

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

**NOTICE OF FILING**

TO: All counsel of Record (see attached Service List)

Please take notice that on July 31, 2009, the undersigned electronically filed with the Illinois Pollution Control Board, 100 West Randolph Street, Chicago, Illinois 60601, **Petitioner's Motion for Leave to File Brief in Excess of 50 Pages**, a copy of which is attached hereto..

Dated: July 31, 2009

Respectfully submitted,

On behalf of FOX MORaine, LLC

/s/ Charles F. Helsten  
One of Its Attorneys

Charles F. Helsten  
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815-490-4900

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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Petitioner,	)	
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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 were particularly lengthy, constituting one of the longest siting hearings in Illinois in the last twenty years. The Record of the underlying proceedings consisted of approximately 19,897 consecutively paginated pages, and included 24 transcripts of the siting application hearings themselves, as well as two (2) transcripts of the Respondent City Council’s meetings to deliberate. The Record of 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.

3. Respondent, City of Yorkville, filed a Response brief numbering 84 pages. Post-hearing briefs were also filed by Kendall County, and Friends of Greater Yorkville, among

others.

4. The Hearing Officer's Order of May 21, 2009, ordered that Petitioner, Fox Moraine, could file its Reply brief on or before July 31, 2009, in response to the Post-Hearing briefs filed by others.

5. Although the Petitioner has strongly endeavored to be as concise as possible in preparing its brief, the necessity of responding to the arguments and assertions made in briefs filed by Respondent City of Yorkville and by Friends of Greater Yorkville has resulted in Petitioner being unable to fully brief the issues within the general 50 page limit under the Board's Rules.

6. 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).*

7. 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.

8. Petitioner accordingly requests leave to file the attached brief, which numbers 61 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.

Electronic Filing - Received, Clerk's Office, July 31, 2009

Dated: July 31, 2009

Respectfully submitted,

On behalf of FOX MORaine, LLC

/s/ Charles F. Helsten

One of Its Attorneys

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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 July 31, 2009, she served a copy of the foregoing upon:

Via E-Mail – hallorab@ipcb.state.il.usl 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.

/s/ Nicola Nelson

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