

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

Kenda C. Hess, Theresa C. Adams,	)	
Lori Shields, John and Joyce Borchert,	)	
Lois Rooney, Charles Archibald, Yolanda	)	
Taylor-Hudson, and Mary Mann	)	
Reifsteck,	)	
	)	PCB No. 2027-002
Petitioners,	)	
	)	
v.	)	
	)	
Area Disposal Service, Inc. and	)	
Village of Rantoul,	)	
	)	
Respondents.	)	

NOTICE OF ELECTRONIC FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on September 15, 2026, Area Disposal Service, Inc. electronically filed with the Office of the Clerk of the Illinois Pollution Control Board the attached MOTION FOR LEAVE TO FILE REPLY IN SUPPORT OF MOTION TO DISMISS PETITION FOR HEARING TO CONTEST THE VILLAGE OF RANTOUL' S APPROVAL OF AREA DISPOSAL SERVICE, INC.'S WASTE TRANSFER STATION, a copy of which is hereby served upon you.

/s/ Janaki Nair
Janaki Nair

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CERTIFICATE OF E-MAIL SERVICE

The undersigned attorney certifies that she served a copy of the foregoing NOTICE OF ELECTRONIC FILING and the following MOTION FOR LEAVE TO FILE REPLY IN SUPPORT OF MOTION TO DISMISS PETITION FOR HEARING TO CONTEST THE VILLAGE OF RANTOUL' S APPROVAL OF AREA DISPOSAL SERVICE, INC.'S WASTE TRANSFER STATION, to the parties on the attached service list, by sending a copy to the email addresses designated on the service list on or before 4:30 p.m. on September 15, 2026.

/s/ Janaki Nair
One of the Attorneys for Area Disposal
Service, Inc.

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Reifstock,	)	
	)	PCB No. 2027-002
Petitioners,	)	
	)	
v.	)	
	)	
Area Disposal Service, Inc. and	)	
Village of Rantoul,	)	
	)	
Respondents.	)	

**AREA DISPOSAL SERVICE, INC.'S MOTION FOR LEAVE TO FILE REPLY IN
SUPPORT OF MOTION TO DISMISS PETITION FOR HEARING TO CONTEST THE
VILLAGE OF RANTOUL'S APPROVAL OF AREA DISPOSAL SERVICE, INC.'S
WASTE TRANSFER STATION**

NOW COMES Respondent, Area Disposal Service, Inc., by its undersigned counsel, pursuant to Section 101.500(e) of the Procedural Rules of the Illinois Pollution Control Board (35 Ill. Adm. Code § 101.500(e)), and moves for leave to file a reply *instanter* in support of Area Disposal's Motion to Dismiss, stating as follows:

1. On July 21, 2026, Petitioners filed a Petition for Hearing to Contest the Village of Rantoul's Approval of Area Disposal Service, Inc.'s Waste Transfer Station ("Petition") with the Illinois Pollution Control Board ("Board"). The Petition alleges that the Village of Rantoul's Board of Trustees' decision to approve Area Disposal's application for a transfer station was against the manifest weight of the evidence. (*See* Petition at 5). The Petition also alleges that the siting process was fundamentally unfair. (*Id.* at 40-43).

2. On August 19, 2026, Respondent Area Disposal Service, Inc. ("Area Disposal") filed a Motion to Dismiss the Petition ("Motion to Dismiss"). The Motion to Dismiss requests dismissal of the Petition in its entirety.

3. On September 1, 2026, Petitioners filed a Response in Opposition to Area Disposal's Motion to Dismiss (the "Response").

4. Area Disposal seeks leave to file the attached reply *instanter*, which concerns only Petitioners' fundamental fairness claim. Area Disposal will stand on its Motion with respect to its request that the Board dismiss the remainder of the Petition.

5. Section 101.500(e) of the Procedural Rules of the Illinois Pollution Control Board, 35 Ill. Adm. Code § 101.500(e), provides that the Board or the hearing officer may permit a reply brief to "prevent material prejudice."

6. Here, unless it is permitted to file the attached reply, Area Disposal would suffer material prejudice because the Response includes numerous misstatements of fact and law. *See In the Matter of: Ameren Ash Pond Closure Rules (Hutsonville Power Station): Proposed 35 Ill. Adm. Code Part 840.101 Through 840.144*, PCB R09-21 (June 18, 2009), 2009 WL 6650323, at *2 (granting motion for leave to file reply where response "mischaracterizes several items"); *see also Indian Creek Development Company and the Chicago Title and Trust Company*, PCB 07-44 (March 15, 2007), 2007 WL 928718, at *4 (allowing reply brief where the response brief "paints a set of facts that are not true, and that fairness dictates that [movant] be given the opportunity to respond and set the record straight.")

7. As explained in more detail in the accompanying reply brief, the Response relies on misrepresentations of what is actually alleged in the Petition. The misrepresentations include the incorrect statement that the Petition identifies "specific public statements made at the June 16, 2026 Special Meeting at which the siting application was approved" (Response at 3), which purportedly support Petitioners' fundamental fairness claim. But no specific statements are, in fact, alleged in the Petition.

8. The Response also misstates the law, asserting false parallels, and false distinctions, between the facts of this case and the precedent relied on by Petitioners and Area Disposal.

9. Area Disposal would be further prejudiced if the reply is not permitted because it would suffer irreparable harm if the Board does not dismiss Petitioners' fundamental fairness claim.

10. Petitioners contend that they are entitled to discovery in order to search for facts that might support their conclusory fundamental fairness allegations. Petitioners have already served broad Interrogatories and Document Requests on Area Disposal for this purpose. In the absence of a fundamental fairness claim, the Board's review would be limited to an assessment of the materials in the record that were considered by the siting authority. If Petitioners' fundamental fairness claim and discovery are improperly allowed to proceed, however, it will substantially increase the scope and cost of this proceeding.

WHEREFORE, Respondent Area Disposal Service, Inc. respectfully requests that the Board enter an order granting this Motion, allowing the filing of Area Disposal's Reply in Support of its Motion to Dismiss *instantly*, and granting such other relief as the Board deems proper.

Respectfully submitted,

AREA DISPOSAL SERVICE, INC.,
Respondent

By: /s/ Janaki Nair
One of its attorneys

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**REPLY IN SUPPORT OF MOTION TO DISMISS PETITION FOR HEARING TO
CONTEST THE VILLAGE OF RANTOUL'S APPROVAL OF AREA DISPOSAL
SERVICE, INC.'S WASTE TRANSFER STATION**

A. The Petition Fails to State a Claim for Lack of Fundamental Fairness.

1. Petitioners' Response Relies on Misrepresentations of the Allegations in the Petition.

Petitioners' argument against dismissal of their fundamental fairness claim relies on a glaring misrepresentation of the allegations in the Petition. Petitioners contend that the Petition alleges "specific public statements made at the June 16, 2026 Special Meeting at which the siting application was approved." (Response at 3). That is false. With respect to the June 16, 2026 meeting, the Petition offers only the conclusory assertion that unidentified "[s]tatements made by Rantoul Trustees, officials, and their representatives at the June 16, 2026 Special Meeting raise similar concerns that the law and facts were prejudged to require approval with no room to consider denial of the application or the imposition of additional conditions on the RTS." (Petition 42-43). This sentence exemplifies the type of conclusory allegation that is not taken as true in a pleading and fails to state a claim for relief. *See Selby v. O'Dea*, 2020 IL App (1st) 181951, ¶ 5. Petitioners'

allegations give no indication of (1) which Trustees Petitioners are claiming prejudged the siting application; (2) what statements those Trustees allegedly made; or (3) how any of their statements suggest that they prejudged the siting application.

Petitioners' remaining allegations are equally flawed. It is true that the Petition "identifies specific transcript pages" in the record. (Response at 16). These allegations are inadequate, however, not because they are nonspecific, but because those pages of the record simply do not indicate there was anything improper in the siting approval process. Petitioners do not dispute that their allegations only identify "*prefiling* review of the RTS Application by *Village staff* and an outside *consultant*." (*Id.* (emphasis added)). Petitioners allege no facts demonstrating that the Trustees had any involvement in these communications or were even aware of these communications, much less that these communications caused them to prejudice Area Disposal's application. In other words, these facts, even if true, would not be evidence of prejudgment, and therefore do not support their fundamental fairness claim.

2. Petitioners' Response Misstates the Law.

First, Petitioners incorrectly assert that their fundamental fairness claim is distinguishable from those which were rejected in *Residents Against a Polluted Environment v. Illinois Pollution Control Bd.*, 293 Ill. App. 3d 219 (3d Dist. 1997). They claim that in that case "the petition failed to name even the parties involved in their bias claim." (Response at 16). But Petitioners' allegations suffer from the identical defect. As already explained, Petitioners still have not even identified which Trustee(s) they are alleging prejudged the siting application.¹

Similarly, the petition in *Environmental Recycling and Disposal Services*, PCB 16-76

¹ The allegations in *Residents Against a Polluted Environment*, 293 Ill. App. 3d at 225, actually identified three individuals by name, but those individuals did not participate in the siting approval vote at issue.

(March 3, 2026), 2016 WL 4400835, involved “improper *ex parte* contacts with Applicant” and improper influence on the members of the siting authority. Petitioners here, in contrast, allege only pre-filing consultations (none of which were allegedly with voting Trustees), which they admit “may be permissible and/or required under Rantoul’s Ordinances.” (Petition at 43). These communications are therefore not indicative of an unfair process. The Petition is transparent about the fact that Petitioners’ fundamental fairness claim rests only on unsupported suspicions (or hopes) of impropriety, not specific facts. Petitioners seek to use this Board review process to investigate *whether* pre-filing communications “crossed the line into impermissible pre-judgment of the application,” *id.*, not to prove well-pleaded allegations. As a matter of law, this is not a proper function of the Board’s review authority.

B. Petitioners Forfeited their Fundamental Fairness Claim Because the Petition Establishes They Knew of the Alleged Bases for the Claim in Advance of the Siting Approval Vote But Chose Not to Raise It.

Petitioners argue there is a factual question concerning whether they knew or should have known of the alleged prejudgment of the siting application before the vote, and therefore their fundamental fairness claim should not be dismissed. This argument fails, however, because it squarely conflicts with Petitioners’ own allegations.

Petitioners’ allegations in support of their fundamental fairness claims are all comprised of statements made at public hearings (including the siting hearing in which all Petitioners allege they participated) *before* the vote approving the siting application. (See Petition at 42-43). The Petition contains no allegations that any evidence of prejudgment by the Trustees came to light only after the vote. Petitioners’ argument that they have a fundamental fairness claim therefore depends on these alleged pre-vote public statements being evidence of prejudgment by the Trustees. That being the case, Petitioners cannot avoid forfeiture by asserting the exact opposite now, i.e. that despite these alleged pre-filing public statements, Petitioners did *not* have reason to

know the Trustees prejudged the application until after the vote had occurred. Because Petitioners' allegations "negate[] the plaintiff's cause of action completely or refutes critical conclusions of law or conclusions of material, but unsupported, fact," their fundamental fairness claim should be dismissed. *See Moran v. Gust K. Newberg/Dugan & Meyers*, 268 Ill. App. 3d 999, 1004 (1st Dist. 1994) (quoting *Emps. Mut. Companies v. Skilling*, 256 Ill. App. 3d 567, 569 (2d Dist. 1994)).

Petitioners also cannot distinguish this situation from *Peoria Disposal Co. v. Illinois Pollution Control Bd.*, 385 Ill. App. 3d 781 (3d Dist. 2008), where the court held that the petitioner's claims were forfeited. Petitioners argue that, in that case, "the evidence showed that the objecting company learned, at the meeting itself and before the vote was taken, that specific board members were members of the Sierra Club—the precise fact underlying its bias claim—and said nothing." (Response at 18). But this fact only highlights the applicability of *Peoria Disposal* here. Petitioners concede that they knew Area Disposal had pre-filing contacts with Rantoul staff and consultants no later than the April 17, 2026 public siting hearing, but they took no action in the two subsequent months before the June 16, 2026 vote. Forfeiture of the fundamental fairness claim is therefore clearly established on the face of the Petition.

As a fall back, Petitioners ask the Board to simply ignore the law and allow their fundamental fairness claim to proceed despite their failure to raise the issue during the siting process. The reason, they claim, is that Petitioners "are individual residents who were not represented by counsel at the time of the Hearing." (Response at 19). Even assuming it is true that Petitioners were not represented during the siting hearing², it would not excuse Petitioners'

² The record contains no evidence of when Petitioners obtained counsel to represent them in connection with their opposition to Area Disposal's siting application, and Petitioners' opposition contains no affidavit or other evidence establishing that it was not until after the siting was approved.

decision to wait and see how the siting vote played out, and only when they did not like the outcome, claim that the process was not fair. The same rules apply to Petitioners, whether they were represented by counsel or not. *See Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 78 (“A *pro se* litigant such as plaintiff here is not entitled to more lenient treatment than attorneys.”); *see also, e.g., U.S. Bank, Nat. Ass'n v. Kennedy*, 2014 IL App (2d) 130453-U (“In Illinois, when a party dispenses with an attorney and proceeds *pro se*, he or she will be held to the same standards and must comply with the same rules and to the same extent as a licensed attorney.”) In sum, Petitioners offer no valid reason why the well-settled rule that bars a fundamental fairness claim that is not raised before a siting vote is inapplicable here.

WHEREFORE, Area Disposal Service, Inc. respectfully requests that the Board dismiss the Petition and this case in its entirety or, alternatively, dismiss the Borchers, Rooney, Archibald, Taylor-Hudson, and Reifsteck, and dismiss the claims of lack of fundamental fairness in Section V of the Petition, and award Area Disposal such other and further relief as is deemed appropriate under the circumstances.

Respectfully submitted,

AREA DISPOSAL SERVICE, INC.,
Respondent

By: /s/ Janaki Nair
One of its attorneys

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