

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
ROXANA LANDFILL, INC.

Petitioner,

vs.

VILLAGE BOARD OF THE VILLAGE OF
CASEYVILLE, ILLINOIS;
VILLAGE OF CASEVILLE, ILLINOIS; and
CASEYVILLE TRANSFER STATION, L.L.C.

Respondents.

No. PCB 15-65

(Pollution Control Facility Siting
Application)

VILLAGE OF FAIRMONT CITY, ILLINOIS,

Petitioner,

vs.

VILLAGE OF CASEYVILLE, ILLINOIS
BOARD OF TRUSTEES and CASEYVILLE
TRASFER STATION, L.L.C.

Respondents.

No. PCB 15-69

(Pollution Control Facility Siting
Application)

**PETITIONER ROXANA LANDFILL, INC'S EMERGENCY MOTION TO QUASH
SUBPOENA DUCES TECUM OF SUSAN PIAZZA**

TO:

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

PLEASE TAKE NOTICE that on October 28, 2014, we filed with the Illinois Pollution Control Board, (1) this Notice of Filing and (2), the attached Petitioner Roxana Landfill, Inc.'s Emergency Motion to Quash Subpoena Duces Tecum of Susan Piazza, a copy of each is attached and served upon you.

Dated: October 28, 2014

PETITIONER ROXANA LANDFILL, INC.

Clark Hill PLC
150 N. Michigan Ave., Suite 2700
Chicago, Illinois 60601
Phone: 312-985-5912

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 28th 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.

Now comes Petitioner Roaxana Landfill, Inc. ("Roaxana"), by and through its attorney Jennifer J. Sackett Pohlenz of CLARK HILL PLC and moves this Honorable Control Board (Board) to quash the Subpoena *Duces Tecum* first served on Susan Piazza, an employee of Allied Waste Transportation, Inc., by Caseyville Transfer Station, L.L.C. on Friday, October 24, 2014 and sent to counsel on Monday, October 27, 2014. In support of this Emergency Motion, Petitioner states as follows:

1. It is unreasonable that Respondent Caseyville Transfer Station, L.L.C. be allowed to issue a "Subpoena *Duces Tecum*" on the Friday before this Tuesday public hearing. Moreover, the documents sought in the subpoena, communications between Susan Piazza and the Village of Caseyville or its attorney, have nothing to do with the fundamental unfairness or jurisdictional issues that will be raised by Petitioner at this public hearing.

2. Petitioner will not be presenting as evidence at hearing any documents concerning or involving Ms. Piazza or any contact that she had with the Village of Caseyville.

3. Further, the Supoena *Duces Tecum* (attached as Exhibit A) provides no request for testimony and first served on Ms. Piazza at 2:35 pm on Friday, October 24, 2014.

4. Indeed, the Supboena *Duces Tecum* was not timely served, pursuant to Pollution Control Board Rule 101.622(b), and is evidence of the continuous effort of Respondents throughout this proceeding to obstruct the proceedings and use its decision not to waive the deadline as a weapon against the parties.

5. The Subpoena *Duces Tecum* is also not issued by the Pollution Control Board Clerk, and is thus not complaint with Pollution Control Board Rule 101.622(a).

6. Likewise, the Subpoena *Duces Tecum* contains a check for \$27.00, which provides a \$25.00 witness fee an only two additional dollars. Under the IRS mileage rate of \$0.56/mile, the fees provided allow for only 3.5 miles of travel. The distance between the two

addresses identified on the Supoena *Duces Tecum* is in excess of 18 miles. Thus, the Subpoena *Duces Tecum* is also noncompliant as respects Rule 101.622.

7. Moreover, there is no reference to the subpoena being for testimony at the public hearing today, testimony is nowhere referenced on the subpoena (inconsistent with the Pollution Control Board form subpoena). The first notice of Respondent Caseyville Transfer Station, L.L.C.'s desire to subpoena Susan Piazza for hearing is the email from Penni Livingston to Hearing Officer Webb at 11:39 a.m. yesterday. Even if that communication was proper notification of the intent to call a witness to testify, which it is not, notification less than 24 hours by the same party that insists on the expedited schedule for this public hearing is highly prejudicial and intended to obstruct preparation for the hearing. Even if Ms. Piazza was available to attend the hearing, which she is not, less than 10-days service as required by the Illinois Pollution Control Board Rules cannot be allowed for testimony at hearing and certainly 24-hour's notice cannot be allowed.

8. Thus, the Supoena *Duces Tecum* served on Susan Piazza should be quashed as it is not issued by the Clerk of the Pollution Control Board pursuant to Rule 101.622, it is a document production subpoena seeking documents with no relevancy to any evidence that will be presented by Petitioner Roxana Landfill, Inc., and it was issued unreasonably and prejudicially close to the date of the sought production of documents and the date of this public hearing. Further, to the extent the Respondent Caseyville Transfer Station, L.L.C. is considering the Subpoena *Duces Tecum* to be a subpoena for testimony, it should be quashed, as it does not state it is a subpoena for testimony, it is not in conformance with Rule 101.622 for issuance of a subpoena for testimony, is not in conformance with Rule 101.622(a) for form of a subpoena, and was intentionally served and noticed on the parties in a manner that would obstruct this expedited schedule for public hearing. A true and correct copy of the form subpoena issued by

the Pollution Control Board is attached.

WHEREFORE, Petitioner Roxana Landfill, Inc. respectfully requests that the Hearing Officer grant this motion and quash the Subpoena *Duces Tecum* served on Susan Piazza.

Dated: October 28, 2014

Respectfully submitted,

ROXANA LANDFILL, INC.

By: /s/ Jennifer J. Sackett Pohlenz

One of Its Attorneys

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

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ROXANA LANDFILL, INC.)
)
 Petitioner.)
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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.)
)
 Respondents.)

PCB-15-65
 (Third Party Pollution Control
 Facility Siting Appeal)

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

PCD-15-69
 (Third Party Pollution Control
 Facility Siting Appeal)
 (Consolidated)

SUBPOENA - DUCES TECUM

TO: Susan Piazza, Roxana Landfill, 4601 Cahokia Creek Road, Edwardsville, IL, 62025

YOU ARE COMMANDED to appear for Hearing at Caseyville Village Hall, 909 South Main St., Caseyville, IL at 9:00 A.M. on Tuesday October 28th.

You shall bring all documents in your possession related to the above matter including the following:

1. Any and all documents and communications that have ever been exchanged between yourself and any village official, village employee, or village attorney, including former village attorney John Gilbert.

YOUR FAILURE TO APPEAR IN RESPONSE TO THIS SUBPOENA WILL SUBJECT YOU TO PUNISHMENT FOR CONTEMPT OF THIS COURT.

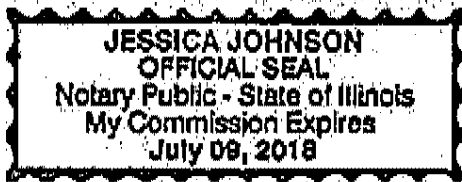
Name: Penni S. Livingston, #06196480
Attorney for: Caseyville Transfer Station, LLC.
Address: 5701 Perrin Road
City: Fairview Heights
Telephone: 618-628-7700

This subpoena will be served by Process Servers, Inc., Belleville, IL who will provide an affidavit upon service. I provided a check for \$27.00 to the witness for witness and mileage fees.

Penni S. Livingston
Penni S. Livingston

Signed and Sworn to before me October 23rd, 2014

Jessica N. Johnson
Notary Public





LIVINGSTON LAW FIRM
5701 PERRIN ROAD
FAIRVIEW HEIGHTS, IL 62208
(618) 628-7700

Associated Bank

70-57-759



10/23/2014

6536

PAY TO THE ORDER OF **Susan Piazza**

Twenty-Seven and 00/100

\$ 27.00

Susan Piazza

DOLLARS



Penny S. Livingston

AUTHORIZED SIGNATURE

MEMO: Witness Fees

⑈006536⑈ ⑆075900575⑆ 2 263 263 05⑈

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ROXANA LANDFILL, INC.

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VILLAGE BOARD OF THE VILLAGE OF CASEYVILLE, ILLINOIS; VILLAGE OF CASEYVILLE, ILLINOIS; and CASEYVILLE TRANSFER STATION, LLC,

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PCB 15-65
(Third Party Pollution Control Facility Siting Appeal)

VILLAGE OF FAIRMONT CITY, ILLINOIS,

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VILLAGE OF CASEYVILLE, ILLINOIS BOARD OF TRUSTEES and CASEYVILLE TRANSFER STATION, LLC,

Respondents.

PCB-15-69
(Third Party Pollution Control Facility Siting Appeal)
(Consolidated)

NOTICE OF FILING

PLEASE TAKE NOTICE that on October 27, 2014, we filed with the Illinois Pollution Control Board this Notice of Filing and the attached Subpoena Duces Tecum for Public Hearing, which was served on Susan Piazza of Roxana Landfill on October 24th, 2014.

Respectfully submitted,

CASEYVILLE TRANSFER STATION, LLC

By: /s/ Penni S. Livingston

Penni S. Livingston, #06196480
Livingston Law Firm
5701 Perrin Road
Fairview Heights, IL 62208
Phone: (618) 628-7700
Fax: (618) 628-7710
Email: penni@livingstonlaw.biz

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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 OF CASEYVILLE, ILLINOIS; VILLAGE)
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PCB-15-65
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YOUR FAILURE TO APPEAR IN RESPONSE TO THIS SUBPOENA WILL SUBJECT YOU TO PUNISHMENT FOR CONTEMPT OF THIS COURT:

Name: Penni S. Livingston, #06196480
Attorney for: Caseyville Transfer Station, LLC.
Address: 5701 Perrin Road
City: Fairview Heights
Telephone: 618-628-7700

This subpoena will be served by Process Servers, Inc., Belleville, IL who will provide an affidavit upon service. I provided a check for \$27.00 to the witness for witness and mileage fees.

Penni S. Livingston
Penni S. Livingston

Signed and Sworn to before me October 23rd, 2014

Jessica N. Johnson
Notary Public



Process Servers Inc.

111 West Washington Street
Belleville, Illinois - 62220
(618) 277-4410
License # 117-000823

Case # PCB-15-65

RETURN OF SERVICE

I, the undersigned employee of Process Servers Inc., a duly registered and qualified Private Investigator, licensed by the State of Illinois, being duly sworn in on my Oath, state that I served the attached SUBPOENA DUCES TECUM on the 24 day of PT 2014, at the hour of 2:55pm on SUSAN PLAZZA whom I would describe as follows: Sex F, Race W, Age 50

I served the same at the following address: 4601 Cassock Creek Road
Edwardsville

If served on someone other than the Defendant at the usual place of abode, please complete:

I served the same upon a person residing in the house hold of _____ informing the person of the Contents of the Summons, and I further placed a copy of said Summons in a sealed envelope with postage fully prepaid and addressed same to Defendant at his or her place of abode.

Please complete if service was not made:

I was unable to serve the Defendant for the following reason:

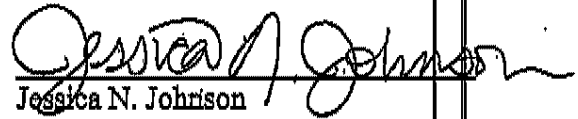
SUBSCRIBED AND SWORN TO before me this 27 day of Oct, 2014



[Signature]
NOTARY PUBLIC

CERTIFICATE OF SERVICE

I, Jessica N. Johnson, do certify that I caused to be electronically filed on this 27th day of October, 2014, the foregoing Respondent Caseyville Transfer Station, LLC.'s Notice of Filing and Subpoena Duces Tecum for Public Hearing to the parties of record by depositing the same electronically on the Illinois Pollution Control Board website as well as emailing the Motion to all parties.


Jessica N. Johnson

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

Attorney for Roxana Landfill, Inc.

Robert Sprague
Sprague & Urban
26 E. Washington Street
Belleville, IL 62220

Attorney for Village of Fairmont City

Carol Webb
1021 North Grand Avenue East
P.O. Box 19724
Springfield, IL 62794-9274

Hearing Officer, IPCB

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

Attorney for Village of Caseyville

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

Attorney for Village of Fairmont City



Drive 18.4 miles, 23 min

Directions from 4301 Cahokia Rd to 909 S Main St

O 4301 Cahokia Rd
Edwardsville, IL 62025

Get on IL-255 S in Roxana from Old Alton Edwardsville Rd

.....2.7 mi / 5 min

- ↑** 1. Head north on Cahokia Rd toward Old Alton Edwardsville Rd
.....0.4 mi
- ↶** 2. Turn left onto Old Alton Edwardsville Rd
.....1.5 mi
- ↑** 3. Continue onto Madison Ave
.....0.4 mi
- ↶** 4. Turn left onto the Illinois 255 N ramp
.....0.4 mi

Follow IL-255 S and I-255 S to Collinsville Rd in Collinsville. Take exit 24 from I-255 S

.....12.4 mi / 12 min

- ↶** 5. Merge onto IL-255 S
.....4.2 mi
- ↶** 6. Keep left to continue on I-255 S
.....7.8 mi
- ↘** 7. Take exit 24 for Collinsville Road
.....0.4 mi
- ↘** 8. Keep right at the fork, follow signs for Collinsville and merge onto Collinsville Rd
.....144 ft

Drive to IL-157 S/S Bluff Rd/State 157 S in Caseyville

.....3.4 mi / 6 min

- ↶** 9. Merge onto Collinsville Rd
.....0.9 mi
- ↘** 10. Turn right toward IL-157 S/S Bluff Rd/State 157 S
.....131 ft
- ↘** 11. Slight right onto IL-157 S/S Bluff Rd/State 157 S
.....2.6 mi

⊙ 909 S Main St
Caseyville, IL 62232

These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.

Map data ©2014 Google

Before the Illinois Pollution Control Board

_____)
 _____)
 _____)
 _____)
 Complainant/Petitioner,)
 v.)
 _____)
 _____)
 _____)
 Respondent.)

PCB _____

SUBPOENA DUCES TECUM

TO:

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 hearing/deposition in the above-captioned matter at _____ .m. on _____ 20 _____, at _____.

You are also ordered to bring with you documents relevant to the matter under consideration and designated herein, _____

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 duces tecum by handing a copy to _____
_____ on _____, 20____.

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

Notary Public