BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

AMERICAN DISPOSAL SERVICES OF ILLINOIS, INC,)
Petitioner,) PCB No. 11-60 (Third-Party Pollution Control Facility
v.	Siting Appeal)
COUNTY BOARD OF MCLEAN COUNTY, ILLINOIS; HENSON DISPOSAL, INC.; and TKNTK, LLC;	
Respondents.	j

HENSON DISPOSAL, INC. AND TKNTK, LLC'S REPLY IN SUPPORT OF 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, respectfully request that the Pollution Control Board grant their Motion to Reconsider ("Motion"). In support thereof, Respondents state as follows:

Petitioner claims in its response to the Motion to Reconsider that the Henson Respondents waived any argument related to new evidence because they stipulated to certain jurisdictional facts and because they could have discovered the new evidence at issue in the Motion to Reconsider. These arguments amount to an assertion that this tribunal should simply ignore relevant evidence, an approach which is illogical and contrary to sound public policy.

The stipulation referenced by Petitioner stated that there were no material facts related to jurisdiction "that any party believes will be identified." Pet'r Resp. at 2. This statement is not an unequivocal declaration that there were no material facts and certainly did not foreclose the possibility that such material facts might later be discovered, as they were here. Petitioner nonetheless argues that the PCB should ignore these material facts in favor of the stipulation. The PCB's rules related to motions for reconsideration, however, make it clear that the PCB should not ignore new evidence. Motions to reconsider are instead envisioned in precisely these

circumstances: when newly discovered facts require reconsideration of the original Order. 35 Ill. Admin. Code 101.902.

Petitioner's arguments regarding an alleged lack of diligence by Respondents in discovering the material facts related to actual notice of the siting application implicitly acknowledge that the Respondents did not in fact know of these material facts as of the time of the stipulation. Petitioner nonetheless argues that material facts should be ignored and urges the reliance on a stipulation that is now known to be inaccurate. This approach is counter to the PCB rules on reconsideration and should be rejected.

Petitioner's implications regarding the Henson Respondents' lack of diligence further beg the question whether, at the time the stipulated facts were being drafted, *Petitioner* had reason to know that the Gibsons had actual knowledge of the filing of the siting application. If Petitioner did not have such knowledge, then it is in no position to claim a lack of diligence by the Henson Respondents. If, on the other hand, Petitioner did know about the landowners' actual notice, then it negotiated stipulated facts in bad faith. In either case, public policy dictates that the PCB revisit its Order on summary judgment in light of the newly discovered evidence of actual notice.

Despite Petitioner's contention that actual notice is not relevant to the jurisdictional question, it nonetheless ironically argues that Respondents waived their actual notice argument because their counsel had *actual notice* of the PCB's ruling granting summary judgment. It is unclear what relevance Respondents' actual notice of the PCB's ruling has on the jurisdictional arguments raised in the Motion to Reconsider. As noted above, the landowners' actual notice of the proceeding was later-discovered evidence relevant to jurisdiction, which was not known to Respondents as of the time of the PCB's ruling. Thus, Respondents' actual notice of that ruling is simply not relevant to the present Motion.

Finally, Petitioner argues that Respondents' Motion should be denied because there is no affidavit from Mr. Gibson, the other landowner of the property at issue. The affidavit of Mr. Gibson is attached hereto as Exhibit 2.¹ This argument is therefore inapplicable. It is clear from the affidavits in support of Respondents' Motion that both landowners had actual notice of, and no objection to, the siting application.

WHEREFORE, for the reasons set forth herein and in their Motion to Reconsider, the Henson Respondents respectfully request that their Motion be granted and the Petitioner's motion for summary judgment be denied.

Dated: October 7, 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

¹ Mrs. Gibson's Affidavit was attached to the Motion to Reconsider as Exhibit 1. For ease of reference, Mr. Gibson's Affidavit has been marked as Exhibit 2. Petitioner argues that the affidavits are insufficient because they do not comply with Supreme Court Rule 191. Petitioner states that the affidavit of Mrs. Gibson fails to provide facts or documentation sufficient to support it. The affidavits, however, contain sworn statements of facts made on the personal knowledge of the affiants. *See* Mot. Reconsid. Ex. 1; Reply Ex. 2. The landowners' affidavits establish through their sworn statements that they are the owners of the parcel at issue and that they subscribe to the *Pantagraph*. The landowners rely on their own personal knowledge, and are competent to testify to the admissible facts contained in their affidavits. They are not testifying in reliance on any documents which would be required to be attached to the affidavits.

AFFIDAVIT

STATE OF ILLINOIS):	
) 5	SS
COUNTY OF MCLEAN)	

THOMAS D. GIBSON, being first duly sworn upon oath, states that he 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.

Thomas D. Gibson

Subscribed and sworn to before me this / day of October 2014

OFFICIAL SEAL
JENNY CAPODICE
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES SEP. 16, 2015

Notary Public

Error! Unknown document property

EXHIBIT

AFFIDAVIT OF SERVICE

The undersigned certifies that on October 7, 2014, she served a copy of the foregoing Henson Disposal, Inc., and TKNTK, LLC's Reply in Support of Motion to Reconsider upon the following:

For Petitioner - Clark Hill, PLC

Attorney Jennifer J. Sackett Pohlenz Clark Hill, PLC 150 N. Michigan Avenue Suite 2700 Chicago, IL 60601 (312) 985-5912 Fax - (312) 985-5971

For Respondent – Rammelkamp Bradney, P.C.

Attorney Amy L. Jackson Rammelkamp Bradney, P.C. 232 West State Street P.O. Box 550 Jacksonville, IL 62651 (217) 245-6177 Fax - (217) 243-7322

For Respondent – County Board of McLean County

Kathy Michael – County Clerk 115 E. Washington Street, Room 102 P.O. Box 2400 Bloomington, IL 61702-2400

For Respondent – County Board of McLean County

Matt Sorensen – County Board Chairman 115 E. Washington Street – Room 102 P.O. Box 2400 Bloomington, IL 61702-2400

For Respondent – County Board of McLean County

Hannah R. Eisner, Assistant State's Attorney – Civil Division 115 E. Washington Street – Room 102 P.O. Box 2400 Bloomington, IL 61702-2400

For Respondent – McLean County State's Attorney

State's Attorney William A. Yoder 104 W. Front Street Room 605 Bloomington, IL 61702-2499

For Respondent -

Attorney Richard T. Marvel 202 N. Center Street, Suite 2 Bloomington, IL 61701 (309) 829-9486

by depositing a copy thereof, enclosed in an envelope, in the United States Mail at 100 Park Avenue, Rockford, Illinois 61105, proper postage prepaid, at or about the hour of 5:00 o'clock p.m., addressed as above.

HINSHAW & CULBERTSON LLP 100 Park Avenue P.O. Box 1389 Rockford, IL 61105-1389 815-490-4900