



**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

**PETITIONER'S MOTION FOR LEAVE TO FILE BRIEF  
IN EXCESS OF 50 PAGES *INSTANTER***

NOW COMES the Petitioner, Fox Moraine Landfill, LLC (hereinafter "Petitioner" or "Fox Moraine"), by its attorneys, George Mueller and Charles Helsten, and for its Motion for Leave to File Brief in Excess of 50 Pages *Instanter*, states as follows:

1. In this action, the Petitioner appeals Respondent's denial of siting approval; the Petitioner's appeal is based on a lack of fundamental fairness in the proceedings below, as well as the fact that the Respondent's denial of siting approval was against the manifest weight of the evidence.

2. The proceedings below concerning the Petitioner's application for siting were particularly lengthy, and took place over the course of six weeks in the spring of 2007, constituting one of the longest siting hearings in Illinois in the last twenty years.

3. The Record of the underlying proceedings is accordingly voluminous, consisting of approximately 19,897 consecutively paginated pages, and includes 24 transcripts of the siting application hearings themselves, as well as two (2) transcripts of the Respondent City Council's meetings to deliberate.

4. The Record of the proceedings in the instant appeal adds an additional three (3) transcripts of hearings (April 21, 22, and 23, 2009), as well as (9) transcripts that were admitted

as Petitioner's Exhibits 1-9 during the hearings.

5. In the instant appeal, the Petitioner offered to waive presentment of argument concerning the sufficiency of evidence concerning the Section 39.2 siting criteria presented during the siting approval hearings below, with the understanding that the Petitioner would make all such arguments in its Post-Hearing brief. The Hearing Officer expressed his approval for the proposal to defer consideration of such arguments until the Post-Hearing briefs.

6. In addition to the necessity of detailing the evidence to show that all of the Section 39.2 siting criteria were met, and the need to refute the materials and testimony proffered by the objector groups, Petitioner's Post-Hearing brief must also set forth the evidence to show the denial of fundamental fairness in the proceedings below through a discussion of the conspiratorial activities that took place from the fall of 2006 through the spring of 2007, as well as the credibility issues that became apparent during the testimony by representatives of Respondent during the hearings in this appeal.

7. Although the Petitioner has strongly endeavored to be as concise as possible in preparing its brief, nevertheless, the necessity of fully presenting the evidence, arguments and authorities, so as not to result in a waiver of issues or arguments that might prejudice any future action for judicial review, Petitioner has, regrettably, found itself unable to fully brief the issues within the general 50 page limit under the Board's Rules.

8. In other siting hearings involving extremely voluminous records and a plethora of issues, the Board has granted the parties leave to file briefs exceeding 50 pages in length. *See, e.g., County of Kankakee, Illinois and Edward D. Smith, Kankakee County State's Attorney v. City of Kankakee, Illinois, The City of Kankakee, Illinois City Council, Town and Country Utilities, Inc. and Kankakee Regional Landfill, L.L.C., PCB 04-33 (March 18, 2004); Peoria*

*Disposal Company v. Peoria County Board*, PCB 06-184 (March 1, 2007). Notably, the briefs filed in these cases were approximately 100 pages.

9. The Petitioner has been willing in the past, and remains willing, to extend the decision deadline so as to give the Board as much time as it needs to work through briefs exceeding the page limit, and is also willing to allow additional time to opposing counsel to respond to Petitioner's brief.

10. Petitioner accordingly requests leave to file the attached brief, which is in excess of 50 pages.

WHEREFORE, Petitioner Fox Moraine respectfully requests that the Board enter an order granting Petitioner leave to file the attached Post-Hearing Brief, which exceeds the Board's 50 page limit.

Dated: June 12, 2009

Respectfully submitted,

On behalf of FOX MORaine, LLC

/s/ Charles F. Helsten

One of Its Attorneys

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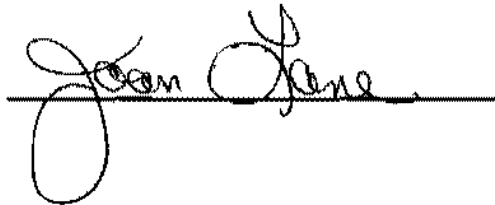
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**AFFIDAVIT OF SERVICE**

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 June 12, 2009, she served a copy of the foregoing upon:

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