

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

REPUBLIC SERVICES, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB No: _____
)	
McLEAN COUNTY, ILLINOIS,)	(Pollution Control Facility Siting Appeal)
McLEAN COUNTY BOARD, and)	
LAKESHORE RECYCLING)	
SYSTEMS, LLC,)	
)	
Respondents.)	

NOTICE OF FILING

To:

Lakeshore Recycling Systems, LLC
5500 Pearl Street, Suite 300
Rosemont, IL 60018

Lakeshore Recycling Systems, LLC
c/o MS Registered Agent Services
191 N. Wacker Drive, Suite 1800
Chicago, IL 60606

Richard M. Guerard, Attorney for LRS
Guerard, Kalina & Butkus
310 S. County Farm Road, Suite H
Wheaton, IL 60187
rich@wydp.com
(via e-mail and regular mail)

McLean County Board
c/o Kathy Michael, McLean County Clerk
McLean County Government Center
115 E. Washington Street, Room 102
Bloomington, IL 61701
Kathy.Michael@mcleancountyil.gov
(via e-mail and regular mail)

Trevor Sierra, Attorney for McLean County
Board
McLean County State's Attorney's Office
115 E. Washington St., Room 401
Bloomington, IL 61701
Trevor.sierra@mcleancountyil.gov

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the PETITION FOR REVIEW OF LOCAL SITING APPROVAL OF A POLLUTION CONTROL FACILITY of Petitioner, Republic Services, Inc., including exhibits, and an Appearance and Notice of Consent to Email Service, copies of which are herewith served upon you.

Date: March 20, 2024



Lucas J. Hall, Attorney for Republic
Services, Inc.

CERTIFICATE OF SERVICE

I, Lucas J. Hall, an attorney, certify that I caused to be served the attached **Notice of Filing** in this proceeding, on the parties identified on the below Service List, by depositing the same in the U.S. Mail in Springfield, Illinois, before 5:00 p.m. on March 20, 2024, with proper postage prepaid.

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Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.



Scott B. Sievers, ARDC No. 6275924
Lucas J. Hall, ARDC No. 6335982
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Attorneys for Petitioner

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APPEARANCE AND CONSENT TO E-MAIL SERVICE

SCOTT B. SIEVERS and LUCAS J. HALL, of Brown Hay + Stephens, LLP, hereby enter their appearance on behalf of Republic Services, Inc., in the above-referenced matter. By this appearance, we also authorize the service of documents on us by email in lieu of receiving paper documents, at the following email addresses: ssievers@bhslaw.com; lhall@bhslaw.com.

Dated: March 20, 2024

Respectfully submitted,

/s/Scott B. Sievers
Scott B. Sievers

/s/Lucas J. Hall
Lucas J. Hall

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Attorneys for Petitioner

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I, Lucas J. Hall, an attorney, certify that I caused to be served the attached **Appearance and Consent to E-Mail Service** in this proceeding, on the parties identified on the below Service List, by depositing the same in the U.S. Mail in Springfield, Illinois, before 5:00 p.m. on March 20, 2024, with proper postage prepaid.

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PETITION FOR REVIEW OF LOCAL SITING APPROVAL OF A POLLUTION CONTROL FACILITY

NOW COMES Petitioner, Republic Services, Inc. (“Republic”), by its attorneys, Brown, Hay + Stephens, LLP, respectfully submits this Petition for Review and requests a hearing before the Pollution Control Board (“PCB”) to contest the decision of the McLean County Board (“County Board”) granting conditional site location approval to Lakeshore Recycling Systems, LLC (“LRS”) for the proposed municipal solid waste transfer station to be located at 2020 Bunn Street in unincorporated McLean County, Illinois (the “Facility”). In support of this Petition, Republic states as follows:

1. This Petition is filed pursuant to Section 40.1 of the Illinois Environmental Protection Act (the “Act”), 415 ILCS 5/40.1, and in accordance with Sections 107.200-107.208 of the Illinois Pollution Control Board Regulations. *See* 35 Ill. Adm. Code 107.200–208. In accordance with Section 107.208, this Petition includes (1) a copy of the County Board’s decision conditionally granting siting approval (Exhibit A), (2) a statement as to why Republic is a proper petitioner, and (3) a specification for the grounds for appeal. *See* 5 Ill. Adm. Code 107.208.

2. LRS applied for the County Board's siting approval (the "Application") on August 18, 2023. On the first day of the public hearing, November 29, 2023, MCB appointed a Hearing Officer, Mr. Derke Price, who presided over the public hearing, which was held on November 29 and 30, 2023. Written public comments were received until 33 days after the close of the hearing (January 2, 2024), at which time the record was closed.

3. LRS and Republic, at the request of the Hearing Officer, submitted proposed findings of fact and conclusions of law on January 5, 2024. The Hearing Officer then submitted his Report, Recommended Findings of Fact and Recommended Conditions of Approval on January 10, 2024.

4. The County Board Pollution Control Committee then met on January 29, 2024, to recommend the adoption of findings of fact and approval of LRS' Application. On February 15, 2024, the County Board held a public meeting at which it made its formal final decision to approve the Application, a true and correct copy of which is attached hereto and incorporated herein as Exhibit A. See 35 Ill. Adm. Code 107.208(a).

A. Republic is a Proper Petitioner (35 Ill. Adm. Code 107.200)

5. Republic is a proper petitioner. Section 40.1 of the Act provides that "a third party other than the applicant who participated in the public hearing conducted by the county board . . . may, within 35 days after the date on which the local siting authority granted siting approval, petition the Board for a hearing to contest the approval of the county board." 415 ILCS 5/40.1; *see also* 35 Ill. Adm. Code 107.200 (b) ("[a]ny person who has participated in the public hearing conducted by the unit of local government and is so located as to be affected by the proposed facility may file a petition for review of the decision to grant siting.").

6. Republic is a waste disposal company that presently fully services the waste management needs of McLean County by picking up and hauling its waste, operating a waste transfer station, and hauling the waste to nearby landfills. As Republic presently operates the sole waste transfer station in McLean County, it is so located as to be affected by the Facility.

7. Republic participated at both days of the County Board's public hearing and attended the County Board Pollution Control Committee's January 29, 2024, meeting and the County Board's February 15, 2024, meeting. Prior to the introduction of any evidence at the first day of the County Board's public hearing, Republic informed the County Board that it did not have jurisdiction to consider the Application because LRS failed to provide adequate notice. Republic cross-examined the witnesses who testified, and submitted written proposed findings of fact, conclusions of law, and closing argument following the hearing.

B. Grounds for Appeal (35 Ill. Adm. Code 107.208)

8. LRS did not meet the notice requirements set forth at Section 39.2(b) of the Act, which mandates that

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 . . . 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).

9. LRS failed to send notice of the County Board proceedings with respect to the Application to the owner of the residentially zoned manufactured home community immediately to the west of Bunn Street and north of Hamilton Road.

10. On August 18, 2023, the authentic tax records of McLean County demonstrated that the aforementioned manufactured home community, which sits within a residentially zoned area, was adjacent to the lot on which the Facility was to be located.

11. According to the authentic tax records of McLean County on August 18, 2023, the width of Bunn Street was the only separation between the parcel on which the proposed facility would be located and the parcel on which the aforementioned manufactured home community is located.

12. Section 39.2(b) excludes from the 250-foot calculation, for purposes of providing notice, “the number of all feet occupied by all public roads.” 415 ILCS 5/39.2(b).

13. The failure of LRS to provide notice deprived the County Board of jurisdiction to render a decision on the Application and thus the decision of County Board must be reversed.

14. Under the Act, the placement of a waste transfer station “less than 1000 feet from the nearest property zoned for primarily residential uses or within 1000 feet of any dwelling . . .” is prohibited. 415 ILCS 5/22.14.

15. Under the Act, a transfer station is “a site or facility that accepts waste for temporary storage or consolidation and further transfer to a waste disposal, treatment or storage facility.” 415 ILCS 5/3.500. A site, in turn, is “any location, place or tract of land used for waste management. A site may include one or more units.” 35 Ill. Adm. Code 807.104. This includes all portions of the parcel used as part of the transfer station operations. *See City of Des Plaines v. Solid Waste Agency of Northern Cook Cty.*, PCB 92-127, 1993 WL 196207 (Ill. Pol. Control Bd. 1993).

16. As of August 18, 2023, the site of the proposed Facility was well within 1,000 feet of the residentially zoned manufactured home community, and thus the decision of the County

Board must be vacated to ensure compliance with the site location standard of Section 22.14 of the Act.

17. The County Board's decision to grant siting approval should also be reversed because the proceedings were fundamentally unfair by virtue of, but not limited to, the following:

a. The residents of the nearby manufactured home community were deprived of their right to speak publicly at the County Board proceedings when the owner of said community was not notified of said proceedings;

b. The public was deprived of its right to speak publicly when the County Board permitted members of the public who were made aware of the County Board proceedings to register for public comment without informing said members of the public that they would not be permitted to speak until the end of the second day of the public hearing, after waiting over eight normal working hours during two normal business days, which resulted in over 30 individuals being called to speak who were no longer present at the hearing;

c. The public was further deprived of its right to speak publicly when the County Board Chairwoman announced on February 15, 2024, prior to the decision on the Application, that no members of the public would be permitted to speak with respect to the Application;

d. The Chairwoman of the County Board misled the County Board prior to their vote on the Application by announcing that the County Board decision was merely a step in the statutory process set forth in Section 39.2 of the Act, and that their decision would automatically go to the PCB for review, depriving Republic and the public of their right to an impartial ruling on the evidence;

e. In rendering its decision, the County Board relied on the report and recommendations of a hearing officer who had prejudged this matter;

f. The County Board considered evidence not presented at the two days of public hearing or during public comment in rendering its decision.

18. The County Board's decision to grant siting approval should also be reversed because LRS failed to show that the proposed facility would comply with Criteria (i), (ii), (iii), and (ix) of Section 39.2 of the Act. The County Board's approval of the Facility's Application on those Criteria is not supported by the record and is against the manifest weight of the evidence.

WHEREFORE, Petitioner, Republic Services, Inc., respectfully requests that the Illinois Pollution Control Board enter an Order reversing the PCB's conditional approval of the Application submitted by LRS for any or all of the reasons stated herein and for such other and further relief the PCB deems just and proper.

Dated: March 20, 2024

Respectfully submitted,

Republic Services, Inc., **Petitioner,**

By: /s/Lucas J. Hall

One of Its Attorneys

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Attorneys for Petitioner

STATE OF ILLINOIS
COUNTY OF MCLEAN

In re:)
)
Application of)
Lakeshore Recycling Systems, LLC/)
Henson Recycling Campus Transfer Station)
for Siting Approval Under 415 ILCS 5/39.2)
of a New Pollution Control Facility)

FINDINGS OF FACT AND CONDITIONS OF APPROVAL
BY THE McLEAN COUNTY BOARD

1. On August 18, 2023, Lakeshore Recycling Systems, LLC ("Applicant") applied to the County of McLean ("County") for local siting approval of a new municipal waste transfer station on its property in unincorporated in McLean County, Illinois as legally described in the application and hereafter referred to as the "Property".
2. The Applicant owns the Property upon which the proposed pollution control facility ("Facility") is to be located.
3. The Applicant has negotiated a Host Agreement with the County and the Host Agreement is a part of the Application. The Applicant has also negotiated a utility agreement with the City of Bloomington that is a part of the Application.
4. The County has jurisdiction to consider the Application.
5. The public hearing on the application was opened on November 30, 2023; the hearing closed on December 1, 2023.
6. In accordance with the Act, written comment was then received by the County for an additional 30 days after the close of the Hearing (i.e., through 11 :59:59 p.m. CDST on January 2, 2024, including any written comment post-marked on or before January 2, 2024).
7. Based upon a finding and legal conclusion that the legal description of the Facility as set forth in the Application (and recognized in the preliminary plan approved by the County) controls, the Applicant fulfilled the pre-filing notice requirements of Section 39.2(b) (which states, in relevant part, that the applicant shall cause written notice of its request for site approval "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 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 ... ").

8. Concerning 415 ILCS 5/22.14 (which states, in relevant part, that "no person may establish any pollution control facility for use as a garbage transfer station, which is located less than 1000 feet from the nearest property zoned for primarily residential uses or within 1000 feet of any dwelling"): As of the date of the application and based upon the legal description of the Facility set forth in the application—which at that time had been recognized in the approved preliminary plan and also recognized in the recorded Assessment plat—the Facility is not located within 1000 feet of any dwelling and not located within 1000 feet of any properties zoned for primarily residential uses.

9. The Applicant complied with all pre-filing notice requirements of Section 39.2(c) of the Act.

10. The siting proceedings herein, both procedurally and substantively, complied with the requirements of fundamental fairness.

11. Based on the understanding of Criterion 1 as articulated by the Pollution Control Board and affirmed by the Illinois Appellate Court for the Third District in *Will County v. Village of Rockdale*, 121 N.E.3d 468 (3d Dist. 2018), the Applicant demonstrated that the proposed Facility meets Criterion 1: "the facility is necessary to accommodate the waste needs of the area it is intended to serve...."

12. In demonstrating that the Facility—as proposed in the Application—meets Criterion 2, the Applicant agreed to the imposition of 3 special conditions to remove any doubt that: "the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected." The 3 stipulated special conditions are:

Special Condition 1: the Applicant shall prepare an acceptable final plat of subdivision and to record same before receiving any construction permit.

Special Condition 2: the Applicant shall be responsible for the maintenance of the landscaping buffers proposed for the Facility, including but not limited to maintaining the landscaping proposed along HDI Court (as such maintenance activities are approved by the highway authority with jurisdiction over HDI Court) and the landscaping buffers on the Facility proper.

Special Condition 3: the Applicant shall construct and dedicate HDI Court, and construct all intersection connections with HDI Court, to the standards set by McLean County and any other authority with jurisdiction over the traffic movements or road design.

13. The following provisions are hereby adopted to supplement Special Condition 3, pursuant to the recommendations of the McLean County Highway Department as contained within its staff report submitted on December 26, 2023:

i. To accommodate the additional truck traffic, HDI Court should be constructed with 6" of hot-mix asphalt on a 12" aggregate base. This would allow for easier future maintenance by the corresponding entity who has jurisdiction of the road.

ii. Curb and gutter and storm sewer should be placed as proposed in the preliminary plan.

iii. As proposed, the newly constructed HDI Court would become a street under the jurisdiction of Bloomington Township Road District. HDI Court should be transferred to the City of Bloomington upon completion and acceptance by Bloomington Township Road District.

iv. HDI Court will be connected to Bunn Street that is under the jurisdiction of the City of Bloomington. HDI Court under the jurisdiction of the City of Bloomington would provide system continuity and logical termini.

v. The intersection of Bunn Street and Hamilton Road needs to be signalized with additional turn lanes to increase the level of service at this location.

14. The Applicant demonstrated that the proposed Facility meets Criterion 3: "the facility is so located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property;"

15. The Applicant demonstrated that the proposed Facility meets Criterion 4: "for a facility other than a sanitary landfill or waste disposal site, the facility is located outside the boundary of the 100-year floodplain or the site is flood-proofed;"

16. The Applicant demonstrated that the Facility meets Criterion 5: "the plan of operations for the is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents;"

17. The Applicant demonstrated that the proposed Facility meets Criterion 6: "the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows;

18. The Applicant demonstrated that the facility will not be accepting hazardous waste and therefore demonstrated that Criterion 7 is not applicable.

19. Based on the analysis of Criterion 8 as articulated by the Pollution Control Board and affirmed by the Illinois Appellate Court for the Third District in *Will County v. Village of Rockdale*, 121 N.E.3d 468 (3d Dist. 2018), the Applicant demonstrated that the proposed Facility meets Criterion 8: "... where the county board has adopted a solid waste management plan consistent with the planning requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act, the facility is consistent with that plan; ... "


20. The Applicant demonstrated that the facility is not located within a regulated recharge area and therefore Criterion 9 is not applicable.

21. The Applicant's operating history demonstrates that the Applicant is qualified to operate the Facility safely and properly.
22. The proposed Facility, when developed and operated in compliance with the special conditions, is consistent with all appropriate and relevant location standards.
23. The Applicant has agreed to comply and approval is conditioned upon compliance with all terms of the Host Agreement.

With the imposition of and compliance by the Applicant with the Special Conditions set forth above, the evidence demonstrates that the Application complies with each of the nine siting criteria in Sec. 39.2(a) of the Act and therefore the County hereby grants siting approval.


Adopted by the County Board of McLean County, Illinois, this 15th day of February, 2024.

APPROVED:



Catherine Metsker, Chairman
McLean County Board

ATTEST:



Kathy Michael, Clerk of the County
Board of the County of McLean, Illinois

CERTIFICATE OF SERVICE

I, Lucas J. Hall, an attorney, certify that I caused to be served the attached **Petition for Review of Local Siting Approval** in this proceeding, on the parties identified on the below Service List, by depositing the same in the U.S. Mail in Springfield, Illinois, before 5:00 p.m. on March 20, 2024, with proper postage prepaid.

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