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FEB 17 2016
STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ENVIRONMENTAL RECYCLING)
AND DISPOSAL SERVICES, INC.)
)
Petitioner,)
)
)
v.)
)
WILL COUNTY, ILLINOIS,)
WILL COUNTY BOARD,)
WASTE MANAGEMENT OF ILLINOIS, INC.)
)
Respondents.)

PCB No. 16-76
(Third-Party Pollution Control
Facility Siting Appeal)

 ORIGINAL

NOTICE OF FILING

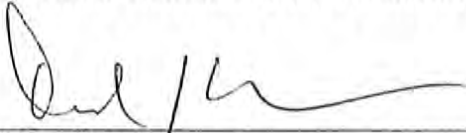
To: See attached Service List.

PLEASE TAKE NOTICE that on February 18, 2016 we filed with the Will County Clerk the attached **WASTE MANAGEMENT OF ILLINOIS, INC.'S MOTION TO STRIKE AND DISMISS THE PETITION FOR REVIEW OF THE DECISION OF THE WILL COUNTY BOARD OF WILL COUNTY, ILLINOIS**, a copy of which is attached hereto and herewith served upon you.

Dated: February 17, 2016

Respectfully Submitted,

WASTE MANAGEMENT OF ILLINOIS, INC.

By: 
Donald J. Moran

Donald J. Moran
PEDERSEN & HOUP
161 North Clark Street, Suite 2700
Chicago, Illinois 60601
Telephone: (312) 641-6888

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STATE OF ILLINOIS
Pollution Control Board

SERVICE LIST
ERDS v. Will County Board & WMII
PCB 16-76

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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WILL COUNTY, ILLINOIS,)
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PCB No. 16-76
(Third-Party Pollution Control
Facility Siting Appeal)

**MOTION TO STRIKE AND DISMISS THE PETITION FOR REVIEW OF
THE DECISION OF THE WILL COUNTY BOARD OF WILL COUNTY, ILLINOIS**

Waste Management of Illinois, Inc. ("WMII"), by and through its attorneys, Pedersen & Houpt, P.C., moves pursuant to Section 40.1(b) of the Illinois Environmental Protection Act (the "Act") and Section 107.208 of the Illinois Pollution Control Board Procedural Rules ("IPCB Rules"), to strike and dismiss Environmental Recycling and Disposal Services, Inc.'s ("ERDS") Petition for Review of the Decision of the Will County Board. In support of its Motion, WMII states as follows:

INTRODUCTION

1. On July 10, 2015, WMII filed its application for site location approval for the expansion of the Laraway Recycling and Disposal Facility (the "Application") with the Will County Board under Section 39.2(a) of the Act. 415 ILCS 5/39.2(a) (2012).

2. On October 14, 2015, pursuant to the Will County Pollution Control Facility Siting Ordinance and Section 39.2(d) of the Act, the Will County Board commenced public hearings on WMII's Application. Additional hearings were held on October 21 and 23, 2015.

3. On December 10, 2015, after reviewing the entire record on the matter, including the Hearing Officer's Findings and Recommendations, the Will County Pollution Control

Facility Committee (the "Committee") recommended that WMII's Application be granted with special conditions.

4. On December 17, 2015, the Will County Board adopted the Committee's decision and recommendations, and granted WMII's Application by a vote of twenty-five in favor, zero opposed and one abstention (the "Decision").

5. On January 19, 2016, ERDS filed its Petition for Review of the Decision (the "Petition"). ERDS alleges that the proceedings "were fundamentally unfair" in that "the Will County Board prejudged the application" and that the "Will County Solid Waste Planning and Land Use Planning staffs had improper ex parte contact with the Applicant and improperly influenced the Will County Board." A copy of the Petition is attached hereto as Exhibit A.

6. The Petition alleged no facts regarding which County Board members prejudged the Application, what persons engaged in ex parte communications, when those communications occurred or the manner in which the Will County Board was improperly influenced.

7. Without such facts, the allegations are mere conclusions and insufficient to meet the pleading requirements of the IPCB Rules.

8. Pursuant to Section 101.506 of the IPCB Rules, WMII timely presents this Motion to Strike and Dismiss the Petition.

LEGAL STANDARD

9. Illinois is a fact pleading state. *LaSalle Nat'l Bank v. City of Highland Park*, 344 Ill. App. 3d 259, 274 (2d Dist. 2003) (citing *Adkins v. Sarah Bush Lincoln Health Center*, 129 Ill. 2d 497 (1989)). A party is required to specify the facts that support his or her claim, and legal conclusions unsupported by allegations of specific facts are insufficient. *Id.* at 274-75; 35 IAC §107.208(c). Pure conclusions, even in administrative proceedings, are insufficient to state a

claim. *City of Des Plaines v. Pollution Control Bd.*, 60 Ill. App. 3d 995, 1000, 377 N.E.2d 114 (1st Dist. 1978).

10. A petition for review of a decision approving local siting of a pollution control facility must include: (1) a copy of the local siting authority's written decision or ordinance; (2) a statement as to how the filing party is a proper petitioner under Section 107.200 of the IPCB Rules; and (3) "a specification of the grounds for the appeal, including any allegations for fundamental unfairness or any manner in which the decision as to particular criteria is against the manifest weight of the evidence." 35 Ill. Adm. Code § 107.208.

11. A petitioner's failure to comply with the requirements of Section 107.208 of the IPCB Rules warrants dismissal of the petition for review as "frivolous" under the Act. This Board has interpreted "frivolous" to mean a pleading that is either legally or factually deficient. *Winnetkans Interested in Protecting the Env't v. IPCB*, 55 Ill. App. 3d 475, 481 (1st Dist. 1977).

12. A petitioner accusing the siting authority of prejudgment must identify specific evidence that members of the siting authority were actually biased. *Stop the Mega-Dump v. County Bd.*, 2012 IL App (2d) 110579. A petition alleging improper *ex parte* contacts must specify the facts supporting the allegation, including the dates on which such contacts occurred. *Id.* at ¶56; 35 IAC § 107.208.

ARGUMENT

13. The Petition sets forth two general assertions regarding the Decision, including that the proceedings were fundamentally unfair, and that the Decision was against the manifest weight of the evidence. Exhibit A, ¶¶ 7, 9.

The Petition Fails to Specify the Grounds Supporting its Claim of Fundamental Unfairness

14. In stating its claim of fundamental unfairness, ERDS alleges that the "Board prejudged the [A]pplication." Petition for Review ¶ 7. However, no supporting facts accompany

this allegation, which therefore amounts to nothing more than a bare conclusion. *LaSalle Nat'l Bank*, 344 Ill. App. 3d at 274; *City of Des Plaines v. Pollution Control Bd.*, 60 Ill. App. 3d at 1000. By failing to set forth any facts supporting its claim of prejudgment, ERDS fails to specify the grounds for this claim as required by Section 107.208 of the IPCB Rules. Accordingly, the claim should be stricken as legally insufficient.

15. ERDS also asserts, without factual support, that the Will County Solid Waste Planning and Land Use Planning staffs had improper ex parte contact with WMII, and improperly influenced the Will County Board. Exhibit A, ¶ 7. However, ERDS provides no factual support or detail regarding how any member of the staffs communicated with WMII or the Will County Board with respect to the Application. ERDS fails to identify a single member of the staff that communicated with WMII regarding its Application, or the substance of such communications. Moreover, ERDS fails to allege that such communications took place after the filing of the Application, so as to qualify as “ex parte communications.” *Stop the Mega-Dump v. County Bd.* at ¶55. The failure to specify the factual and legal grounds for this claim violates Section 107.208 of the IPCB Rules. The claim should therefore be stricken as legally insufficient.

16. Similarly, ERDS concludes that the staffs somehow improperly influenced the County Board in making its Decision to grant WMII's Application, without specifying any supporting facts. To the extent that ERDS asserts that WMII and the Solid Waste Planning staffs conspired to influence the Board in making its Decision, ERDS is required to plead with particularity the specific facts regarding such conspiracy. *Fritz v. Johnston*, 209 Ill. 2d 302, 317 (2004). Because of this failure to specify any facts supporting this claim, the Petition is frivolous, and should be stricken.

17. The Petition further alleges that the Board “was biased in favor of [WMII] and did not render an impartial decision based upon the evidence.” Exhibit A, ¶ 7. This allegation is a pure conclusion, unsupported by the specification of grounds or supporting facts. Accordingly, the allegation should be stricken as legally insufficient.

CONCLUSION

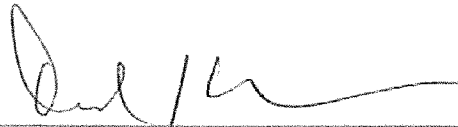
18. ERDS’s Petition falls well below the pleading requirements of Section 107.208 of the IPCB Rules. The Petition is composed of conclusions which, even in the context of an administrative proceeding, are insufficient to state a claim. Accordingly, the Petition should be stricken and dismissed as frivolous.

WHEREFORE, WMII moves that this Board strike and dismiss ERDS’s Petition for Review without prejudice, and grant such other relief as the Board deems appropriate.

Dated: February 17, 2016

Respectfully Submitted,

WASTE MANAGEMENT OF ILLINOIS, INC.


By: 

Donald J. Moran

Donald J. Moran
PEDERSEN & HOUP
161 North Clark Street, Suite 2700
Chicago, Illinois 60601
Telephone: (312) 641-6888

CERTIFICATE OF SERVICE

I, Donald J. Moran, an attorney, certify that I have served the attached **WASTE MANAGEMENT OF ILLINOIS, INC.'S MOTION TO STRIKE AND DISMISS THE PETITION FOR REVIEW OF THE DECISION OF THE WILL COUNTY BOARD OF WILL COUNTY, ILLINOIS** on the named parties by electronic service and by depositing same in the U.S. mail at 161 N. Clark Street, Chicago, Illinois 60601, at 5:00 p.m. on February 17, 2016.



Donald J. Moran

ENVIRONMENTAL RECYCLING AND DISPOSAL SERVICES, LLC

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ENVIRONMENTAL RECYCLING)
AND DISPOSAL SERVICES, INC.)

Petitioner,)

v.)

PCB No. _____)

WILL COUNTY, ILLINOIS,)
WILL COUNTY BOARD,)
WASTE MANAGEMENT OF)
ILLINOIS, INC.)

Respondents.)

**PETITION FOR REVIEW OF DECISION OF THE WILL COUNTY BOARD
OF WILL COUNTY, ILLINOIS**

NOW COMES the Petitioner, Environmental Recycling and Disposal Services, Inc., by its attorneys, Mueller Anderson & Associates, and hereby petitions the Illinois Pollution Control Board ("PCB") to review the decision of the County Board of Will County, Illinois ("County Board") granting site location approval to Waste Management of Illinois, Inc. ("WMII" or "Applicant") for site location approval for expansion of the Laraway Recycling and Disposal facility, located in Will County, Illinois. In support hereof ERDS states as follows:

1. This Petition is filed pursuant to Section 40.1 of the Illinois Environmental Protection Act, 415 ILCS 5/40.1 ("Act"), in accordance with Sections 107.200 through 107.208 of the PCB procedural rules, 35 Ill. Admin. Code §§ 107.200-.208.
2. On July 10, 2015, WMII filed an application for siting approval ("application") with Will County Illinois, requesting approval for expansion of the Laraway Recycling and Disposal Facility located in Will County, Illinois.
3. Public hearings on the application were held in October of 2015.

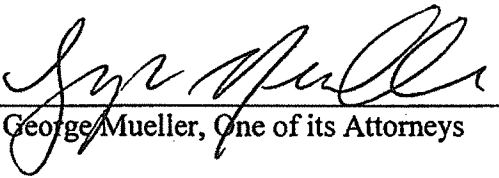
4. ERDS appeared and participated in the public hearings, filing motions, cross-examining witnesses and submitting proposed findings. ERDS owns and operates a waste hauling company in Will County, Illinois and ERDS has local siting approval for a solid waste transfer station in Rockdale, Illinois, located in close proximity to the Laraway Recycling and Disposal facility. ERDS has vehicles that operate on the same roadway network that will be impacted by the expansion of the Laraway Recycling and Disposal facility.
5. On December 17, 2015, the Will County Board conditionally approved the application. A copy of the resolution of the County Board granting such conditional approval is attached hereto and made a part hereof as Exhibit A.
6. On the first date of the public hearing on the application, ERDS filed a Motion to Dismiss and Disqualify, alleging that bias and prejudice on the part of the Will County Board and Will County Solid Waste and Land Planning staffs made a fundamentally fair hearing impossible. Accordingly, ERDS timely made and preserved fundamental fairness arguments based upon prejudice and bias.
7. The proceedings before the Will County Board on the application were fundamentally unfair, in that the Will County Board prejudged the application, Will County Solid Waste Planning and Land Use Planning staffs had improper ex parte contact with the Applicant and improperly influenced the Will County Board. The Will County Board was biased in favor of the Applicant and did not render an impartial decision based upon the evidence.
8. The County Board's conditional approval in the manner employed by the County Board is not authorized by Section 39.2 of the Act.
9. The County Board's decision was against the manifest weight of the evidence and as to statutory siting criteria i (need), ii (public health, safety and welfare) and vi (traffic).

WHEREFORE, ERDS requests that PCB enter an order:

- a. Setting for a hearing this contest of the County Board's siting decision,
- b. Reversing the County Board's siting approval decision, and
- c. Providing such other and further relief as the Board deems appropriate.

Respectfully submitted,

On behalf of ENVIRONMENTAL RECYCLING
AND DISPOSAL SERVICES, LLC

By: 
George Mueller, One of its Attorneys

Dated: January 19, 2016

George Mueller
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**RESOLUTION OF THE COUNTY BOARD
WILL COUNTY, ILLINOIS**

Pursuant to Section VIII (E.) and (F.) of the Will County Pollution Control Facility Siting Ordinance, issue the Report and Recommendation of the Committee to the Will County Board concerning the Application of Waste Management of Illinois for Site Location Approval for Expansion of the Laraway Recycling and Disposal Facility

WHEREAS, on or about January 19, 2006, the Will County Board adopted the current version of the Will County Pollution Control Facility Siting Ordinance, and

WHEREAS, on or about the 10th day of July, 2015, Waste Management of Illinois, Inc. filed its application for site location approval for expansion of the Laraway Recycling and Disposal Facility with the Will County Clerk, and

WHEREAS, a public hearing as required by the Will County Pollution Control Facility Siting Ordinance, as well as the State Siting Statute (415 ILCS 5/39.2(d)), was held on such application in October, 2015, and

WHEREAS, the post-hearing public comment period relating to such request for site location approval has now ended, and the record has been closed in this matter, and

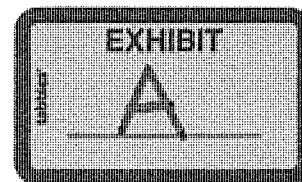
WHEREAS, subsequent to the close of the post-hearing public comment period, herein, all Participants in the public hearing held with respect to this Application submitted certain proposed Findings of Fact, Conclusions of Law and Recommendations; and

WHEREAS, subsequent thereto Larry M. Clark, the Hearing Officer duly appointed by the Will County Board in the above matter rendered his final Findings and Recommendations; and

WHEREAS, after a review of the entire record made in this matter (including the Hearing Officer's Findings and Recommendations), the Will County Pollution Control Facility Committee met in open session on December 10, 2015, and recommended that site location approval be granted for expansion of this pollution control facility subject to certain special conditions recommended by the Committee.

NOW, THEREFORE, BE IT RESOLVED, after review of the Application, all testimony, all exhibits, the hearing record as a whole, all public comments, the proposed Findings of Fact, Conclusions of Law, Conditions and Recommendations submitted by various parties herein, the record of this proceeding as a whole, and after considering all relevant and applicable factors and matters, as well as the Hearing Officer's Findings and Recommendations, and the Pollution Control Facility Committee's Decision and Recommendations, the Will County Board finds that the Pollution Control Facility Committee's Decision and Recommendation should be adopted, and, accordingly, further finds as follows:

BE IT FURTHER RESOLVED, that the Preamble of this Resolution is hereby adopted as if



fully set herein. This Resolution shall be in full force and effect upon its passage and approval as provided by law.

The Board has jurisdiction to rule on the Application of Waste Management of Illinois, Inc. for siting approval of a pollution control facility based upon the Applicant's proper notification as provided by Section 39.2 of the Illinois Environmental Protection Act and the Will County Ordinance as they pertain to persons and entities that appear on the authentic tax records of County of Will, as well as such other notice requirements set forth in these statutory provisions.

Aye 25

Nay 0

Abstain 1

CRITERION 1: THE FACILITY IS NECESSARY TO ACCOMMODATE THE WASTE NEEDS OF THE AREA IT IS INTENDED TO SERVE.

The Applicant has demonstrated compliance with Criterion 1:

Aye 25

Nay 0

Abstain 1

(Conditions attached to Criterion 1): (None).

CRITERION 2: THE FACILITY IS SO DESIGNED, LOCATED AND PROPOSED TO BE OPERATED THAT THE PUBLIC HEALTH, SAFETY AND WELFARE WILL BE PROTECTED.

The Applicant has demonstrated compliance with Criterion 2:

Aye 25

Nay 0

Abstain 1

(Conditions attached to Criterion 2): The Will County Board further finds that certain conditions should be imposed as being reasonable and necessary to accomplish the purposes of Section 39.2 of the Illinois Environmental Protection Act (the "Act"), and that such conditions are not inconsistent with regulations promulgated by the Illinois Pollution Control Board (the "Board") concerning this type of pollution control facility: (See Attachment "A").

CRITERION 3: THE FACILITY IS LOCATED SO AS TO MINIMIZE INCOMPATIBILITY WITH THE CHARACTER OF THE SURROUNDING AREA AND TO MINIMIZE THE EFFECT ON THE

VALUE OF THE SURROUNDING PROPERTY.

The Applicant has demonstrated compliance with Criterion 3:

Aye 25
Nay 0
Abstain 1

(Conditions attached to Criterion 3): The Will County Board further finds that certain conditions should be imposed as being reasonable and necessary to accomplish the purposes of Section 39.2 of the Illinois Environmental Protection Act (the "Act"), and that such conditions are not inconsistent with regulations promulgated by the Illinois Pollution Control Board (the "Board") concerning this type of pollution control facility: (See Attachment "A").

CRITERION 4: THE FACILITY IS LOCATED OUTSIDE THE BOUNDARY OF THE 100-YEAR FLOOD PLAIN OR THE SITE IS FLOOD-PROOFED.

The Applicant has demonstrated compliance with Criterion 4:

Aye 25
Nay 0
Abstain 1

(Conditions attached to Criterion 4): (None).

CRITERION 5: THE PLAN OF OPERATIONS FOR THE FACILITY IS DESIGNED TO MINIMIZE THE DANGER TO THE SURROUNDING AREA FROM FIRE, SPILLS, OR OTHER OPERATIONAL ACCIDENTS.

The Applicant has demonstrated compliance with Criterion 5:

Aye 25
Nay 0
Abstain 1

(Conditions attached to Criterion 5): (None).

CRITERION 6: THE TRAFFIC PATTERNS TO OR FROM THE FACILITY ARE SO DESIGNED AS TO MINIMIZE THE IMPACT ON EXISTING TRAFFIC FLOWS.

The Applicant has demonstrated compliance with Criterion 6:

Aye 25
Nay 0
Abstain 1

(Conditions attached to Criterion 6): The Will County Board further finds that certain conditions should be imposed as being reasonable and necessary to accomplish the purposes of Section 39.2 of the Illinois Environmental Protection Act (the "Act"), and that such conditions are not inconsistent with regulations promulgated by the Illinois Pollution Control Board (the "Board") concerning this type of pollution control facility: (See Attachment "A").

CRITERION 7: IF THE FACILITY WILL BE TREATING, STORING OR DISPOSING OF HAZARDOUS WASTE, AN EMERGENCY RESPONSE PLAN EXISTS FOR THE FACILITY WHICH INCLUDES NOTIFICATION, CONTAINMENT, AND EVACUATION PROCEDURES TO BE USED IN CASE OF AN ACCIDENTAL RELEASE.

The Applicant has demonstrated compliance with Criterion 7:

Aye 25
Nay 0
Abstain 1

(Conditions attached to Criterion 7): (None).

CRITERION 8: IF THE FACILITY IS TO BE LOCATED IN A COUNTY WHERE THE COUNTY BOARD HAS ADOPTED A SOLID WASTE MANAGEMENT PLAN CONSISTENT WITH THE PLANNING REQUIREMENTS OF THE LOCAL SOLID WASTE DISPOSAL ACT OR THE SOLID WASTE PLANNING AND RECYCLING ACT, THE FACILITY IS CONSISTENT WITH THAT PLAN.

The Applicant has demonstrated compliance with Criterion 8:

Aye 25
Nay 0
Abstain 1

(Conditions attached to Criterion 8): (None).

CRITERION 9: IF THE FACILITY WILL BE LOCATED WITHIN A REGULATED RECHARGE AREA, ANY APPLICABLE REQUIREMENTS SPECIFIED BY THE BOARD FOR SUCH AREAS HAVE BEEN MET.

The Applicant has demonstrated compliance with Criterion 9:

Aye 25
Nay 0
Abstain 1

(Conditions attached to Criterion 9): (None).

GENERAL CONDITION

A general condition should be imposed which is reasonable and necessary to accomplish the purposes of Section 39.2 of the Illinois Environmental Protection Act (the "Act"), and which is not inconsistent with regulations promulgated by the Illinois Pollution Control Board (the "Board") concerning this type of pollution control facility (See Attachment "A").

Aye 25
Nay 0
Abstain 1

GRANTING OF LOCAL SITING APPROVAL

Local Siting Approval is granted for Application.

Aye 25
Nay 0
Abstain 1

NOW THEREFORE, BE IT RESOLVED, by the Will County Board, that based upon its findings on these nine criteria, the County Board hereby:

Approves the Application for local siting approval.

BE IT FURTHER RESOLVED, that this Resolution becomes effective immediately upon the adoption thereof.

PRESENTED to the Will County Board on the 17th day of December, 2015.

Adopted by the Will County Board this 17th day of December, 2015.

AYES:	Howard, Ogalla, Moustis, Singer, Moran, Rice, Harris, Traynere, Bennefield, Fritz, Gould, Balich, Fricilone, Brooks Jr., Winfrey, Parker, Staley-Ferry, Babich, Wilhelmi, Hart, Maher, Tuminello, Weigel, Collins, Ferry
ABSTAIN:	Freitag

Result: Approved - [Unanimous]

Nancy Schultz Voots
Nancy Schultz Voots (SEAL)
Will County Clerk

Approved this 21st day of December, 2015.

Lawrence M. Walsh
Lawrence M. Walsh
Will County Executive