

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ROXANA LANDFILL, INC.)
)
 Petitioner,)
)
 v.)
)
 VILLAGE BOARD OF THE VILLAGE)
 OF CASEYVILLE, ILLINOIS; VILLAGE)
 OF CASEYVILLE, ILLINOIS; and)
 CASEYVILLE TRANSFER STATION,)
 LLC,)
)
 Respondents.)

PCB 15-65
 (Third Party Pollution Control
 Facility Siting Appeal)

VILLAGE OF FAIRMONT CITY,)
 ILLINOIS,)
)
 Petitioner,)
)
 v.)
)
 VILLAGE OF CASYEVILLE, ILLINOIS)
 BOARD OF TRUSTEES and)
 CASEYVILLE TRANSFER STATION,)
 LLC,)
)
 Respondents.)

PCB-15-69
 (Third Party Pollution Control
 Facility Siting Appeal)
 (Consolidated)

RESPONDENT CASEYVILLE TRANSFER STATION, LLC and RESPONDENT VILLAGE OF CASEYVILLE, ILLINOIS' JOINT MOTION TO STRIKE AND DISMISS PETITIONER VILLAGE OF FAIRMONT CITY'S PETITION FOR REVIEW

Now comes Respondent, Caseyville Transfer Station, LLC ("CTS"), by and through its attorney, Penni Livingston of the Livingston Law Firm, and Respondent Village of Caseyville, Illinois, by and through its attorney, J. Brian Manion of Weilmuenster Law Group, P.C., pursuant Section 101.506 of the Pollution Control Board Procedural Rules, and hereby move to STRIKE and DISMISS the Petition for Review of Decision Concerning Siting of New Pollution

Control Facility (the "Petition") filed by the Village of Fairmont City, Illinois ("Fairmont City").

In support of its Motion, the Respondent states as follows:

1. Background

On February 10, 2014, CTS filed with the Village of Caseyville, Illinois an Application for Local Siting Approval (the "Application") for a municipal solid waste transfer station to be located on Bunkum Road within the municipal boundaries of Caseyville. A public hearing regarding the Application was held on May 29, 2014. On August 6, 2014, the Board of Trustees of the Village of Caseyville approved the Application. Fairmont City filed the Petition on September 8, 2014.

2. Argument

Fairmont City has not and cannot establish that it is a person that can file a petition for review under Section 40.1 of the Illinois Environmental Protection Act (the "Act"), 415 ILCS 5/40.1 or under 35 IAC 107.200. Section 107.200 of the Pollution Control Board's procedural rules states in pertinent part:

The following persons may file a petition for review of a decision concerning siting of a new pollution control facility pursuant to Section 40.1 of the Act:

* * *

(b) Other persons. Any person who has participated in the public hearing conducted by the unit of local government and is *so located as to be affected by the proposed facility* may file a petition for review of the decision to grant siting.

Fairmont City alleges in paragraph 5 of the Petition that it is located approximately one mile from the approved facility and is within the proposed service area of the facility. However, at the May 29, 2014 public hearing, no public official or resident of Fairmont City spoke nor did counsel for Fairmont City identify any way in which a resident or Fairmont City is so located as to be affected by the approved facility.

No public official or resident of Fairmont City spoke at the public hearing (except to introduce attorney Don Moran) such that no one from Fairmont raised any concern regarding any potential impacts to Fairmont City with respect to any of the statutory criteria. No one testified or made comment on any manner in which Fairmont City could or would be affected by the approved facility.

Rather, the attorney for Fairmont City, Mr. Donald Moran, argued that siting approval should be denied because the facility was not necessary to accommodate the waste needs of the service area and that the transfer station was not specifically called for by the St. Clair County Solid Waste Management Plan.

These issues are apparently of great concern to Waste Management, similar to Roxanna Landfill's interest here perhaps, but not of particular concern to the residents of Fairmont City. Otherwise someone would have attended the hearing to state such interest. The only interest here from this Petitioner is the fact that Waste Management of Illinois, Inc. owns and operates its Milam Landfill within Fairmont City and that Waste Management of Illinois, Inc. and Fairmont City are parties to a host agreement under which Waste Management of Illinois, Inc. makes payments to Fairmont City based on the volumes of waste received at the facility. In addition to the fact that no one from Fairmont City participated in the hearing as a potential future affected party to challenge the siting approval, concerns about tipping fees are not within the measures that provide evidence that anyone attending the hearing was so located as to be affected by the proposed facility.

See Exhibit A for the Fairmont City Minutes of May 7, 2014 where the Host Agreement is amended but more pointedly please read under Report of Police Chief page 3 where the Fairmont City minutes reveal:

“The chief reported he had received a phone call from an attorney representing Waste Management, Don Moran, regarding a proposed Caseyville Transfer Station. The Village of Caseyville is trying to get their own transfer station to haul trash to Duquoin. The landfill is opposed to the station and believes it is also not in the best interest of the Village of Fairmont. A hearing regarding the transfer station will be held May 29, 2014. Mr. Moran will represent the Village of Fairmont City. He forwarded an agreement and Chief Penny asked the Board to approve the agreement.”

The historic public record of Pollution Control Board matters makes clear that Donald Moran has represented Waste Management for decades on pollution control facility siting issues. In fact he has likely been to more siting hearings than any other attorney in the State. In this matter, Mr. Moran is now, for the first time, representing Fairmont City where his client Waste Management has its largest facility in this region along with a host agreement with the City that Mr. Moran now represents in this proceeding.

As shown in the minutes to the May 7, 2014 meeting of the Fairmont City Board of Trustees, attached as **Exhibit A**, Mr. Moran apparently notified Fairmont City of a concern Waste Management had and seemingly solicited Fairmont City as a client in this matter in order to alleviate any diversion of tipping fees if this transfer station might take consolidated waste elsewhere. Caseyville Transfer Station very much views this as Mr. Moran using his relationship with Fairmont City to advance Waste Management's interest of eliminating a potential competitor and to ensure that all waste from our region goes to the nearest landfills- Milan and Roxanna.

There has been no showing or even an attempt to show how Fairmont City or its residents are so located as to be affected by the approved facility. Rather, Waste Management is attempting to use the appeal procedures of Section 40.1 of the Act as a barrier to entry into

the solid waste marketplace. Section 40.1 of the Act and Section 107.200 of the applicable regulations do not allow for this abuse of the process.

WHEREFORE, the Respondents, Caseyville Transfer Station, LLC and Village of Caseyville, Illinois, pray that Petitioners' petition for review be dismissed with prejudice.

Respectfully submitted,

CASEYVILLE TRANSFER STATION, LLC
and VILLAGE OF CASEYVILLE, ILLINOIS

By: /s/ Penni S. Livingston

Penni S. Livingston, #06196480
Livingston Law Firm
5701 Perrin Road
Fairview Heights, IL 62208
Phone: (618) 628-7700
Fax: (618) 628-7710
Email: penni@livingstonlaw.biz

AND

By: /s/ J. Brian Manion

J. Brian Manion
Weilmuenster Law Group, P.C.
3201 West Main Street
Belleville IL 62226
(618) 257-2222 - phone
(618) 257-2030 - fax
E-mail: jbm@weilmuensterlaw.com