

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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|----------------------------------|---|--------------------------------|
| ROXANA LANDFILL, INC. |) | |
| |) | |
| Petitioner, - |) | |
| |) | |
| v. |) | PCB 15-65 |
| |) | (Third Party Pollution Control |
| VILLAGE BOARD OF THE VILLAGE |) | Facility Siting Appeal) |
| OF CASEYVILLE, ILLINOIS; VILLAGE |) | |
| OF CASEYVILLE, ILLINOIS; and |) | |
| CASEYVILLE TRANSFER STATION, |) | |
| LLC, |) | |
| |) | |
| Respondents. |) | |
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| |) | |
| VILLAGE OF FAIRMONT CITY, |) | |
| ILLINOIS, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | PCB-15-69 |
| |) | (Third Party Pollution Control |
| VILLAGE OF CASYEVILLE, ILLINOIS |) | Facility Siting Appeal) |
| BOARD OF TRUSTEES and |) | (Consolidated) |
| CASEYVILLE TRANSFER STATION, |) | |
| LLC, |) | |
| |) | |
| Respondents. |) | |

**RESPONDENTS CASEYVILLE TRANSFER STATION, LLC AND RESPONDENT
VILLAGE OF CASEYVILLE, ILLINOIS' JOINT MEMORANDUM IN OPPOSITION
TO FAIRMONT CITY'S MOTION FOR SANCTIONS AND TO STRIKE
RESPONDENTS' JOINT MOTION TO STRIKE AND DISMISS**

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 Weilmunster Law Group, P.C., and hereby state as follows in opposition to Petitioner Village of Fairmont City's Motion for Sanctions and to Strike Respondent Village of Caseyville Transfer Station, LLC's and

Respondent Village of Caseyville, Illinois' Joint Motion to Strike and to Dismiss Fairmont City's Petition for Hearing to Contest Site Location Approval ("Fairmont Motion for Sanctions"): Respondents filed their Motion in good faith based upon a good faith belief of inappropriate representation on the face of the Fairmont City minutes. Sanctions are inappropriate and would deter truth finding efforts.

Further, Respondents state as follows:

1. Background

On October 8, 2014 Respondents CTS and the Village of Caseyville, Illinois filed a Joint Motion to Strike and Dismiss Petitioner Village of Fairmont City, Illinois' Petition for Review, alleging, among other things, that (1) the Village of Fairmont City had not produced evidence that it was so located as to be affected by the proposed facility, as necessary to bring a petition for review under Section 40.1(b) of the Illinois Environmental Protection Act; (2) Waste Management of Illinois, Inc. through its attorney Donald Moran had solicited the Village of Fairmont City to be represented by Mr. Moran in opposition to the Caseyville Transfer Station and that the petition was to protect primarily the interests of Waste Management; and (3) protection of such an economic interest does not render Fairmont City a proper party to bring a petition for review. On October 22, 2014, the Village of Fairmont City filed the Fairmont Motion for Sanctions in response to the Joint Motion to Strike and Dismiss.

2. Argument

a. The Board's Rules Do Not Provide for Monetary Sanctions and the Supreme Court Rules on Monetary Sanctions do not Apply

In the Fairmont Motion for Sanctions, Fairmont City requests among other things that the Board enter an order "imposing the costs incurred by Fairmont City in bringing this motion,

including its reasonable attorneys' fees, on CTS, Caseyville and their counsel in such proportion as the Board deems fit and just." However, the Board's procedural rules specify all of the sanctions that may be imposed by the Board, and those sanctions do not include monetary penalties.

Section 101.800(b) of the Board's rules states in its entirety:

Sanctions include the following:

- 1) Further proceedings may be stayed until the order or rules are complied with, except in proceedings with a statutory decision deadline. Proceedings with a statutory decision deadline may be dismissed prior to the date on which decision is due;
- 2) The offending person may be barred from filing any other pleading or other document relating to any issue to which the refusal or failure relates;
- 3) The offending person may be barred from maintaining any particular claim, counterclaim, third-party complaint, or defense relating to that issue;
- 4) As to claims or defenses asserted in any pleading or other document to which that issue is material, a judgment by default may be entered against the offending person or the proceeding may be dismissed with or without prejudice;
- 5) Any portion of the offending person's pleadings or other documents relating to that issue may be stricken and, if appropriate, judgment may be entered as to that issue; and
- 6) The witness may be barred from testifying concerning that issue.

35 Ill. Admin. Code § 101.800(b). Quite clearly, monetary sanctions, as requested by Fairmont City, are not among the sanctions available to the Board.

b. Illinois Supreme Court Rule 137(a) Does Not Apply

Fairmont City relies on Illinois Supreme Court Rule 137(a) for the proposition that the Board may impose monetary sanctions on the Respondents. Fairmont City conveniently ignores the Board's Rule 101.100(b), which states, in pertinent part:

The provisions of . . . the Supreme Court Rules [Ill. S. Ct. Rules] do not expressly apply to proceedings before the Board. However, the Board may look to the . . . Supreme Court Rules for guidance where the Board's procedural rules are silent.

35 Ill. Admin. Code § 101.100(b). In fact, as made explicit in Rule 101.800(b), the Board's rules are not silent on the issue of the sanction remedies available to the Board. Rule 101.800 provides an exclusive list of such sanctions, and the monetary sanctions sought by Fairmont City are not allowed.

c. Even if Supreme Court Rule 137(a) Applied, Respondents' Motion is not Sanctionable Because it was Well Grounded in Fact and Warranted by Existing Law or a Good-Faith Argument for the Extension, Modification or Reversal of Existing Law

As an initial matter, Respondents do not and have not disputed that Fairmont City had a right to participate in the May 29, 2014 public hearing on the Application and that Fairmont City did so participate. However, Section 40.1(b) of the Act and the Board's rules make clear that participation alone is not sufficient to bring a petition for review. A petitioner must additionally show that it is "so located as to be affected by" the proposed facility. 415 ILCS 5/40.1; *see also* 35 IAC 107.200. Respondents in good faith sought a decision by the Board regarding whether Fairmont City was so located as to be affected by the proposed facility, particularly where no person at the May 29, 2014 public hearing spoke with respect to any particular impact to Fairmont City. Moreover, while there has been little Board or judicial interpretation of the phrase "so located as to be affected by," there is a reasonable interpretation the term "location" evidences a legislative intent that a proper petitioner is someone who would be affected by the facility with respect to the siting criteria, and not merely by an economic or competitive harm.

Furthermore, Fairmont City's reliance on *Valessares v. County Board*, PCB 87-36 (July 16, 1987) as a basis for sanctions is misplaced. *Valessares* involved a motion to dismiss filed

by Mr. Donald Moran on behalf of Waste Management of Illinois, Inc. asserting among other things that the petitioner was not so located as to be affected by a proposed landfill expansion. *Valessares* did not involve the issue of sanctions. The *Valessares* Board had first determined that “the issue regarding the effect of the proposed facility on [the petitioner] is almost exclusively factual.” *Valessares*, PCB 87-36, p 3. While the Board in *Valessares* ultimately determined that the petitioner was a proper party, it did not set forth any absolute rules as to when a party is “so located as to be affected by” but instead decided the issue under the particular facts of that case.

In this case, Respondents sought through discovery the facts supporting Fairmont City’s claim that it was so located as to be affected by the proposed facility. In response, Fairmont City provided no facts at all, and instead provided only a citation to the *Valessares* case without explanation. Respondents maintain that they have a good faith argument under existing law or for the extension, modification or reversal of existing law, that a mere financial or economic interest is not alone sufficient to render a party “so located to be affected by” a proposed facility and were within their rights to pursue discovery and seek a Board order with respect to Fairmont City’s right to bring a petition under Section 40.1(b).

Now, based upon the testimony of Fairmont City Police Chief Scott Penny at the October 28, 2014 hearing (although contrary to the Village minutes attached to the Joint Motion), Fairmont City claims it had a concern with respect to traffic patterns. This information was not readily apparent from the original hearing on this matter and it was not provided by Fairmont City in response to Respondents’ discovery requests. While it still appears that the only real interest Fairmont City has in contesting this facility is loss of its tipping fee tax revenue and it appears they are pursuing this matter for Waste Management, Respondents apologize for raising issues of improper solicitation as the minutes of the Fairmont meeting

made the participation appear quite economic in nature and raised issues of a "straw man" participation scheme. Traffic patterns were considered as can be seen by the testimony of the Village Trustees. While the Village of Fairmont proper is some distance from this proposed facility, if traffic patterns were a concern of the Village, that would raise to the level of being so located as to be affected and Respondents' Joint Motion may be deemed moot based on the new evidence. Even so, sanctions for pursuing the truth are inappropriate and should be denied.

WHEREFORE, the Respondent, Caseyville Transfer Station, LLC, prays that
Petitioner's petition for monetary sanctions be DENIED.

Respectfully submitted,

CASEYVILLE TRANSFER STATION, LLC
and VILLAGE OF CASEYVILLE, ILLINOIS

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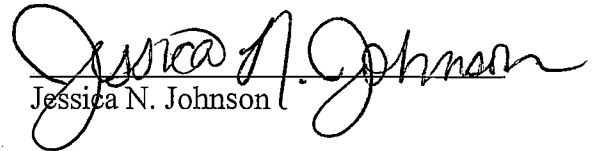
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CERTIFICATE OF SERVICE

I, Jessica N. Johnson, do certify that I caused to be electronically filed on this 5th day of November, 2014, the foregoing Respondent Caseyville Transfer Station, LLC. and Respondent Village of Caseyville's Joint Memorandum in Opposition to Fairmont City's Motion for Sanctions and to Strike Respondents' Joint Motion to Strike and Dismiss to the parties of record by depositing the same electronically on the Illinois Pollution Control Board website as well as emailing the Motion to all parties.


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