

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ROXANA LANDFILL, INC.)
)
) Petitioner,)
 vs.) No. PCB 15-65
)
) VILLAGE BOARD OF THE VILLAGE OF)
) CASEYVILLE, ILLINOIS;) (Pollution Control Facility Siting Application)
) VILLAGE OF CASEVILLE, ILLINOIS; and)
) CASEYVILLE TRANSFER STATION, L.L.C.)
) Respondents.)

VILLAGE OF FAIRMONT CITY, ILLINOIS,) No. PCB 15-69
) Petitioner,)
 vs.) (Pollution Control Facility Siting Application)
) VILLAGE OF CASEYVILLE, ILLINOIS)
) BOARD OF TRUSTEES and CASEYVILLE)
) TRANSFER STATION, L.L.C.)
) Respondents.)

PETITIONER ROXANA LANDFILL, INC.'S RESPONSE IN OPPOSITION TO RESPONDENTS' JOINT MOTION TO STRIKE AND DISMISS PETITION FOR REVIEW, MOTION TO STRIKE RESPONDENTS' MOTION & RESERVATION FOR JOINDER IN VILLAGE OF FAIRMONT CITY'S RESPONSE & MOTION

TO: J. Brian Manion Weilmuenster Law Group, P.C. 3201 West Main Street Belleville IL 62226 (jbm@weilmuensterlaw.com)	Donald J. Moran Pedersen & Houpt 161 N. Clark Street, Ste 2700 Chicago, Illinois 60601 (dmoran@pedersenhaupt.com)	Robert J. Sprague Sprague & Urbana 26 E. Washington Street Belleville, Illinois 62220
Hearing Officer Carol Webb (Carol.Webb@illinois.gov)	Penni S. Livingston 5701 Perrin Rd. Fairview Heights, IL 62208 (penni@livingstonlaw.biz)	

PLEASE TAKE NOTICE that on October 20, 2014, we filed with the Illinois Pollution Control Board, (1) this Notice of Filing and (2), the attached Petitioner Roxana Landfill, Inc.'S Response In Opposition To Respondents' Joint Motion To Strike And Dismiss Petition For Review, Motion To Strike Respondents' Motion, & Joinder In Village Of Fairmont City's Motion For Sanctions, a copy of each is attached and served upon you.

Dated: October 20, 2014 **PETITIONER ROXANA LANDFILL, INC.**

Clark Hill PLC
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BY: /s/ Jennifer J. Sackett Pohlenz
 One of its attorneys

PROOF OF SERVICE

I, Jennifer J. Sackett Pohlenz an attorney, certify¹ that I served the above referenced documents on the persons identified above by e-mail, at the email addresses listed, before 5:00 p.m. on this 20th day of October 2014.

 /s/ Jennifer J. Sackett Pohlenz

¹ Under penalties as provided by law pursuant to Illinois Rev. Stat. Chap. 110-, Sec. 1-109, I do certify that the statements set forth herein are true and correct.

INTRODUCTION

Respondents have brought an unreasonable Motion to Strike or Dismiss (“Motion”) that has no foundation in law or fact. Respondents’ Motion should be stricken or, alternatively denied, as it fails to comply with Illinois Pollution Control Board Rule (“Rule”) 101.504 and presents false information to the Illinois Pollution Control Board (“Board”). Further, the motion should be stricken, or alternatively denied, as it has no basis in law. Roxana Landfill, Inc.’s Petition for Review not only meets pleading standards, but solely based on the Record on Appeal, there is evidence showing Roxana Landfill, Inc. is “so located as to be affected” by the proposed Caseyville Transfer Station, L.L.C. Finally, the Respondents’ argument that Roxana Landfill, Inc. needed to prove the “so located as to be affected” portion of Section 40.1 of the Illinois Environmental Protection Act is contrary to the law and precedent, which provide that the “so located as to be affected” prong of standing is, indeed, not required to participate in a local siting. Notwithstanding, had that been a requirement, Respondents waived it by not objecting to Roxana Landfill, Inc.’s participation at the local siting public hearing.

ARGUMENT

A. Roxana Landfill, Inc. Has Standing To File This Petition

415 ILCS 5/40.1(b) provides:

(b) If the county board or the governing body of the municipality as determined by paragraph (c) of Section 39 of this Act [415 ILCS 5/39], grants approval under Section 39.2 of this Act [415 ILCS 5/39.2], a third party other than the applicant who participated in the public hearing conducted by the county board or governing body of the municipality may, within 35 days after the date on which the local siting authority granted siting approval, petition the Board for a hearing to contest the approval of the county board or

the governing body of the municipality. Unless the Board determines that such petition is duplicative or frivolous, or that the petitioner **is so located as to not be affected** by the proposed facility, the Board shall hear the petition in accordance with the terms of subsection (a) of this Section and its procedural rules governing denial appeals, such hearing to be based exclusively on the record before county board or the governing body of the municipality. The burden of proof shall be on the petitioner. The county board or the governing body of the municipality and the applicant shall be named as co-respondents. (415 ILCS 5/40.1, emphasis added).

Respondents argue that Petitioner Roxana Landfill, Inc. is “so located as to not be affected.”

However, Respondents not only fail to comply with Rule 101.504, but they present false information to the Board and information that is inconsistent with what is even contained in the Record on Appeal. None of the allegations concerning Roxana Landfill, Inc. contained in the Motion are in the Record on Appeal and none are supported as required by Rule 101.504.

For example, the Respondents state in their Motion that Roxana Landfill is “over 20 miles” from the proposed Caseyville Transfer Station, L.L.C. However, the Record on Appeal states that Roxana Landfill, which is included in Caseyville Transfer Station, L.L.C.’s Application for Site Location Approval, is 19 miles from the proposed facility. (A-0011). In addition, the Motion conveniently excludes Caseyville Transfer Station, L.L.C.’s service area, a relevant factor under the case law to determine whether a petitioner is “so located as to not be affected” and a fact that defeats Respondents’ Motion. (A-0009, Figure 8). Roxana Landfill, Inc. is located in Madison County, within Caseyville Transfer Station, L.L.C.’s service area.

In addition, Respondents’ allegations that Roxana Landfill, Inc. does no business in St. Clair is preposterous and not relevant to the Motion. Roxana Landfill, Inc. plead that it does business in St. Clair County and it will present that evidence at the Pollution Control Board public hearing. Further, there is no requirement that Roxana Landfill, Inc. present that evidence

at the pleading state. “When ruling on a motion to dismiss, the Board must take all well-pled facts contained in the pleadings as true, and must draw all inferences from those facts in the light most favorable to the non-movant.” *American Disposal Services of Illinois, Inc. v. County Board of McLean County*, PCB 11-60, slip op. at 34 (Feb. 16, 2012), citing, *Veolia ES Zion Landfill, Inc. v. City Council of the City of Zion*, PCB 11-10, slip op at 2 (Nov. 4, 2010), citations omitted.

Moreover, Respondents fail to cite any case in support of their position. Indeed, citing a decision would be impossible, since Respondents assert a position that is contrary to the existing law and precedent. Petitioners who are located within the service area identified by the siting applicant, or are doing business in that service area, meet the requirement of Section 40.1(b) of the Act. *Carmichael v. Browning-Ferris Industries of Illinois, Inc. et al.*, PCB No. 930114, slip op. 3 (August 5, 1993)(Petitioner living 10 miles from proposed facility and doing business in the service area was “so located as to be affected.”); *Worthen, et al. v. Village of Roxana, et al.*, PCB No. 90-137, slip op. 6-7 (November 29, 1990)(Petitioners living in the service area are “so located as to be affected.”); *Valessares, et al. v. County Board of Kane County, et al.*, PCB No. 87-36, slip op. 23-24 (July 16, 1987)(petitioner within the service area articulated by the siting applicant is “so located as to be affected.”).

Therefore, Respondents’ Motion should be stricken or, alternatively, denied as Roxana Landfill, Inc.’s Petition for Review is more than sufficiently plead and Respondents’ Motion is not founded on sound facts and is contrary to legal precedent.

B. Section 40.1(b) Is A Requirement For A Petition For Review And Not For Participation In Local Siting Proceedings

Respondents also argue, without any law to support them, that a petitioner needs to prove Section 40.1(b) during the local siting proceeding. Respondents’ proposition is contrary to case law in which this Board has held it is no possible to raise an objection to standing based on

Section 40.1(b) during the local siting hearing. *Valessares*, PCB No. 87-36, slip op. at 22-23.

Thus, if it is not possible to raise an objection to Section 40.1(b) standing during the local siting proceedings, it is also not required that a petitioner prove Section 40.1(b) standing requirements at the local siting proceeding. Moreover, if Petitioner Roxana Landfill, Inc. was required to meet Section 40.1(b) requirements at the local siting proceedings and notwithstanding the fact that the Caseyville Transfer Station, L.L.C. raises Roxana Landfill in its own needs analysis (which should be *de facto* proof of Section 40.1(b) sufficiency), Respondents waived their arguments, by not also raising them during the local siting proceedings.

C. Joinder In The Village Of Fairmont City's Response & Motion

Petitioner reserves the right to join in the Village of Fairmont City's response and motion, particularly if the Village of proceeds with filing a motion for sanctions against Respondents for filing the motions to strike and dismiss both Roxana Landfill, Inc.'s and Vilalge of Fairmont City's Petitions for Review, as those motions are contrary to law; without any factual basis; without any legal citation; asserting facts not in the Record on Appeal and not in compliance with Rule 101.504; and, in a highly expedited proceeding where responding to the Motion interferes with Petitioners in their ability to prepare for the upcoming public hearing.

WHEREFORE, Petitioners ROXANA LANDFILL, INC. respectfully request the Illinois Pollution Control Board strike Respondents' Motion or, in the alternative, deny the Motion.

Dated: October 20, 2014

Respectfully submitted,

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ROXANA LANDFILL, INC.

By:

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One of Its Attorneys