BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

FOX MORAINE, LLC)
Petitioner,)
V.) PCB 07- 146
UNITED CITY OF YORKVILLE, CITY COUNCIL)))
Respondent.)

NOTICE OF FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on this 20th day of November, 2007, George Mueller, one of the attorneys for Petitioner, Fox Moraine, LLC, filed via electronic filing of the attached **Objection to Petition to Intervene** with the Clerk of the Illinois Pollution Control Board, a copy of which is herewith served upon you.

Respectfully submitted,

FOX MORAINE, LLC

By: <u>/s/George Mueller</u>
One of its Attorneys

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Electronic Filing - Received, Clerk's Office, November 20, 2007

Fox Moraine, LLC v. United City of Yorkville PCB No. 2007-146

SERVICE LIST

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PCB 2007-146 Michael Blazer Jeep & Blazer 24 N. Hillside Avenue, Suite A Hillside, IL 60162

CERTIFICATE OF SERVICE

I, Sharon Twardowski, a non-attorney, certify that I served a copy of the
foregoing Notice of Filing and Fox Moraine, LLC's Objection to Petition to
Intervene to the Hearing Officer and all Counsel of Record listed on the attached
Service list, be sending it via Electronic Mail and First Class Mail on November
20, 2007, before 5:00 p.m.

[x] Under penalties as provides by law pursuant to ILL. REV. STAT. CHAP. 110-SEC 1-109, I certify that the statements set forth Herein are true and correct

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OBJECTION TO PETITION TO INTERVENE

NOW COMES Fox Moraine, LLC, by its attorneys, Charles Helsten and George Mueller and for its Objection to the Petition to Intervene filed by Friends of Greater Yorkville states and alleges as follows:

- 1. It is well established that third party objectors are precluded from intervention in an appeal from a denial of siting approval. Waste Management v. County Board of Kane County, PCB 03-104 (Feb. 20, 2003), Land and Lakes Company, et al. v. Village of Romeoville, PCB 94-195 (Sept. 1, 1994), Waste Management of Illinois, Inc. v. PCB, 160 III.App.3d 454, 513 N.E.2d 592 (2nd Dist. 1987), McHenry County Landfill, Inc. v. IEPA, 154 III.App.3d 89, 506 N.E.2d 372 (2nd Dist. 1987). A party may intervene only when the third party is a state's attorney or the Attorney General's office intervening to represent the public interest.
- 2. Friends of Greater Yorkville is a third party objector without the special intervention rights of a state's attorney or the Attorney General's office representing the public interest. Friends of Greater Yorkville may participate through public comments and may seek to file an *amicus curiae* brief.

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3. Friends of Greater Yorkville's Petition to Intervene cites no authority in

support of its petition to intervene, because no such authority exists. 35 ILC 101.402

cited by Friends of Greater Yorkville is not applicable to this proceeding as that section

is a part of the PCB's general rules applicable to adjudicatory proceedings, while the

provisions of part 107 of chapter 35 of the Illinois Administrative Code specifically

govern intervention in petitions to review pollution control facility siting decisions made

by units of local government. Section 107.202(b) of the Board's rule specifically states,

"Where the interest of the public would be served the Board or hearing officer may allow intervention by the Attorney

General or the State's Attorney in the county in which the

facility will be located."

No other authority for intervention in pollution control facility siting reviews exists.

WHEREFORE, Fox Moraine, LLC prays that the Petition to Intervene filed by

Friends of Greater Yorkville be denied.

Respectfully submitted,

FOX MORAINE, LLC

By: /s/ George Mueller

One of its attorneys

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