

OCT 20 2014

ILLINOIS POLLUTION CONTROL BOARD

October 20, 2014

STATE OF ILLINOIS
Pollution Control Board

ROXANA LANDFILL, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 15-65
)	(Third-Party Pollution Control Facility
VILLAGE BOARD OF THE VILLAGE OF)	Siting Appeal)
CASEYVILLE, ILLINOIS; VILLAGE OF)	
CASEYVILLE, ILLINOIS; and)	
CASEYVILLE TRANSFER STATION,)	
L.L.C.,)	
)	
Respondents.)	

 ORIGINAL

VILLAGE OF FAIRMONT CITY, ILLINOIS,)	
)	
Petitioner,)	
)	
v.)	PCB 15-69
)	(Third-Party Pollution Control Facility
VILLAGE OF CASEYVILLE, ILLINOIS,)	Siting Appeal)
BOARD OF TRUSTEES and CASEYVILLE)	(Consolidated)
TRANSFER STATION, L.L.C.,)	
)	
Respondents.)	

HEARING OFFICER ORDER

On October 16, 2014, petitioners filed objections to respondent Caseyville Transfer Station's (CTS's) discovery requests. On October 17, 2014, CTS filed a motion to compel the Village of Fairmont City (Fairmont) to respond to discovery requests.

ROXANA LANDFILL, INC.

Interrogatories

Interrogatory No. 3 asks Petitioner Roxana Landfill, Inc. (Roxana) for facts supporting Roxana's eligibility to file this petition for review, including information as to how Roxana is so located as to be affected by the facility. The interrogatory further seeks facts relating to Roxana's business in and nearby the Village of Caseyville (Village). Interrogatory No. 11 seeks the identity of all corporate representatives that have knowledge of the answers to Interrogatories No. 2 and No. 3.

Interrogatories No. 4 and No. 5 ask Roxana to identify all communications with Village officials and employees relating to the siting application, and to identify Board members who Roxana claims prejudged the application, along with any factual basis. Interrogatory No. 7 asks for all instances in which Roxana claims the proceedings were fundamentally unfair.

Roxana objects that it is vague, overly broad, unduly burdensome, and not calculated to lead to admissible evidence. Further, the question seeks information that is privileged and confidential such as attorney-client communications and work products. To the extent that the question only seeks facts, Roxana agreed to answer and facts are in process of being discovered.

Document Requests

CTS requests all documents that Roxana intends to present as evidence at hearing; documents Roxana relies on in support of the allegations in its petition; documents demonstrating that Roxana is located so as to be affected by the facility; and documents relied on in answering interrogatories.

Roxana argues that this request is unduly burdensome without knowing what documents are already in the administrative record, as it had not been filed at the time this objection was made. Roxana further objects to documents seeking information that is confidential, privileged and proprietary.

Discussion

The objections to all of the interrogatories and document requests listed above are overruled with respect to relevance; however, a determination cannot be made as to whether any of the requested information is privileged, trade secret, or otherwise confidential. These privileges must be determined specifically with respect to each document, and Roxana has the burden of establishing that the privilege applies.

With the hearing on October 28, 2014, it is unlikely that the allegedly privileged, trade secret, or confidential documents can be ruled on before hearing. CTS can decide whether they want to waive the decision deadline to allow time for such determination, otherwise a determination on privilege cannot be made in this order; thus the objection is neither sustained nor overruled. Evidence that is allegedly privileged will not be admitted at hearing except as an offer of proof. However, to the extent that Roxana intends to introduce facts or documents at hearing relating to the interrogatories or document requests listed herein, those documents must be disclosed to CTS provided they are not already part of the administrative record.

VILLAGE OF FAIRMONT CITY

Interrogatories

Interrogatory No. 3 seeks documents and communications relating to the May 7, 2014 Board of Trustees meeting for the Fairmont. Specifically, information on a resolution amending the host community agreement between Fairmont and Waste Management of Illinois, Inc.; information about the agreement between Fairmont and attorney Don Moran as referenced in the meeting minutes; any other information relating to a decision that this proposed facility was not in the best interest of Fairmont; and the decision to retain Don Moran to oppose the facility. Interrogatory No. 13 asks how Fairmont came to be represented by Waste Management's attorney Don Moran, and information including whether Fairmont is paying for such representation.

Interrogatories No. 14 and No. 15 ask for facts and exact evidence that shows that Fairmont will be negatively affected by the approval of CTS, and ask for the identity of all persons from Fairmont who testified at hearing.

Fairmont objects on the grounds that these interrogatories seek information not relevant to any issue of jurisdiction or fundamental fairness in this proceeding, nor is it reasonably calculated to lead to admissible evidence. CTS' motion to compel argues that this information is relevant to their argument that Fairmont is not so located as to be affected by the facility.

Interrogatories No. 16 and No. 17 asks for Fairmont's exact argument and factual basis to claim that CTS is not necessary to accommodate the waste needs of the area, and that it is not consistent with the County's solid waste plan. Fairmont objects on the grounds that the information is not relevant to jurisdiction or fundamental fairness, nor is it reasonably calculated to lead to discovery of admissible evidence.

Document Requests

CTS seeks all documents identified in Fairmont's answers to the interrogatories; documents Fairmont intends to present as evidence; and all documents that Fairmont relies on in support of any allegations in its petition for review. Fairmont objects on grounds of relevance and the fact that these documents are in the record or in the control of CTS.

CTS further seeks a copy of the host community agreements between Fairmont and Waste management of Illinois, and a copy of all agreements between Fairmont and counsel Moran or his law firm. Fairmont objects on grounds of relevancy and confidentiality.

Discussion

One of the criteria pursuant to Section 39.2(a) of the Act is whether the facility is necessary to accommodate the waste needs of the area it is intended to serve. The objection as to relevance of interrogatories No. 16 and No. 17 is overruled. If Fairmont plans to introduce facts

Fairmont's objection is sustained with respect to relevance of documents related to the host agreement between Fairmont and Waste Management, and related agreements with counsel Moran or his firm. As stated above, a determination cannot be made with respect to confidentiality without more information.

To the extent that the following documents are not part of the administrative record and not alleged to be privileged, Fairmont is compelled to produce documents that it intends to present as evidence at hearing, and any other documents it intends to rely on in asserting that it is so located as to be affected by CTS.

VILLAGE'S MOTION TO QUASH DEPOSITION SUBPOENAS

The motion to quash is denied. The time constraints in this case have prevented compliance with certain procedural notice requirements, and it would unfairly prejudice petitioners to be unable to depose key witnesses. Additionally, there is some question as to whether the Village has contributed to the obstruction of scheduling depositions. The hearing officer has been apprised of Roxana's on-going efforts to accommodate the Village's witnesses. However, while the Village claims that they have provided alternative dates and times for petitioners to conduct depositions, the hearing officer is only aware of an email agreeing to an evidence deposition of the Village Clerk on October 27, 2014.

Procedural rules provide that parties may seek Board review of discovery rulings pursuant to 35 Ill. Adm. Code 101.616(e). The parties are reminded that the filing of an appeal does not stay the proceeding. In statutory decision deadline cases, the hearing officer must manage the case to insure that discovery, hearing and briefing schedules allow for Board deliberation and a timely decision of the case as a whole.

IT IS SO ORDERED.

Carol Webb

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CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were mailed, first class, on October 20, 2014, to each of the persons on the attached service list.

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on October 20, 2014:

John T. Therriault
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PCB 2015-065
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