

ILLINOIS POLLUTION CONTROL BOARD
June 2, 2011

AMERICAN DISPOSAL SERVICES OF)
ILLINOIS, INC.,)
)
Petitioner,)
)
v.) PCB 11-60
) (Third-Party Pollution Control Facility
COUNTY BOARD OF MCLEAN COUNTY,) Siting Appeal)
ILLINOIS; HENSON DISPOSAL, INC.; and)
TKNTK, LLC;)
)
Respondents.)

ORDER OF THE BOARD (by A.S. Moore):

On March 22, 2011, American Disposal Services of Illinois, Inc. (ADS) filed a petition asking the Board to review a February 15, 2011 decision of the County Board of McLean County, Illinois (McLean County Board). *See* 415 ILCS 5/40.1(b) (2008); 35 Ill. Adm. Code 101.300(b), 107.204 (Time for Filing Petition). The McLean County Board granted an application by Henson Disposal, Inc. (Henson) for approval of the site of a pollution control facility recycling construction and demolition materials.

On April 20, 2011, respondents Henson and TKNTK, LLC filed a motion to strike and dismiss ADS's petition, and both the County Board and ADS have filed responses.

For the reason stated below, the Board concludes that it does not now have an adequate record on which to determine that Henson complied with the notice requirements of Section 39.2(b) of the Act and, in turn, whether the McLean County Board acquired jurisdiction to consider Henson's application for site approval. Accordingly, the Board directs Henson to address this issue in a filing within 14 days and allows the other parties to respond. The Board today reserves ruling on Henson's pending motion to strike and dismiss ADS' petition.

PROCEDURAL HISTORY

On March 22, 2011, ADS filed a petition (Pet.) asking the Board to review a February 15, 2011 decision of the McLean County Board. *See* 415 ILCS 5/40.1(b) (2008); 35 Ill. Adm. Code 101.300(b), 107.204. That decision granted an application by Henson for approval of the site of a pollution control facility recycling construction and demolition materials at 2148 Tri Lakes Road, Bloomington; 510 East Hamilton Road, Bloomington; and 2014 Bunn Street, Bloomington.

In an order dated April 7, 2011, the Board accepted ADS's petition for hearing and directed the County Board to file the entire record of its proceedings within 21 days. On April 29, 2011, the County Board filed the record (R.).

On April 20, 2011, respondents Henson and TKNTK, LLC filed a motion to strike and dismiss ADS's petition (Mot.). On May 6, 2011, the Board received a response to the motion from both the County Board and from ADS (ADS Resp).

NOTICE REQUIREMENTS

Section 39.2 of the Environmental Protection Act (Act), which addresses local review of requests for approval of proposed pollution control facilities, provides in pertinent part that,

[n]o 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.

Such written notice shall also be served upon members of the General Assembly from the legislative district in which the proposed facility is located and shall be published in a newspaper of general circulation published in the county in which the site is located.

Such notice shall state the name and address of the applicant, the location of the proposed site, the nature and size of the development, the nature of the activity proposed, the probable life of the proposed activity, the date when the request for site approval will be submitted, and a description of the right of persons to comment on such request as hereafter provided. 415 ILCS 5/39.2(b) (2008).

RECORD ON NOTICE OF REQUEST FOR SITING APPROVAL

Examination of the county record reveals that Henson Disposal Inc. submitted to the McLean County Board a "Site Location Application" dated "April 2010" for the Henson Disposal Recycling Center. R. at 2. Between the pages of the application addressing the nine statutory siting criteria and the pages comprising five appendices, there appears a single page blank other than a file stamp of the McLean County Clerk dated April 19, 2010. R. at 23. Newspaper notice of the request for site approval indicated that the request would be submitted

to the McLean County Board on that date. R. at 1 (Pantagraph Publishing Co. Certificate of Publication).

The County Board's Index of the Record refers to an "Amendment to Site Application; 8/9/10" at pages 64-76. Page 76 of the county's record is blank other than a file stamp of the McLean County Clerk dated August 9, 2010. R. at 76. Newspaper notice of the request for site approval indicated that the request would be submitted to the McLean County Board on that date. R. at 63 (Pantagraph Publishing Co. Certificate of Publication). The Board notes that the pending motion to strike and dismiss states that "Henson Disposal Inc. filed an Application for Siting Approval in August 9, 2010 with the County of McLean." Mot. at 1. The Board further notes that, on February 15, 2011, the McLean County Board approved findings of fact and a recommendation stating in pertinent part that Henson filed an amended application for site approval on August 9, 2010. R. at 152.

The Board in the following subsections reviews the County Board's record on the issue of certified mail service of notice of the request for siting approval. The record does not plainly indicate that the applicant attempted personal service on any of the entities listed below.

Apparent Owners of Property Within 250 Feet

HO1615CP Partnership

A receipt for payment of postage and fees for certified mail indicates that, on July 23, 2010, notice was mailed to HO1615CP Partnership at 405 N. Hershey Road in Bloomington. C-70. The record includes a return receipt or "green card" for the same article number. *Id.* The green card includes a signature that is not clearly legible but indicates delivery on August 2, 2010. *Id.*

Bradford Supply Company

A receipt for payment of postage and fees for certified mail indicates that, on July 23, 2010, notice was mailed to Bradford Supply Company at P.O. Box 246 in Robinson. C-71. The record includes a return receipt or "green card" for the same article number. *Id.* The green card includes the signature of Robin Goss and indicates delivery on July 27, 2010. *Id.*

David Capodice

A receipt for payment of postage and fees for certified mail indicates that, on July 23, 2010, notice was mailed to David Capodice at 2820 Capodice Rd. in Bloomington. C-72. The record includes a return receipt or "green card" for the same article number. *Id.* The green card includes the signature of Janet Capodice and indicates delivery on July 26, 2010. *Id.*

McLean County Trustee

A receipt for payment of postage and fees for certified mail indicates that, on July 23, 2010, notice was mailed to McLean County Trustee at P.O. Box 96 in Edwardsville. C-72. The

record includes a return receipt or “green card” for the same article number. *Id.* The green card includes a signature that is not clearly legible and does not clearly indicate a date of delivery. *Id.*

City of Bloomington

A receipt for payment of postage and fees for certified mail indicates that, on July 23, 2010, notice was mailed to the City of Bloomington at 109 E. Olive St. in Bloomington. C-72. The record includes a return receipt or “green card” for the same article number. *Id.* The green card includes the signature of Larry Walsh and indicates delivery on July 26, 2010. *Id.*

Tri Lakes Conservation Recreation Club

A receipt for payment of postage and fees for certified mail indicates that, on July 23, 2010, notice was mailed to Tri Lakes Conservation Recreation Club at 2100 Bunn St. in Bloomington. C-73. The record includes a return receipt or “green card” for the same article number. *Id.* The green card includes a signature that is not clearly legible and does not clearly indicate a date of delivery. *Id.*

BCA LLC

A receipt for payment of postage and fees for certified mail indicates that, on July 23, 2010, notice was mailed to BCA LLC at 14 Timber Ridge Dr. in Lexington. C-73. The record includes a return receipt or “green card” for the same article number. *Id.* The green card includes a signature that is not clearly legible but indicates delivery on July 24, 2010. *Id.*

Morgan & Grimshaw

A receipt for payment of postage and fees for certified mail indicates that, on July 23, 2010, notice was mailed to Morgan & Grimshaw at 11 Currency Dr. in Bloomington. C-74. The record includes a return receipt or “green card” for the same article number. *Id.* The green card includes a signature that is not clearly legible and does not clearly indicate a date of delivery. *Id.*

Adeline Berner

A receipt for payment of postage and fees for certified mail indicates that, on July 23, 2010, notice was mailed to Adeline Berner at 34 Hodgehaven Cir. in Bloomington. C-74. The record includes a return receipt or “green card” for the same article number. *Id.* The green card includes the signature of Bob Branom but does not clearly indicate a date of delivery. *Id.*

Raymond Fairchild

A receipt for payment of postage and fees for certified mail indicates that, on July 23, 2010, notice was mailed to Raymond Fairchild at 20 Currency Dr. in Bloomington. C-69. The record does not include a return receipt or “green card” corresponding to the same article number. *See id.* at 69-74.

Kipp Connour

A receipt for payment of postage and fees for certified mail indicates that, on July 23, 2010, notice was mailed to Kipp Connour at 1902 Bunn St. in Bloomington. C-69. The record does not include a return receipt or “green card” corresponding to the same article number. *See id.* at 69-74.

Norel Enterprises

A receipt for payment of postage and fees for certified mail indicates that, on July 23, 2010, notice was mailed to Norel Enterprises at 206 W. Washington in Bloomington. C-69. The record does not include a return receipt or “green card” corresponding to the same article number. *See id.* at 69-74.

Members of the General Assembly**Representative Dan Brady**

A receipt for payment of postage and fees for certified mail indicates that, on July 23, 2010, notice was mailed to Representative Dan P. Brady at 202 N. Prospect, Suite 203 in Bloomington. C-73. The record includes a return receipt or “green card” for the same article number. *Id.* The green card includes a signature that is not clearly legible but clearly indicates delivery on July 26, 2010. *Id.*

Representative Keith Sommer

A receipt for payment of postage and fees for certified mail indicates that, on July 23, 2010, notice was mailed to Representative Keith Sommer at 121 W. Jefferson St. in Morton. C-70. The record includes a return receipt or “green card” for the same article number. *Id.* The green card includes the signature of Ann Armitage and clearly indicates delivery on August 2, 2010. *Id.*

Representative Shane Cultra

A receipt for payment of postage and fees for certified mail indicates that, on July 23, 2010, notice was mailed to Representative Shane Cultra at 104 W. Lincoln Ave. in Onarga. C-70. The record includes a return receipt or “green card” for the same article number. *Id.* The green card includes the signature of Lindsey T. Ishmiel and clearly indicates delivery on August 3, 2010. *Id.*

Senator Dan Rutherford

A receipt for payment of postage and fees for certified mail indicates that, on July 23, 2010, notice was mailed to Senator Dan Rutherford at 105B State House in Springfield. C-71. The record includes a return receipt or “green card” from Senator Rutherford for a different

article number. *Id.* That green card indicates delivery to Illinois Senate District 53 in Pontiac, includes the signature of Fran Siders with a partially obstructed delivery date. *Id.*

Senator Bill Brady

A receipt for payment of postage and fees for certified mail indicates that, on July 23, 2010, notice was mailed to Senator Bill Brady at 2203 Eastland Dr., Suite 3 in Bloomington. C-74. The record includes a return receipt or “green card” for the same article number. *Id.* The green card includes the signature of Amy Glasscock and with a partially obstructed delivery date. *Id.*

Illinois Environmental Protection Agency

A receipt for payment of postage and fees for certified mail indicates that, on July 27, 2010, notice was mailed to the Illinois Environmental Protection Agency (Agency) at 1021 N. Grand, P.O. Box 19276 in Springfield. C-69. The record includes a return receipt or “green card” for the same article number. C-71. The green card was date-stamped by the Agency with the signature of Warren Viles with a delivery date that is not clearly legible. *Id.*

A second receipt for payment of postage and fees for certified mail indicates that, on July 27, 2010, notice was mailed to the Agency’s asbestos unit at P.O. Box 19276 in Springfield. C-71. The record does not include a return receipt or “green card” corresponding to the same article number. *See id.* at 69-74.

DISCUSSION

In its petition for review, ADS alleged that, “[a]s an initial matter, McLean did not have proper jurisdiction to conduct the local public hearings or make a decision on Henson’s siting Application. The pre-filing notice was not accurate, was misleading, and was insufficient under the requirements of Section 39.2(b) of the Act.” Pet. at 2, citing 415 ILCS 5/39.2(b) (2008). In its motion to strike and dismiss, Henson counters that ADS “fails to allege any specific allegations which would give the Board or the Respondents sufficient information as to the character of the evidence to be introduced or the issues to be tried.” Mot. at 7. In its response to the motion, ADS asserts that the record “contains no pre-filing property owner notification” as required by the Act and that the McLean County Board lacked jurisdiction to approve Henson’s application for site approval. ADS Resp. at 1, citing 415 ILCS 5/39.2(b) (2008).

The parties in this proceeding have raised, among other issues, the threshold question of whether Henson’s notice of its request for site approval complied with the requirements of Section 39.2(b) of the Act (415 ILCS 5/39.2(b) (2008)) and thus whether the McLean County Board acquired jurisdiction to consider that request. Based on its review of the notice requirements of the Act and the record regarding service of notice of the application for site approval, the Board concludes that it does not now have an adequate record on which to determine that Henson complied with the notice requirements and, in turn, whether the McLean County Board acquired jurisdiction to consider Henson’s application. In other words, the Board cannot determine from the record now before it whether Henson provided timely notice of its

request for site approval to each entity required under Section 39.2(b) to receive it. *See* 415 ILCS 5/39.2(b) (2008). Above in its summary of the record regarding notice of Henson's request for site approval, the Board summarizes that record.

Accordingly, the Board below directs Henson as the applicant for site approval to submit within 14 days of this order, on or before June 16, 2011, a filing addressing the adequacy of service of notice under Section 39.2 of the Act. The Board directs Henson at a minimum to list

the owners of all property within the subject area not solely owned by the applicant, and [] 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 requirements exceed 400 feet, including public streets, alleys and other public ways; (415 ILCS 5/39.2(b) (2008))

and the "members of the General Assembly from the legislative district in which the proposed facility is located. . . ." *Id.*

Within seven days of that deadline, on or before June 23, 2011, the other parties may file a response to Henson's filing. As Henson has sought an expedited ruling on its pending motion to strike and dismiss, the "mailbox rule" at 35 Ill. Adm. Code 101.300(b)(2) will not apply to any of these filings, and the Board's Clerk must receive them before the close of business on the day of those deadlines.

Pending receipt of those filings, the Board reserves ruling on Henson's motion to strike and dismiss.

In summary, the Board directs Henson as the applicant for site approval to submit to the Board within 14 days of this order, on or before June 16, 2011, a filing addressing the adequacy of service of notice under Section 39.2(b) of the Act. The "mailbox rule" at 35 Ill. Adm. Code 101.300(b)(2) will not apply to this filing. On or before June 23, 2011, the other parties may file a response to Henson's filing. The "mailbox rule" at 35 Ill. Adm. Code 101.300(b)(2) will not apply to this filing.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 2, 2011, by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board