

ILLINOIS POLLUTION CONTROL BOARD
February 1, 2024

PROTECT WEST CHICAGO,)
)
Petitioner,)
)
v.) PCB 23-107
) (Third-Party Pollution Control Facility
CITY OF WEST CHICAGO, WEST) Siting Appeal)
CHICAGO CITY COUNCIL and)
LAKESHORE RECYCLING SYSTEMS,)
LLC,)
)
Respondents.)

PEOPLE OPPOSING DUPAGE)
ENVIRONMENTAL RACISM,)
) PCB 23-109
Petitioner,) (Third-Party Pollution Control Facility
) Siting Appeal)
v.)
) (Consolidated)
CITY OF WEST CHICAGO and)
LAKESHORE RECYCLING SYSTEMS,)
LLC,)
)
Respondents.)

OPINION AND ORDER OF THE BOARD (by J. Van Wie):

This is a pollution control facility siting appeal of a City of West Chicago City Council (City) decision to grant a Lakeshore Recycling Systems, LLC (Lakeshore or LRS) application to site a municipal solid waste transfer station at 1655 Powis Road in West Chicago, DuPage County (site). See 415 ILCS 5/40.1(b) (2022); 35 Ill. Adm. Code 101.300(b), 107.204. On March 28, 2023, Protect West Chicago (PWC) timely filed a petition asking the Board to review that February 28, 2023 decision of the City. That petition was filed as case number PCB 23-107. On March 31, 2023, People Opposing DuPage Environmental Racism (PODER) timely filed a petition asking the Board to review the same City decision, which was filed as case number PCB 23-109.

The Board accepted both petitions for hearing on April 6, 2023, and consolidated these cases on May 18, 2023.

The issue of whether or not proper notice of Lakeshore's application was provided to adjacent landowners under Section 39.2(b) of the Act (415 ILCS 5/39.2(b) (2022)) is a threshold issue. Failure to properly provide notice under Section 39.2 of the Act divests the City of jurisdiction in this waste transfer station siting appeal. After a careful examination of the record and the arguments presented by the parties, the Board finds that proper notice was not provided to the owner of the property with PIN 01-32-506-001, and the Board vacates the decision of the City for lack of jurisdiction.

In this final opinion and order, the Board first reviews the procedural background of this case. The Board then presents an abbreviated factual history and the issue. Next, the Board summarizes the parties' arguments on the issue. Then, the Board reviews the applicable legal background and proceeds to its discussion of the issue. The Board concludes the opinion and order with its determination on this pollution control facility siting appeal.

PROCEDURAL BACKGROUND

On March 28, 2023, PWC filed with the Board its petition for review of a February 28, 2023 determination by the City to grant siting approval to Lakeshore for operation of a new pollution control facility. The City's determination granted siting approval to the applicant, Lakeshore, for Lakeshore's proposed waste transfer station in West Chicago. The City's decision was based on the findings of the hearing officer for the public hearings on the proposed facility that were held by the City of West Chicago on January 3, 4, 5, 10, 12, 16 and 19, 2023.

On March 31, 2023, PODER filed with the Board its petition for review of that same City determination. The Board accepted both petitions for hearing on April 6, 2023. On April 12, 2023, Lakeshore filed a motion to consolidate these cases. They were consolidated by Board order of May 18, 2023.

On April 14, 2023, Lakeshore filed a motion to vacate and strike the Board order of April 6, 2023, as well as a waiver of the decision deadline in PCB 23-107, and on April 17, 2023, Lakeshore filed a waiver of the decision deadline in PCB 23-109. Lakeshore waived the decision deadline in both cases to October 5, 2023.

Also on April 14, 2023, PWC filed a motion for leave to amend its petition. Lakeshore and the City filed no objection to the motion.

On April 19, 2023, PWC filed a motion for leave and for extension of time to respond to Lakeshore's motion to vacate and strike. The hearing officer granted PWC's motion for extension to May 12, 2023. On May 12, 2023, PWC filed its response to Lakeshore's motion to vacate. On May 17, 2023, Lakeshore filed its reply.

On April 19, 2023, the City filed the record on its proceedings in PCB 23-107 (C0001-C3346 and C3347-C6399) and its certificate of the record on appeal and index to the record.

On April 20, 2023, Lakeshore filed its response of no objection to PWC's motion to amend. On April 21, 2023, the City filed its response of no objection, and on April 24, 2023, PODER filed its response of no objection.

On April 21, 2023, the City filed a motion to supplement the record. The Board received no response to the motion.

On May 18, 2023, the Board: granted Lakeshore's motion to consolidate these two cases; granted PWC's motion to amend its petition and accepted the amended petition for hearing; granted the City's motion to supplement the record; and denied Lakeshore's motion to vacate or strike the Board order of April 6, 2023.

Board Hearing

The Board's hearing officer set a hearing for September 28, 2023. Notice of the Board hearing was published in the *DuPage County Herald* on August 24, 2023.

The Board hearing was held on September 28, 2023 in West Chicago. The Board received the hearing transcript (Tr.) on October 11, 2023.

Four witnesses testified at hearing: Ruben Pineda, the Mayor of West Chicago; Michael Guttman, City Administrator for the City of West Chicago; Lori Chassee, Alderman for the First Ward of the City of West Chicago; and Tom Dabareiner, Director of Community Development for the City of West Chicago. Juliette Alcantar-Garcia, a resident of West Chicago, also gave a sworn statement at hearing.

The Board received 11 public comments after the hearing (PC #1-11). Comments were received from Gerald Frantzen, Maria Gonzalez, Yesenia Guajardo, Ray Bebee, Barbara Holmes, Heather Niziolek, Denise Kolode, Javier Comboni, Sara Phalen, Abby Thompson, and one anonymous commenter.

PODER, PWC, the City, and Lakeshore each filed a post-hearing brief on November 13, 2023. Each party filed its response brief on December 6, 2023.

In a hearing officer order on October 24, 2023, the hearing officer granted PWC's September 28, 2023 motion to admit the underlying record as it pertained to the documents found in the Record on Appeal before the Board, and denied the motion as to the two documents pertaining to the Illinois Attorney General's Public Access Counselor.

RELEVANT FACTUAL BACKGROUND

Lakeshore Recycling Systems is the owner and operator of a permitted solid waste management facility on an approximately 27.66-acre parcel located at 1655 Powis Road, West Chicago, DuPage County, Illinois (Facility). C0008. The Facility currently processes construction and/or demolition recycling. *Id.* The September 16, 2023 siting application was for an expansion of this Facility to include a waste transfer station. *Id.* Lakeshore currently owns

approximately 10 strategically located municipal solid waste transfer station facilities and/or construction or demolition recycling and transfer station facilities in Illinois and Wisconsin, and operates an additional facility in Illinois. *Id.*

On August 23, 2022, Lakeshore sent via certified mail, return receipt requested, pre-filing notice of its intent to file a siting application with the City to: Senator Karina Villa; Representative Maura Hirschauer; the Fox Valley Airport Authority; Maxwell Properties LLC; Cabot IV-IL 1W09 LLC c/o Cabot Properties INC; TCD 238 AIM Property, LLC c/o Taurus Investment; Union Pacific Railroad Company; the John Pietrobon Trust; and Oscar (IL) LLC. C006165-C006170. Also on August 23, 2022, Lakeshore sent pre-filing notice via UPS Express to Canadian National Railway and Chicago Central & Pacific Railroad to locations in Canada. C006165, C006171-6172.

On September 16, 2022, Lakeshore submitted its application to the City via personal delivery. C000001. The application addressed nine statutory siting criteria for site approval. C000014-C001929; *see* 415 ILCS 5/39.2(b) (2022). Lakeshore published notice of its intent to file an application for the site in the DuPage County *Daily Herald*. C006085-C006091.

Seven public hearings were held on the application, on January 3, 4, 5, 10, 12, 16 and 19, 2023. C001930-C003346. Sixty-two exhibits were admitted at hearing. C003347-C005731. The City received 164 written public comments on the siting application, and 26 oral testimonies were given at the hearings. C005758-C005960, C005732-5757. Lakeshore's expert John Hock testified before the City and was subject to cross-examination on his affidavit of service of the pre-filing notice on the affected property owners. C002026-C002040; C003347-C003349. Mr. Hock testified that he used a geographic information systems (GIS) mapping feature on the DuPage County website and had his staff use various internet sources to determine the ownership and addresses of the owners of the railroad properties. C002026-2028. He further testified that his staff contacted corporate offices for the railroads. C002027. Mr. Hock testified that he did not contact the DuPage County Treasurer. He also did not contact, or know if anyone in his office had contacted, the DuPage County Clerk or local assessor to confirm the correct ownership of the parcel with PIN 01-32-506-001. C002034, C002037-2038.

At the hearing, PWC moved to dismiss Lakeshore's application on jurisdictional grounds for lack of proper pre-filing notice and challenging the authenticity of the tax records used by Lakeshore. C002-39-C002040; C006101. PWC's motion included DuPage County railroad tax bills for what PWC alleged were all the railroads in DuPage County, obtained from the DuPage County Treasurer. C006103-C006105; C006116-C006128. These documents did not include a railroad tax bill for Canadian National Railway. The City denied PWC's motion to dismiss based on the hearing officer's finding that Lakeshore satisfied the Section 39.2(b) notice requirements. C006043; *see also*, C006015.¹

¹ In the hearing officer report (C006008-C0060027), the City hearing officer stated, "It is not disputed that the Applicant did not serve the Canadian National Railway by personal service nor by registered mail return receipt requested. Instead, the Applicant caused written notice of the Applicant's request for site approval to be delivered via paid courier". C006013.

LEGAL BACKGROUND

Statutory Authority

Section 39.2(b) of the Act sets forth requirements for pre-filing notice of a siting application and provides in its entirety that,

[n]o later than 14 days before the date on which the county board or governing body of the municipality receives a request for site approval, the applicant shall cause written notice of such request to be served either in person or by registered mail, return receipt requested, on the owners of all property within the subject area not solely owned by the applicant, and on all owners of all property within 250 feet in each direction of the lot line of the subject property, said owners being such persons or entities which appear from the authentic tax records of the County in which such facility is to be located; provided, that the number of all feet occupied by all public roads, streets, alleys and other public ways shall be excluded in computing the 250 feet requirement; provided further, that in no event shall this requirement exceed 400 feet, including public streets, alleys and other public ways.

Such written notice shall also be served upon members of the General Assembly from the legislative district in which the proposed facility is located and shall be published in a newspaper of general circulation published in the county in which the site is located.

Such notice shall state the name and address of the applicant, the location of the proposed site, the nature and size of the development, the nature of the activity proposed, the probable life of the proposed activity, the date when the request for site approval will be submitted, and a description of the right of persons to comment on such request as hereafter provided. 415 ILCS 5/39.2(b) (2022).

Standard of Review

Failure to meet the notice requirements of Section 39.2(b) of the Act (415 ILCS 5/39.2(b) (2022)) divests the City of West Chicago of jurisdiction to hear the matter. Ogle County Board v. PCB, 272 Ill. App. 3d 184, 649 N.E.2d 545 (2nd Dist. 1995). The law is well-settled that when reviewing a question of law, the reviewing court should use the *de novo* standard of review. *See Panhandle Eastern Pipe Line Company v. IEPA*, 314 Ill. App. 3d 296, 734 N.E.2d 18, 21 (4th Dist. 2000). Lakeshore asserts that the Board should review the City's decision using the manifest weight of the evidence standard. LRS Br. at 6. The City asserts that the Board should review the challenges to the City's decision on the Section 39.2 criteria using the manifest weight of the evidence standard. City Br. at 17. The manifest weight of the evidence standard is the only standard of review discussed by Lakeshore in its briefings, while the City mentions the clearly erroneous standard in addition to the manifest weight of the evidence standard. *See City Resp. Br.* at 9.

However, regarding applying the manifest weight of the evidence standard to the issue of the sufficiency of notice under Section 39.2(b) of the Act (415 ILCS 5/39.2(b) (2022)), the Board disagrees with both Lakeshore and the City. Clearly, whether or not service was sufficient under Section 39.2(b) to give the City jurisdiction is a question of law, and, therefore, the Board will use the *de novo* standard of review on this matter. *See Waste Management of Illinois v. Illinois Pollution Control Board*, 356 Ill. App. 3d 229, 233, 826 N.E. 2d 586, 590 (3rd Dist. 2005).

ISSUE

The Board must first determine whether the Section 39.2(b) notice requirements of the Act (415 ILCS 5/39.2(b) (2022)) were met. Failure to meet the strict notice requirements of Section 39.2(b) of the Act divests the City of West Chicago of jurisdiction to hear the matter. *City of Kankakee v. County of Kankakee, County Board of Kankakee, and Waste Management of Illinois, Inc.*, PCB 03-125 at 6 (Aug. 7, 2003), citing *Browning Ferris Industries of Illinois v. IPCB*, 162 Ill. App. 3d 801, 805, 516 N.E.2d 804, 807 (5th Dist. 1987); *Ogle County Board v. PCB*, 272 Ill. App. 3d 184, 649 N.E.2d 545 (2nd Dist. 1995) (Ogle County). A jurisdictional defect is dispositive of a case *ab initio*. *Illinois Power Co. v. PCB*, 137 Ill. App. 3d 449, 484 N.E.2d 898 (4th Dist. 1985); *Kane County Defenders, Inc. v. PCB*, 139 Ill. App. 3d 588, 487 N.E.2d 743 (2nd Dist. 1985). Therefore, if PWC prevails on the issue of failure to properly notice one of the property owners, the remaining issues are mooted. *See City of Kankakee* at 6.

ARGUMENTS

Petitioner PWC raises the issue of inadequate pre-filing notice pursuant to Section 39.2(b) of the Act (415 ILCS 5/39.2(b) (2022)). Petitioner PODER did not raise the issue. The following section will summarize PWC's argument that notice on Canadian National Railway (CNR) was inadequate. Next, the Board will summarize the responses of the City and Lakeshore.

Protect West Chicago's Arguments

Authentic Tax Records

PWC argues first that Lakeshore failed to use the authentic tax records of the county to determine the owner of a property within 250 feet of the lot line of the site. PWC Br. at 17; *see* 415 ILCS 5/39.2(b) (2022). PWC points out that two of the parcels of land adjacent to the site, PIN 01-32-505-011 and PIN 01-32-506-001, are owned by railroads. *Id.* at 18. PWC claims LRS was required to consult the offices of the DuPage County Treasurer and DuPage County Clerk to obtain the authentic tax records for the parcels owned by the railroads. *Id.* at 17, citing *Scott v. City of Chicago*, 29 N.E.2d 592, 594-595 (1st Dist. 2015) (holding that applicant required to consult County Clerk, Treasurer and Assessor when determining proper entities and locations for service on affected parties). However, PWC claims that because in Illinois railroad tax assessments are only made by the Department of Revenue, Lakeshore should have consulted the Illinois Department of Revenue in lieu of the County Assessor. PWC Br. at 18; 35 ILCS 200/8-5 (2022); 35 ILCS 200/11-70(b), (d) (2022); 35 ILCS 20/11-80 (2022).

PWC asserts that because Lakeshore did not consult the DuPage County Clerk or the DuPage County Treasurer to confirm the property owner and address of the property owner, Lakeshore did not obtain the authentic tax records for the parcel with PIN 01-32-506-001 (Parcel). PWC Br. at 18. PWC states that the DuPage County Treasurer, Gwen Henry, and the DuPage County Clerk, Jean Kaczmarek, confirmed that six railroads were clearly identified in the DuPage County tax records. *Id.*; *see also* C006116-C006128, C006129-C006150. PWC contends that the DuPage County Clerk's and Treasurer's authentic tax records show that the Parcel belongs to EJ&E Railroad, and that none list Canadian National Railway. PWC Br. at 18; C006116-C006128; C006129-6150. PWC points to the disclaimers on the DuPage County website that state, "[d]ue to update changes in the county tax system the ownership and tax information within the Parcel Viewer parcel data may not be current", and, "[t]he user expressly acknowledges that the Parcel Viewer website, data, and maps may contain nonconformities, defects, or errors.... The County of DuPage is not inviting reliance on the Parcel Viewer website, data or maps and the user should always verify the actual data by contacting the appropriate regulating agency", to suggest that the website information is not authentic tax records under Section 39.2(b). PWC Resp. Br. at 3, fn. 3. Accordingly, PWC argues Mr. Hock's reliance on the GIS website was erroneous. Further, PWC asserts that because the map presented by Lakeshore to support Mr. Hock's testimony shows Canadian National Railway, parenthetical EJ&E, connected to the Parcel (C003399) states on its face that it is for "assessment purposes only", Lakeshore also erroneously relied on this map as an authentic tax record. *Id.*; *see also*, City Br. at 4.

Service on Correct Owner

PWC next argues that Lakeshore did not serve the correct owner of the Parcel, EJ&E Railroad, but instead attempted to serve Canadian National Railway. PWC Br. at 18-19. PWC states that it requested tax bills for all railroads in DuPage County. PWC Br. at 19; *see* C006116-C006128. PWC contends that the authentic tax records of DuPage County do not list Canadian National Railway among these railroads, and therefore, Canadian National Railway was not the proper entity to serve for the Parcel. PWC Resp. Br. at 3; *see* C006129-C006185. PWC asserts and the authentic tax records instead show EJ&E and Wisconsin Central Ltd. PWC Br. at 19; PWC Resp. Br. at 4; *see also* C006116-C006185.

PWC also cites to the City hearing, where upon cross-examination, Lakeshore's expert John Hock admitted that he never contacted anyone at the DuPage County Clerk's or Treasurer's office to confirm the ownership of the Parcel. PWC Br. at 18-19; *see also* C002160-C002163. Instead, he went to the DuPage County website and used a GIS map showing property information to identify the owner of the Parcel and the other parcels within 250 feet of the Subject Property. C006153; *see also* C002034-C002035, C002037-C002039, C002160-C002163. PWC contends further that, even if Canadian National Railway is the owner or parent company of either EJ&E or Wisconsin Central Ltd., Illinois law distinguishes between companies and their subsidiaries and so Lakeshore should have served EJ&E, or Wisconsin Central Ltd., rather than Canadian National Railway. PWC Resp. Br. at 20.

PWC further argues that the geographical location of service was not correct, as the authentic tax records of DuPage County show that the owner of the Parcel is located at 17641 S. Ashland Avenue in Homewood, Illinois. PWC Br. at 19; C006125-6126; C003400. PWC contends that Lakeshore should have sent the pre-filing notice to the Homewood address reflected in the authentic tax records of DuPage County, instead of the Canadian National Railway office located in Montreal, Canada. PWC Br. at 19; C0026125-6126. PWC argues that the statutory pre-filing notice requirements for service are strictly construed, and that Lakeshore's notice failed to meet the requirements. PWC Br. at 19-20; PWC Resp. Br. at 5.

Method of Service

Finally, PWC argues that, regardless of whether Canadian National Railway is the correct property owner for pre-filing notice, Lakeshore did not perfect service on Canadian National Railway in compliance with the requirements of Section 39.2(b) of the Act (415 ILCS 5/39.2(b) (2022)). PWC Br. at 20. PWC argues that the statute provides for only two methods of service when serving pre-filing notice on property owners of property within 250 feet of a proposed pollution control facility siting location: registered mail, return receipt requested, or personal service. *Id.*; *see also*, 415 ILCS 5/39.2(b) (2022). PWC contends that Lakeshore's attempt to serve Canadian National Railway using UPS Express delivery service was not a method allowed by the plain language of Section 39.2(b), and therefore fails the strict interpretation of the notice requirement upheld by the Appellate Court in Waste Management. PWC Br. at 20 (citing Waste Management of Illinois v. Illinois Pollution Control Board, 356 Ill. App. 3d 229, 234, 826 N.E. 2d 586, 591-92 (3d Dist. 2005)); 415 ILCS 5/39.2(b) (2022).

West Chicago City Council

Pre-Filing Notice

The City first argues that it properly denied PWC's motion to dismiss Lakeshore's application on jurisdictional grounds for failure to comply with the Section 39.2(b) pre-filing notice requirements (415 ILCS 5/39.2(b) (2022)). City Br. at 3. The City states that the sole issue on pre-filing notice concerns Lakeshore's service on the property owner of the Parcel, PIN 01-32-506-001. *Id.* The City argues that PWC incorrectly alleges that: (1) Lakeshore failed to properly identify the owner of the Parcel, and (2) the manner of service was improper. *Id.*

Authentic Tax Records and Correct Owner

On the first point - that Lakeshore failed to properly identify the owner of the Parcel - the City contends that Lakeshore did an "adequate search of the authentic tax records of DuPage County". City Br. at 4. The City cites John Hock's statement that he learned that the authentic tax records of DuPage County could be accessed via the DuPage County website, and the DuPage County Treasurer's website. *Id.*; *see* C006153. The DuPage County website also links a GIS database showing all real estate parcels in the County. City Br. at 4. The City asserts that "this is the computer equivalent of information previously available in hard copies of plat books and section maps". *Id.* The City suggests that because John Hock used this GIS map on the DuPage County website to determine the owners of the properties within 400 feet of the Subject

Property, he used the authentic tax records of DuPage County. *See, id.; see also*, C006153. The City supports its argument by pointing to Lakeshore’s Hearing Exhibit 5, which it describes as being a map page from the “County Clerk’s official tax/plat maps”, that identifies Canadian National Railway (EJ&E) as the owner of the Parcel as of 2022. *See, id.*; C003399. The City asserts that John Hock’s research determined that EJ&E, or Eastern Joliet & Elgin Railway, had been purchased in its entirety “about 10 years ago” by Canadian National Railway. City Br. at 5.

Method of Service

On the second point - that the manner of service on Canadian National Railway was improper - the City argues that the use of UPS delivery at Canadian National Railway’s corporate headquarters at 935 Rue de la Gauchetière, Montreal, H3B2M9, QC, Canada was sufficient to satisfy the Section 39.2(b) statutory notice requirement (415 ILCS 5/39.2(b) (2022)). City Br. at 4. The City argues that because Lakeshore arranged for delivery of the pre-filing notice by UPS Worldwide Express delivery, Lakeshore caused written notice of its application to be served in person on Canadian National Railway in compliance with Section 39.2(b). City Br. at 5-6. The City does not compare UPS delivery to sending pre-filing notice by registered mail, return receipt requested. Rather, the City re-asserts its position that UPS delivery is equivalent to in-person personal service. *Id.* at 6.

The City did not give additional argument on the issue of jurisdiction in its response brief. City Resp. Br. at 1-2.

Lakeshore Recycling Systems

Authentic Tax Records

Lakeshore opposes PWC’s argument that EJ&E was the owner of the Parcel, contending that the authentic tax records of DuPage County show Canadian National Railway to be the owner of the Parcel. LRS Br. at 4. Lakeshore argues that PWC founded its argument on evidence that is not the authentic tax records of DuPage County, like West Chicago annexation records and Illinois Department of Revenue records, as well as tax bills that do not list the Parcel’s PIN to establish a link between the tax payor and the property. *Id.* at 5. Lakeshore contends that its expert, John Hock, offered testimony at the City hearing to explain his determination of the Parcel’s ownership. *Id.*

Lakeshore points to its Hearing Exhibit 5, the DuPage County, Illinois 2022 Real Estate Tax Assessment Parcels Map, that lists Canadian National Railway on the Parcel to support its contention. *Id.* Lakeshore asserts that its research showed Canadian National Railway purchased EJ&E “about 10 years ago”. *Id.* Lakeshore also points to its Hearing Exhibit 6, a photo of the building in Homewood where PWC argued Lakeshore should have served EJ&E, and claims the photo reveals the building to be owned by Canadian National Railway. *Id.*; C003400.

Correct Owner and Location

Lakeshore argues that Canadian National Railway was personally served by parcel delivery service at its home office in Montreal, Canada, and that this complies with Section 39.2(b). LRS Br. at 5. Lakeshore asserts that because Section 39.2(b) does not specify where the property owner must be served or the manner of personal service, its decision to serve Canadian National Railway via parcel delivery service at Canadian National Railway's "home office" satisfies "both the spirit and letter of the law" for personal service. LRS Br. at 6. Lakeshore argues that there is flexibility in evaluating service under Section 39.2(b), based on the idea that the pre-filing notice requirement is to be given its ordinary meaning and not expanded to require more than what is written. Bishop v. Illinois Pollution Control Bd., 235 Ill. App. 3d 925, 601 N.E.2d 310 (1992).

Lakeshore cites to its Hearing Exhibit 5, the DuPage County, Illinois 2022 Real Estate Tax Assessment Parcels Map for the west half of the northeast quarter of Section 32 in Wayne Township, maintained by the DuPage County Clerk, to support its service choice. *Id.* at 2-3; C003399. Lakeshore contends that the Parcel and its owner are correctly identified on this map. Lakeshore Br. at 3. The map lists the owner of the Parcel as Canadian National Railway, with a parenthetical reference to EJ&E. *Id.*

Method of Service

Lakeshore re-asserts in its response brief that the pre-filing notice service method was legally sufficient. LRS Resp. Br. at 2. Lakeshore argues that PWC provides no authority for its position that "actual personal service by a UPS delivery man is not, in fact, personal service". LRS Resp. Br. at 3. Lakeshore further contends that an employee at a corporate office signing a receipt acknowledging "they received the served document" is the best form of personal service. *Id.*

Lakeshore next argues that Illinois courts have strictly enforced the timing requirements of Section 39.2(b), but have more liberally construed other portions of the notice requirements. LRS Resp. Br. at 3. In support of this position, Lakeshore cites both Tate v. Illinois Pollution Control Bd., 188 Ill. App. 3d 994, 1019 (4th Dist. 1989) ("Notice is sufficient if it is in compliance with the statute and it places potentially interested persons on inquiry about the details of the activity. The notice itself need not be so technically detailed as to raise unnecessary concerns among local residents and the general public"), as well as the legislative declaration of the Act that its terms and provisions shall be liberally construed to as to effectuate its purposes. *See* 415 ILCS 5/2 (2022).

DISCUSSION

The issue of whether or not proper notice to landowners was provided under Section 39.2(b) of the Act (415 ILCS 5/39.2(b) (2022)) is a threshold issue in a pollution control siting appeal to the Board. If proper notice procedures were not followed, then the City lacked jurisdiction to hear the siting appeal. The following discussion analyzes the law and reviews the relevant arguments of the parties. The Board then makes findings based on the analysis and review.

The plain language of Section 39.2(b) of the Act requires:

“No later than 14 days before the date on which the county board . . . receives a request for site approval, the applicant shall cause written notice of such request to be served either in person or by registered mail, return receipt requested, on the owners of all property . . . within 250 feet in each direction of the lot line of the subject property, said owners being such persons or entities which appear from the authentic tax records of the County in which such facility is to be located.” (415 ILCS 5/39.2(b) (2022) (emphasis added).

The legislature has provided clear and precise language to the Board detailing what steps an applicant must take to provide notice. Section 39.2(b) of the Act (415 ILCS 5/39.2(b) (2022)) has three distinct elements. First, the authentic tax records of the county must be used to determine property owners to serve notice. Second, the property owners who own property within 250 feet of the lot line of the proposed facility must be notified. Third, service on those property owners must be effectuated using registered, mail return receipt requested, or personal service. In setting forth these elements, the legislature balanced the right of affected citizens and entities to be informed with the necessity of siting landfills in Illinois. The Board today applies the plain language of the statute to determine if the owner of one Parcel, PIN 01-32-506-001, was properly served notice.

The Board finds that the property owner of the Parcel was not properly served. First, the Board finds that Lakeshore failed to demonstrate that it used the authentic tax records of DuPage County to determine who owned the Parcel for pre-filing notice. Lakeshore used the DuPage County Clerk’s Real Estate Tax Assessment Parcels Map of 2022 in the record before the Board lists Canadian National Railway, parenthetical EJ&E, on the Parcel, and not Wisconsin Central Ltd. C003399. However, the DuPage County Treasurer’s 2021 Railroad Tax Bills show EJ&E owing 2021 property tax, and the 2021 P-TAX documents from the County Clerk show EJ&E or Wisconsin Central Ltd. owing taxes, though neither identifies for what parcel. *See* C006125-6126; C006131-6150. Thus, demonstrating that at least the tax bill from DuPage County Treasurer listed a different owner. Once the ownership of the Parcel was challenged at the siting hearings before the City, Lakeshore did not offer evidence to show that it in fact used the authentic tax records, either at the City hearing, or again when challenged before Board.

PWC also argues that the “mere existence of a parent-subsidiary relationship is insufficient to establish close ties necessary” for proper service of process”. *See* PWC Br. at 18 (*citing* Wissmiller v. Lincoln Trail Motorsports, Inc., 195 Ill. App. 3d 399, 403, 552 N.E.2d 295, 298 (4th Dist. 1990)). But even if Canadian National Railway is ultimately the correct entity, Lakeshore cites to no authority to support its assertion that the website it used to determine the property ownership was an authentic tax record. Lakeshore did not verify the information with the County Clerk, Treasurer or Assessor, and there is nothing in the record before the Board to show that Lakeshore verified the information it found on the internet was the property ownership information listed in the authentic tax records of the county with the DuPage County Clerk, the DuPage County Treasurer or DuPage County Assessor, for each parcel affected by the proposed siting. *See* Bishop v. Pollution Control Bd., 235 Ill. App. 3d 925, 932, 601 N.E.2d 310, 315 (5th Dist. 1992) (holding that authentic tax records may be held by offices of county clerk, treasurer,

and assessor because all three offices play a role in the keeping and processing of county tax records); 415 ILCS 5/39.2(b) (2022).

John Hock stated the DuPage County website's GIS feature satisfied that requirement but that he did not confirm ownership of the Parcel with either the DuPage County Clerk or Treasurer. Here, respondents present no caselaw to show that a county's general website with a GIS map function is a verified source of information by the county assessor, treasurer, or clerk for authentic tax records. Nor do respondents provide testimony from the County Clerk or Treasurer to verify that information Lakeshore obtained from the internet contained the county's authentic tax records. See Bishop at 932, 315 (5th Dist. 1992). The Board therefore finds that Lakeshore's reliance on the DuPage County website's GIS mapping feature did not satisfy the statutory requirement in Section 39.2(b) of the Act to consult the "authentic tax records of the County" in determining to whom to send pre-filing notice.

The parties raised no argument concerning the 250-foot boundary for notice. But concerning the manner of service, respondents argue that sending notice by UPS Worldwide Express service was sufficient notice of an impending landfill siting application. However, the Act envisions two, and only two, types of service: personal or registered mail, return receipt requested. Therefore, the attempt by Lakeshore to serve a property owner by sending notice of its application by UPS Express commercial carrier mail is not authorized by the plain language of Section 39.2(b) of the Act. 415 ILCS 5/39.2(b) (2022). Respondents cite three cases – Waste Management, Bishop and Tate – to support their argument for a liberal construction of the method of service under Section 39.2(b). The Appellate Court found in Waste Management that posting a notice was insufficient under Section 39.2(b) because the Act specifically required that service had to be made by personal service or registered mail, return receipt requested, and that the record plainly showed neither had been perfected, and affirmed the Board's decision to vacate the County of Kankakee's determination for lack of jurisdiction. 356 Ill. App. 3d 229, 233, 826 N.E. 2d 586, 590 (3rd Dist. 2005). In Bishop, the Appellate Court reversed the Board's decision to vacate a county siting approval based on a finding that the tax records maintained by the County Treasurer's Office were in fact "authentic tax records" within the plain meaning of the statute where the term "authentic tax records" was not defined. Bishop v. Pollution Control Bd., 235 Ill. App. 3d 925, 601 N.E.2d 310 (1992). Lastly, the Appellate Court found in Tate that the technical description of the facility in the pre-filing notice need not be as detailed as the original petitioners contended, contrary to the Board's decision. Tate v. Illinois Pollution Control Bd., 188 Ill. App. 3d 994, 1019 (4th Dist. 1989).

The Bishop holding that Section 39.2 be given its plain meaning to include multiple "authentic" tax records applied where the term "authentic tax records" was not defined. Bishop, 235 Ill. App. 3d at 933. By contrast, the two allowable methods of service under Section 39.2(b) are defined: registered mail, return receipt requested, or personal service. The plain language of Section 39.2(b) of the Act (415 ILCS 5/39.2(b) (2022)) does not allow for delivery of notice via commercial carrier. It requires delivery of notice to be made in one of only two ways: via registered mail, return receipt requested, or personal service. The Appellate Court in Waste Management held that certified mail, return receipt requested, is an exact equivalent of registered mail, return receipt requested, but did not evaluate whether commercial carrier delivery is an exact equivalent method of personal service under Section 39.2(b). Waste Management, 356 Ill.

App. 3d 229, 233 (3rd Dist. 2005). The Board has reviewed the case law and can find no case where sending pre-filing notice to a business entity in a parcel via commercial carrier was an exact equivalent of personal service made by either the applicant or an authorized process server on someone authorized to receive personal service on the entity's behalf.

Illinois law requires that a private corporation be served by: “(1) leaving a copy of the process with its registered agent or any officer or agent of the corporation found anywhere in the State; or (2) in any other manner now or hereafter permitted by law.” 735 ILCS 5/2-204 (2022). Because the property owner of the Parcel is a corporate entity, in order to perfect personal service on that entity under Illinois law, Lakeshore could have served pre-filing notice or could have caused pre-filing notice to be served on the registered agent or other officer or agent of that entity found anywhere in the state of Illinois. See 735 ILCS 5/2-204 (2022); 415 ILCS 5/39.2(b) (2022). PWC alleges that, based on the address on the DuPage County authentic tax records, the owner of the Parcel should have been served at a building in Illinois located at 17641 S. Ashland Avenue, in Homewood. PWC Br. at 19. Lakeshore contends that this building is associated with Canadian National Railway. Lakeshore Br. at 5; C003400; C006195. To perfect service of the pre-filing notice as directed by Section 39.2(b) of the Act, 415 ILCS 5/39.2(b) (2022), Lakeshore could have mailed the pre-filing notice, by registered mail, return receipt requested, or by certified mail, return receipt requested² to, or personally served, or caused to be personally served, an agent or officer of Canadian National Railway at a location in Illinois. Neither respondent explained why Lakeshore chose to use a commercial carrier to deliver the pre-filing notice to the Canadian National Railway office in Canada rather than serving an agent or office in Illinois pursuant to Section 39.2(b). See 735 ILCS 5/2-204 (2022); 415 ILCS 5/39.2(b) (2022).

Lakeshore has cited no caselaw or other authority in support of its position that delivery by a commercial carrier like UPS constitutes “personal service” under Section 39.2(b) of the Act (415 ILCS 5/39.2(b) (2022)). See generally LRS Br., LRS Resp. Br. Nor does the City. See City Br. at 5-6. The City misapplies the Appellate Court's finding in Waste Management: there, the Appellate Court's citation to the Olin Corp. holding that the “difference in delivery method was not of “pivotal importance” when both document that the addressee received the letter was made to support the Court's finding that “*certified mail, return receipt requested*, is the exact equivalent of *registered mail, return receipt requested*, for purposes of the statute”. Waste Management of Illinois v. Illinois Pollution Control Board, 356 Ill. App. 3d 229, 233, 826 N.E. 2d 586, 590 (3rd Dist. 2005) (emphasis added); see also Olin Corp. v. Bowling, 95 Ill. App. 3d 1113, 1116-17, 420 N.E.2d 1047, 1050 (1981). The Waste Management court distinguished these two methods of delivery from that of regular mail. *Id.* At no point did it make an evaluation of whether any of these mailing services was equivalent to personal service.

Illinois courts have strictly construed statutory notice requirements, holding that actual notice will not cure failure to perfect notice under a statutory notice requirement. See Waste

² See Olin Corp. v. Bowling, 95 Ill. App. 3d 1113, 1116-17, 420 N.E.2d 1047, 1050, 51 Ill. Dec. 489 (1981) (holding certified mail, return receipt requested, and registered mail, return receipt requested, were in effect the same for purposes of complying with service notice requirements under the Act).

Management v. IPCB, 356 Ill. App. 3d 229 at 233 (2005) (“Even if we assume that [the facts of the case] prove actual notice, it could make no difference. Notice would not have been achieved by the statutorily-required means and proof of actual notice would not overcome that failure of compliance.”) There is no law to indicate that actual notice by a non-prescribed method is sufficient to satisfy the statutory requirement. Waste Management at 236. The City’s reliance on Waste Management to support its assertion that “the fact that the proper parties received the notice does not disqualify the local siting authority from considering an application for local siting approval” is therefore a mischaracterization of the Waste Management holding that actual notice does not cure failure to perfect statutory notice requirements. *See* City Br. at 6; Waste Management at 233.

Lakeshore and the City argue that UPS delivery is the exact equivalent of personal service. The UPS Express parcel delivered to Canadian National Railway in Montreal, Canada was signed “Helene” and the receipt says “left at dock”. C006181. Contrary to Lakeshore’s assertion that “personal service does not get any better than when an employee at the corporate office signs a receipt acknowledging they received the served document”, a person accepting personal service on behalf of a corporation must be authorized to do so. 735 ILCS 5/2-204 (2022); *see* LRS Resp. Br. at 3. Illinois law requires service on a business entity to be made on its registered agent or officer in Illinois who is authorized to accept service on its behalf. 735 ILCS 5/2-204 (2022). This means that to accept service on behalf of a corporation, a person must be an authorized agent or officer of the corporation. *See* 735 ILCS 5/2-204 (2022). Nothing in the record indicates what Helene’s relationship to Canadian National Railway is, specifically, whether she is authorized to receive personal service on behalf of Canadian National Railway. *See* 735 ILCS 5/2-204 (2022); C006181. It does not even prove that she is an employee of Canadian National Railway.

The Board finds that Lakeshore did not comply with the statutory pre-filing notice requirements of Section 39.2(b) (415 ILCS 5/39.2(b) (2022)). Lakeshore’s service by UPS Express delivery is not one of the methods prescribed by statute or deemed exactly equivalent in applicable caselaw. The plain language of Section 39.2(b) does not suggest that a UPS delivery person leaving a parcel of unknown import at a dock, or with a person of unknown authority, at a business’s office to be a method of “personal service” on that business under Illinois law. 415 ILCS 5/39.2(b) (2022); *see* 735 ILCS 5/2-204 (2022). Therefore, the Board finds that a UPS delivery person leaving a parcel containing the pre-filing notice for signature at the dock of the Canadian National Railway office in Montreal is not “personal service” under the notice requirements of Section 39.2(b) of the Act (415 ILCS 5/39.2(b) (2022)).

The Board disagrees with Lakeshore’s assertion that statutory pre-filing notice requirements are not to be strictly construed. *See* Waste Management v. IPCB, 356 Ill. App. 3d 229 at 233 (2005) (“Even if we assume that [the facts of the case] prove actual notice, it could make no difference. Notice would not have been achieved by the statutorily-required means and proof of actual notice would not overcome that failure of compliance.”) The Board finds that Lakeshore’s reliance on Tate mischaracterizes the Tate holding that the *notice itself* need not include unnecessary detail, and rather paradoxically implying that for Lakeshore to perfect notice on Canadian National Railway, it would require anything beyond what is sufficient to satisfy the requirements of Section 39.2(b). The Board does not believe that if Lakeshore had perfected service on Canadian National Railway by either method listed in Section 39.2(b), it would have

made the notice “so technically detailed as to raise unnecessary concerns among local residents and the general public”. *See Tate v. Illinois Pollution Control Bd.*, 188 Ill. App. 3d 994, 1019 (4th Dist. 1989); 415 ILCS 5/39.2(b) (2022). The Board finds that UPS delivery of the pre-filing notice “left at dock” signed for by “Helene” at the Canadian National Railway’s Montreal office is not sufficient to comply with the requirements of personal service set forth under Illinois law. *See* 415 ILCS 5/39.2(b) (2022).

In summary, the plain language of the statute establishes that pre-filing notice to property owners must be served in one of two ways: by either registered mail, return receipt requested, or by personal service. 415 ILCS 5/39.2(b) (2022). Illinois law requires personal service on a corporation to be made on someone authorized to accept personal service on the corporation’s behalf. 735 ILCS 5/2-204 (2022). The notice requirements for pollution control facility siting decisions are to be strictly construed (*see Browning Ferris Industries of Illinois v. PCB*, 162 Ill. App. 3d 801, 805, 516 N.E.2d 804, 807 (5th Dist. 1987)). Because Lakeshore failed to properly serve the pre-filing notice of its application on the owner of the property by registered mail, return receipt requested, or by personal service on someone authorized to accept personal service, Lakeshore did not serve the owner of the Parcel with PIN 01-32-506-001, and thus the City lacked jurisdiction to review Lakeshore’s siting application.

CONCLUSION

The issue of whether or not proper notice to landowners was provided under Section 39.2(b) of the Act (415 ILCS 5/39.2(b) (2022)) is a threshold issue. Failure to provide notice under Section 39.2 of the Act divests the City of jurisdiction in this waste transfer station siting appeal. After a careful examination of the record and the arguments presented by the parties, the Board finds that proper notice was not provided to the owner of the property with PIN 01-32-506-001, and the Board vacates the decision of the City for lack of jurisdiction.

Since the Board has found that the City lacked jurisdiction to review the siting application, the Board need not address the remaining issues regarding the 1,000 foot setback, fundamental fairness, and the criteria raised by the parties.

This opinion constitutes the Board’s findings of fact and conclusions of law.

ORDER

The Board vacates the City of West Chicago City Council’s February 28, 2023 decision granting an application for siting of a pollution control facility owned and operated by Lakeshore Recycling Systems, LLC for the facility located in the City of West Chicago, DuPage County, Illinois.

IT IS SO ORDERED.

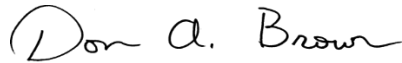
Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2022); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906,

102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702. Filing a motion asking that the Board reconsider this final order is not a prerequisite to appealing the order. 35 Ill. Adm. Code 101.902.

Names and Addresses for Receiving Service of Any Petition for Review Filed with the Appellate Court	
Parties	Board
Protect West Chicago Ricardo Meza Meza Law 542 S. Dearborn, 10 th Floor Chicago, Illinois 60605 rmeza@meza.law	Illinois Pollution Control Board Attn: Don A. Brown, Clerk 60 E. Van Buren St., Suite 630 Chicago, Illinois 60605
People Opposing DuPage Environmental Racism Robert A. Weinstock, Director, Environmental Advocacy Center Northwestern Pritzker School of Law 375 E. Chicago Avenue Chicago, Illinois 60611 robert.weinstock@law.northwestern.edu	
Lakeshore Recycling Systems George Mueller 1S123 Gardener Way Winfield, Illinois 60190 george@muelleranderson.com Karen Donnelly Karen Donnelly Law 501 State St. Ottawa, Illinois 61350 Donnellylaw501@gmail.com	

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I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on February 1, 2024, by a vote of 4-0.



Don A. Brown, Clerk
Illinois Pollution Control Board