

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

REPUBLIC SERVICES, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB No.: 24-065
	)	
McLEAN COUNTY, ILLINOIS,	)	(Pollution Control Facility Siting Appeal)
McLEAN COUNTY BOARD, and	)	
LAKESHORE RECYCLING	)	
SYSTEMS, LLC,	)	

**REPUBLIC SERVICES' POST-HEARING BRIEF**

NOW COMES Petitioner, AMERICAN DISPOSAL SERVICES, INC. d/b/a Republic Services of Bloomington (“Republic Services”), by and through its attorneys, Claire D. Meyer and Scott B. Sievers of Brown, Hay + Stephens, LLP, and for its post-hearing brief in support of its Petition for Review of Local Siting Approval of a Pollution Control Facility states as follows:

**I. INTRODUCTION**

The Illinois Pollution Control Board (“PCB” or “Board”) should vacate the decision of the McLean County Board (the “County Board”) granting conditional site location approval to Lakeshore Recycling Systems, LLC (“LRS”) for a proposed municipal solid waste transfer station for three reasons. First, LRS submitted an application (“Application”) that failed to meet the statutory notice requirements set forth in Section 39.2(b) of the Environmental Protection Act (“Act”), 415 ILCS 5/1 *et seq.*—a threshold issue that divested the McLean County Board of jurisdiction. *See Protect West Chicago v. City of West Chicago et al.* at 15 (PCB No. 23-107 Feb. 1, 2024). Second, the site location violates the setback requirements set forth in Section 22.14(a) of the Act. Third, Board proceedings on the LRS Application were marred by deficiencies amounting to a denial of fundamental fairness. Thus, it is essential that the Pollution Control

Board vacate the conditional site location approval, not merely on technicalities, but to affirm the principles of justice and accountability that govern Pollution Control Board proceedings.

## **II. PROCEDURAL HISTORY**

On August 18, 2023, LRS applied to McLean County for local siting approval of a new municipal waste transfer station in unincorporated McLean County, Illinois. (Record on Appeal (hereafter "R.") at C-1 to C-892).

On November 29 and 30, 2023, McLean County held a public hearing on the LRS application. (R. C-893 to C-1046). Derke Price presided as Hearing Officer. (R. C-894 at 2 to C-895 at 5).

On January 2, 2024, McLean County closed the record on the LRS Application after receiving written public comments on it for 33 days after the close of the hearing. (R. C-1017 at 377).

On January 5, 2024, and at the request of Hearing Officer Price, LRS and Republic Services submitted proposed findings of fact and conclusions of law. (R. C-1054 to C-98).

On January 10, 2024, Hearing Officer Price submitted his Report, Recommended Findings of Fact and Recommended Conditions of Approval. (R. C-1099 to C-1117).

On January 29, 2024, the McLean County Board Pollution Control Site Hearing Committee met to recommend the adoption of findings of fact and approval of the Application. (R. C-1770 to C-1772).

On February 15, 2024, the McLean County Board held a public meeting and voted to approve the LRS Application subject to certain conditions set forth in the Findings of Fact and Conditions of Approval by the McLean County Board. (R. C-1773 to C-1779).

On March 20, 2024, Republic Services filed its Petition for Review of Local Siting Approval of a Pollution Control Facility (“Petition for Review”) with the Pollution Control Board pursuant to Section 40.1 of the Act and Sections 107.200-107.208 of the PCB regulations. 415 ILCS 5/40.1; Ill. Adm. Code 107.200–107.208 (2017).

On July 29, 2024, PCB Hearing Officer Carol Webb presided over a hearing on Republic Services’ Petition for Review, with counsel for Republic Services, LRS, and McLean County present. As part of its case-in-chief, Republic Services called four witnesses: Markus Bounds, Program Administrator for the McLean County Recorder’s Office; McLean County Treasurer/Tax Collector Rebecca McNeil; Joshua Schuster, GIS Specialist for the McLean County Supervisor of Assessments; and Susan Schafer, McLean County Board Member. As part of its case-in-chief, LRS called David Brown, a land surveyor at Lewis, Yockey & and Brown, Inc. Consulting Engineers. LRS also offered written testimony from attorney Richard M. Guerard. McLean County offered written testimony from McLean County Board Chairwoman Catherine Metsker, who was present at the hearing for cross-examination.

### **III. FACTUAL BACKGROUND**

#### **A. LRS FAILED TO PROVIDE THE REQUISITE STATUTORY NOTICE TO THE OWNERS OF A MOBILE HOME PARK PARCEL WITHIN 250 FEET OF THE ORIGINAL PARCEL FOR THE PROPOSED FACILITY.**

Section 39.2 of the Environmental Protection Act provides for local siting review of pollution control facilities, with subsection (b) providing in pertinent part that

(b) 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; 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.

415 ILCS 5/39.2(b) (emphasis added). Accordingly, the Record on Appeal and the evidence at hearing addressed this requirement.

LRS submitted its Application on August 18, 2023, so Section 39.2(b) of the Act required LRS to provide notice to those who on that date owned property within 250 feet in each direction of the lot line of the subject property. (R. C-1, C-3). The proposed waste transfer station would be located in an unincorporated area of McLean County east of Bunn Street near the south-central part of the City of Bloomington. (R. C-16). Immediately on the other side of Bunn Street, to the west, lies the residential Hilltop Mobile Home Park. (R. C-48, C-353, C-368, C-425, C-430, C-979 at 226:15–16). Access to the proposed waste transfer facility would be from Bunn Street. (R. C-16).

The LRS Application proposed that the waste transfer station would be located on a larger parcel identified as Parcel No. 21-15-152-010 (“Original Parcel”). (*E.g.*, R. C-336, C-444). Joshua Schuster, a GIS Specialist for the McLean County Supervisor of Assessments office, testified in the PCB hearing about his input to McLean County’s answers to Republic Service’s interrogatories. (PCB Tr. 80:10–14, 100:19–101:19; Republic Ex. 2). Schuster testified that he determined that Parcel No. 21-16-276-003 was the parcel identification number, or PIN, of the three nearest properties to the proposed facility when measured from the boundary of the Original Parcel, Parcel No. 21-15-152-010. (PCB Tr. 100:19–101:19; 103:12–104:12). “I used a measurement tool that allows you to track between the distance of property boundaries or parcel boundaries to the nearest apparent structures,” Schuster testified. (PCB Tr. 101:5–10).

On November 24, 2009, the McLean County Recorder’s Office recorded a deed transferring three parcels—Parcel Nos. 12-16-127-001, 21-16-226-006, and, significantly, 21-16-

276-003—to James A. Moore and Marion Moore, as Trustees of The Moore Living Trust dated March 17, 1993 (“the Moore Trustees”). (PCB Republic Ex. 4). Nearly 14 years later, on November 9, 2023, the McLean County Recorder’s Office recorded another deed again transferring the three parcels, including Parcel No. 21-16-276-003, from the Moore Trustees to Hilltop MH, L.L.C. (PCB Republic Ex. 5). The address of the subject property in both deeds is 1902 South Main Street, Bloomington, Illinois—the address of Hilltop Mobile Home Park.<sup>1</sup> Thus, when the LRS Application was submitted on August 18, 2023, the records of the McLean County Recorder’s Office showed that the Hilltop Mobile Home Park parcels, including Parcel No. 21-16-276-003, were owned by the Moore Trustees.

On July 25, 2023, LRS mailed its Notice of Intent to File a Request for Local Siting Approval of a New Pollution Control Facility with the County of McLean, Illinois (“Notice”). (R. C-858 to C-861). The mailing list indicated LRS mailed the Notice to numerous property owners and members of the General Assembly from the legislative district in which the proposed waste transfer station was to be located. (R. C-862 to C-865). Neither the mailing list nor the Registered Mail receipts included in the LRS Application show the Notice was mailed to the Moore Trustees (R. C 862 to C-879).

Accordingly, while the Moore Trustees were the owners of record of the Hilltop Mobile Home Park parcels, including Parcel No. 21-16-276-003, at the time LRS mailed its Notice and submitted its Application, and while that particular parcel was identified by McLean County as comprising the properties nearest the Original Parcel, No. 21-15-152-010, LRS nonetheless did

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<sup>1</sup> Petitioner moves the Board to take judicial notice that 1902 South Main Street, Bloomington, Illinois, is the address for Hilltop Mobile Home Park as identified within the records of the Illinois Environmental Protection Agency. *See* [https://water.epa.state.il.us/dww/JSP/WaterSystemDetail.jsp?tinwsys\\_is\\_number=718314&tinwsys\\_st\\_code=IL&wsnumber=IL1130080](https://water.epa.state.il.us/dww/JSP/WaterSystemDetail.jsp?tinwsys_is_number=718314&tinwsys_st_code=IL&wsnumber=IL1130080) (last visited Aug. 19, 2024).

not provide the Moore Trustees with its Notice of its intent to file with McLean County its request for local siting approval of a new waste transfer station directly across Bunn Street from the mobile home park.

**B. LRS SOUGHT TO SUBDIVIDE THE EXISTING PARCEL WHERE THE WASTE TRANSFER FACILITY WOULD BE LOCATED, BUT THE PARCELS TO BE CREATED BY THAT SUBDIVISION DID NOT EXIST IN THE AUTHENTIC TAX RECORDS OF MCLEAN COUNTY AT THE TIME LRS SUBMITTED ITS APPLICATION.**

On February 1, 2023, the McLean County Zoning Department received a preliminary plan for a subdivision of existing LRS property. (PCB LRS Ex. 16). The McLean County Board approved the preliminary plan on February 16, 2023. *Id.*

On August 17, 2023—the day before LRS submitted its Application—the McLean County Recorder of Deeds recorded an assessment plat that concerned two existing parcels, including the Original Parcel, No. 21-15-152-010. (PCB LRS Ex. 14).

GIS Specialist Schuster testified that the McLean County Supervisor of Assessments office uses a Parcel Control Change Request form to track changes in parcels, including the combining and dividing of parcels. (PCB Tr. 80:19–81:18). Schuster testified to Republic Exhibit 1, a Parcel Control Request form received August 17, 2023—again, the day before LRS submitted its Application. (PCB Tr. 81:23–82:1). The LRS Application, including the LRS Notice to adjacent landowners, identifies Parcel No. 21-15-151-022 (“Proposed Facility Parcel”) as the site of the proposed transfer facility. (*E.g.*, R. C-1781 to C-1788). Schuster testified that the Parcel Control Change Request marked as Republic Exhibit 1 shows that this Proposed Facility Parcel and two others were to be created upon the retirement of two other parcels, including the Original Parcel, No. 21-15-152-010. (PCB Tr. 84:16–85:18; PCB Republic Ex. 1). However, as of August 2023, the three parcels, including the Proposed Facility Parcel, did not

yet exist, according to the testimony of Rebecca McNeil, the McLean County Treasurer/Collector. (PCB Tr. 69:20–70:4). In fact, McNeil testified that the Proposed Facility Parcel and the two other new parcels would not even be assessed for property taxes until the parcels came into existence on January 1, 2024. (PCB Tr. 70:5–13). The new parcels' first tax bill would be for 2024, payable in 2025. (PCB Tr. 70:13–17).

McNeil further testified that, as McLean County Treasurer and Collector, she works on governmental accounting work, collection, distribution, and billing of property taxes. (PCB Tr. at 57:12–20). McNeil testified that the system she uses to look up tax bills and tax information in her office is the Devnet system. (PCB Tr. 73:4–6). When asked what information is used or needed in order to generate a tax bill, Treasurer McNeil testified that

[w]hen a tax bill is generated, we require the assessment, and that would be for example in 2024, when our bill in 2024 generated, we were given the tax year 2023 assessment. We would be given the exemptions information the parcel is entitled to. We would be given the taxable assessment. And then we would also be given the tax rates. We would use all of that data to generate the property tax bill. We are not physically given that information. It flows through our system since all three offices operate on the same property tax ware system called Devnet.

(PCB Hearing Tr. at 73:22–74:12).

Schuster, the GIS Specialist within the McLean County Supervisor of Assessments office, testified that “Devnet is our internal system that we use to track parcels, including tax information. It’s used within the treasurer office, the assessor office, as well as the clerk’s office.” (PCB Tr. at 84:2–6). Schuster testified that he mapped the parcel control change for the Proposed Facility Parcel on August 21, 2023. (PCB Tr. 82:23–83:5; PCB Republic Ex. 1). Schuster further testified that Devnet would not have reflected this parcel control change until January 18, 2024. (PCB Tr. 84:7–10; PCB Republic Ex. 1).

**C. THE ORIGINAL PARCEL LIES ACROSS BUNN STREET FROM THE HILLTOP MOBILE HOME PARK PARCEL.**

Schuster, the McLean County GIS Specialist, also testified regarding the distances between the parcels. In reviewing the Parcel Control Change Request concerning the division of the Original Parcel and creation of the new parcels, Schuster indicated that the outline of the Original Parcel on page two of the document seemed to be the parcel that was to be retired. (PCB Tr. 85:19–86:24; PCB Republic Ex. 1). Schuster then viewed the Facility Location Map and recognized that the western border of the Original Parcel was not likely to be located further than 250 feet from Bunn Street. (PCB Republic Ex. 9; PCB Tr. 91:22-93:15). Schuster also approximated that the westernmost portion of the Original Parcel was 50 feet from Bunn Street but less than 250 feet, nonetheless. (PCB Republic Ex. 1; PCB Tr. 94:13-19).

**IV. ARGUMENT**

**A. BY FAILING TO INCLUDE PROPER NOTICE OF ITS PROPOSED FACILITY TO THE OWNERS OF AN ADJACENT MOBILE HOME COMMUNITY, THE LRS APPLICATION FAILED TO COMPLY WITH THE ACT'S JURISDICTIONAL NOTICE REQUIREMENTS**

Because LRS failed to provide the notice of its proposed facility to all owners of property adjacent to the site as required by the Environmental Protection Act, the PCB should find that the County Board lacked jurisdiction to consider the LRS Application.

Neither Republic Services nor LRS dispute that an application for siting approval must comply with all statutory provisions in order to meet the jurisdictional requirements. Under the Act, applicants are required to serve written notice of intent to file a siting application on all property owners within 250 feet in each direction of the lot line of the subject property, as determined by the authentic tax records of the county in which the facility is to be located. 415 ILCS 5/39.2(b). When determining who is entitled to notice under the Act, the correct boundary



for measuring purposes is the “lot line,” as determined by the authentic tax records of the County, not some future, unfinalized parcel.

Applicants seeking local siting approval must satisfy the requirements of Section 39.2, including subsection (b), which provides in pertinent part as follows:

(b) No 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 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; 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.

415 ILCS 5/39.2(b) (emphasis added).

Whether proper notice was provided to landowners under Section 39.2(b) of the Act is a threshold issue. *See, e.g., Protect West Chicago v. City of West Chicago et al.* at 15 (PCB No. 23-107 Feb. 1, 2024). “Failure to provide notice under Section 39.2 of the Act divests the [local siting authority] of jurisdiction ... .” *Id.* In addition to this jurisdictional notice requirement, the burden of proof rests upon the applicant to show that all procedural requirements to such have been met. *Cnty. of Kankakee v. Illinois Pollution Control Bd.*, 396 Ill. App. 3d 1000, 1008 (3d Dist. 2009) (citing *Waste Mgmt. of Illinois v. Illinois Pollution Control Bd.*, 356 Ill. App. 3d 229, 234 (3d Dist. 2005)). Without jurisdiction, the County Board was without the power to hear the waste transfer facility siting proposal. *See Kane County Defenders, Inc. v. Pollution Control Board*, 139 Ill. App. 3d 588, 593, (2d Dist. 1985); *see also Ogle County Board v. Pollution Control Board*, 272 Ill. App. 3d 184, 193 (2d Dist. 1995) (“[C]ompliance with the individual notice requirements of section 39.2(b), as with the publication notice requirements, is a

jurisdictional prerequisite to a county board's authority to act over a given landfill proposal.”). Whether LRS complied with the Section 39.2(b) notice requirement is reviewed by this Board *de novo*, as it is a question of law. *Protect West Chicago v. City of West Chicago et al.* at 6 (PCB No. 23-107 Feb. 1, 2024).

The goal of statutory interpretation is to ascertain the legislature's intent, and the best indicator of that intent is the language of the statute given its plain, ordinary meaning. *E.g.*, *Miller v. Dep't of Agric.*, 2024 IL 128508, ¶ 29. Although the Environmental Protection Act does not define the term “authentic tax records” used in Section 39.2(b), the Appellate Court of Illinois considered it in *Bishop v. Pollution Control Board*, 235 Ill. App. 3d 925 (5th 1992). The *Bishop* court looked to Black's Law Dictionary, which defined “authentic” as “[g]enuine; true; real; pure; reliable; trustworthy; having the character and authority of an original; duly vested with all necessary formalities and legally attested. Competent, credible, and reliable as evidence.” *Id.* at 933 (citing Black's Law Dictionary 121 (5th ed. 1979)). Because the county board in *Bishop* heard testimony that the county's treasurer, supervisor of assessments, and county clerk (serving as recorder of deeds) all played a role in the collection and record-keeping functions of the taxing process, the Fifth District held that records of the treasurer relied upon by the siting applicant to provide notice to adjacent property owners constituted “authentic tax records” under Section 39.2(b). *Bishop* at 932–33; *see accord Scott v. City of Chicago*, 2015 IL App (1st) 140570 ¶ 12 (citing *Bishop* and construing “authentic tax records” as encompassing records of the county assessor, clerk, and treasurer).

In this matter, the record clearly demonstrates that LRS failed to provide notice to the owners of all property within 250 feet of the subject property, as LRS failed to provide notice to the Moore Trustees as owners of record of Parcel No. 21-16-276-003, a Hilltop Mobile Home

Park parcel identified by McLean County as one of the three properties nearest to the proposed waste transfer facility when measured from the boundary of the Original Parcel, Parcel No. 21-15-152-010, which across Bunn Street from the mobile home park. (*See* PCB Tr. 100:19–101:19; 103:12–104:12).

The record demonstrates that during the entirety of 2023, the parcel LRS claims as the proposed facility site, Parcel No. 21-15-151-022 (“Proposed Facility Parcel”), was not in existence. (PCB Tr. 69:20–70:4; PCB Republic Ex. 3A). At the time of the Application’s filing, the only record of the parcel was the Assessment Plat and Plat of Survey, but these documents do not constitute the creation of a final plat, nor do they create a subdivision of a parcel according to the authentic tax records of the county.

The Proposed Facility Parcel did not receive a tax bill for the year 2023, nor was it mapped on Devnet, McLean County’s internal system to track parcels, including tax information. (PCB Republic Ex. 2; PCB Hearing Tr. 84:7-10). Moreover, Parcel No. 21-15-152-010 (“Original Parcel”) only retired on December 31, 2023. (PCB Republic Ex. 2). Thus, the only relevant parcel for determining the boundary of the proposed facility site, according to the authentic tax records of McLean County at the time of filing, was the Original Parcel.

The record further demonstrates that, when LRS mailed its pre-filing notices on July 25, 2023, and submitted its Application on August 18, 2023, the record owners of the Hilltop Mobile Home Park Parcel, No. 21-16-276-003, were the Moore Trustees according to the authentic tax records of McLean County. (PCB Republic Ex. 4).

In certain areas, the only separation of the Original Parcel and the Hilltop Mobile Home Park Parcel was Bunn Street, a public road. Based on testimony from Joshua Schuster, GIS Specialist for the McLean County Supervisor of Assessments Office, the Original Parcel

appeared to be well within 250 feet from the boundary of the Hilltop Mobile Home Park Parcel. (PCB Tr. 94:13-19; PCB Republic Ex. 9). The Application indicates that at no point in time were the Moore Trustees provided notice of LRS' intent to file a request for siting approval. (R. C-857 to C-879). Thus, LRS failed to provide notice to all owners who, according to the authentic tax records of McLean County, owned property within 250 feet in each direction of the lot line of the subject property.<sup>2</sup>

LRS argues that “the authentic tax records are to be used for determining the owners to whom notice must be provided, not for determining the boundaries of the proposed facility or the subject property.” (PCB Tr. at 14:19–15:13). This argument is immaterial. Whether the “authentic tax records” are used as the boundary for the lot line or only for determining the appropriate owners renders the same result under the Act. LRS claims that the completion of a preliminary plan was adequate for creating a “lot line” for determining the boundary for measuring what property owners should receive notice, but testimony from Markus Bounds, McLean County Recording Program Administrator, indicated that, to be designated as a “lot,” a piece of land needed to be assigned its own parcel identification number. (PCB Tr. at 50:9–19). The Proposed Facility Parcel did not even exist in tax year 2023, however. (PCB Tr. 69:20–70:4; PCB Republic Ex. 3A). This confirms that there was not yet a legal “lot” inside the existing Original Parcel to measure from for determining surrounding property owners for notice requirements. This stance was recognized by the McLean County Health Department, in which it noted that that at the time the Application was submitted, “[t]he information provided implies the lot exists when it does not.” (R. C-1215).

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<sup>2</sup> As Wallace Tudor stated during public comment, “[W]ho puts a trash facility across from mobile home park? Way to beat down the people already worse off.” (R. C-1764).

While the Assessment Plat and Preliminary Plan are contained in the application, such documents do not legally create an existing real estate parcel. “[T]he subject property for notice purposes is the property (or properties), *as legally recorded*, that encompassed the regional pollution control facility.” *Land and Lakes Company, JMC Operations, Inc. and NBD Trust Company of Illinois, as Trustee Under Trust No. 2624EG v. Village of Romeoville*, PCB 91-7, Opinion and Order, 12 (August 26, 1991) (emphasis added). Further, when a parcel is not further divided, the boundary for determining the lot line is the boundary of the larger existing parcel, rather than just the boundary of the proposed facility itself. See *Env't Control Sys., Inc. v. Long*, 301 Ill. App. 3d 612, 623 (5th Dist. 1998). In fact, *Environmental Control Systems, Inc. v. Long* involves a similar siting application issue, which is worth quoting in part:

[Applicant] contends that the statute requires notification only to those landowners living in that 250-foot proximity to the RPCF. Taking [Applicant's] argument to an extreme situation, no landowner would need to be notified if the parcel of land was sufficiently large and the RPCF was located in the middle of that parcel.

The language of the statute requires notification of owners of land within 250 feet of the *lot line*. Ill.Rev.Stat.1989, ch. 111 ½, par. 1039.2(b). The record reflects that *the lot lines at issue are detailed on the authentic tax records and assessor's map*. The lines on the map and tax records coincide with parcel five. The parcel is not further divided. The RPCF is located within a section of parcel five.

Statutes should be given their plain and ordinary meaning. *R.P. Lumber Co. v. Office of State Fire Marshal*, 293 Ill.App.3d 402, 406, 227 Ill.Dec. 898, 688 N.E.2d 379, 383 (1997). As the PCB stated in its decision, the statute calls for notification to owners of land within 250 feet of the lot line— “not 250 feet from some other point within the lot lines.” We conclude that *lot line* refers to the greater parcel line, and not simply the RPCF line. To conclude otherwise could result in abuse, with property owners in close proximity to a proposed RPCF not receiving notification because the applicant owns enough land surrounding the proposed RPCF to negate the 250-foot rule.

*Id.* at 622-23 (emphasis added).

Richard Guerard, counsel for LRS at the time of the Application's filing, addressed this case during the November 29, 2023, public hearing on the Application, stating that *Environmental Control Systems, Inc. v. Long*, the court concluded:

what the lot line is, is what is in the assessor's authenticated record. And in their – on their tax map. And in fact, that's what we have. And that's what we've done. And it has a pin number and it's on the county GSI maps separated all as a lot.

(R. C-901 at 29:6–11). However, Guerard mischaracterized the assignment of a PIN that had been held for future use of the Proposed Facility Parcel with the actual data from the assessor's record at the time of filing. LRS has provided a declaration of Guerard in which he attempts to assert that because the Proposed Facility Parcel now is depicted on the authentic tax records and the Assessors' map, it was the correct boundary for determining which property owners were entitled to notice. (PCB LRS Ex. 18). This argument is without merit. At the public hearing on November 29, 2023, Guerard admitted the final plat had not yet been recorded. (R. C-901 at 30:10–13). Although LRS had recorded documents to signal its intent to subdivide the Original Parcel, no subdivision had occurred at the time of the Application's filing. In fact, even the professional land surveyor who participated in preparing the preliminary subdivision plan, David Brown, acknowledged that plans could change before there was a final plat. (PCB Tr. 131:2–4, 140:4–10; 148:6–149:12; PCB LRS Ex. 16). Thus, at the time of the Application's submission, the “lot line of the subject property” was the boundary of the Original Parcel.

On July 25, 2024, the date on which LRS sent its Notice of Intent to File a Request for Local Siting Approval of a New Pollution Control Facility with the County of McLean, Illinois, the parcel in which the proposed pollution control facility is to be located was not in existence. LRS has attempted to untimely subdivide the Original Parcel to avoid providing notice to the property owners of the Hilltop Mobile Home Park Parcel. The assertion by LRS of a nonexistent

lot line as the boundary for its determination of which property owners were to receive notice of the application's filing caused certain property owners, according to the authentic tax records of McLean County and the relevant lot line, to be deprived of such notice in violation of Section 39.2(b) of the Environmental Protection Act. 415 ILCS 5/39.2(b). This critical mistake is not one that can be rectified. Because LRS failed to meet the notice requirements of Section 39.2(b)—a threshold issue—the McLean County Board lacked jurisdiction to hear this matter, *see Protect West Chicago v. City of West Chicago et al.* at 15 (PCB No. 23-107 Feb. 1, 2024), *supra*. Consequently, the Board should vacate the County Board's decision on the LRS Application.

**V. THE LRS APPLICATION FAILED TO SATISFY THE STATUTORY, 1,000-FOOT SETBACK REQUIREMENT.**

Section 22.14(a) of the Environmental Protection Act prohibits the establishment of a waste transfer station “located less than 1000 feet from the nearest property zoned for primarily residential uses or within 1000 feet of any dwelling ... .” 415 ILCS 5/22.14(a). The Act further provides that compliance with this requirement “shall be determined as of the date the application for siting approval is filed.” 415 ILCS 5/39.2(a). Whether the LRS Application complied with the Section 22.14(a) setback requirement is a question of law that this Board should review *de novo*. *Cf. Protect West Chicago v. City of West Chicago et al.* at 6 (PCB No. 23-107 Feb. 1, 2024) (reviewing compliance with Section 39.2(b) notice requirement *de novo*); however, the LRS Application fails even under a manifest weight of the evidence standard of review.

Much as it erred in measuring the boundary for determining which property owners were entitled to prior notice of its siting application, LRS also failed to use the correct boundary to determine whether the Proposed Facility Parcel satisfied the Act's 1,000-foot setback requirement. As noted above, throughout its Application, LRS incorrectly references the

Proposed Facility Parcel as the boundary for measuring whether proper criteria under the Act have been met.

In an obvious effort to try to overcome the setback requirements, LRS has tried to subdivide the parcel, claiming that the proposed facility site is to be wholly located on the Proposed Facility Parcel, which is more than 1,000 feet from a piece of residential property. Pollution Control Board regulations provide that the “site” for a facility means the entire “location, place or tract of land used for waste management” and it “may include one of more units.” 35 Ill. Adm. Code 807.104. The Application identifies a public access road that has yet to be constructed that will run across the land currently owned by LRS to the proposed facility site. (R. C-167). With its subdivision of the Original Parcel, LRS has tried to overcome this regulation by creating parcel number 21-15-151-023 (“HDI Court Parcel”) to wholly encompass such road. This access road is mischaracterized in the Application, which states that “the access road for the facility will be at the end of HDI Court which *will be* a public street.” (R. C-134) (emphasis added). However, that statement cannot be taken as verifiable support of the application, as the requisite steps have not been taken to obtain County approval of that road as public. The HDI Court Parcel connects the Proposed Facility Parcel to Bunn Street, as depicted on the Preliminary Plan, and is within 1,000 feet from the Hilltop Mobile Home Park Parcel. The HDI Court Parcel is to be the primary access point to the proposed facility, and as a non-public road, is part of the “location, place or tract of land used for waste management.” 35 Ill. Adm. Code 807.104. Because the non-public road identified above is a part of the proposed facility in determining if the facility site meets the setback requirements, LRS incorrectly determined that the transfer station was not located within 1,000 feet of a residential property and instead violates Section 22.14(a) of the Act.



**VI. THE COUNTY PROCEEDINGS VIOLATED FUNDAMENTAL FAIRNESS BY THWARTING PUBLIC COMMENT AND MISLEADING COUNTY BOARD MEMBERS AS TO THE DECISIVENESS OF THEIR VOTE ON THE SITING APPLICATION.**

The local county board may establish its own rules and procedures governing conduct of a local siting approval, so long as they are fundamentally fair and not inconsistent with the Act. *Waste Mgmt. of Illinois, Inc. v. Pollution Control Bd.*, 175 Ill. App. 3d 1023, 1036 (2d Dist. 1988); 415 ILCS 5/40.1(a). The manner in which a hearing is conducted and the opportunity to be heard are important elements in assessing fundamental fairness. *Hediger v. D & L Landfill, Inc.*, PCB 90-163, slip op. at 5 (Dec. 20, 1990); *see also Timber Creek Homes, Inc. v. Village of Round Lake Park et.al.*, PCB 14-099 (Apr. 3, 2014). Fundamental fairness refers to principles of adjudicative due process. *E & E Hauling v. PCB*, 116 Ill. App. 3d 586, 596 (2d Dist. 1983). A siting authority's decision may be overturned if the manifest weight of the evidence demonstrates its proceedings were fundamentally unfair. *Env't Recycling and Disposal Services, Inc., Petitioner v. Will County et al.*, 2016 WL 4506920, at \*3 (PCB No. 16-76 Aug. 19, 2016).

**a. The Public Was Deprived of Its Right to Speak on The LRS Application**

The County Board flouted the requirement of fundamental fairness in public hearing procedures when it refused to allow public comment on the first day of the public hearing on the LRS Application.

LRS provided notice of the public hearing on its Application in the *The Pantagraph*, a daily newspaper in Bloomington, Illinois, during the weeks of November 7, 14, 21, and 27, 2023. (R. C-1781—1788). This notice provided that “a public hearing will be held on Wednesday November 29, 2023 at 1:00 pm.” and informed the public of its opportunity to present oral public comment during the meeting. *Id.* At the outset of the first day of the hearing on November 29, 2023, Derke Price, the Hearing Officer presiding over the proceedings, informed members of the

public present at the hearing that, “[w]hen we’re done here with the evidence of the hearing, there will be a point for public comment, oral public comment.” (R. C-895 at 7:16–19). Hearing Officer Price noted that “[s]ome people have signed up already to do that,” and advised that there was a sign up list by the door if the public wished to sign up for public comment. (R. C-895 at 7:20–23).

However, rather than let any members of the public speak on that first day of hearing on November 29, 2023, public comment was postponed until after all the evidence was presented on the second day of hearing, on November 30, 2023. (R. C-972 at 197; R. C-1005 at 330:1–4). Hearing Officer Price stated, “[F]or now we’re going to turn to oral public comment of the public and that includes everybody who has indicated to me or through the website or on the sign-up sheet that they intend to provide that.” (R. C-1005 at 330:21 to R. C-1006 at 331:1). The notice LRS provided of the public hearing said nothing about the public hearing being continued from November 29 to November 30, 2023, nor anything about oral public comment being continued to another day as well. (R. C-1781—1788).

That many members of the public who might have signed up to provide oral public comment on the LRS Application on the first day of hearing on November 29, 2023, were no longer available to speak by the end of the second day of hearing on November 30, 2023, was made clear as soon as Hearing Officer Price began calling off names of those who had indicated a desire to be heard:

We’ll begin with Riley Francis. Is Riley Francis here? Do we have a – where is the microphone they’re to go to by the way?

**MS. WILLIAMS:** I believe this is the only microphone, so I can help facilitate this.

**HEARING OFFICER PRICE:** All right, thank you. All right, then I’m skipping past Riley Francis. There’s a Henry R. who signed up. Is there a Henry R.? All right, we’ll move on. Teresa Kouth. Teresa? No. Then I have Francis Green. No Francis Green. Okay. The next on the sign-up was Mark Peterson.

**MR. PETERSON:** Here. Thank you. ...

(R. C-1006 at 331:7–19). This pattern repeated itself for the remainder of the public comment period:

**HEARING OFFICER PRICE:** Thank you, Mr. Peterson. Next up is Mary Fitzgerald. Mary? All right. Then I've got a Thaddeus Stevens or a Mr. Stevens, Ms. Stevens, 309-66 – no. All right, is Barb Smith here? Okay, Ted 573-673-1314. I cannot possibly read that last name. Ted? J.R. Davenport? All right. Tom Krieger. Steve Johnson.

**MR. JOHNSON:** My name is Steve Johnson. ...

(R. C-1006 at 334:5–12). By the time Hearing Officer Price opened up the public hearing for members of the public to be heard, more than 30 people who had signed up to speak were no longer present. (R. C-1005 at 330:1 to R. C-1017 at 377:6).

McLean County Board member Susan Schafer testified during the July 29, 2024, hearing that she attended the two days of hearings on the LRS Application on November 29 and November 30, 2023. (PCB Tr. at 112:1–9, 18–24). Schafer recalled people who had signed up on the first day of the hearing being called to speak at the end of the second day who no longer were present, and that there were not many people still there. (PCB Tr. at 113:1–13). Schafer testified that

[t]he hearing officer offered, or repeated several times to have people sign up for public comment. But never really, other – **never really gave a lot of indication as to when that would really be.** He might have said it at the very beginning that it would be at the end. But, **I don't think people realized how long that hearing was going to be. And that they thought that, like County Board meetings, public comments usually are at the beginning. And so they couldn't – they didn't stay.** And so I don't really think that they got a real good feel as to exactly when it was going to occur, other than maybe at the end. And did know when that was going to be.”

(PCB Tr. 119:6–19) (emphasis added). These members of the public were denied their right to express their views on the proposed waste transfer facility through oral public comment at a hearing in which they had so indicated their desire to speak that they had signed up on a list to do

so. The hearings were held on a Wednesday and Thursday, from approximately 1 p.m. to 6 p.m.—times when many people would need to take off work to be able to attend.

The county board hearing is the most critical stage of the site approval process. *See Kane Cnty. Defs., Inc. v. Pollution Control Bd.*, 139 Ill. App. 3d 588, 593 (2d Dist. 1985). The manifest weight of the evidence shows the McLean County Board siting proceedings were fundamentally unfair. More than 30 people who were prepared to voice their opinions on the LRS Application on the first day of hearing were denied the opportunity to speak to offer oral public comment. By notifying the public that the public hearing would take place on November 29, 2023, and indicating that members of the public would then be allowed to offer oral public comment but then not allowing public comment until November 30, 2023, the County Board proceedings were fundamentally unfair.

**b. The McLean County Board was Misled.**

Not only were members of the public denied an opportunity to offer oral comment on the first day of the November 2023 hearing, but the County Board was misled as to its role in the proceedings. Throughout the application process, the Board was misguided about its power over the matter and, more importantly, the decisiveness of its decision.

At the beginning of the first day of public hearing on November 29, 2023, Hearing Officer Price said that the Board makes its decision “[a]nd then it goes from here to down, to Springfield, for review at the Pollution Control Board.” (R. C-896 at 11:15–18). Section 40.1 of the Environmental Protection Act governs instances in which a party may appeal a local siting approval, and it provides that parties *may* petition the PCB for a hearing to contest the approval. *See* 415 ILCS 5/40.1. Thus, the appeal process is merely optional and only is commenced after the County Board makes its decision *and* a petition for an appeal hearing is filed. *Id.*

In addition, Catherine Metsker, the McLean County Board Chairwoman, indicated that the vote to be taken by the County Board at its February 15, 2024, meeting was not a final decision on the Application and that a final decision would be made by the PCB. (*See* PCB Tr. at 153:14–19, McLean County Ex. 17 at 5:101–102). The manifest weight of the evidence shows that the actions of the McLean County Board during the application process evidenced a lack of fundamental fairness. The vote taken on the LRS Application was not merely a step in the statutory process but a determination based upon the evidence presented. Although appeals are frequently taken to the PCB, this is not a requisite step in the application process. The repeated assertions to the County Board that its approval was merely a step in determining whether the Application was ultimately approved constituted a misrepresentation that ultimately caused the proceedings to be rendered unfair, depriving the public of its right to a fully considered and impartial ruling.

**V. CONCLUSION**

For the reasons set forth herein, Republic Services prays that the Illinois Pollution Control Board vacate the decision of the McLean County Board to conditionally approve the LRS Application for development of a waste transfer station in unincorporated McLean County, Illinois.

Dated: August 20, 2024

AMERICAN DISPOSAL SERVICES, INC.  
d/b/a Republic Services of Bloomington  
("Republic Services"),

Petitioner.

By: s/Claire D. Meyer  
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**PROOF OF SERVICE**

The undersigned hereby certifies that on August 20, 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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