

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

NOTICE OF FILING

TO: J. Brian Minion 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 <i>rsprague@spragueurban.com</i>
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 November 7, 2014, we filed electronically 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 Village and Village Board of Caseyville’s Motion for Costs**, a copy of each is attached and electronically served upon you.

Dated: December 24, 2014

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

PETITIONER ROXANA LANDFILL, INC.

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 24th day of December 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.

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PETITIONER ROXANA LANDFILL, INC.'S
RESPONSE IN OPPOSITION TO RESPONDENTS VILLAGE AND VILLAGE BOARD
OF CASEYVILLE'S MOTION FOR COSTS

Now comes Petitioner Roxana Landfill, Inc., by and through one of its attorneys, Jennifer J. Sackett Pohlenz at Clark Hill PLC, and files this Response in Opposition to Respondents Village and Village Board of Caseyville's Motion for Costs, and states as follows.

Respondents Village and Village Board of Caseyville filed a Motion for Costs of Preparing and Certifying the Record on December 12, 2014 ("Motion"), without ever having presented a bill for **costs** of certification to the Petitioners. The Motion should be denied, because **(A)** it seeks fees and costs for which the Village and Village Board are not entitled to reimbursement and **(B)** as moot as the Village and Village Board failed to submit an invoice for costs to the Petitioners, the Pollution Control Board already ordered Petitioners to pay the cost of certifying the record, and consistent with Section 39.2(n) of the Act, and the Petitioners will reimburse the \$440.84 in copying costs and \$71.30 in mailing costs to the Village and Village Board of Caseyville within 30 days of having received those invoices.

(A) ***The Village Board and Village of Caseyville Are Not Entitled to Reimbursement of Fees and Are Not Entitled to Reimbursement of Costs Related to the Siting Review Process***

The Village Board and Village of Caseyville seek reimbursement of (1) alleged fees from Rob Watt, Leslie McReynolds, and the Weilmuenster Law Group, P.C. and (2) transcript costs alleged to be from PohlmanUSA Court Reporting, none of which is a “cost” under Section 39.2(n).

(1) Fees Are Not A Reimbursable “Cost”

Section 39.2(n) of the Illinois Environmental Protection Act provides:

(n) In any review proceeding of a decision of the county board or governing body of a municipality made pursuant to the local siting review process, the petitioner in the review proceeding shall pay to the county or municipality the **cost** of preparing and certifying the record of proceedings. (415 ILCS 5/39.2(n))(emphasis added).

Similarly, Section 107.306 of the Illinois Pollution Control Board's procedural rules provide that "the petitioner must pay the **costs** of preparing and certifying the record to the Board." 35 Ill. Adm. Code 107.306 (emphasis added).

“Costs” by its plain and ordinary meaning does not include “fees.” Further, the Pollution Control Board has been reversed on appeal when it interpreted the term “hearing costs” under Section 21 of the Act to include attorneys’ fees: “[a]bsent a statute or contract to the contrary, attorney fees and the ordinary expenses and burdens of litigation are not recoverable by the prevailing party. *Miller v. Pollution Control Bd.*, 267 Ill. App. 3d 160, 171, 642 N.E.2d 475 (4th Dist. 1994), *citing House of Vision, Inc. v. Hiyane*, 42 Ill. 2d 45, 51-52, 245 N.E.2d 468, 472 (S.Ct. 1969). The *Miller* decision is relevant and applicable to this case, as it addressed specifically whether costs include fees.

The Appellate Court in *Miller* explained further that “[s]tatutes permitting the recovery of costs from the unsuccessful litigant are in derogation of the common law and must be strictly

construed. Litigants may not be allowed to recover as costs items other than those specified in the statute authorizing such awards.” *Id.* citing *Calcagno v. Personalcare Health Management, Inc.* 207 Ill. App. 3d 493, 502, 565 N.E.2d 1330, 1336 (4th Dist. 1991)

Moreover, even if fees were allowed to be included in a “cost,” which Petitioner denies, there is no itemization of time for the alleged fees of Rob Watt and Leslie McReynolds; the affidavit of Leslie McReynolds fails to comply with Illinois Supreme Court Rule 191, as it is conclusory, fails to attach documentation referenced in the affidavit, and fails to identify how the information is within her personal knowledge sufficient for such an affidavit²; and, the asserted fees on their face are unreasonable, particularly given that the size of the Record on Appeal produced by the Village Board and its condition, lacking nearly half of its content.

Therefore, for the reasons stated above, the fees sought by the Village and Village Board in its Motion for Rob Watt, Leslie McReynolds, and the Weilmuenster Law Group, P.C. are not recoverable “costs” and the Motion, as respects these fees, should be denied.

(2) The Costs of a Court Reporter in the Siting Process is a Cost of the Applicant

In addition to inappropriately seeking fees as part of the Section 39.2(n) costs reimbursement, the Village and Village Board seek unspecified and undocumented costs for the “preparation of the transcripts for the Record on Appeal” from PohlmanUSA Court Reporting. Although the Village and Village Board identify this cost at \$407.01, it provides no receipt from Pohlman and no reference to what “transcripts” are included in this cost, and no authentication of the cost.

Further, the cost of transcripts of the public siting hearing and any decision-making hearings are the responsibility of the Applicant and not Petitioner, under Section 39 (k) of the Act: “[a] county board or governing body of a municipality may charge applicants for siting

² (e.g., Ms. McReynolds’ affidavit fails to comply with Rule 191 as it does not explain how she can testify or have personal knowledge as to unitemized time and the “wages and benefits” calculation of Rob Watt and herself.)

review under this Section a reasonable fee to cover the reasonable and necessary costs incurred by such county or municipality in the siting review process.” It is interesting that the Village of Caseyville who is in “financial dire straits” has not sought the reasonable and necessary costs incurred by it from Caseyville Transfer Station, LLC. *See, Roxana Landfill, Inc. v. Village Board of the Village of Caseyville, et al.*, Slip Op., at 14 (December 18, 2014)(quotation from Trustee Davis). Notwithstanding, the costs related to the hearing, such as transcription costs, are not costs of preparation of the record on appeal and are not chargeable to the Petitioners under Section 39.2(n) of the Act.

Therefore, the Motion should be denied, as Village Board and Village of Caseyville are not entitled to seek or receive reimbursement of (1) alleged fees from Rob Watt, Leslie McReynolds, and the Weilmuenster Law Group, P.C. and (2) transcript costs alleged to be from PohlmanUSA Court Reporting, none of which is a “cost” under Section 39.2(n).

(B) *The Remainder Of The Village’s Motion Is Moot*

The remainder of the Motion should be denied by the Illinois Pollution Control Board as moot, because the Village and Village Board failed to submit an invoice for costs to the Petitioners, the Pollution Control Board already ordered Petitioners to pay the cost of certifying the record, and consistent with Section 39.2(n) of the Act, the Petitioners will reimburse the \$440.84 in copying costs and \$71.30 in mailing costs to the Village and Village Board of Caseyville within 30 days of having received those invoices. It should be noted that, to date, no invoice for the alleged copying of the Record on Appeal has been provided to the Petitioners and attached to the Motion is only an “accounts payable inquiry” printout from the Village of Caseyville.

WHEREFORE, Participant Roxana Landfill, Inc. respectfully requests this Honorable Board to deny the Motion for Costs of Preparing and Certifying the Record filed by the Village and Village Board of Caseyville, for the reasons stated in this Response.

Dated: December 24, 2014

Respectfully submitted,

ROXANA LANDFILL, INC.

By: /s/ Jennifer J. Sackett Pohlenz

One of Its Attorneys

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