

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

REPUBLIC SERVICES, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 2024-065
)	
McLEAN COUNTY, ILLINOIS)	(Third-Party Pollution Control
McLEAN COUNTY BOARD;)	Facility Siting Appeal)
and LAKESHORE RECYCLING)	
SYSTEMS, LLC.,)	
)	
Respondents.)	

MOTION TO STRIKE OR QUASH PETITIONER’S RULE 237(b) NOTICES TO APPEAR

Respondent McLean County, Illinois (the “County”), by and through counsel, pursuant to 735 ILCS 5/2-1101 and 35 Ill. Adm. Code Sections 101.500 and 101.622, submit the following Motion to Strike or Quash Petitioner’s filings Captioned Rule 237(b) Notice to Appear (“Motion”).

1. On July 23, 2024, Petitioner caused to be filed five (5) documents in this matter, each fashioned as “Rule 237 Notice to Appear,” (“Notices to Appear”) directed to five named individuals purported to be employees of the County. Those persons were identified as Rebecca McNeil, Susan Schafer, Connie Clifford, Mark Bounds, and Joshua Schuster (collectively, the “Named Persons”). The Notices to Appear instructed the Named Persons to appear before the Illinois Pollution Control Board for the purpose of testifying at the proceedings on July 29 and 30, 2024. Petitioner cites no authority from the

- Illinois Administrative Code or the Pollution Control Board ("Board"), relying instead on Illinois Supreme Court Rule 237
2. By the agreement of the parties and an order of the Board, the hearing in this matter will begin on July 29, 2024.
 3. Petitioner's Rule 237 Notices to Appear should be stricken or quashed because they fail to comply with 35 Ill. Adm. Code Section 101.622, which is the relevant authority to compel the appearance of witnesses. Additionally, under Section 101.100(b) the Code of Civil Procedure and the Supreme Court Rules do not apply to proceedings before the Board; those authorities only apply, "when the Board's procedural rules are silent." Unlike Rule 237, the statutory basis to compel the appearance of witnesses is found in the Environmental Protection Act, which prescribes a more limited subpoena power than exists under Illinois Supreme Court Rules. Specifically, 415 ILCS 5/5 (e), authorizes the Board to "subpoena and compel the attendance of witnesses ...reasonably necessary to resolution of the matter under consideration. The Board shall issue such subpoenas upon the request of any party to a proceeding under subsection (d) of this Section or upon its own motion."
 4. Consistent with the Environmental Protection Act, the Pollution Control Board's regulations require that subpoenas for the attendance of witnesses be issued by the Board. Moreover, once produced, the subpoenas must be served upon the witnesses no later than ten days before the date of the required appearance. Under Section 101.622(b), "[a] copy of the subpoena must be filed with the Clerk and served upon the hearing officer within seven days after service upon the witness. Failure to serve both the Clerk and the hearing officer makes the subpoena null and void."

5. Petitioner apparently failed to procure subpoenas through the Board to compel the attendance of the Named Persons and is instead relying on purported Rule 237(b) Notices to Appear that have no legal basis vis-a-vis the Board. Even if Petitioner were to now serve the Named Persons with proper subpoenas issued by the Board, they would be invalid for failing to comply with the requirement that service on the witness occur ten days before the hearing.

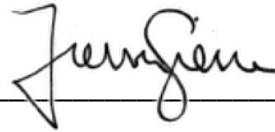
WHEREFORE, for the foregoing reasons, Respondent County of McLean respectfully respects that Petitioners' Rule 237(b) Notices to Appear be stricken or quashed, and for such other and further relief the Board deems just and proper.

Respectfully submitted,

COUNTY OF McLEAN, ILLINOIS,
Respondent,

Date: July 24, 2024

By: _____



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 24, 2024, he served a copy of the foregoing MOTION TO STRIKE OR QUASH PETITIONERS' RULE 237(b) NOTICES TO APPEAR upon the following via email:

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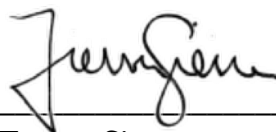
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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters herein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.



Trevor Sierra