
Respondent.)

SUBPOENA FOR DEPOSITION & DOCUMENTS

TO: **Via Personal Service**
Kerry Davis, Village Board Member, Village of Caseyville
Village of Caseyville
909 South Main Street
Caseyville, Illinois 62232

AND

Counsel for the Village Board and Village of Caseyville– via email
(jbm@weilmuensterlaw.com)
J. Brian Manion
Weilmuenster Law Group, P.C
3201 West Main Street
Belleville IL 62226

Pursuant to Section 5(e) of the Environmental Protection Act (415 ILCS 5/5(e) (2006)) and 35 Ill. Adm. Code 101, Subpart F, you are ordered to attend and give testimony at the deposition in the above-captioned matter at **11:00 a.m., on October 21, 2014, or at such other time and date as can be agreed to between the parties, at The Village Hall, Village of Caseyville, 909 South Main Street, Caseyville, Illinois 62232.**

You are also ordered to bring with you documents relevant to the matter under consideration and designated herein, books, papers, documents, or other tangible things concerning the Caseyville Transfer Station, L.L.C. pollution control facility siting application that are not contained the Record on Appeal filed with the Pollution Control Board by the Village of Caseyville.

Failure to comply with this subpoena will subject you to sanctions under 35 Ill. Adm. Code 101.622(g) and 101.802.

ENTER:



John T. Therriault, Clerk
Pollution Control Board
Date: October 14, 2014

I served this subpoena by handing a copy to _____
_____ on _____, 20____.

Subscribed and sworn to before me this _____ day of _____,
20____.

Notary Public

Before the Illinois Pollution Control Board

ROXANNA LANDFILL, INC.)
)
)
Complainant/Petitioner,) PCB PCB 15-65
)
v.)
)
VILLAGE BOARD OF THE VILLAGE OF)
CASEYVILLE, ILLINOIS; VILLAGE OF)
CASEYVILLE ILLINOIS; and CASEYVILLE)
TRANSFER STATION, LLC)
)
Respondent.)

SUBPOENA FOR DEPOSITION & DOCUMENTS

TO: Via Email (rwatt@caseyville.org) and
Via Personal Service

Rob Watt, Village Clerk
Village of Caseyville
909 South Main Street
Caseyville, Illinois 62232

AND

Via email (jbm@weilmuensterlaw.com)

J. Brian Manion
Weilmuenster Law Group, P.C.
3201 West Main Street
Belleville IL 62226

Pursuant to Section 5(e) of the Environmental Protection Act (415 ILCS 5/5(e) (2006)) and 35 Ill. Adm. Code 101, Subpart F, you are ordered to attend and give testimony at the deposition in the above-captioned matter at **9:00 a.m., on October 22, 2014, or at such other time and date as can be agreed to between the parties, at The Village Hall, Village of Caseyville, 909 South Main Street, Caseyville, Illinois 62232.**

You are also ordered to bring with you documents relevant to the matter under consideration and designated herein, books, papers, documents, or other tangible things concerning the Caseyville Transfer Station, L.L.C. pollution control facility siting application that are not contained the Record on Appeal filed with the Pollution Control Board by the Village of Caseyville.

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20____.

Notary Public

Before the Illinois Pollution Control Board

ROXANNA LANDFILL, INC.)
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 Complainant/Petitioner,) PCB PCB 15-65
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 v.)
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 VILLAGE BOARD OF THE VILLAGE OF)
 CASEYVILLE, ILLINOIS; VILLAGE OF)
 CASEYVILLE ILLINOIS; and CASEYVILLE)
 TRANSFER STATION, LLC)
)
 Respondent.)

SUBPOENA FOR DEPOSITION & DOCUMENTS

TO: Via Email (lmcreeynolds@caseyville.org) and
Via Personal Service

Leslie McReynolds
Village of Caseyville
909 South Main Street
Caseyville, Illinois 62232

Pursuant to Section 5(e) of the Environmental Protection Act (415 ILCS 5/5(e) (2006)) and 35 Ill. Adm. Code 101, Subpart F, you are ordered to attend and give testimony at the deposition in the above-captioned matter at **11:00 a.m., on October 22, 2014, or at such other time and date as can be agreed to between the parties, at The Village Hall, Village of Caseyville, 909 South Main Street, Caseyville, Illinois 62232.**

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Failure to comply with this subpoena will subject you to sanctions under 35 Ill.

Adm. Code 101.622(g) and 101.802.

ENTER:



John T. Therriault, Clerk
Pollution Control Board
Date: October 14, 2014

I served this subpoena by handing a copy to _____

_____ on _____, 20____.

Subscribed and sworn to before me this _____ day of _____,

20____.

Notary Public

Before the Illinois Pollution Control Board

ROXANNA LANDFILL, INC.)	
)	
)	
Complainant/Petitioner,)	PCB PCB 15-65
)	
v.)	
)	
VILLAGE BOARD OF THE VILLAGE OF)	
CASEYVILLE, ILLINOIS; VILLAGE OF)	
CASEYVILLE ILLINOIS; and CASEYVILLE)	
TRANSFER STATION, LLC)	
)	
Respondent.)	

SUBPOENA FOR DEPOSITION & DOCUMENTS

TO: **Via Personal Service**
Walter Abernathy, Village Board Member, Village of Caseyville
Village of Caseyville
909 South Main Street
Caseyville, Illinois 62232

Counsel for the Village Board and Village of Caseyville— via email
(jbm@weilmuensterlaw.com)
J. Brian Manion
Weilmuenster Law Group, P.C
3201 West Main Street
Belleville IL 62226

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Failure to comply with this subpoena will subject you to sanctions under 35 Ill. Adm. Code 101.622(g) and 101.802.

ENTER:



John T. Therriault, Clerk
Pollution Control Board
Date: October 14, 2014

I served this subpoena by handing a copy to _____
_____ on _____, 20____.

Subscribed and sworn to before me this _____ day of _____,
20____.

Notary Public

J. Brian Manion

From: J. Brian Manion <jbm@weilmuensterlaw.com>
Sent: Wednesday, October 15, 2014 7:48 AM
To: 'Pohlenz, Jennifer Sackett'; 'rwatt@caseyville.org'; 'leslie01@caseyville.org'
Cc: 'penni@livingstonlaw.biz'; 'Donald J. Moran (dmoran@pedersenhoupt.com)'
Subject: RE: Subpoenas for Deposition and Public Hearing

Ms. Pohlenz:

Please confirm by noon that you are withdrawing your subpoenas for discovery depositions. If I do not receive confirmation by noon that the subpoenas are withdrawn, I will be filing a motion for sanctions for your willful and intentional violation of the Hearing Officer's Order and the Board's Rules.

Thank you for immediate attention to this.

J. Brian Manion
Attorney at Law
Weilmuenster Law Group, P.C.
3201 West Main Street
Belleville IL 62226
(618) 257-2222 - phone
(618) 257-2030 - fax
E-mail: jbm@weilmuensterlaw.com
Website: www.weilmuensterlaw.com

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From: Pohlenz, Jennifer Sackett [<mailto:JPohlenz@ClarkHill.com>]
Sent: Tuesday, October 14, 2014 8:49 PM
To: rwatt@caseyville.org; leslie01@caseyville.org
Cc: penni@livingstonlaw.biz; J. Brian Manion <jbm@weilmuensterlaw.com> (jbm@weilmuensterlaw.com); Donald J. Moran (dmoran@pedersenhoupt.com)
Subject: FW: Subpoenas for Deposition and Public Hearing

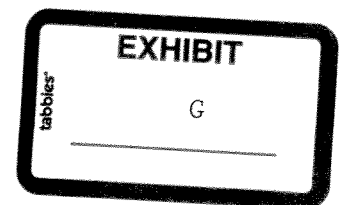
Please see attached subpoenas for Mr. Watt and Ms. McReynolds.

Regards,

Jennifer

Jennifer J. Sackett Pohlenz

CLARK HILL PLC
150 N Michigan Ave | Suite 2700 | Chicago, Illinois 60601
312.985.5912 (direct) | 312.985.5971 (fax) | 312.802.7810 (cell)
jpohlenz@clarkhill.com | www.clarkhill.com



From: Pohlenz, Jennifer Sackett
Sent: Tuesday, October 14, 2014 4:23 PM
To: penni@livingstonlaw.biz; J. Brian Manion <jbm@weilmuensterlaw.com> (jbm@weilmuensterlaw.com)
Cc: Donald J. Moran (dmoran@pedersenhoupt.com)
Subject: Subpoenas for Deposition and Public Hearing

I am enclosing subpoenas for depositions and, separately, for the public hearing.

Regards,

Jennifer

Jennifer J. Sackett Pohlenz

CLARK HILL PLC

150 N Michigan Ave | Suite 2700 | Chicago, Illinois 60601
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OCT 17 2014

STATE OF ILLINOIS
Pollution Control Board

October 16, 2014

John T. Therriault
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St.
Suite 11-500
Chicago, IL 60601

 ORIGINAL

RE: Roxana Landfill, Inc. v. Village Board of the Village of Caseyville, Illinois, et al.; No. PCB 15-65; and Village of Fairmont City, Illinois v. Village of Caseyville, Illinois Board of Trustees, et al.; No. PCB 15-69

Dear Mr. Therriault:

Enclosed please find an original and one copy of our Response to Motion to Hearing Officer to Clarify the September 30, 2014 Order and Motion for Sanctions. Please verify receipt and filing by returning a file stamped copy of said document in the enclosed self-addressed envelope.

If you should require anything further, please feel free to contact me.

Very truly yours,

WEILMUNSTER LAW GROUP, P.C.

By: 

J. Brian Manion

JBM/kjf
Enclosures

cc: Jennifer J. Sackett Pohlenz
Carol Webb
Donald Moran
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