

**BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD**

FOX MORaine, LLC)	
)	
Petitioner,)	
)	
v.)	PCB 07- 146
)	
UNITED CITY OF YORKVILLE,)	
CITY COUNCIL)	
)	
Respondent.)	

NOTICE OF FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on this 31st day of January, 2008, George Mueller, one of the attorneys for Petitioner, Fox Moraine, LLC, filed via electronic filing of the attached **FOX MORaine, LLC'S REPLY TO YORKVILLE'S RESPONSE TO MOTION TO COMPEL** with the Clerk of the Illinois Pollution Control Board, a copy of which is herewith served upon you.

Respectfully submitted,

FOX MORaine, LLC

By: /s/ George Mueller
One of its Attorneys

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Fox Moraine, LLC v. United City of Yorkville
PCB No. 2007-146

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CERTIFICATE OF SERVICE

I, Sharon Twardowski, a non-attorney, certify that I served a copy of the foregoing **Notice of Filing** and **FOX MORaine, LLC'S REPLY TO YORKVILLE'S RESPONSE TO MOTION TO COMPEL** to the Hearing Officer and all Counsel of Record listed on the attached Service list, by sending it via Electronic Mail on January 31, 2008, before 5:00 p.m.

/s/ Sharon Twardowski_____

- [x] Under penalties as provided by law pursuant to ILL. REV. STAT. CHAP. 110-SEC 1-109, I certify that the statements set forth herein are true and correct

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**FOX MORaine, LLC'S REPLY TO
YORKVILLE'S RESPONSE TO MOTION TO COMPEL**

NOW COMES Fox Moraine, LLC, ("Fox Moraine") by one of its attorneys, George Mueller, and for its Reply to the Response filed by the City of Yorkville ("Yorkville") to the Motion to Compel previously filed herein states as follows:

1. For the reason that it will expedite the resolution of this motion and the issues raised therein, Fox Moraine, as discussed in the last conference with the hearing officer herein, withdraws its request for sanctions. Fox Moraine is concerned with receiving full and complete discovery and maintains its request for an Order compelling the same.

2. The City of Yorkville, in its response, questions the apparent authority for Fox Moraine's complaint that the City of Yorkville's response to the Request for Production of documents did not include an Affidavit of Completeness. Discovery in this case is governed by Pollution Control Board Rule 101.616, which states in pertinent part, "For purposes of discovery, the Board may look to the Code of Civil Procedure and the Supreme Court Rules for guidance where the Board's Procedural Rules are silent." Supreme Court Rule 214, which governs the discovery of documents, objects and

tangible things requires in pertinent part, "The party producing documents shall furnish an affidavit stating whether the production is complete in accordance with the request." Accordingly, the responses of Yorkville to Fox Moraine's Request to Produce, regardless of whether they are substantively complete, also failed to comply with the Supreme Court Rule 214 requirement of an Affidavit of Completeness.

3. Yorkville argues that Fox Moraine's Motion to Compel fails because it is vague and does not specify how Yorkville's responses and refusal to answer are inadequate and incomplete. First of all, Fox Moraine's motion clearly indicated that Yorkville's responses and refusals, as well as its objections to discovery, were inadequate and incomplete, regardless of whether or not the right to object and refuse had been previously waived by failure to make the objection in its initial motion regarding discovery. Yorkville attempts to shift the burden here by suggesting that Fox Moraine needs to provide authority in support of its motion and specific reasons as to why the responses of Yorkville were incomplete and specific reasons as to why the hearing officer should issue an Order compelling further production and answers to interrogatories. It is axiomatic that a party objecting to discovery, and hence not providing complete answers to interrogatories or complete production of documents, has the burden of justifying the objection and the refusal to answer or produce. Admittedly, Fox Moraine, in its initial motion did not state with specificity in what way the objections of Yorkville were insufficient, improper or otherwise not well taken. However, the nature of Yorkville's objections to production and refusals to answer interrogatories did not require such specificity or a detailed explanation in a motion to compel, as

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Yorkville's objections themselves lacked any specificity. In fact, Yorkville's objections and refusals were so vague and generic that Yorkville's motion to compel could not contain a specific explanation of how they were inadequate and insufficient. For example, Yorkville makes a general objection to all of the requests for discovery and then in typical large law firm fashion agrees to answer some requests without waiver of its general objections, presumably so the party making the request will be grateful that they got some information. More specifically, Yorkville fails entirely to answer interrogatory number 2, stating that in addition to its general objections the interrogatory

"Is overly broad, unduly burdensome and vague and is beyond the scope of this siting appeal. This interrogatory is not limited to information that is relevant to this appeal or is reasonably calculated to lead to the discovery of admissible evidence."

Yorkville does not specify why answering this interrogatory is burdensome, why the interrogatory is vague, how or why it is overly broad or how the request is beyond the scope of the siting appeal. Yorkville's objection to interrogatory 3, which it also refused to answer, is essentially the same, plus Yorkville adds even more objections in its refusal on that interrogatory.

4. Yorkville additionally objects to certain requests as being beyond the scope of the proceeding because the same seek information related to the annexation of the subject property by the City of Yorkville or information about *ex parte* communications predating the filing of the application. Pre-filing contacts may be relevant evidence of fundamental fairness violations. Land and Lakes, Co. v. PCB, 319

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Ill. App. Third 41, 743 NE 2nd 188 (3rd Dist. 2000). Any evidence of collusion between the decision maker and others, either in favor of or opposed to, an Application is probative, even if that collusion occurs prior to the filling of the Application or in a different context.

5. It is the job of the hearing officer in cases like this to resolve discovery conflicts. Conflicts about the scope of discovery occur frequently, and accordingly, the hearing officer can be expected to have a good sense of what is appropriate in discovery and what is beyond the proper scope. Fox Moraine has confidence that the hearing officer, who is well experienced in seeing objections from parties claiming that discovery requests are overly broad, unduly burdensome and vague or are beyond the scope of relevance is able to rule on said objections and motions to compel related to said objections without much difficulty. Yorkville's response almost implies that compelling answers in lieu of such broad and generic objections is unique and novel. We are not reinventing the wheel here. Fox Moraine simply wants answers to fair and appropriate questions and documents that relate to possible prejudgment and bias.

WHEREFORE, Fox Moraine prays that its Motion to Compel be allowed and for such other relief that the hearing officer deems appropriate.

Respectfully submitted,

FOX MORaine, LLC

By: /s/ George Mueller
 One of its attorneys

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