

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

FOX MORaine, LLC,)	
)	
Petitioner,)	
)	
v.)	PCB No. 07-146
)	
UNITED CITY OF YORKVILLE, CITY)	
COUNCIL,)	
)	
Respondent.)	

EMERGENCY MOTION FOR LEAVE TO CHECK OUT THE RECORD OF PROCEEDINGS OF THE UNDERLYING LANDFILL SITING APPLICATION

NOW COMES the Petitioner, Fox Moraine Landfill, LLC hereinafter (“Petitioner” or “Fox Moraine”), by its attorneys, George Mueller and Charles Helsten, and for its Emergency Motion for Leave to Check Out the Record of Proceedings of the Underlying Landfill Siting Application, states as follows:

1. The Petitioner, Fox Moraine, filed the instant appeal in the aftermath of the Respondent’s denial of the Petitioner’s application for landfill siting approval.
2. In this action, the Petitioner appeals the Respondent’s denial of siting approval based on the lack of fundamental fairness in the proceedings below, and further, based on the fact that the denial of siting approval was against the manifest weight of the evidence in the proceedings below.
3. During the hearing in the instant appeal, the Petitioner offered to waive presentment of argument concerning the sufficiency of evidence in the proceedings below to establish that the Section 39.2 siting criteria had been met, with the understanding that the Petitioner would make all such arguments in its Post-Hearing brief, by citing to the proceedings below. The Hearing Officer expressed his approval for the Petitioner’s proposal to defer consideration of such arguments until the Post-Hearing briefs.

4. The Respondent, City of Yorkville, has filed a copy of the Record of the underlying proceedings with the Board, consisting of approximately 19,897 consecutively paginated pages, and at all relevant times the Respondent has had access to a copy of the paginated Record.

5. However, when the Petitioner contacted the Clerk of the Pollution Control Board to inquire about checking out the Record of proceedings below for use in the preparation of Petitioner's Post-Hearing Brief, the Clerk explained that he is not authorized to allow a litigant to check out the Record. The Clerk did, however, advise the Petitioner that the Record could be copied at a charge of \$.75 per page.

6. Because the Petitioner, unlike the Respondent, does not have access to a copy of the Record as paginated, the Petitioner is prevented, in its Post-Hearing brief, from stating its case with citations to the paginated Record unless it expends \$14,922.75 for copying charges, and causes an additional 19,897 sheets of paper to be used to make duplicates of existing documents currently stored with the Board.

7. Inasmuch as it is a routine matter in the appellate courts for a litigant to check out a copy of the paginated Record for use in the preparation of the litigant's brief (*see, e.g.*, Fed. R. App. P. 11(c); Ill. S. Ct. R. 324, 325), and inasmuch as the Petitioner's attorneys are officers of the court, the Petitioner respectfully requests that the Board grant Petitioner leave to check out the Record, with the understanding that the entire Record of proceedings below will be returned to the Clerk upon Petitioner's completion of the briefing process.

8. The deadline to file Petitioner's Post-Hearing brief is June 12, 2009, therefore it is critical that the Petitioner begin review of the voluminous Record of Proceedings as soon as possible. Accordingly, Petitioner requests that the Board act on this motion at the earliest

possible opportunity.

WHEREFORE, Petitioner Fox Moraine respectfully requests that the Board enter an order authorizing the Clerk to allow the Petitioner to check out the Record, upon a pledge by Petitioner's counsel that the full and complete Record will be returned to the Clerk at the conclusion of the briefing period.

Dated: April 28, 2009

Respectfully submitted,

On behalf of FOX MORaine, LLC

/s/ Charles F. Helsten

One of Its Attorneys

Charles F. Helsten
Hinshaw & Culbertson LLP
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389
815-490-4900

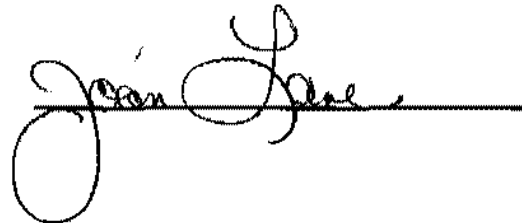
George Mueller
MUELLER ANDERSON, P.C.
609 East Etna Road
Ottawa, IL 61350
815-431-1500

SAFFIDAVIT OF SERVICE

The undersigned, pursuant to the provisions of Section 1-109 of the Illinois Code of Civil Procedure, hereby under penalty of perjury under the laws of the United States of America, certifies that on April 24, 2009, she served a copy of the foregoing upon:

Via E-Mail – hallorab@ipcb.state.il.us Bradley P. Halloran Hearing Officer Illinois Pollution Control Board James R. Thompson Center 1000 W. Randolph St., Ste. 11-500 Chicago, IL 60601	Via E-Mail – dombrowski@wildman.com Leo P. Dombrowski Wildman, Harrold, Allen & Dixon 225 West Wacker Dr. Suite 3000 Chicago, IL 60606-1229
Via E-Mail – jharkness@momlaw.com James S. Harkness Momkus McCluskey, LLC 1001 Warrenville Road, Suite 500 Lisle, IL 60532	Via E-Mail – eweis@co.kendall.il.us Eric C. Weiss Kendall County State's Attorney Kendall County Courthouse 807 John Street Yorkville, IL 60560

Via E-mail.



HINSHAW & CULBERTSON LLP
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389
(815) 490-4900