

**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 13th day of November, 2008, George Mueller, one of the attorneys for Petitioner, Fox Moraine, LLC, filed via electronic filing of the attached **Petitioner's Motion to Cancel the December 2008 Hearing** 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. 07-146
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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 **Petitioner's Motion to Cancel the December 2008 Hearing** to the Hearing Officer and all Counsel of Record listed on the attached Service list, by sending it via Electronic Mail on November 13, 2008, before 5:00 p.m.

/s/ Sharon Twardowski

- [x] Under penalties as provides 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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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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v.)	PCB No. 07-146
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UNITED CITY OF YORKVILLE, CITY)	
COUNCIL,)	
)	
Respondent.)	

PETITIONER'S MOTION TO CANCEL THE DECEMBER 2008 HEARING

NOW COMES Petitioner, FOX MORaine LLC, by its attorneys, George Mueller and Charles F. Helsten, seeking leave pursuant to 35 Ill. Adm. Code 510, to cancel the Hearing in this matter currently scheduled to begin on December 16, 2008, stating as follows:

1. Approximately two weeks ago, Mr. Donald Hamman, a material principal and owner of Petitioner, Fox Moraine, LLC, became ill and sought medical attention, whereupon it was discovered that he had significant blockage in all four arteries of the heart.

2. Mr. Hamman has accordingly been scheduled to undergo quadruple bypass open heart surgery on November 21, 2008.

3. Mr. Hamman's physicians have indicated that in the aftermath of surgery, during the post-surgical recovery period Mr. Hamman must avoid all stressful activities for at least sixty days, and possibly longer.

4. Mr. Hamman's presence and participation in the Hearing on this matter is crucial, and Petitioner will suffer material prejudice if the Hearing is not canceled and re-scheduled for a later date.

5. Petitioner therefore requests that the current Hearing be cancelled, and that the Hearing Officer conduct a status conference in about sixty days to further assess Mr. Hamman's

ability to participate.

6. This request to cancel arises from circumstances beyond the movant's control, and is not the result of a lack of diligence.

7. Because the instant motion is being made more than ten (10) days in advance of the hearing, the Hearing Officer is authorized to cancel the hearing pursuant to 35 Ill. Adm. Code 101.510. There is Board precedent for granting a motion to cancel hearings due to serious illness of a principal. *See, e.g., People v. Community Landfill Co. et al.*, PCB 03-191 (October 3, 2006).

8. Affidavits including the factual basis for this request to cancel, as well as medical information from Mr. Hamman's physician, will follow shortly.

9. In the event the instant motion is granted and the Hearing is re-scheduled for a date some time after February 1, 2009, Petitioner will extend the decision deadline to and including August 6, 2009.

Dated: November 13, 2008

Respectfully submitted,

On behalf of Petitioner

/s/George Mueller
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