

ILLINOIS POLLUTION CONTROL BOARD
May 21, 2009

FOX MORAINE,L.L.C.,)	
)	
Petitioner,)	
)	
v.)	PCB 07-146
)	(Pollution Control Facility
UNITED CITY OF YORKVILLE, CITY)	Siting Appeal)
COUNCIL,)	
)	
Respondent.)	
)	
)	
KENDALL COUNTY,)	
)	
Intervenor.)	

HEARING REPORT

On April 21, 22 and 23, 2009, hearings in this matter were held at the United City of Yorkville Public Library, 902 Game Farm Road, Yorkville, Il. Attorneys George Mueller and Richard S. Porter appeared and participated on behalf of the petitioner, Fox Moraine, L.L.C. (Fox Moraine). Attorneys Leo P. Dombrowski and Anthony G. Hopp appeared and participated on behalf of the respondent, United City of Yorkville, City Council (Yorkville). Attorneys James F. McCluskey and James S. Harkness appeared and participated on behalf of the intervenor Kendall County.

Preliminary Matters

On April 6, 2009, Yorkville filed three motions *in limine*, entitled “United City of Yorkville’s Motion in Limine #5”, “United City of Yorkville’s Motion in Limine #6” and, “United City of Yorkville’s Motion in Limine 7”. On April 10, 2009, Fox Moraine filed their respective responses. The motions *in limine* were addressed at the April 21, 2009, hearing and the rulings are reflected in the transcript.

Witness Credibility

On April 23, 2009, Fox Moraine tendered what was subsequently taken as Hearing Officer Exhibit 2, entitled “Motion of Petitioner, Fox Moraine, LLC For A Finding That Valerie Burd Was Not A Credible Witness”. On April 24, 2009, Fox Moraine filed an amended motion regarding the credibility of Valerie Burd. On May 7, 2009, Yorkville filed its response to the

amended motion. The motion and the response are taken under advisement and will be addressed at a later date.

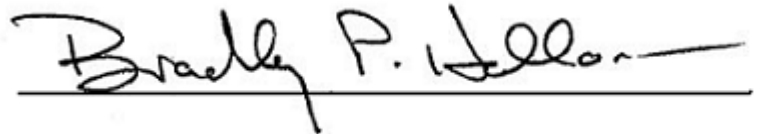
Exhibits

An exhibit list itemizing the offered exhibits and summarizing their status is attached to this order. There is no Petitioner Exhibit 12 because official notice was taken of PCB 08-95 and PCB 08-96.

Briefing Schedule

A briefing schedule was discussed and agreed to subsequent the hearing. Petitioner's post-hearing brief is due to be filed on or before June 12, 2009. Respondent's post-hearing brief is due to be filed on or before July 17, 2009. Petitioner's reply is due to be filed on or before July 31, 2009. Intervenor Kendall County's brief and the respective *amicus curiae* briefs of the Village of Plainfield and the Friends of Greater Yorkville are due to be filed on or before July 17, 2009. Public Comment is due to be filed on or before June 5, 2009.

IT IS SO ORDERED.

A handwritten signature in black ink that reads "Bradley P. Halloran". The signature is written in a cursive style and is positioned above a solid horizontal line.

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 W. Randolph Street
Chicago, Illinois 60601
312.814.8917

PCB 07-146

April 21, 22, 23, 2009 Hearing**Exhibit List**

Exhibit	Description	Status
Hearing Officer Exhibit 1	Petitioner's Hearing Brief/Offer of Proof Regarding "Deliberative Process"	Taken under advisement
Hearing Officer Exhibit 2	Motion of Petitioner Fox Moraine, LLC For a Finding That Valerie Burd was not a Credible Witness	Taken under advisement
Intervenor Exhibit 1	Stipulation Between Fox Moraine, LLC And the County of Kendall	Admitted
Public Comment	Written Public Comment of George Gilson	Taken with case
Petitioner's Exhibit 1	Plan Commission Meeting, Report of Proceedings of September 25, 2006	Admitted
Petitioner's Exhibit 2	Report of Proceedings of September 26, 2006	Admitted
Petitioner's Exhibit 3	Report of Proceedings of October 10, 2006,	Admitted
Petitioner's Exhibit 4	Report of Proceedings of October 24, 2006	Admitted
Petitioner's Exhibit 5	Report of Proceedings of October 30, 2006	Admitted
Petitioner's Exhibit 6	Report of Proceedings of November 13, 2006	Admitted
Petitioner's Exhibit 7	Report of Proceedings of November 14, 2006	Admitted
Petitioner's Exhibit 8	Report of Proceedings of November 30, 2006	Admitted
Petitioner's Exhibit 9	Report of Proceedings of January 23, 2007	Admitted
Petitioner's Exhibit 10	Circuit Court Record for case # 07-OV-43	Taken as Official Notice
Petitioner's Exhibit 11	Circuit Court Order in # 2008 L 68	Taken as Official Notice
Petitioner's Exhibit 13	Newspaper Article, dated April 15, 2007	Taken as Offer of Proof to assist the witness testimony

Petitioner's Exhibit 14	April 5, 2007 Newspaper Article	Taken as Offer of Proof to assist in witness testimony
Petitioner's Exhibit 15	Campaign Disclosure of Valerie Burd	Admitted
Petitioner's Exhibit 16	Law Firm Invoice, dated June 15, 2007	Admitted
Petitioner's Exhibit 17	City Council Minutes of May 8, 2007	Admitted
Petitioner's Exhibit 18	Report of Proceedings of May 23, 2007	Admitted
Petitioner's Exhibit 19	Report of Proceedings of May 24, 2007	Admitted
Petitioner's Exhibit 20	Web page of Robyn Sutcliffe	Admitted
Petitioner's Exhibit 21	Web page of Robyn Sutcliffe, dated January 3, 2007	Admitted
Petitioner's Exhibit 22	Web page of Robyn Sutcliffe, dated January 9, 2007	Admitted
Petitioner's Exhibit 23	Public Hearing document, dated January 23, 2007	Admitted
Petitioner's Exhibit 24	Letter from Chuck Sutcliffe	Taken as Offer of Proof
Petitioner's Exhibit 25	3 rd Ward advisor document from Robyn Sutcliffe	Admitted
Petitioner's Exhibit 26	Newspaper article, dated November 2, 2006	Taken as Offer of Proof to assist witness testimony
Petitioner's Exhibit 27	Newspaper Article, dated November 7, 2006	Taken as Offer of Proof to assist witness testimony
Petitioner's Exhibit 28	Copy of Wally Werderich's Palm Card	Admitted
Petitioner's Exhibit 29	First page of "Petitioner's Response To Motion For Attorney's Fees", filed in PCB 08-95, stamped September 19, 2008	Taken as Offer of Proof to assist witness testimony

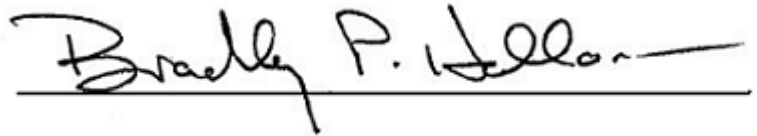
Petitioner's Exhibit 30	Notice of Filing Document regarding "Verification in Support of Yorkville's Response to Motion for Attorney's Fees" from PCB 08-95	Taken as Offer of Proof to support witness testimony
Petitioner's Exhibit 31	Ordinance No. 2006-117 document	Admitted
Petitioner's Exhibit 32	Police Incident Report, dated March 13, 2007	Taken as an Offer of Proof to assist in witness testimony
Petitioner's Exhibit 33	Resolution-Denial of Siting Application	Admitted
Petitioner's Exhibit 34	Resolution-Approval With Conditions of Siting Application	Admitted
Petitioner's Exhibit 35	Resolution-Denial of Siting Application	Admitted
Petitioner's Exhibit 36	Resolution-Approval/Denial of Siting application	Admitted
Respondent's Exhibit 1	Copy of Palm Card Regarding the Landfill Siting Process	Admitted
Respondent's Exhibit 2	Copy of Check from Fox Moraine to United City of Yorkville, dated November 28, 2006	Admitted
Respondent's Exhibit 3	Letter from Fox Moraine to Yorkville City Clerk, dated December 1, 2006	Admitted

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order was mailed, first class, on May 21, 2009, to each of the persons on the attached service list.

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on May 21, 2009:

John T. Therriault
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Ste. 11-500
Chicago, Illinois 60601

A handwritten signature in black ink that reads "Bradley P. Halloran". The signature is written in a cursive style and is positioned above a solid horizontal line.

Bradley P. Halloran
Hearing Officer
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