

ILLINOIS POLLUTION CONTROL BOARD

ENVIRONMENTAL RECYCLING AND)	
DISPOSAL SERVICES, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 16-76
)	(Third-Party Pollution Control Facility
WILL COUNTY, ILLINOIS, WILL COUNTY)	Siting Appeal)
BOARD, AND WASTE MANAGEMENT OF)	
ILLINOIS, INC.,)	
)	
Respondents.)	

NOTICE OF FILING

PLEASE TAKE NOTICE that on February 17, 2016, we filed the Will County Clerk the attached **Combined Motion of Will County and the Will County Board to Strike and Dismiss the Petition for Review of the Decision of the Will County Board of Will County, Illinois of Environmental Recycling and Disposal Services, Inc.**, a copy of which is attached hereto and herewith served upon you.

Dated: February 17, 2016

Respectfully Submitted,

WILL COUNTY and WILL COUNTY
BOARD

/s/Charles F. Helsten
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Attorney for Respondent, Will County,
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CERTIFICATE OF SERVICE

I, Charles F. Helsten, an attorney, certify that I have served the attached **Combined Motion of Will County and the Will County Board to Strike and Dismiss the Petition for Review of the Decision of the Will County Board of Will County, Illinois of Environmental Recycling and Disposal Services, Inc.**, on the named parties by electronic service and by depositing the same in the U.S. mail at 100, Park venue, Rockford, Illinois 61101, by 5:00 p.m. on February 17, 2016.

/s/Charles F. Helsten

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COMBINED MOTION TO STRIKE AND/OR DISMISS THE PETITION FOR REVIEW OF ENVIRONMENTAL RECYCLING AND DISPOSAL SERVICES, INC.

NOW COME Respondents, WILL COUNTY, ILLINOIS, and the WILL COUNTY BOARD, by and through their attorneys of record, HINSHAW & CULBERTSON LLP, and move 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 to strike, and/or in the alternative, dismiss the Petition of Environmental Recycling and Disposal Services, Inc. ("ERDS") in the above-captioned matter and, in support thereof, state as follows:

1. On July 10, 2015, Waste Management of Illinois, Inc. ("WMI") filed its Application for Site Location Approval for expansion of the Laraway Recycling and Disposal Facility (the "Application") with the Will County Board pursuant to Section 39.2 of the Act. 415 ILCS 5/39.2.

2. Thereafter, pursuant to Section 39.2(d) of the Act, as well as relevant provisions of the Will County Pollution Control Facility Siting Ordinance, the Will County Board held public hearings on the Application on October 10, 2015, October 14, 2015 and October 21, 2015.

3. On or about December 10, 2015, the Will County Pollution Control Facility (the "Committee"), recommended that WMI's Application be granted (with certain special conditions).

4. Subsequent thereto, on December 17, 2015, the Will County Board approved the Committee's decision and recommendations and granted site location approval by a vote of twenty-five (25) in favor, none opposed, and one abstention (the "Decision").

5. On or about December 21, 2015, Lawrence M. Walsh, Will County Executive, executed a resolution ("Siting Resolution") memorializing the December 17, 2015 approval granted by the Will County Board and such Resolution was then filed with the Will County Clerk.

6. On January 19, 2016, ERDS filed its Petition for Review of that Decision (the "Petition"). A copy of said Petition is attached hereto as Exhibit A and incorporated herein by this reference.

7. On or about the 4th day of February, 2016, this Honorable Board accepted said Petition for hearing.

8. Pursuant to Section 101.506 of the Rules of Illinois Pollution Control Board, this Motion has been presented by Will County and the Will County Board in timely fashion.

9. In its Petition, ERDS alleges that the siting proceedings before the Will County Board were "fundamentally unfair".

10. In that regard, the sum total of allegations included in the Petition concerning the proceeding being fundamentally unfair are included at Paragraph 7:

"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 bias in favor of the Applicant and did not render an impartial decision based upon the evidence."

11. The Illinois Environmental Protection Act (the "Act") sets forth the requirements for an appeal from local siting approval for a pollution control facility. The statute states:

Unless the Board determines that such petition is duplicative or frivolous . . . the Board shall hear the petition in accordance with the terms of subsection (a) of this Section and its procedural rules governing denial appeals.

415 ILCS 5/40.1(B). The Board, in turn, requires that a petition for review of approval of a siting application must include "a *specification* of the grounds for the appeal, including any allegations for fundamental fairness or *any manner in which* the decision as to the particular criteria is against the manifest weight of the evidence." 35 Ill. Admin. Code § 107.208 (emphasis added).

The regulation then explicitly requires *specifics* regarding the grounds for appeal, and does not contemplate merely a list of conclusory allegations. *Id; see also* 35 Ill. Admin. Code § 105.210 (governing denial appeals and made applicable to siting appeals by virtue of Section 40.1(b) of the Act; stating that a petition for review of denial of a permit must include "a statement *specifying* the grounds of appeal") (Emphasis added).

12. However, the Petition does not contain any facts whatsoever regarding: (1) which County Board members allegedly prejudged the Application, (2) which members of the Will County Solid Waste Planning and Land Use Planning staffs allegedly had improper ex parte contacts with the Applicant (and, as well as when such alleged improper ex parte contacts took place and the substance of such alleged improper ex parte contacts), and (3) the particular method and manner in which the Will County Board was allegedly improperly influenced. Moreover, the Petition contains no facts whatsoever as to the particular method and manner in

which the Will County Board was allegedly biased in favor of the Applicant, and, consequently, did not render an impartial decision based upon the evidence received in the siting proceeding.

13. As such, the allegations concerning the alleged lack of fundamental fairness in the siting proceeding are mere conclusions, and are, as a matter of law, insufficient to satisfy the pleading requirements of the Rules of the Illinois Pollution Control Board.

14. As noted above, the Petition contains no facts whatsoever concerning the manner and method in which the siting proceeding undertaken by the Will County Board was fundamentally unfair. 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)). As such, a party is required to specify facts that support its claim and mere legal conclusions that are unsupported by allegations of specific facts are insufficient. *Id.* at 274-75; 35 IAC §107.208(c). While a Petitioner is not required to plead all facts in its Petition, it must plead facts necessary to provide sufficient notice of its claims to Respondents. See *Sierra Club and Jim Bensman v. City of Wood River and Norton*, PCB 98-43 (Nov. 6, 1997). However, the present Petition contains any facts whatsoever which would provide sufficient notice of its "fundamental fairness" claims to Respondents, let alone those well-pled facts that are necessary to support a Petition such as this.

15. A Petition which fails to comply with the requirements of Section 107.208 of the IPCB Rules may be dismissed as being "frivolous" under the Act. In turn, the Board has interpreted "frivolous" to mean a pleading that is factually deficient/insufficient. See *Winnetkans Interested in Protecting the Env't (WIPE) v. IPCB*, 55 Ill. App. 3d 475, 370 N.E.2d 1176 (1977) (citing *WIPE V. IPCB*, PCB No. 76-215 (Nov. 10, 1976)). The Board has explicitly found that broadly generalized allegations may be so factually deficient as to be frivolous. *WIPE v. IPCB*,

PCB No. 76-215 (Nov. 10, 1976). A pleading is frivolous when it states "only a 'bare conclusion' of law, in effect a mere suspicion." *WIPE*, 55 Ill. App. 3d at 479 (citing PCB No. 76-215); *City of Des Plaines v. Metro. Sanitary Dist.*, 60 Ill. App. 3d 995, 1000, 377 N.E.2d 114 (1978) ("[T]his allegation pleads only pure conclusions which, even in administrative proceedings are insufficient to state a cause of action."). Moreover, allegations of fundamental unfairness must be proven by clear and convincing evidence (an extremely high standard of proof under Illinois law). *Fox Moraine, LLC v. United City of Yorkville*, 2011 Ill. App. 2d (1017, 960 N.E.2d 1144) (2d Dist. 2011), *Stop the Mega-Dump v. County Bd.*, 2012 IL App (2d) 110579.

16. In addition, a Petition alleging ex parte contacts must specify the facts supporting the such allegation. *Id.* Again, the present Petition alleges no facts whatsoever (much less well-pled facts) which set forth the nature and manner of such ex parte contacts which serve as a basis for Petitioner's allegations of denial of fundamental fairness.

17. Going further, the allegations set forth by ERDS in its Petition to the effect that "... 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 ..." sounds in a theory of conspiracy. As such, ERDS is required to plead with particularity the specific facts which constitute any such conspiracy. *Fritz v. Johnston*, 209 Ill. App. 2d 302, 317 (2004). Again, because of its failure to specify any facts whatsoever supporting this claim, the Petition is frivolous, and should be stricken and/or dismissed.

CONCLUSION

The fundamental fairness allegations set forth in the Petition filed by ERDS fall well below the very clear and express pleading requirements of Section 107.208 of the Rules of the

Illinois Pollution Control Board. The Petition contains only bare conclusions which, even in the context of an administrative proceeding, are insufficient to state a proper claim as a matter of law. As such, this Petition should either be dismissed or the allegations relating to a claimed denial of fundamental fairness should be stricken as being frivolous.

WHEREFORE, WILL COUNTY and the WILL COUNTY BOARD move that this Honorable Board strike and/or dismiss ERDS's Petition for Review, or, in the alternative, strike those allegations relating to a claimed denial of fundamental fairness, and for such other relief as the Board deems just and appropriate in the circumstances.

Respectfully submitted,

WILL COUNTY, ILLINOIS and WILL
COUNTY BOARD

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