

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

REPUBLIC SERVICES, INC.	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB No. 24-65
	)	(Third-Party Pollution Control
McLEAN COUNTY, ILLINOIS,	)	Facility Siting Appeal)
McLEAN COUNTYBOARD, and	)	
LAKESHORE RECYCLING	)	
SYSTEMS, LLC,	)	
	)	
Respondents.	)	

**REPUBLIC SERVICES’ RESPONSE TO RESPONDENTS’ MOTION FOR SANCTIONS**

NOW COMES Petitioner, AMERICAN DISPOSAL SERVICES, INC. d/b/a REPUBLIC SERVICES OF BLOOMINGTON (incorrectly named as Republic Services, Inc.) (hereinafter, “Republic Services”), by and through its attorneys, Brown, Hay + Stephens, LLP, and for its Response to Respondents’ Motion for Sanctions states as follows:

1. On June 17, 2024, the Hearing Officer entered an Order setting a Discovery Schedule that provided for written discovery responses to be served by June 24, 2024, and answered within 21 calendar days of service.
2. The Discovery Schedule additionally provided that the parties could supplement their witness disclosures and documents to be used as hearing exhibits through July 22, 2024, the date on which copies of all exhibits and the names and subject matter of each witness are due.
3. On June 24, 2024, Respondents propounded their written discovery requests on Republic Services. Due to unforeseen circumstances, Republic Services was unable to timely complete its responses by July 15, 2024, the twenty-first day after service of Respondent’s discovery requests. Consequently, Republic Services moved for a one-week extension of time in which to tender its discovery responses. The Hearing Officer denied Republic Services’ motion on

July 16, 2024; however, Republic Services' written discovery responses had not yet been fully completed and as such were not tendered to Respondents.

4. On July 15, 2024, Republic Services received voluminous written discovery responses from Respondents. On July 17, 2024, LRS supplemented its responses to Republic Services' Initial Disclosures.

5. On July 18, 2024, at approximately 1:20 p.m., Republic Services tendered its responses to Respondents' written discovery requests, which largely referenced documents that were either matters of public record, already in the possession of Respondents, or both. Further, Republic Services' discovery responses indicated that several allegations of the Petition for Review were being withdrawn. Specifically, Republic Services indicated that it inadvertently referenced criterion (ix) of Section 39.2 in its Petition, and that it was withdrawing its contention that the County Board considered evidence not presented at the two days of public hearing, as alleged in Paragraph 17.f of its Petition. Although Republic Services had a good-faith basis to believe that such evidence was considered, it in good faith wished to narrow the issues for hearing to facilitate these proceedings.

6. On July 18, 2024, at approximately 5:30 p.m., counsel for Republic Services became aware that Respondents had filed a motion for sanctions with respect to their discovery responses after reviewing the docket in this case because Respondents had not sent counsel a copy of their motion.

7. Respondents' Motion for Sanctions asserts that, at the time of writing, Respondents had not yet received Republic Services' discovery responses. Respondents allege that the delay in Republic's responses "significantly impairs Respondents' ability to prepare for the scheduled hearing."

8. Under the Board's General Rules, the Board has broad discretion in determining the imposition of sanctions. *See Ill. Env'tl. Prot. Agency v. Celotex Corp.*, 168 Ill. App. 3d 592, 597 (3d Dist. 1988). The Board may order sanctions for an unreasonable failure to comply with a scheduling order. 35 Ill. Adm. Code 101.800(a). In determining whether to impose a sanction and which sanction would be appropriate, the Board is to consider (1) the relative severity of the refusal or failure to comply, (2) the history of the proceeding, (3) the degree to which the proceeding has been delayed or prejudiced, and (4) the existence or absence of bad faith by the offending party or person. *Id.* at 101.800(c).

9. Republic Services was unable to complete its discovery responses by July 15, 2024, due to unforeseen circumstances, but completed and sent said responses just three days after the deadline and well within the 28-day period ordinarily applicable to interrogatory responses in Board proceedings. *See* 35 Ill. Adm. Code 101.620(b). These responses largely consisted of documents that are matters of public record, documents within the record on appeal, and statements about legal positions that have been consistently raised throughout these proceedings. Although Republic Services understands that a brief delay in providing its discovery responses may have an impact on the already condensed schedule, the delayed responses in the present case do not prejudice LRS or McLean County where they already were in possession of many of the documents that were produced and already knew what Republic Services was contending based upon the record of proceedings in this matter.

10. Republic Services does not dispute that the brief delay in its discovery responses was likely inconvenient to Respondents; however, this delay was not the product of bad faith, deliberate non-compliance, or an effort to unreasonably delay these proceedings. *See Timber Creek Homes, Inc. v. Vill. of Round Lake Park*, PCB No. 14-99, 2014 WL 4249954, \* 8 (Aug. 21, 2014)

(finding in pollution control facility siting appeal that sanctions were not appropriate where no bad faith, deliberate non-compliance, or efforts to unreasonably delayed were shown).

WHEREFORE, for the foregoing reasons, Petitioner, American Disposal Services, Inc. d/b/a Republic Services of Bloomington, respectfully requests that Respondents' Motion for Sanctions be denied, and for such other and further relief the Board deems just and proper.

Respectfully submitted,

American Disposal Services, Inc.  
d/b/a Republic Services of Bloomington,  
**Petitioner,**

By: /s/Lucas J. Hall

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**PROOF OF SERVICE**

The undersigned hereby certifies that on July 19, 2024, a copy of the foregoing instrument was served on the below parties in this matter via email and the Clerk's Office On-Line e-file system. Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

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/s/Lucas J. Hall

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