

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ROXANA LANDFILL, INC.)

Petitioner,)

v.)

VILLAGE BOARD OF THE VILLAGE)
OF CASEYVILLE, ILLINOIS; VILLAGE)
OF CASEYVILLE, ILLINOIS; and)
CASEYVILLE TRANSFER STATION,)
LLC,)

Respondents.)

PCB-15-65
(Third Party Pollution Control
Facility Siting Appeal)

VILLAGE OF FAIRMONT CITY,)
ILLINOIS,)

Petitioner,)

v.)

VILLAGE OF CASEYVILLE, ILLINOIS)
BOARD OF TRUSTEES and)
CASEYVILLE TRANSFER STATION,)
LLC,)

Respondents.)

PCB-15-69
(Third Party Pollution Control
Facility Siting Appeal)
(Consolidated)

RESPONDENT CASEYVILLE TRANSFER STATION, LLC AND RESPONDENT
VILLAGE OF CASEYVILLE, ILLINOIS' JOINT
MOTION FOR PROTECTIVE ORDER

Now comes Respondent, Caseyville Transfer Station, LLC ("CTS"), by and through its attorney, Penni Livingston of the Livingston Law Firm, and Respondent Village of Caseyville Illinois, by and through its attorney J. Brian Manion of Weilmunster Law Group, P.C., pursuant Section 101.616(d) of the Pollution Control Board Procedural Rules, and hereby moves for a protective order prohibiting discovery with respect to matters protected by the **deliberative process privilege**. In support of its Motion, the Respondents state as follows:

1. On October 14, 2014, Petitioner Roxana Landfill, Inc. issued subpoenas for the depositions of the following Village of Caseyville officials: Walter Abernathy, Trustee; Kerry Davis, Trustee; Robert Watt, Village Clerk; and Leslie McReynolds, Deputy Village Clerk (collectively, the "Village Officials").

2. The Illinois Pollution Control Board, as well as Illinois courts, have recognized a "deliberative process privilege" providing that the mental processes of decision makers shall not be examined regarding the bases for their decisions. *See Fox Moraine, LLC v. United City of Yorkville*, 960 N.E.2d 1144, 1168 (Ill. App. 2011) (attempt to seek testimony from decision makers "regarding their processes in reaching their decisions . . . is not allowable in well-settled law"); *see also Rochelle Waste Disposal, LLC v. City Council of the City of Rochelle, Illinois*, PCB 03-218 (April 15, 2004); *Land and Lakes Co. v. Village of Romeoville*, PCB 92-25 (June 4, 1992).

3. Walter Abernathy and Kerry Davis are protected by the deliberative process privilege and any inquiry into the mental impressions or processes of either of them with respect to their decisions to vote in favor of approval of the Caseyville Transfer Station Application for Local Siting Approval is prohibited under Illinois law. *See id.*

4. Likewise, any attempt to seek the testimony of any of the other Village Officials with respect to the mental processes of or bases for the decisions of Messrs. Abernathy and Davis is likewise prohibited.

WHEREFORE, the Respondents, Caseyville Transfer Station, LLC and the Village of Caseyville Illinois pray for a protective order that Petitioners are barred from seeking testimony or otherwise inquiring into the mental processes of or bases for the decisions of

Walter Abernathy or Kerry Davis with respect to the approval of the Caseyville Transfer Station Application for Local Siting Approval.

Respectfully submitted,

CASEYVILLE TRANSFER STATION, LLC
and VILLAGE OF CASEYVILLE, ILLINOIS

By: /s/ Penni S. Livingston

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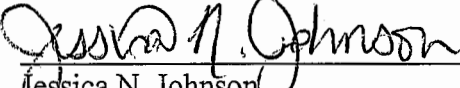
AND

By: /s/ J. Brian Manion

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CERTIFICATE OF SERVICE

I, Jessica N. Johnson, do certify that I caused to be electronically filed on this 17th day of October, 2014, the foregoing Respondent Caseyville Transfer Station, LLC and Respondent Village of Caseyville, Illinois' Joint Motion for Protective Order to the parties of record by depositing the same electronically on the Illinois Pollution Control Board website as well as emailing the Motion to all parties.


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