

**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)

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VILLAGE OF FAIRMONT CITY, )  
 ILLINOIS, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 VILLAGE OF CASEYVILLE, 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'S REPLY TO  
 PETITIONER ROXANA LANDFILL, INC.'S RESPONSE IN OPPOSITION TO  
 RESPONDENTS' JOINT MOTION FOR PROTECTIVE ORDER**

Now comes Respondent, Caseyville Transfer Station, LLC ("CTS"), by and through its counsel, Penni Livingston of the Livingston Law Firm, and hereby makes the following reply to Petitioner Roxana Landfill, Inc.'s Response in Opposition to Respondents Caseyville Transfer Station's and Village of Caseyville's Joint Motion for Protective Order. In support of its Motion, the Respondents state as follows:

1. The Protective Order sought by Respondents pertains solely to the mental impressions and testimony of the Village of Caseyville decision-makers and does not seek to suppress the disclosure of any documents.
2. With respect to the deliberative process privilege, Illinois law draws a clear distinction between the disclosure of documents, on the one hand, and inquiry into the mental processes of the decision maker, on the other. *See Fox Moraine, LLC v. United City of Yorkville*, 960 N.E.2d 1144, 1168 (Ill. App. 2011) (attempt to seek testimony from decision makers "regarding their processes in reaching their decisions ... is not allowable in well-settled law.")
3. The case law cited by Petitioner Roxana Landfill, Inc. is inapposite as the holdings relied upon by Roxana Landfill, Inc. relate explicitly to the discovery of documents and not to a protective order with respect to testimony on matters protected by the deliberative process privilege. With respect to *Fox Moraine*, Roxana Landfill, Inc. points the Hearing Officer to the discussion regarding the "Roth Report," clearly a document, but ignores the clear holding of *Fox Moraine* that elicitation of testimony is treated differently than document requests, the former of which is clearly privileged. The other case cited by Roxana Landfill, Inc., *Dunke v. City of Chicago*, 373 Ill. Dec. 804 (1<sup>st</sup> Dist 2013), involves production of a document under a similar but distinct federal statutory deliberative process privilege and concludes that the document in question was privileged even though the Major spoke of it at a press conference.

4. For all these reasons and the reasons stated in the original Motion, the Deliberative Process Privilege should be upheld through a proper protective order.

WHEREFORE, as previously stated in Respondents' Motion for Protective Order, Respondent Caseyville Transfer Station, LLC Illinois prays for a protective order that Petitioners are barred from seeking testimony from the Village of Caseyville decision-makers with respect to their deliberative processes.

Respectfully submitted,

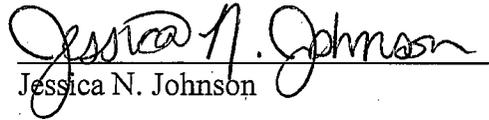
CASEYVILLE TRANSFER STATION, LLC

By: /s/ Penni S. Livingston

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**CERTIFICATE OF SERVICE**

I, Jessica N. Johnson, do certify that I caused to be electronically filed on this 21<sup>st</sup> day of October, 2014, the foregoing Respondent Caseyville Transfer Station, LLC.'s Reply to Petitioner Roxana Landfill, Inc.'s Response in Opposition to Respondents' Joint Motion for Protective Order 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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