

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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.)
)

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

STATE OF ILLINOIS
Pollution Control Board

 **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)

REPLY TO ROXANA LANDFILL, INC.'S MOTION FOR PROTECTIVE ORDER

NOW COME, Respondents', Village of Caseyville, Illinois and Village Board of the Village of Caseyville, by and through their attorney and for their Reply to Roxana Landfill, Inc.'s Motion for Protective Order, states as follows:

1. Roxana Landfill, Inc. cites Dumke v. City of Chicago, 373 Ill.Dec. 804, 810 (1st Dist. 2013), for the proposition, "Illinois Courts have held that the deliberative process privilege can be waived." First, Dumke did not involve the deliberative process privilege. Rather, Dumke involved an exemption to the Illinois Freedom of Information Act for pre-decisional documents. It is interesting that Roxana Landfill, Inc. cited the Dumke case because even if the Dumke case were applicable, it would support the conclusion that Trustee Davis and Trustee Abernathy could

not waive the deliberative process privilege. Dumke held that only the head of a public body could waive an exemption to FOIA. *Id.* at 807-08. Applying this rational to the facts of this case, only the president of the board of trustees of the Village of Caseyville, Leonard Black, could waive the deliberative process privilege for the Caseyville Village Board. This rational is sound. If any individual member of a political body could waive the deliberative process privilege, then any lone dissenting member of the political body could stifle the body's ability to conduct a fully and frank deliberation on a matter.

2. Fox Moraine, LLC v. United City of Yorkville, 2011 IL App (2d) 100017, ¶ 73 (2nd Dist. 2011), was directly on point and held that comments made by aldermen speak for themselves and do not require further inquiry.

3. The Village Board of the Village of Caseyville joins in the Motion for Protective Order. It is also further anticipated that Trustee Abernathy and Trustee Davis will both individually assert the deliberative process privilege.

Respectfully Submitted,

WEILMUNSTER LAW GROUP, P.C.

BY: 
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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 21st day of October, 2014.

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Hearing Officer
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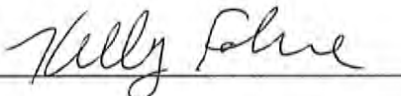
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STATE OF ILLINOIS
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WEILMUNSTER
LAW GROUP, P.C.

October 21, 2014

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STATE OF ILLINOIS
Pollution Control Board

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

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:

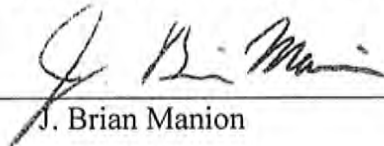
Enclosed please find an original and one copy of our Reply to Roxana Landfill, Inc.'s Motion for Protective Order. Please verify receipt and filing by returning a file stamped copy of said document in the enclosed self-addressed envelope.

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
Penni S. Livingston
Robert Sprague

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