

Electronic Filing - Received, Clerk's Office, May 20, 2008

**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 May, 2008, George Mueller, one of the attorneys for Petitioner, Fox Moraine, LLC, filed via electronic filing of the attached **RESPONSE TO MOTION TO DISMISS** with the Clerk of the Illinois Pollution Control Board, a copy of which is herewith served upon you.

Respectfully submitted,

FOX MORaine, LLC

By: /s/ George Mueller
One of its Attorneys

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

SERVICE LIST

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CERTIFICATE OF SERVICE

I, Sharon Twardowski, a non-attorney, certify that I served a copy of the foregoing **Notice of Filing** and **RESPONSE TO MOTION TO DISMISS** to the Hearing Officer and all Counsel of Record listed on the attached Service list, be sending it via Electronic Mail on May 20, 2008, before 5:00 p.m.

/s/ Sharon Twardowski

- [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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**BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD**

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

RESPONSE TO MOTION TO DISMISS

NOW COMES Fox Moraine, LLC by and through one of its attorneys, George Mueller, and for its response to the Motion to Dismiss filed herein by the United City of Yorkville, states as follows:

1. The Motion to Dismiss filed by the City of Yorkville, in essence, seeks a dismissal for Fox Moraine's alleged failure to pay for preparation of the record on review.

2. The invoices submitted with the motion, being four invoices from a company entitled C2 Legal and totaling \$6,282.96 do not, on their face, indicate that they were incurred for preparation of the record on review. These invoices listed as the customer a certain individual named "Ryan Aldrich" and they list as the person to whom the services were sold the firm of Wildman, Harrold, Allen & Dixon LLP. The invoices charged for preparation of 42 dvd's, 20 compact discs and for a service call of "blow back of scanned images." Accordingly, it is not at all clear that these services are even related to the preparation of the record submitted to the Pollution Control Board.

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3. The foregoing notwithstanding, Fox Moraine previously accepted counsel for Yorkville's representation that the foregoing services were in fact related, reasonable and necessary for preparation of the record, and based upon this, payment of the invoices was directed last September. Due to an oversight, the letter authorizing payment was sent to an incorrect address and payment was inadvertently not made.

4. Upon learning of the inadvertent failure to make payment, Fox Moraine promptly made direct payment of these invoices with a check in the amount of \$6,282.96 sent to "Wildman, Harrold, Allen & Dixon, LLP" on May 6, 2008, a copy of the check is attached hereto and made a part hereof.

5. The City of Yorkville cites 735 ILCS 5/3-109 in support of the proposition that failure to pay for the preparation of the record mandates dismissing the petition for review. However, that section does not mandate dismissal for non-payment, it merely states that failure to pay may be authority for the entry of an order dismissing a complaint. Rodriguez v. Sheriff's Merit Commission, 355 Ill.App.3d 676 (Second District 2005). Accordingly, dismissal is discretionary and not mandatory.

WHEREFORE, given the foregoing, and the fact that payment has now been made, the motion to dismiss should be denied as moot.

Respectfully submitted,

FOX MORaine, LLC

By: /s/ George Mueller
One of its attorneys

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FOX MORaine LLC
2500 LANDMEIER ROAD
ELK GROVE VILLAGE, IL 60007

2-1900
710


DATE May 6, 2008

PAY
TO THE
ORDER OF

C2 Legal

\$ 6,282.96

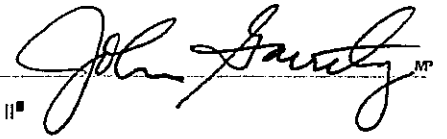
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