

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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NOV 18 2014

STATE OF 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, LLC,)
)
Respondents.)

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

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

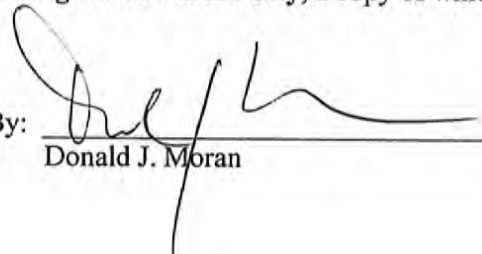
PCB 15-69
(Third Party Pollution Control Facility
Siting Appeal)

 ORIGINAL

NOTICE OF FILING

TO: SEE ATTACHED CERTIFICATE OF SERVICE

PLEASE TAKE NOTICE that on the 18th day of November, 2014, we filed with the Illinois Pollution Control Board, **Village of Fairmont City's Motion for Leave to File Reply in Support of Its Motion for Sanctions and to Strike, Village of Fairmont City's Reply in Support of Its Motion for Sanctions and to Strike and Reply Brief of Petitioner Village of Fairmont City**, a copy of which is attached and served upon you.

By: 

Donald J. Moran

Donald J. Moran
PEDERSEN & HOUP
161 North Clark Street
Suite 2700
Chicago, Illinois 60601
Telephone: (312) 641-6888

CERTIFICATE OF SERVICE

Donald J. Moran, an attorney, on oath states that he served the foregoing **Village of Fairmont City's Motion for Leave to File Reply in Support of Its Motion for Sanctions and to Strike, Village of Fairmont City's Reply in Support of Its Motion for Sanctions and to Strike and Reply Brief of Petitioner Village of Fairmont City**, on the following parties electronically and by depositing same in the U.S. mail at 161 N. Clark Street, Chicago, Illinois 60601, on this 18th day of November, 2014.

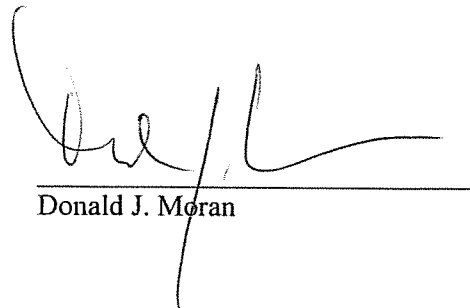
Village of Caseyville
c/o Rob Watt, Clerk
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By e-mail only



Donald J. Moran

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



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

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

(Consolidated)

**VILLAGE OF FAIRMONT CITY'S MOTION FOR LEAVE TO FILE
REPLY IN SUPPORT OF ITS MOTION FOR SANCTIONS AND TO STRIKE**

NOW COMES Petitioner Village of Fairmont City ("Fairmont City"), by its attorneys Sprague & Urban and Pedersen & Houpt, P.C., pursuant to Section 101.500(e) of the Pollution Control Board Procedural Rules and for its Motion for Leave to file a Reply in Support of its Motion for Sanctions and to Strike Respondent Caseyville Transfer Station, LLC's ("CTS's") and Respondent Village of Caseyville, Illinois' ("Caseyville's") Joint Motion to Strike and to Dismiss Fairmont City's Petition for Hearing to Contest Site Location Approval (the "Joint Motion"), states as follows:

1. On October 22, 2014, Fairmont City filed its Motion to Strike and for Sanctions, asserting (1) that the Joint Motion violated Section 101.504 of the Board's Procedural Rules and (2) that the Joint Motion was not well-grounded in fact or warranted by existing law or a good faith argument for the extension, modification or reversal of existing law.

2. CTS and Caseyville have responded to Fairmont City's Motion. The Response reads limitations into Section 101.800 of the Board's Procedural Rules that do not appear in the text of the rule in order to argue that the Board lacks the authority to impose the requested sanctions.

3. The Response also falsely suggests that the Joint Motion was predicated on Fairmont City's refusal to respond to legitimate discovery requests.

4. Finally, the Response continues to advance CTS' and Caseyville's bad faith conspiracy theory regarding Fairmont City's counsel, despite having obtained testimony disproving this theory.

5. Fairmont City has not had the opportunity to address any of these arguments.

6. Fairmont City should be granted leave to file the Reply attached hereto as Attachment 1, therefore, to prevent material prejudice to Fairmont City and its Motion.

WHEREFORE, for all of the reasons stated above, Fairmont City respectfully requests that the Board enter an Order:

A. Granting Fairmont City leave to file the Reply attached hereto as Attachment 1;
and

B. Providing such other and further relief as the Board deems appropriate.

November 18, 2014

Respectfully submitted,

VILLAGE OF FAIRMONT CITY

By: 

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

By: 

Donald J. Moran
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Exhibit 1

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

| | | |
|---|---|--------------------------------|
| ROXANA LANDFILL, INC. |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | PCB 15-65 |
| |) | (Third Party Pollution Control |
| |) | Facility Siting Appeal) |
| VILLAGE BOARD OF THE VILLAGE OF |) | |
| CASEYVILLE, ILLINOIS; VILLAGE OF |) | |
| CASEYVILLE, ILLINOIS; and |) | |
| CASEYVILLE TRANSFER STATION, LLC, |) | |
| |) | |
| Respondents. |) | |
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| VILLAGE OF FAIRMONT CITY, ILLINOIS, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | PCB 15-69 |
| |) | (Third Party Pollution Control |
| VILLAGE OF CASEYVILLE, ILLINOIS |) | Facility Siting Appeal) |
| BOARD OF TRUSTEES and CASEYVILLE |) | |
| TRANSFER STATION, LLC, |) | (Consolidated) |
| |) | |
| Respondents. |) | |

**VILLAGE OF FAIRMONT CITY'S REPLY IN SUPPORT
OF ITS MOTION FOR SANCTIONS AND TO STRIKE**

NOW COMES Petitioner Village of Fairmont City ("Fairmont City"), by its attorneys Sprague & Urban and Pedersen & Houpt, P.C., pursuant to Section 101.500(e) of the Pollution Control Board Procedural Rules and for its Reply in Support of its Motion for Sanctions and to Strike Respondent Caseyville Transfer Station, LLC's ("CTS's") and Respondent Village of Caseyville, Illinois' ("Caseyville's") Joint Motion to Strike and to Dismiss Fairmont City's Petition for Hearing to Contest Site Location Approval (the "Joint Motion"), states as follows:

INTRODUCTION

CTS and Caseyville now admit that the Joint Motion should be denied. (Resp., p. 6). Testimony received during this proceeding from Fairmont City's chief of police, Scott Penny, reveals that Fairmont City sought out its present counsel — not the other way around — and that Fairmont City has specific concerns that "all the garbage trucks [going to the proposed facility] would drive — drive through Washington Park and Fairmont City. None would drive through Caseyville" (Ex. A). CTS and Caseyville do not deny that these facts, combined with Fairmont City's location one mile from the proposed facility and within the facility's proposed service area, establish Fairmont City's standing to appeal Caseyville's local siting decision.

The only issue now presented is whether and how to sanction CTS and Caseyville. CTS and Caseyville do not deny the core of Fairmont City's Motion for Sanctions. For instance, they do not deny that their Joint Motion violates Section 101.504 of this Board's Procedural Rules, in that all of the facts asserted therein fall outside the record and are not supported by oath, affidavit or certification. There is, therefore, a clear basis for imposing sanctions under Section 101.800(b) of those Rules by striking the Joint Motion and barring CTS and Caseyville from filing any further pleading or other documents denying Fairmont City's standing in this matter or asserting their conspiracy theories regarding Waste Management or Fairmont City's counsel.

CTS and Caseyville, furthermore, do not deny the underlying basis for sanctions under Illinois Supreme Court Rule 137(a). They do not deny that the Joint Motion failed to cite any legal authority for its two arguments: (1) that a Petitioner must prove its standing to appeal during the local siting proceeding and (2) that the Board may strike and dismiss such an appeal on the ground that it is "really" advancing the financial interests of a non-party — an argument itself based on an unsubstantiated and speculative conspiracy theory. Unsurprisingly, CTS' and

pleadings, motions and other papers as are well-grounded in law and fact. CTS and Caseyville do not deny this. Section 101.100(b) of the Board Procedural Rules states that "the Board may look ... to the Supreme Court Rules for guidance where the Board's procedural rules are silent." Accordingly, the Board may look to the Supreme Court Rules regarding the obligation of attorneys to only sign and file such pleadings, motions and other papers as are well-grounded in law and fact. CTS and Caseyville do not deny this either.

The Board may also look to Supreme Court Rule 137(a) as a basis for imposing monetary sanctions for filing a pleading that is not well-grounded in fact or in law. Section 101.800 authorizes the Board to impose sanctions for unreasonable failures to comply with the Board's Procedural Rules or an order of the Board or a hearing officer. It does not address sanctions for filing a pleading that is not well-grounded in fact or in law. Accordingly, the Board's Procedural Rules are silent on the sanctions available for filing a pleading that is not well-grounded in fact or in law and the Board may, therefore, look to the Supreme Court Rules for guidance and authorization to impose monetary sanctions.

C. CTS's and Caseyville's Conduct Is Sanctionable under Rule 137(a).

CTS and Caseyville have never presented any legal authority supporting their argument that a municipality located only one mile away from and within the service area of a proposed facility is not so located as to be affected by that facility. Their attempt to distinguish *Valessares v. County Board*, PCB 86-36 (July 16, 1987), on the grounds that it does not concern sanctions misses the point. *Valessares* is relevant because it held that an individual living within a proposed facility's service area was, necessarily, so located as to be affected by that facility even though he lived more than five miles away. CTS and Caseyville have provided no authority to

suggest that a municipality located within a proposed facility's service area is not similarly situated to Mr. Valessares and, therefore, have failed to ground their Joint Motion in the law.

Fairmont City specifically informed CTS and Caseyville of the facts that bring Fairmont City within *Valessares'* holding. It is, further, undisputed that these facts were alleged in Fairmont City's Petition and that, if proven, they establish Fairmont city's standing to appeal. Despite knowing both the facts and the law establishing Fairmont City's standing, however, CTS and Caseyville pursued theories with no legal or factual basis whatsoever, namely, that Fairmont City should have established its standing to appeal with witness testimony during the local siting proceeding and that the financial interests of a *non-party* are not a sufficient basis to establish a different party's standing. (Resp., p. 5).

These arguments were not brought in good faith and are sanctionable. Not only is the first argument directly contradicted by black letter law regarding the dismissal of Petitions to the Board, it also ignores that both Fairmont City's mayor and a member of its township's Board of Trustees spoke during the local siting hearing and that the Board member specifically addressed his and Fairmont City's concerns regarding odor, hazardous materials and fire safety. (Ex. B). *See also Timber Creek Homes, Inc. v. Village of Round Lake Park*, PCB No. 14-99 (Mar. 20, 2014) ("Board must take all well-pleaded allegations as true and may not dismiss the petition unless it clearly appears that no set of facts could be proven which would entitle petitioner to relief."). The argument was not warranted by the law, grounded in the facts, or brought in good faith. The Board should impose sanctions.

The second argument fares no better. There is, to Fairmont City's knowledge, no legal authority to support the proposition that the Board can dismiss a Petition on the ground that the Petitioner is merely a proxy for a non-party's interests; CTS and Caseyville, certainly, cite none.

Instead, they pretend that their argument was necessitated by Fairmont City's refusal to respond to discovery. In fact, CTS and Caseyville brought their Joint Motion before propounding discovery. Fairmont City also successfully objected to that discovery — which was entirely addressed to the Waste Management conspiracy theory, not Fairmont City's standing — and therefore had no obligation to respond. The argument was, furthermore, based on nothing more than counsel's supposition and speculation — the Joint Motion cited no admissible evidence whatsoever. Yet even now, after their theory has since been disproven by the testimony of Fairmont City's police chief, Scott Penny, CTS and Caseyville continue, without any factual basis and in knowing bad faith, to argue that "it still appears that the only real interest Fairmont City has ... is loss of its tipping fee tax revenue and it appears they are pursuing this matter for Waste Management" (Ex. B; Resp., p. 5). CTS and Caseyville should be sanctioned.

CONCLUSION

Section 101.800 of the Board's Procedural Rules and Supreme Court Rule 137(a) authorize the Board to strike the Joint Motion, bar CTS and Caseyville from filing any further pleading or other documents denying Fairmont City's standing in this matter or asserting their conspiracy theories regarding Waste Management or Fairmont City's counsel, and impose the costs incurred by Fairmont City in bringing this motion, including its reasonable attorneys' fees, on CTS, Caseyville and their counsel. The Joint Motion undeniably violated Section 101.50 and its arguments lacked both legal and factual support. The Joint Motion was brought in bad faith, and that bad faith continues in CTS' and Caseyville's Response. CTS, Caseyville and their counsel should be sanctioned.

November 18, 2014

Respectfully submitted,

VILLAGE OF FAIRMONT CITY

By: 

Robert J. Sprague
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By: 

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1 narrowly tailored to any fundamental fairness
2 claims or the motion for sanctions that was filed
3 against them by Fairmont City. So, having said
4 that, this is an offer of proof.

5 Mr. Penny, you may approach.
6 You may take a seat on the witness stand and the
7 court reporter will swear you in, please.

8 WHEREUPON:

9 SCOTT PENNY
10 called as a witness herein, having been first duly
11 sworn, deposeseth and saith as follows:

12 DIRECT EXAMINATION

13 BY MR. MANION

14 Q. Can you please state your full name?

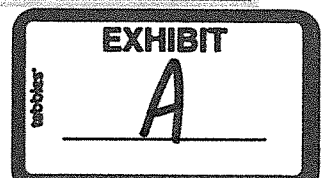
15 A. Scott B. Penny, P-E-N-N-Y.

16 Q. And how are you currently employed?

17 A. I am the chief of police in the
18 Village -- administrator for the Village of
19 Fairmont City, Illinois.

20 Q. Okay. How did you first become
21 aware that there was a siting application for a
22 waste transfer station in the Village of
23 Caseyville?

24 A. I saw a notice -- a public notice in



1 the newspaper.

2 Q. Okay. Did you ever get contacted
3 about objecting to the siting application by
4 anyone?

5 A. No, I contacted our mayor and city
6 council members and said "We need to review this
7 very closely."

8 Q. Okay. After you spoke with them,
9 what happened next as far as objecting to the
10 application?

11 A. In our discussion, I commented to
12 the mayor "If we're getting involved in this, we
13 need a specialist that is an environmental
14 attorney." The next thing that happened is the
15 mayor asked me to do some research and find out
16 who was the top environmental attorney in the
17 area. I said "Well, I know from our transactions
18 negotiating in resolving issues with my old
19 landfill the attorney that they have beats us at
20 every opportunity and we always end up on the
21 losing end. I would say we need to hire him."

22 Q. I want to show you what has been
23 marked as Exhibit 1. Can you take a look at the
24 first paragraph on page three, please?

1 (Document marked as Hearing
2 Exhibit No. 1 for
3 identification.)

4 MR. MORAN: May I see the document
5 that he's showing the witness?

6 HEARING OFFICER WEBB: Do you have
7 another -- yeah, show him.

8 MS. LIVINGSTON: And, for the
9 record, these are meeting agenda minutes dated May
10 7th, 2014, Village of Fairmont City, Illinois.

11 MS. SACKETT POHLENZ: And what was
12 it marked?

13 MR. MANION: Exhibit 1.

14 BY THE WITNESS:

15 A. Paragraph three?

16 BY MR. MANION:

17 Q. The first paragraph at the top of
18 the page.

19 A. What about?

20 Q. First, can you identify that
21 document and is that a true and accurate copy of
22 the meeting minutes?

23 A. This is on Fairmont City Village
24 letterhead dated May 7th.

1 Q. Okay.

2 A. Beyond that, I can't.

3 Q. Does it appear to be a --

4 A. It appears to be in good form.

5 Q. Okay. Can you read that first
6 paragraph on page three, please?

7 A. "Chief reported he had received a
8 phone call from an attorney representing Waste
9 Management Don Moran regarding a proposed
10 Caseyville Transfer Station. Village of
11 Caseyville is trying to get their own transfer
12 station to haul trash to Du Quoin. The landfill
13 is opposed to this station and believes it is not
14 in the best interest of the Village. A hearing
15 regarding the transfer station will be held on May
16 29th, 2014. Mr. Moran will represent the Village
17 of Fairmont City. He forward an agreement and
18 Chief Penny asked the Board to approve the
19 agreement."

20 Q. Is that a true and accurate summary
21 of the statements you made at that meeting?

22 A. Not necessarily.

23 Q. What is inaccurate about it?

24 A. It is not fully accurate with all

1 details concerning the conversation.

2 Q. Well, what is inaccurate about that
3 paragraph?

4 A. The fact that I had contacted Don
5 Moran before receiving a call from Don Moran.

6 Q. Okay. Did you?

7 A. This should reflect -- what this
8 should reflect is I had discussion with Don Moran.

9 Q. But that's not what the minutes say,
10 fair enough?

11 A. Yes, you're right.

12 MR. MANION: I don't have any other
13 questions.

14 HEARING OFFICER WEBB: Okay.
15 Ms. Livingston, do you have any questions?

16 C R O S S E X A M I N A T I O N
17 BY MS. LIVINGSTON

18 Q. Did you discuss in the public
19 meeting of May 7th, 2014, why the city -- why it
20 would not be good for the Village of Fairmont?

21 MR. MORAN: Ms. Hearing Officer,
22 this is going well beyond any reasonable question
23 relating to any reasonably relevant issue in this
24 case. We've just addressed this. We're going to

1 go over it again?

2 HEARING OFFICER WEBB: Well, it is
3 already -- I mean, the testimony is already not
4 admitted. You know, I'll -- I'll give you a
5 little leeway to make your offer of proof, but I
6 agree. I don't -- I don't believe this is
7 relevant, but if you'd like to appeal it to the
8 Board I'll let you make -- get whatever
9 information you want on paper.

10 BY THE WITNESS:

11 A. Could you repeat the question?

12 BY MS. LIVINGSTON:

13 Q. My question was did you discuss any
14 of the criteria on the record that day as to why
15 the Village of Fairmont was concerned about --

16 A. Looking at the criteria that were in
17 your proposal and --

18 Q. Yes.

19 A. -- justification?

20 Q. Right.

21 A. No, we would not have discussed
22 this.

23 Q. No discussion happened?

24 A. No.

1 Q. And is it -- is it fair to say that
2 the biggest concern for the Village of Fairmont
3 would be that if waste was hauled to another
4 landfill in another county, then you would receive
5 less tipping fees?

6 A. No, what was at issue with the
7 Village of Fairmont City was that the way that the
8 siting -- the physical location of the site was
9 constructed was that all the garbage trucks would
10 drive -- drive through Washington Park and
11 Fairmont City. None would drive through
12 Caseyville and that's what had everyone offended.

13 Q. Do you agree that Bunkum Road is
14 easily accessible to the interstate by coming back
15 to 157?

16 A. Trucks are prohibited at the weight
17 levels of self-compacting trash trucks -- trucks
18 are prohibited from accessing that road from
19 Highway 157.

20 Q. And are you aware that the St. Clair
21 County Highway Department has already given funds
22 to upgrade that road and that that is their
23 intention?

24 A. We hear many things said about

1 highway improvements in this area, especially at
2 election time, and when we see that road improved
3 we'll believe it then.

4 Q. All right. You would agree -- you
5 would agree that in May of this year it wasn't
6 election time, right?

7 A. Yes, it wasn't an election in May.
8 It was in April.

9 Q. I don't have anything else.

10 HEARING OFFICER WEBB: Okay.

11 MR. MORAN: I have a request.

12 HEARING OFFICER WEBB: Yes.

13 MR. MORAN: I move that the
14 testimony that Mr. Penny has provided be, in fact,
15 admitted at this hearing because I believe based
16 upon what we've heard it does address the very
17 issue which is raised by the motion for sanctions
18 and that was the basis for the location of
19 Fairmont City as to be effected by this proposed
20 facility and I think it would be relevant to the
21 Board to consider that in considering the motion
22 for sanctions.

23 MS. LIVINGSTON: I think it is
24 particularly relevant for you to consider on the

October 28, 2014

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1 motion for sanctions as well because the only
2 thing that we had were these minutes where the
3 chief had not been able to explain himself and we
4 were seeing that the minutes reflect that he got a
5 phone call from an attorney who seemed to be
6 creating a facade to represent the city as opposed
7 to the big waste management company and so this is
8 what we relied upon in filing our motion and so it
9 is relevant to us as well to not be sanctioned.

10 This is what we relied on.

11 HEARING OFFICER WEBB: Do you concur
12 with Mr. Moran?

13 MS. SACKETT POHLENZ: Roxanna
14 Landfill, Inc?

15 HEARING OFFICER WEBB: Yes.

16 MS. SACKETT POHLENZ: I don't
17 object. I won't object.

18 HEARING OFFICER WEBB: You won't
19 object. Okay. Well, I -- I guess if the Village
20 of Fairmont agrees to the admission of the
21 evidence from this witness no reason not to admit
22 it. Does anyone have anything else for this
23 witness? Okay. Thank you, sir.

24 THE WITNESS: Thank you.

COPY

CASEYVILLE TRANSFER STATION, LLC
APPLICATION FOR LOCAL SITING APPROVAL

PUBLIC HEARING

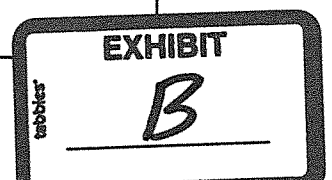
Taken at Caseyville Community Center, 909 South
Main Street, Caseyville, Illinois 62232
Between the Hours of 5:00 p.m. and 8:40 p.m.)

May 29, 2014

Sherrie L. Merz, RDR/CSR/CCR

CSR No. 084-002840

CCR No. 995



1 that. And I have to stand here and say, you know, as
2 the mayor of Washington Park, he already did his
3 presentation. He already said this, and he already said
4 that. Same presentation is what you're getting tonight.
5 So again, what are you going to get? You're going to
6 get the tax dollars and we're going to get everything
7 else of the disadvantage with this transfer station.
8 Thank you.

9 MAYOR BLACK: Okay. Mayor, would you like
10 speak?

11 MAYOR ALEX BREGEN: Alex Bregen, mayor of
12 Fairmont City. I raised my hand prior to the attorney's
13 suggestion that this doesn't seem fair. We sat through
14 a couple of these transfer stations. Rebuttal from
15 remarks and questions, we're going to be here all night
16 and tomorrow if you're going to continue. Suggestion --
17 it's your meeting. If you are going to continue the
18 rebuttal, a suggestion that you have some very
19 knowledgeable and prominent attorneys in this field. If
20 you want to have a little rebuttal, I suggest -- no
21 disrespect to the people in the audience here -- let's
22 get to the chase and get this young man to answer the
23 questions from people who've been doing this all their
24 lives. Then maybe the questions that will follow won't
25 need rebuttal.

1 It was paid for by the applicant. So why wasn't a
2 traffic study done before this was even brought forward?

3 MR. GILBERT: I think it was the conclusion
4 of the board that it was the burden of the applicant to
5 provide, not the burden of the village to conduct.
6 Because as Mr. Moran pointed out, it's the applicant's
7 burden to prove compliance with all the criteria under
8 the statute, and it's the board's determination that
9 it's not an obligation of the Board of Trustees.

10 MR. MILLER: I understand but that's not what
11 I had on here. Said it would be paid for by the board.
12 I couldn't understand why you wouldn't have done this
13 ahead of time.

14 MR. GILBERT: I think that's an appropriate
15 question for Mr. Siemsen probably.

16 MR. MILLER: All right, thank you.

17 MR. STEVE MILLER: My name is Steve Mitchell.
18 I'm a registered voter of Fairmont City. I'm also a
19 member of the township Board of Trustees. As you heard
20 the mayor from Washington Park, they said Mr. Siemsen
21 brought this to them; they turned it down. Mr. Miller,
22 our supervisor, presented you with a resolution we
23 passed. We had the majority of the people are here. A
24 lot of them went home, but a lot of people who were here
25 were at our meeting. Mr. Siemsen was at that meeting,

1 and took a vote on it. The village, the township turned
2 it down. We all voted against it, because it was
3 something. So the people, the voters in our town, the
4 voters in Washington Park, a lot of the voters on the
5 outskirts of Caseyville, they don't want it either. And
6 see, you know, the people that don't want it -- it's all
7 in your hands, and everybody around is of the same
8 thought.

9 Like I said, this is about the third time.
10 I've heard this presentation three times now. Three
11 different things he's come up with what he said. One of
12 the things he stated was they were going to have the
13 transfer station, if he got it approved, tractor
14 trailers loaded with garbage sitting overnight. Hundred
15 degree weather, you got trash out behind your house with
16 a lid on it. Hundred degree weather in the summertime,
17 it sits there. Before your people could come and pick
18 it up, it's going to smell. I live two and a half,
19 three miles from Milam. We put millions of tons of dirt
20 on it. Occasionally, when the wind is blowing just
21 right, you can catch it at my house. That's three miles
22 away.

23 And this one is going to be closer. If the
24 winds come out of the south in the summertime -- I
25 worked in the city when I was younger when I was a kid.

1 I worked on the garbage truck, and I know what it smells
2 like and I know what these people put in and what you
3 haul in. You don't know what you are going to get from
4 a mom and pop organization.

5 They said they will have experts there, hire
6 people there, have them trained. You can't spot it when
7 it's locked up inside. It's gone. They're not going to
8 sit around and wait to go through this garbage to see if
9 they got cans of paint, battery mixed in with it.
10 You're going to have hazardous material floating around
11 no matter what.

12 I was a fireman for almost 14 years, and I
13 saw the fires on the trash. I saw the fires at the
14 dump. No matter how or what kind of safety matters, you
15 have accidents. And with rail, where the railroad
16 tracks are, with this is where they're wanting to put
17 it, their people won't be able to get to it. Caseyville
18 is the one that's going to handle their fire. You're
19 having to depend on Washington, Fairmont City to come
20 over and depend on State Park and hope they don't get
21 stopped by a train. Even if they say it's not going to
22 be a big project, you don't know what you're involved
23 with until you got something with Haz-Mat. That's all
24 I've got to say.

25 MS. CRYSTAL ANTHONY: My name is Crystal

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, LLC,)
)
Respondents.)

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

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

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



REPLY BRIEF OF PETITIONER VILLAGE OF FAIRMONT CITY

Petitioner, Village of Fairmont City ("Fairmont City"), by its attorneys Sprague & Urban and Pedersen & Houpt, P.C., submits this brief in reply to the Respondent Caseyville Transfer Station, LLC's and Respondent Village of Caseyville's Post-Hearing Brief in Reply to the Post-Hearing Briefs of Petitioners Roxana Landfill, Inc. and Village of Fairmont City ("Resp. Reply Br. at __").

I. INTRODUCTION

Respondents are correct that the Village may consider the economic benefits of the proposed transfer station. It may not, however, base its approval on the economic benefits, and ignore or give short shrift to the evidence or lack of evidence on the statutory criteria. But this is precisely what the Village did.

After acknowledging that they were "not clear on" the statutory criteria and were not given information regarding the criteria, the trustees voted to approve the site location request because "it would be a good thing for Caseyville" and "this is a revenue source for the Village we can certainly use." (Aug. 6 Tr. at 8, 10-12)

In so voting, these trustees ignored or overlooked (1) the Applicant's failure to prove a lack of disposal capacity in the service area necessitating access, through the proposed transfer station, to distant, out-of-service area landfills; (2) unrebutted expert testimony that the waste needs of the service area are met by existing in-service area landfills, and that there is no need for a transfer station to provide access to more distant landfills at higher transportation cost; (3) Applicant's failure to accurately assess the character of the surrounding area or perform any investigation of property value or impact on property value; and (4) the fact that the county solid waste management plan does not even mention, much less approve, a transfer station as a component of the county's solid waste management system.

As a result, the Village's approval of the application is without evidentiary support, its determinations concerning criteria (i), (ii), (iii), (vi) and (viii) are against the manifest weight of the evidence, and its decision should be reversed.

II. ARGUMENT

- A. The proposed transfer station is not necessary because the service area does not need access to distant landfills

As Respondent Caseyville Transfer Station, LLC ("CTS") points out, transfer stations "serve the purpose of consolidating waste from collection vehicles into more efficient transfer trailers for more economical shipment to distant disposal sites." (Resp. Reply Br. at 9.) The need for a transfer station is determined by its purpose and function, that this, by the service it is intended to provide. The service it is intended to provide - affording more efficient transport of waste to out-of-service area landfills - is the measure for determining need. If there is no need for the essential purpose or function of the transfer station, there is no need for the transfer station. Logically and practically speaking, therefore, there is no need for a transfer station that does not provide more efficient transportation of service area waste to distant, out-of-service area landfills.

The proposed transfer station's purpose is to consolidate waste for more economical transport to distant landfills. However, more economical transport of waste was not established here. In fact, the uncontradicted testimony established, not surprisingly, that transporting waste from the service area to out-of-service area landfills would be more costly than transporting that waste to the available landfills within the service area. (May 29 Tr. at 75-76.)

In addition, there was no evidence of insufficient or declining landfill capacity or increased transportation and disposal costs to demonstrate the service area's need to access distant landfill sites. See Wabash & Lawrence Counties Taxpayers & Water Drinkers Ass'n v. Pollution Control Board, 198 Ill.App.3d 388, 555 N.E.2d 1081, 1086 (5th Dist. 1990) (need involves consideration of increased transportation and disposal costs); Landfill 33, Ltd. v.

Effingham County Board & Sutter Sanitation Services, PCB 03-43, slip op. at 29 (February 20, 2003) (need for transfer station established by evidence of rapidly diminishing capacity of area landfills and economic viability of transfer station to access out-of-county landfills). Where, as here, there is ample disposal capacity available at service area landfills, there is no need for a transfer station. See A.R.F. Landfill, Inc. v. Pollution Control Bd., 174 Ill.App.3d 82, 528 N.E.2d 390, 396 (2d Dist. 1988) (failure to consider available disposal capacity fatal to a request to find need); Waste Management of Illinois, Inc. Village of Bensenville, No. PCB 89-28, slip op. at 11 (Aug. 10, 1989) (failure to identify amount of waste being sent to landfills within a reasonable distance to accommodate service area waste needs justified denial of need for waste transfer station), *aff'd* Waste Management of Illinois, Inc. v. Illinois Pollution Control Bd., 234 Ill.App.3d 65, 600 N.E. 2d 55 (1st Dist. 1992).

- B. Service area landfill capacity and transportation costs to distant landfills are important factors in determining need

Respondents contend that neither the existence of local landfill capacity nor the costs to transport waste to remote landfills are relevant to the need criterion. (Resp. Reply Br. at 9-11.) In fact, the case law establishes precisely the opposite. See Waste Management of Illinois, 234 Ill.App.3d at 69-70 (inadequate description of service area waste disposal capability and operational efficiencies warranted denial of need for waste transfer station); Wabash & Lawrence Counties, 555 N.E. 2d at 1086 (need involves consideration of increased costs of transporting and disposing waste); A.R.F. Landfill, 528 N.E.2d at 396 (failure to consider available disposal capacity fatal to a finding of need); Waste Management of Illinois, Inc. v. Pollution Control Bd., 123 Ill.App.3d 1075, 463 N.E.2d 969, 978 (2d Dist. 1984) (increased costs, distance and travel time constitute evidence of need); Landfill 33, slip op. at 29 (evidence of rapidly diminishing capacity of area landfills and economic viability of accessing out-of-county landfills relevant in

establishing need for transfer station); American Bottom Conservancy v. Village of Fairmont City, No. PCB 01-159, slip op. at 24 (economics of greater hauling distances can be germane to criterion (i)).

C. Promotion of competition is not probative of criterion (i)

Respondents argue, without any evidence or support in the record, that Allied Waste and Waste Management are utilizing "Section 39.2 of the Illinois Environmental Protection Act as a means to protect the oligopoly that these companies have enjoyed in the Metro East waste disposal marketplace." (Resp. Reply Br. at 3)¹ Respondents proceed to argue that the proposed transfer station is necessary to promote competition and efficiency in the service area.

Respondents, however, cite no authority for the proposition that increased competition is a factor relevant to a finding of need. The plain language of criteria (i) simply states that need is established by demonstrating that the proposed facility is "necessary to accommodate the waste needs of the area it is intended to serve." 415 ILCS 5/39.2(a)(i). The language does not state that a facility may be found necessary if it were demonstrated "to promote competition" in the waste industry, "to accommodate the business needs of independent waste haulers", or "to improve competitive balance" in waste transportation and disposal, much less explain what those concepts mean or how they could be shown. Moreover, there is no reported appellate court or Pollution Control Board decision which has found, much less applied, such criteria.

¹ This allegation was made previously in Respondents' Joint Motion to Strike and to Dismiss Fairmont City's Petition for Hearing to Contest Site Location Approval. Fairmont City's has filed a Motion for Sanctions and to Strike Respondents' Joint Motion, on the grounds that the Joint Motion and conspiracy theories alleged therein are wholly without support in fact or law and irrelevant. The Motion for Sanctions is pending with the Board, and requests that one of the sanctions bar Respondents from continuing to assert their unfounded conspiracy theories. Including these baseless and frivolous claims in their Reply Brief, despite Scott Penny's testimony at the October 28 Pollution Control Board hearing refuting these allegations (Oct. 28 Tr. at 48-55), only underscores the merits of the Motion for Sanctions and the need to grant it and strike the allegations from the Respondents' Reply Brief.

- D. CTS did not properly assess the character of the surrounding area and did not perform any evaluation of the proposed facility's effect on the value of surrounding property

Respondents claim that since "there are no residential or even retail businesses in the vicinity" of the proposed site, the character of the surrounding area is "wholly" consistent with the transfer station. (Resp. Reply Br. at 15.) They further assert that since the Act does not require a guarantee that there will be no incompatibility and impact on property values, there is no requirement to perform any study or analysis of property values to determine whether there is an effect. (Resp. Reply Br. at 15-16.) Respondents' arguments are based on a misreading of the Act and case law. The requirements of criterion (iii) are well-settled: the applicant must demonstrate (a) more than minimal efforts to reduce the facility's incompatibility, and (b) that it has done or will do what is reasonably feasible to minimize incompatibility. Waste Management of Illinois, Inc. v. Illinois Pollution Control Board, 123 Ill.App.3d 1075, 1090, 463 N.E.2d 969, 980 (2d Dist. 1984). The applicant may not simply declare the site compatible with surrounding land uses, and then claim that criterion (iii) has been met. See File v. D&L Landfill, Inc., 219 Ill.App.3d 897, 579 N.E.2d 1228 (5th Dist. 1991) (applicant must demonstrate more than minimal efforts to demonstrate compliance with criterion (iii)).

Proper consideration of criterion (iii) requires, as a first step, an accurate assessment of the character of the surrounding area and the value of surrounding property. Without this information, it is not possible to evaluate the proposed facility's impact, much less to determine what is reasonably feasible to minimize any impact. Yet CTS undertook neither an accurate assessment of the character of the surrounding area nor an investigation and evaluation of surrounding property value.

In describing the character of the surrounding area, CTS stated that there are no residential uses within 1000 feet of the site. This is not correct. The undisputed evidence established that there are four parcels of property zoned SR-MH (Singly Family District - Manufactured Home District) by St. Clair County located within 1000 feet of the proposed transfer station, and two parcels zoned MHP (Manufactured Home District) by St. Clair County located within 1000 feet. (Affidavit of Dallas Alley, ¶¶ 9-11.) The location of these parcels violates the 1000-ft. setback requirement of Section 22.14(a) of the Act. 415 ILCS 5/22.14(a).

CTS admits that it performed no investigation or evaluation of property values, dismissing such an effort as unnecessary because of "the obvious fact that the proposed site is remote and appropriate for the proposed land use." (Resp. Reply Br. at 16.) Criterion (iii), however, is not met simply by stating that the site is compatible. It also requires a demonstration that the site is located to "minimize the effect on the value of surrounding property." 415 ILCS 5/39.2(a)(iii). This demonstration requires a study or evaluation of surrounding property values as an essential first step in analyzing whether the proposed site will affect those values. An applicant cannot determine whether the location of the proposed site will have any effect on surrounding property values without first knowing what those values are. CTS's failure to perform a study of surrounding property value precludes it from determining whether there is any effect or impact on such value, and thus precludes it from determining what reasonably could be done to minimize any effect, and from demonstrating compliance with criterion (iii).

- E. The proposed transfer station is not consistent with the county solid waste management plan

Respondents did not directly respond to any of the arguments presented by Fairmont City regarding criterion (viii) in its opening brief. Instead, Respondents state that Fairmont City provides no legal authority for the "outlandish claim" that a transfer station cannot be found

consistent with the County plan if it is not mentioned in the plan. (Resp. Reply Br. at 21.) They conclude by claiming that since the plan does not prohibit the transport of waste from the service area to landfills outside the service area, the proposed transfer station is consistent with the plan. (Resp. Reply Br. at 21.)

Respondents ignore the well-established principle for determining plan consistency: the intent of the plan, as indicated by its plain language. County of Kankakee v. Ill. Pollution Control Bd., 396 Ill.App.3d 1000, 955 N.E.2d (3rd Dist. 2009); Landfill 33, PCB 03-43, slip op. at 29.

The plain language of the plan does not include transfer stations as intended or expected elements of the county's solid waste management system. It does not discuss the purpose or usefulness of transfer stations as appropriate or necessary components of the county's network of pollution control facilities. There is no information or statements explaining how transfer stations would promote or achieve any purpose or objective of the plan. Rather, the plan plainly states that direct haul is the means of disposal, and landfilling is the preferred disposal option. (May 29 Tr. at 79.)

In sum, there is no language in the plan that mentions, much less approves, the notion of a transfer station being part of the county's solid waste management system and, thus, there is no legal basis for finding that the proposed transfer station is consistent with the plan.

F. Denial of the right to cross-examine Mr. Siemsen was fundamentally unfair

Respondents claim that there is no valid argument that the public hearing was fundamentally unfair because fundamental fairness rights are limited to inspection of the siting application and presenting public comment, citing Stop the Mega-Dump v. County Board of DeKalb County, 2012 IL App. (2d) 110579. (Resp. Reply Br. at 22.)

Respondents' claim is wrong, and their citation to Stop the Mega-Dump misplaced. Stop the Mega-Dump did not limit the fundamental fairness rights of hearing participants to inspection of the application and public comment. Rather, the decision limited only the rights of the general public to participate in the siting proceedings. Stop the Mega-Dump, ¶43. It affirmed the longstanding principle that fundamental fairness incorporates minimal standards of procedural due process for all hearing participants, including the right to be heard and the right to cross-examine adverse witnesses. Stop the Mega-Dump, ¶¶ 27, 43; Land & Lakes Co. v. Illinois Pollution Control Bd., 319 Ill.App.3d 41, 47, 743 N.E.2d 188, 190 (3rd Dist. 2000). Petitioners were denied the opportunity to cross-examine STS's witness, Mr. Siemsen, in violation of their fundamental fairness rights.

It is important that the Board reaffirm the fundamental fairness right of hearing participants to present their case and cross-examine adverse witnesses. This is true even in situations, such as this case, where applicant's presentation of its case through unsworn testimony, and thus not subject to cross-examination, was not sufficient to demonstrate prima facie compliance with the statutory criteria. Denial of this core fundamental fairness right should not be overlooked because specific prejudice could not be shown.

G. Adoption of arguments in Petitioner Roxana Landfill, Inc.'s Reply Brief

Fairmont City hereby adopts and joins Petitioner Roxana Landfill, Inc.'s arguments contained in its Reply Brief.

III. CONCLUSION

The Village's August 6, 2014 grant of local siting approval should be reversed on the grounds that its approval of criteria (i), (ii), (iii), (vi) and (viii) is against the manifest weight of the evidence.

November 18, 2014

Respectfully submitted,

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