

ILLINOIS POLLUTION CONTROL BOARD
April 7, 2011

AMERICAN DISPOSAL SERVICE OF)	
ILLINOIS, INC.,)	
)	
Petitioner,)	
)	PCB 11-60
v.)	(Third-Party Pollution Control Facility
)	Siting Appeal)
COUNTY BOARD OF MCLEAN COUNTY,)	
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) timely filed a petition (Pet.) 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 at 2148 Tri Lakes Road, Bloomington; 510 East Hamilton Road, Bloomington; and 2014 Bunn Street, Bloomington. For the reasons set forth below, the Board accepts the petition for hearing.

ADS's PETITION

Under the Environmental Protection Act (Act) (415 ILCS 5/39(c) (2008)), before the Illinois Environmental Protection Agency can issue a permit to develop or construct a new or expanding pollution control facility, the permit applicant must obtain approval for the site of the facility from the appropriate unit of local government, *i.e.*, the county board if in an unincorporated area or the governing body of the municipality if in an incorporated area. If the unit of local government approves the site, specified third parties may appeal the decision of the unit of local government to the Board. *See* 415 ILCS 5/40.1(b) (2008); 35 Ill. Adm. Code 107.200(b).

In this case, ADS appeals on multiple bases. First, ADS claims that the McLean County Board “did not have proper jurisdiction to conduct the local public hearings or make a decision on Henson’s siting Application” because “[t]he 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).

Under Section 39.2(a) of the Act, “[a]n applicant for local siting approval shall submit sufficient details describing the proposed facility to demonstrate compliance [with], and local

siting approval shall be granted only if the proposed facility meets” nine criteria. 415 ILCS 39.2(a) (2008) (listing criteria (i) - (ix)). ADS claims that “Criteria 1, 2, 3, 4, 5, 6, 7, 8, and 9 were not met by Henson” and that the McLean County Board’s “approval of Henson’s siting Application on those Criteria is not supported by the record and against the manifest weight of the evidence.” Pet. at 3. ADS further claims that the McLean County Board “did not make a finding as to Criterion 4, and incorrectly determined that Criterion 4 was not applicable.” *Id.*

Third, ADS claims that “the local siting review procedures, hearings, decision, and process, individually and collectively, were fundamentally unfair due to, at a minimum, the unavailability of the public record.” Pet. at 3.

THIRD-PARTY APPEAL

Section 40.1(b) of the Act (Act) (415 ILCS 5/40.1(b) (2008)) allows third parties to appeal a local government decision to approve the site of a pollution control facility if the third parties participated in the local government’s public hearing and are so located as to be affected by the proposed facility. *See* 415 ILCS 5/40.1(b) (2008); 35 Ill. Adm. Code 107.200(b). The petition for review must, among other things, specify the grounds for appeal and include a copy of the local government’s siting decision. *See* 35 Ill. Adm. Code 107.208. The third party must file the petition within 35 days after the local government approves siting. *See* 415 ILCS 5/40.1(b) (2008); 35 Ill. Adm. Code 107.204.

ADS’s petition states that it participated in the McLean County Board’s public hearings and that it is so located as to be affected by the proposed facility. Specifically, ADS states that it entered its appearance at and attended the siting hearing and, “through its attorneys, timely filed written comments” addressing Henson’s application. Pet. at 2. ADS further states that it “is a company that does business in McLean.” *Id.* As noted in the preceding section of this order, ADS has stated its grounds for the appeal, and it has included a copy of the McLean County Board’s decision approving the site. The petition meets the content requirements of 35 Ill. Adm. Code 107.208. In addition, ADS filed its petition within 35 days after the McLean County Board approved the site.

Unless the Board determines that the third party’s petition is “duplicative or frivolous,” the Board will hear the petition. 415 ILCS 5/40.1(b) (2008); 35 Ill. Adm. Code 107.200(b). An action before the Board is duplicative if it is “identical or substantially similar to one brought before the Board or another forum.” 35 Ill. Adm. Code 101.202. An action before the Board is frivolous if it is “a request for relief that the Board does not have the authority to grant” or “fails to state a cause of action upon which the Board can grant relief.” *Id.* No evidence now before the Board indicates that this action is duplicative or frivolous. *See* 415 ILCS 5/40.1(b) (2008).

For the reasons above, the Board accepts ADS’s petition for hearing.

HEARING AND DECISION DEADLINE

ADS has the burden of proof. *See* 415 ILCS 5/40.1(b) (2008); 35 Ill. Adm. Code 107.506. Hearings will be based exclusively on the record before the McLean County Board,

except that, if relevant, evidence may be introduced on (1) the local government's jurisdiction over the siting application and (2) the fundamental fairness of the procedures used by the local government in reaching its decision. *See* 415 ILCS 5/40.1(b) (2008); Land & Lakes v. IPCB, 319 Ill. App. 3d 41, 48, 743 N.E.2d 188, 194 (3d Dist. 2000).


Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40.1(a), (b) (2008)), which only Henson may extend by waiver (35 Ill. Adm. Code 107.504; *see also* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Henson "may deem the site location approved." 415 ILCS 5/40.1(a) (2008). Currently, the decision deadline is Wednesday, July 20, 2011, which is the 120th day after the Board received the petition. *See* 35 Ill. Adm. Code 107.504. The Board meeting immediately before the decision deadline is scheduled for Thursday, July 7, 2011.

McLEAN COUNTY BOARD'S RECORD

The McLean County Board must file the entire record of its proceedings within 21 days after the date of this order. *See* 35 Ill. Adm. Code 107.302. The record must comply with the content and certification requirements of 35 Ill. Adm. Code 107.304, 107.308. The Board stresses that "[t]he record must contain the originals or legible copies of all documents, must be arranged in chronological sequence, and must be sequentially numbered, placing the letter 'C' before the number of each page." 35 Ill. Adm. Code 107.304(b). In addition, the certification of record "must contain an index that lists the documents comprising the record and show the page number on which they start and end." 35 Ill. Adm. Code 107.308. ADS must pay to the McLean County Board the cost of preparing and certifying the record. 415 ILCS 5/39.2(n) (2008); 35 Ill. Adm. Code 107.306.

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 April 7, 2011, by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board