

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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NOV 16 2007

STATE OF ILLINOIS
Pollution Control Board

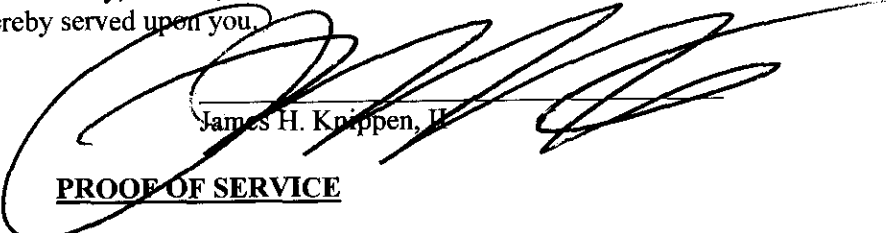
FOX MORaine, L.L.C.,)
)
Petitioner,)
)
)
)
v.)
)
UNITED CITY OF YORKVILLE)
CITY COUNCIL,)
)
Respondent.)

PCB 07-146
Pollution Control Facility Siting Appeal

NOTICE OF FILING

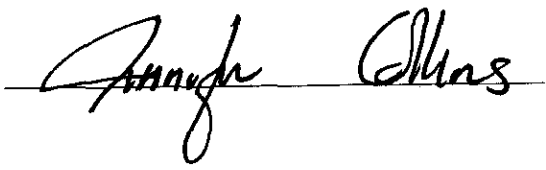
TO: See Attached Service List

PLEASE TAKE NOTICE that on November 13, 2007, we filed before the Illinois Pollution Control Board, Kendall County, Illinois, the Friends of Greater Yorkville's Petition to Intervene, a copy of which is hereby served upon you.

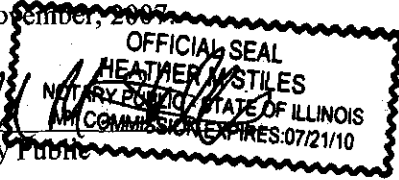

James H. Knippen, II

PROOF OF SERVICE

I, the undersigned, on oath, state that I served a copy of this Notice of Filing, Proof of Service and the aforementioned pleading to the attorneys above-mentioned through the U.S. Postal Service on November 13, 2007.



Subscribed and Sworn to me this
13th day of November, 2007.


Notary Public

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

FOX MORAINE, L.L.C.,)
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 Petitioner,)
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 v.)
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 UNITED CITY OF YORKVILLE,)
 CITY COUNCIL,)
)
 Respondent.)

PCB 07-146
Pollution Control Facility Siting Appeal

Friends of Greater Yorkville's Petition to Intervene

NOW COMES Friends of Greater Yorkville, an Illinois not-for-profit corporation, by and through its attorneys, WALSH, KNIPPEN, KNIGHT & POLLOCK, CHARTERED, and pursuant to 35 Ill. Admin. Code § 101.402, respectfully requests that this Honorable Board permit Friends of Greater Yorkville to intervene in this proceeding, and that Walsh, Knippen, Knight & Pollock, Chartered, be granted leave to file an appearance on behalf of Friends of Greater Yorkville; and in support of this petition it states the following:

1. Friends of Greater Yorkville is an Illinois not-for-profit corporation consisting of citizens of the United City of Yorkville and its surrounding area that are opposed to the siting of a landfill in Yorkville. Friends of Greater Yorkville was formed to serve as an organized, unified conduit through which those citizens could convey their opinions and concerns with those persons responsible for deciding on the siting of the landfill.

2. As part of its Petition for Review before this Board, Petitioner Fox Moraine, L.L.C., states that the proceedings before the Yorkville City Council were not fundamentally fair.

3. One of the reasons that Fox Moraine asserts caused the proceedings before the Yorkville City Council to be unfair is that "Objectors to the Application, including but not

limited to, participant[] ... Friends of Greater Yorkville engaged in prejudicial *ex parte* contacts with the members of the Yorkville City Council." (Petn. at ¶ 5(J).)

4. Friends of Greater Yorkville expects that Fox Moraine will seek depositions and discovery from its members surrounding the issues of allegedly-*ex parte* contacts that allegedly occurred between its members and members of the Yorkville City Council. Friends of Greater Yorkville seeks to have counsel present and participating in the discovery that it expects will be sought from it.

5. Further, Friends of Greater Yorkville wishes to file any *amicus curiae* briefs to the Board that may be necessary to protect its own interests and that of its members. Friends of Greater Yorkville had a First Amendment right to petition its elected officials to take action favorable to it. *Stahelin v. Forest Preserve Dist. of DuPage County*, --- Ill. App. 3d ---, 2007 WL 3052853, **7-8 (2d Dist. 10/10/07). This First Amendment principle is commonly known as the *Noerr-Pennington* doctrine. *Id.* The Yorkville City Council has a corresponding "right to listen" to its citizens' petition that the City Council undertake an act that it has the power to undertake. *Id.* at *8.

6. Fox Moraine is alleging in its Petition for Review that Friends of Greater Yorkville's exercise of its First Amendment right to petition caused the Yorkville City Council's proceedings not to be fundamentally fair. (Petn. at ¶ 5(J).) It is alleging that this petitioning was done *ex parte*. (*Id.*) By its very nature, this allegedly-*ex parte* petitioning would not be preserved for the record. Therefore, this is not a case where the Yorkville City Council will simply be defending its decision on the record. Instead, Fox Moraine is trying to establish fundamental unfairness by going outside the record and impugning the petitioning that Friends of Greater Yorkville brought to its elected officials.

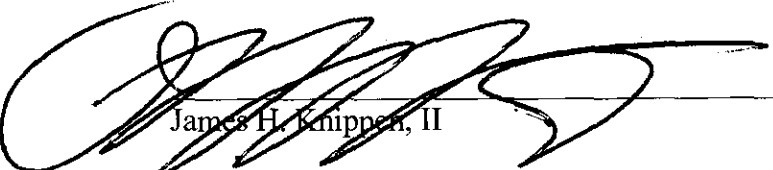
7. Because it is Friends of Greater Yorkville's petitioning of the Yorkville City Council that Fox Moraine is alleging as a basis for reversing the Yorkville City Council's decision on Fox Moraine's application for site location approval, Friends of Greater Yorkville will be materially prejudiced if it is not allowed to intervene to protect its own First Amendment right to petition. 35 Ill. Admin. Code § 101.402(d)(2). This material prejudice would arise because Fox Moraine would be allowed to put on evidence attacking the propriety of Friends of Greater Yorkville's petitioning activity, but Friends of Greater Yorkville would not be allowed to defend its own actions.

8. If Friends of Greater Yorkville is not allowed to intervene, it would have to rely on the arguments of the impartial government body that it petitioned. Friends of Greater Yorkville respectfully submits that it does not believe that it has the right to expect an impartial government body to "take sides" with it on the issue of its allegedly-*ex parte* petitioning activity. The Yorkville City Council has no responsibility to assert Friends of Greater Yorkville's First Amendment rights in this situation. If Friends of Greater Yorkville is not allowed to intervene, there is no party in this case that can adequately protect its First Amendment rights, and because of this it will be materially prejudiced.

WHEREFORE, Friends of Greater Yorkville, an Illinois not-for-profit corporation, respectfully requests that this Honorable Board grant Friends of Greater Yorkville leave to intervene in this cause of action, and that Walsh, Knippen, Knight & Pollock, Chartered, be granted leave to file an appearance on behalf of Friends of Greater Yorkville.

James H. Knippen, II
WALSH, KNIPPEN, KNIGHT &
POLLOCK, CHARTERED
601 W. Liberty Dr.
Wheaton, IL 60187-4940
630-462-1980

Respectfully submitted,
WALSH, KNIPPEN, KNIGHT & POLLOCK, CHARTERED



James H. Knippen, II

Proof of Service

I, the undersigned, on oath, state that I have served on the date of November 13, 2007, the attached "**Friends of Greater Yorkville's Petition to Intervene**", by U.S. Mail, upon the following persons:

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Jeffrey D. Jeep, Esq.

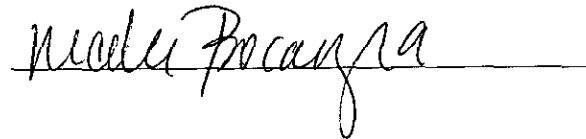
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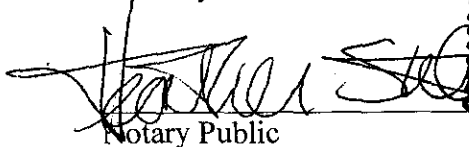
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Kendall County Courthouse
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Subscribed and sworn to before me this
13th day of November 2007.


Notary Public

