

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

 ORIGINAL

AMERICAN DISPOSAL SERVICES OF ILLINOIS)
)

Petitioner)

VS.)

No. PCB 11-60

COUNTY BOARD OF McLEAN COUNTY, ILLINOIS, HENSON DISPOSAL, INC., and TKNTK, LLC,)
)

Respondents.)

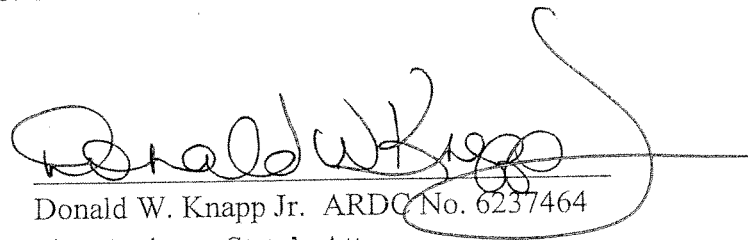
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CLERK'S OFFICE
SEP 18 2014

STATE OF ILLINOIS
Pollution Control Board

CERTIFICATE OF SERVICE

TO: SEE ATTACHED SERVICE LIST

The undersigned certifies that on September 15, 2014, I served a copy of the attached Entry of Appearance and Motion to Reconsider upon the person named in the attached service list by depositing a copy thereof, enclosed in an envelope, in the United States Mail in Bloomington, Illinois, proper postage prepaid, at or about the hour of 5:00 o'clock p.m.



Donald W. Knapp Jr. ARDC No. 6237464
First Assistant State's Attorney
McLean County State's Attorney's Office
115 E. Washington Street, Room 401
Bloomington, IL 61701
Ph. (309) 888-5110
Fx. (309) 888-5111

SERVICE LIST
PCB 11-60

Amy L. Jackson

For Respondent Rammelkamp Bradney, P.C.
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Richard Marvel

For Respondent Henson Disposal, Inc. and TKNTK, LLC
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Jennifer J. Sackett-Pohlenz

For Petitioner American Disposal Services of Illinois
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Charles F. Helsten

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P.O. Box 1389
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Richard Porter

For Respondent Henson Disposal, Inc., and TKNTK, LLC
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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AMERICAN DISPOSAL SERVICES OF
ILLINOIS

Petitioner

VS.

COUNTY BOARD OF McLEAN COUNTY,
ILLINOIS, HENSON DISPOSAL, INC., and
TKNTK, LLC,

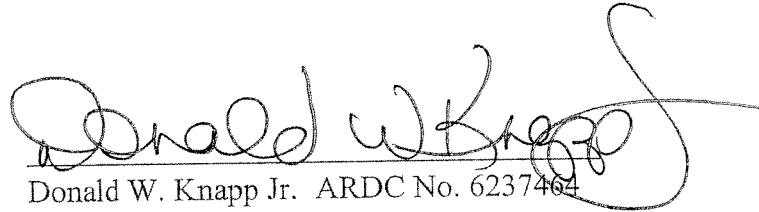
Respondents.

STATE OF ILLINOIS
Pollution Control Board

No. PCB 11-60

ENTRY OF APPEARANCE

I hereby file my appearance in this proceeding, on behalf of the Respondent, County Board of McLean County.



Donald W. Knapp Jr. ARDC No. 6237464
First Assistant State's Attorney
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115 E. Washington Street, Room 401
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

SEP 18 2014

AMERICAN DISPOSAL SERVICES OF
ILLINOIS, INC,

Petitioner,

v.

COUNTY BOARD OF MCLEAN COUNTY,
ILLINOIS; HENSON DISPOSAL, INC.; and
TKNTK, LLC;

Respondents.

PCB No. 11-60

STATE OF ILLINOIS
Pollution Control Board

COUNTY BOARD OF MCLEAN COUNTY'S MOTION TO RECONSIDER

NOW COMES Respondent, the County Board of McLean County, a body corporate and politic, (the County), by and through its attorney, Donald W. Knapp Jr. of the McLean County State's Attorney's Office, and pursuant to 35 Ill. Admin. Code 101.520, moves the Pollution Control Board to reconsider its order of August 7, 2014 ("Order") vacating the siting approval of the County for a pollution control facility (the "Facility") located at 2148 Tri Lakes Road. In support thereof, Respondent states as follows:

1. The undersigned is informed and believes that Henson Disposal intends to file a motion to reconsider which is attached to this pleading and marked as Exhibit A.
2. The County wishes to join in Henson Disposal's Motion to Reconsider and incorporates by reference all arguments made therein.
3. The County also believes reconsideration is appropriate in light of the affidavit of the owner of PIN 21-16-226-004.
4. To invalidate the County's jurisdiction over the applicant's siting request when all parties were either properly served with notice or had notice of the proceedings below stands the very tenet of notice and an opportunity to be heard on its head by allowing a third-party competitor of the applicant to remain silent during the

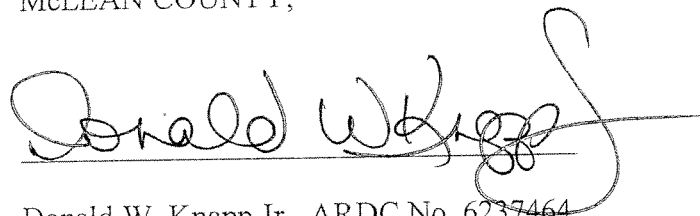
siting process only to later engage in a game of legal "gotcha." Such a ruling would evince the very essence of form over substance.

WHEREFORE, the County respectfully requests that the Pollution Control Board reconsider its Opinion and Order and deny Petitioner's Motion for Summary Judgment.

Dated: September 15, 2014

Respectfully submitted,

On behalf of the COUNTY BOARD OF
McLEAN COUNTY,

A handwritten signature in black ink, appearing to read "Donald W. Knapp Jr.", written over a horizontal line. The signature is stylized and cursive.

BY: Donald W. Knapp Jr. ARDC No. 6237464
First Assistant State's Attorney
McLean County State's Attorney's Office
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Bloomington, IL 61701
Ph. (309) 888-5110
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RECEIVED
CLERK'S OFFICE

SEP 18 2014

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

AMERICAN DISPOSAL SERVICES OF ILLINOIS, INC,

Petitioner,

v.

COUNTY BOARD OF MCLEAN COUNTY, ILLINOIS; HENSON DISPOSAL, INC.; and TKNTK, LLC;

Respondents.

PCB No. 11-60
(Third-Party Pollution Control Facility
Siting Appeal)

STATE OF ILLINOIS
Pollution Control Board

HENSON DISPOSAL, INC. AND TKNTK, LLC'S MOTION TO RECONSIDER

NOW COME the Respondents, Henson Disposal, Inc. ("Henson") and TKNTK, LLC ("TKNTK") (the "Henson Respondents"), by and through their attorneys, HINSHAW & CULBERTSON LLP, and pursuant to 35 Ill. Admin. Code 101.520, move the Pollution Control Board to reconsider its order of August 7, 2014 ("Order") vacating the siting approval of the McLean County Board for a pollution control facility (the "Facility") located at 2148 Tri Lakes Road. In support thereof, Respondents state as follows:

1. In its Order, the PCB granted summary judgment for Petitioner because it found that a person entitled to pre-filing notice under Section 39.2(b) of the Environmental Protection Act, the taxpayer of PIN 21-16-226-004, was not served or sent such notice. However, reconsideration is appropriate, and summary judgment should not be granted, because there are material facts related to pre-filing notice that have been discovered since the Order was issued.¹

2. Reconsideration is appropriate in this instance because there is new evidence indicating that the Order was in error. See 35 Ill. Admin. Code 101.902 ("In ruling upon a motion for reconsideration, the Board will consider factors including new evidence, or a change in the law, to conclude that the Board's decision was in error.").

¹ The parties stipulated that there were no material facts concerning jurisdiction "that any party believes will be identified or otherwise disclosed at a hearing in this matter." Order at 17. This stipulation does not preclude the possibility of new evidence, as in the instant case.

EXHIBIT

A 1064

3. The owner of PIN 21-16-226-004, Tonja Gibson, has come forward and stated that she had actual notice regarding the Facility. Furthermore, Ms. Gibson has stated that she did not have any objection to either the notice received or the siting of the Facility at any relevant time throughout these proceedings. Ms. Gibson's Affidavit, which is attached hereto as Exhibit 1, states that the Ms. Gibson subscribed to the *Pantagraph*, the newspaper in which pre-filing notice was published. Ex. 1, ¶ 3. Ms. Gibson further state that she "did not and do[es] not have any objection to the siting of the Henson Disposal, Inc. pollution control facility." Ex. 1, ¶ 4.

4. The Fourth District of the Appellate Court of Illinois, by whom an appeal in this matter would be heard, has not specifically addressed the issue of whether actual notice is sufficient to satisfy the jurisdictional prerequisite of Section 39.2. However, it has held that a notice that contains errors in the description of the property location, but which is nonetheless sufficient to apprise concerned citizens and adjoining landowners of the location of the proposed site, meets the requirements of Section 39.2(b). *See Tate v. PCB*, 188 Ill. App. 3d 994, 1018, 544 N.E.2d 1176 (4th Dist. 1989) ("The purpose of the notice is obviously to notify interested persons of the intent to seek approval to develop a new site or to expand an existing facility."); *see also Daubs Landfill, Inc. v. PCB*, 166 Ill. App. 3d 778, 782, 520 N.E.2d 977 (5th Dist. 1988). "An act of the legislature should not be construed so as to lead to absurd consequences." *Daubs*, 166 Ill. App. 3d at 782.

5. It would be an absurd consequence to vacate the properly issued siting approval in this matter based on the fact that a landowner who had actual notice, and who *does not object* to the siting of the Facility, was not also mailed notice. The Gibsons were "apprised of the location of the proposed site" and were aware of the Henson Respondents' "intent to seek approval to develop a new site," and simply had and have no objections to its location.

EXHIBIT A 2064

6. Further, several courts have held that a party entitled to notice need not have actually received the notice in order for the siting authority to have jurisdiction. *See, e.g., Maggio v. PCB*, 2014 Ill App (2d) 130260 (2d Dist. 2014) ("[S]ection 39.2(b) does not require that landowners actually receive preapplication notices at least 14 days before the siting application is filed."). It is completely illogical to vacate the siting approval in this case, in which a non-objecting landowner had actual notice, especially in light of the cases that have upheld approvals where the landowners did not even receive pre-filing notice. This is particularly true where, as here, the intent of the notice – to apprise the Gibsons of the Henson Respondents' intent to seek site approval – was satisfied.

6. In light of the new evidence discussed herein, the Order should be reversed and Petitioner's Motion for Summary Judgment should be denied.

WHEREFORE, the Henson Respondents respectfully request that the PCB reconsider its Order and deny Petitioner's Motion for Summary Judgment.

Dated: September 15, 2014

Respectfully submitted,

On behalf of HENSON DISPOSAL, INC and
TKNTK, LLC.

/s/ Richard S. Porter

Richard S. Porter
One of Its Attorneys

Charles F. Helsten ARDC 6187258
Richard S. Porter ARDC 6209751
HINSHAW & CULBERTSON LLP
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389
815-490-4900

EXHIBIT A 3 of 4

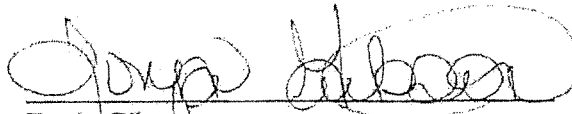
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STATE OF ILLINOIS)
) SS
COUNTY OF MCLEAN)

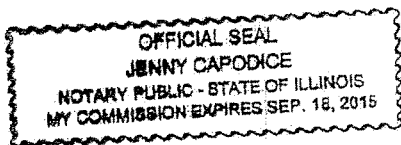
TONJA GIBSON, being first duly sworn upon oath, states that she is above the age of 18; that if called to testify in the above-entitled matter, could competently testify to the following:

1. I am the owner of 1901 Bunn Street, Bloomington IL 61704.
2. That 1901 Bunn Street, Bloomington IL 61704 has been identified as Tax Identification number 21-16-226-004 with the McLean County Tax Assessor.
3. That I am and was a recipient of the Pantagraph Newspaper at the time the notice was published concerning the hearing for the site application filed by Henson Disposal, Inc. for a pollution control facility at 2148 Tri Lakes Road, Bloomington, IL; 510 East Hamilton Road, Bloomington, IL and 2014 Bunn Street, Bloomington, IL.
4. I did not and do not have any objection to the siting of the Henson Disposal, Inc. pollution control facility.

Affiant further sayeth not.


Tonja Gibson

Subscribed and sworn to before me this 13th day of September 2014.




Notary Public

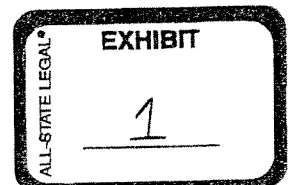


EXHIBIT A 4 of 4