

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

FOX MORAINE, LLC	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB No. 07-146
	)	(Pollution Control Facility Siting
	)	Appeal)
UNITED CITY OF YORKVILLE, CITY	)	
COUNCIL	)	
	)	
Respondent.	)	

**NOTICE OF FILING**

To: See Attached Service List

PLEASE TAKE NOTICE that on April 6, 2009, Leo P. Dombrowski, one of the attorneys for Respondent, United City of Yorkville, filed via electronic filing the attached **United City of Yorkville's Motion in Limine #6**, with the Clerk of the Illinois Pollution Control Board, a copy of which is herewith served upon you.

Respectfully submitted,

UNITED CITY OF YORKVILLE

By:           /s/ Leo P. Dombrowski            
One of their Attorneys

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COUNCIL	)	
	)	
Respondent.	)	

**YORKVILLE'S MOTION IN LIMINE # 6**

Pursuant to the Hearing Officer's Order of March 23, 2009 and 35 Ill. Admin. Code § 101.610, Respondent, the United City of Yorkville, City Council ("Yorkville"), by and through its attorneys, moves the Hearing Officer in limine to exclude from the hearing on this matter any use of meeting minutes, transcripts, or video recordings of twenty-seven different city council meetings, or, in the alternative, require Fox Moraine to give, on or before April 16, 2009, written notice of designations of the portions of the minutes, transcripts (date and line), and video (date and time) that it intends to introduce so that Yorkville can properly prepare for the hearing. In support of its motion, Yorkville states the following:

1. Conservatively estimating that each meeting from which the minutes, transcripts and video recordings were made was only two hours long, Fox Moraine has designated minutes, transcripts and video recordings from over fifty-four hours' worth of hearings on its Exhibit List, Nos. 12-14. Yorkville believes that Fox Moraine intends to use mere snippets of these many hours of footage and pages of transcripts to inaccurately portray the hearings, and Yorkville requests that Fox Moraine be forbidden from doing so.

2. If Fox Moraine is permitted to introduce portions of the minutes, transcripts and/or video recordings at the hearing (assuming it can establish the proper evidentiary prerequisites), Yorkville will, for fairness, need to introduce surrounding portions of the minutes, transcripts and/or video recordings to provide context. Yorkville will be unduly prejudiced and the hearing of this case will be needlessly prolonged unless Fox Moraine is required to give advance notice of the portions of these minutes, transcripts and/or video recordings that it intends to introduce at the hearing. Due to the numerous hours of minutes, transcripts and/or video recordings, if Fox Moraine does not advise Yorkville in advance which portions it intends to offer, Yorkville will be unable to determine in advance which other portions of this mass of minutes, transcripts and/or video recordings Yorkville needs to offer into evidence. Fox Moraine should not be permitted to surprise Yorkville, and thus gain an unfair advantage, by hiding which portions of this massive amount of minutes, transcripts and/or video recordings Fox Moraine will seek to introduce.

3. Requiring Fox Moraine to provide at least advance designations for the minutes, transcripts and/or video recordings will promote the orderly presentation of evidence at the hearing. Yorkville will know the specific portions of minutes, transcripts and/or video recordings that Fox Moraine intends to introduce and will be able to prepare in advance its own designations "which ought in fairness to be considered in connection with" Fox Moraine's portions. *See, e.g.*, Ill. S. Ct. Rule 212(c) (allowing opposing party to offer portions that should fairly be considered along with the first party's designations). If Yorkville is able to formulate and present its objections to such minutes, transcripts and/or video recordings in advance, the hearing will proceed more quickly and efficiently.

WHEREFORE, Yorkville respectfully requests that the Hearing Officer forbid Fox Moraine from introducing the minutes, transcripts or video recordings of the council meetings designated in Fox Moraine's Exhibit List Nos. 12-14. In the alternative, Yorkville respectfully requests that the Hearing Officer require Fox Moraine to give, on or before April 16, 2009, written notice of the portions of the minutes, transcripts (date and line), and videos (date and time) that it intends to introduce.

Respectfully submitted,

UNITED CITY OF YORKVILLE, CITY  
COUNCIL

By: \_\_\_\_\_ /s/ Leo P. Dombrowski  
One of Its Attorneys

Dated: April 6, 2009

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**CERTIFICATE OF SERVICE**

I, Susan Hardt, a non-attorney, certify that I caused a copy of the foregoing **Notice of Filing and United City of Yorkville's Motion in Limine #6**, to be served upon the Hearing Officer and all Counsel of Record listed on the attached Service list by sending it via Electronic Mail on April 6, 2009.

/s/ Susan Hardt

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

**SERVICE LIST**

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