

ILLINOIS POLLUTION CONTROL BOARD  
April 4, 2024

REPUBLIC SERVICES, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 24-65
	)	(Third-Party Pollution Control Facility
McLEAN COUNTY, ILLINOIS; McLEAN	)	Siting Appeal)
COUNTY BOARD; and LAKESHORE	)	
RECYCLING SYSTEMS, LLC,	)	
	)	
Respondents.	)	

ORDER OF THE BOARD (by M.D. Mankowski):

On March 21, 2024, Republic Services, Inc. (Republic) timely filed a petition (Pet.) asking the Board to review a February 15, 2024 decision of the McLean County Board. *See* 415 ILCS 5/40.1(b) (2022); 35 Ill. Adm. Code 101.300(b), 101.1020, 107.204. The McLean County Board granted with conditions an application by Lakeshore Recycling Systems, LLC (LRS) to approve the site of a pollution control facility at 2020 Bunn Street in unincorporated McLean County.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2022)), before the Illinois Environmental Protection Agency can issue a permit to develop or construct a new or expanding pollution control facility, the permit applicant must obtain siting approval for the facility from the local government (*i.e.*, the county board if in an unincorporated area or the governing body of the municipality if in an incorporated area). If the local government approves siting, certain third parties may appeal the local government’s decision to the Board. *See* 415 ILCS 5/40.1(b) (2022); 35 Ill. Adm. Code 107.

In this case, Republic appeals on the grounds that LRS failed to comply with the notice requirements of Section 39.2(b) of the Act and that the proceedings before the McLean County Board were not fundamentally fair. Pet. at 3-6, citing 415 ILCS 5/39.2(b) (2022). Republic also appeals on the grounds that LRS failed to show that its proposed facility would comply with criteria (i), (ii), (iii), and (ix) of Section 39.2 of the Act and that the McLean County Board’s approval of Republic’s application on those criteria “is not supported by the record and is against the manifest weight of the evidence.” Pet. at 6, citing 415 ILCS 5/39.2(a)(i), (ii), (iii), (ix) (2022). For the reasons below, the Board accepts the petition for hearing.

**THIRD-PARTY APPEAL**

Section 40.1(b) of the Act (415 ILCS 5/40.1(b) (2022)) allows third parties to appeal a local government decision granting approval to site a pollution control facility if the third parties participated in the local government’s public hearing and are so located as to be affected by the

proposed facility. *See* 415 ILCS 5/40.1(b) (2022); 35 Ill. Adm. Code 107.200(b). The petition for review must, among other things, specify the grounds for appeal and include a copy of the local government’s siting decision. *See* 35 Ill. Adm. Code 107.208. The third party must file the petition within 35 days after the local government approves siting. *See* 415 ILCS 5/40.1(b) (2022); 35 Ill. Adm. Code 107.204. Unless the Board determines that the third party’s petition is “duplicative or frivolous,” the Board will hear the petition. 415 ILCS 5/40.1(b) (2022); 35 Ill. Adm. Code 107.200(b).

Republic’s petition states that it participated in both days of the McLean County Board’s public hearing. Pet. at 2-3. The petition also states that, as “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,” it is so located as to be affected by the proposed facility. *Id.* at 3. Republic specifies the grounds for the appeal and includes a copy of the McLean County Board’s siting decision. The petition meets the content requirements of 35 Ill. Adm. Code 107.208. Republic also filed its petition within 35 days after the McLean County Board approved siting.

### **HEARING AND DECISION DEADLINE**

An action before the Board is duplicative if it is “identical or substantially similar to one brought before the Board or another forum.” 35 Ill. Adm. Code 101.202. An action before the Board is frivolous if it is “a request for relief that the Board does not have the authority to grant” or “fails to state a cause of action upon which the Board can grant relief.” *Id.* No evidence now before the Board indicates that this action is duplicative or frivolous. The Board accepts Republic’s petition for hearing.

Republic has the burden of proof. *See* 415 ILCS 5/40.1(b) (2022); 35 Ill. Adm. Code 107.506. Hearings will be based exclusively on the record before the McLean County Board, except that, if relevant, evidence may be introduced on (1) the local government’s jurisdiction over the siting application and (2) the fundamental fairness of the procedures used by the local government in reaching its decision. *See* 415 ILCS 5/40.1(b) (2022); Land & Lakes v. IPCB, 319 Ill. App. 3d 41, 48, 743 N.E.2d 188, 194 (3d Dist. 2000).

Upon its own motion or the motion of any party, the Board or the hearing officer may order that the hearing be held by videoconference. In deciding whether to hold the hearing by videoconference, factors that the Board or the hearing officer will consider include cost-effectiveness, efficiency, facility accommodations, witness availability, public interest, the parties’ preferences, and the proceeding’s complexity and contentiousness. *See* 35 Ill. Adm. Code 101.600(b), 107.400.

Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40.1(a), (b) (2022)), which only LRS may extend by waiver (35 Ill. Adm. Code 107.504; *see also* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, LRS “may deem the site location approved.” 415 ILCS 5/40.1(a) (2022). Currently, the decision deadline is Friday, July 19, 2024, which is the 120th

day after the Board received the petition. *See* 35 Ill. Adm. Code 107.504. The Board meeting immediately before the decision deadline is scheduled for Thursday, July 11, 2024.

**McLEAN COUNTY BOARD RECORD**

The McLean County Board must file the entire record of its proceedings within 21 days after the date of this order. *See* 35 Ill. Adm. Code 107.302. The record must comply with the Board's requirements for content, organization, and certification. *See* 35 Ill. Adm. Code 101.1030(g), 107.304, 107.308. In addition, the McLean County Board must file the record electronically instead of in paper. Specifically, the record must be filed through the Clerk's Office On-Line (COOL) or on compact disk or other portable electronic data storage device and, to the extent technically feasible, in text-searchable Adobe PDF. *See* 35 Ill. Adm. Code 101.302(h)(2)(C), 107.302.<sup>1</sup>

Republic must pay to the McLean County Board the cost of preparing and certifying the record. 415 ILCS 5/39.2(n) (2022); 35 Ill. Adm. Code 107.306.

IT IS SO ORDERED.

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



Don A. Brown, Clerk  
Illinois Pollution Control Board

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<sup>1</sup> Questions about filing the record in an electronic format should be directed to the Clerk's Office at (312) 814-3620 or (312) 814-3461.