

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

|                                       |   |                                                |
|---------------------------------------|---|------------------------------------------------|
| <b>Kenda C. Hess, Theresa Adams,</b>  | ) |                                                |
| <b>Lori Shields, John and Joyce</b>   | ) |                                                |
| <b>Borchers, Lois Rooney, Charles</b> | ) |                                                |
| <b>Archibald, Yolanda</b>             | ) |                                                |
| <b>Taylor-Hudson, and Mary Mann</b>   | ) |                                                |
| <b>Reifsteck,</b>                     | ) |                                                |
|                                       | ) |                                                |
| <b>Petitioners,</b>                   | ) | <b>PCB 2027-002</b>                            |
|                                       | ) | <b>(Third-Party Pollution Control Facility</b> |
|                                       | ) | <b>Siting Appeal)</b>                          |
| <b>v.</b>                             | ) |                                                |
|                                       | ) |                                                |
|                                       | ) |                                                |
| <b>Area Disposal Service, Inc.,</b>   | ) |                                                |
| <b>And Village of Rantoul,</b>        | ) |                                                |
|                                       | ) |                                                |
| <b>Respondents.</b>                   | ) |                                                |

**PETITIONERS' RESPONSE IN OPPOSITION TO RESPONDENT AREA DISPOSAL SERVICE, INC.'S MOTION TO DISMISS PETITIONERS' PETITION**

Petitioners Kenda C. Hess (“Hess”), Theresa Adams (“Adams”), Lori Shields (“Shields”, John and Joyce Borchers (collectively, “Borchers”), Lois Rooney (“Rooney”), Charles Archibald (“Archibald”), Yolanda Taylor-Hudson (“Taylor-Hudson”), and Mary Mann Reifsteck (“Reifsteck”), hereinafter collectively referred to as “Petitioners”, by and through this Response, individually and collectively oppose the Motion to Dismiss Petition for Hearing (the “Motion”) filed by Respondent Area Disposal Service, Inc. (“Area Disposal”). For the reasons that follow, the Motion should be denied in its entirety.

**INTRODUCTION**

With its Motion, Area Disposal calls on the Illinois Pollution Control Board (the “Board”) to strip Illinoisians of their statutory right to appeal a local siting decision as third parties, thereby gutting Section 40.1(b) of the Illinois Environmental Protection Act (the “Act”), 415 ILCS 5/40.1(b). Area Disposal asks the Board to find that Petitioners, who attended the local siting hearing, spoke on the record, and/or otherwise participated in it, nonetheless lack standing to seek the Board’s review because a municipal ordinance drafted to define who may act as a formal

“party” with cross-examination and rebuttal rights at the local siting hearing is, according to Area Disposal, the exclusive gateway to the entirely separate statutory third party right of appeal under Section 40.1(b) of the Act. No Illinois court, and no prior decision of this Board, has adopted that strained interpretation of the statute.

To the contrary, and as Area Disposal itself concedes, the Board has repeatedly held that “mere attendance” at a public hearing is sufficient to establish “participation” for purposes of third party standing under Section 40.1(b). (See Mot. at 7–8 (citing *Valessares v. County Board of Kane County*, PCB 87-36 (July 16, 1987); *Zeman v. Village of Summit*, PCB 92-174, PCB 92-177 (consol.) (Dec. 17, 1992); *Amer. Disposal Servs. of Illinois, Inc. v. County Bd. of McClean County, Illinois*, PCB 11-60 (Feb. 16, 2012)). Area Disposal asks the Board to abandon that settled standard based on a single 2012 appellate decision (*Stop the Mega-Dump*) that addressed an entirely different question—whether a siting authority’s procedures for recognizing formal, actively-litigating “parties” rendered a hearing fundamentally unfair—and that nowhere purported to redefine, let alone narrow, the statutory standing conferred to third parties by Section 40.1(b).

Area Disposal also argues that certain Petitioners, whose participation in the hearing was, according to Area Disposal, only by submitting written public comments, lack standing because such participation does not qualify for purposes of standing. As a threshold matter, the full nature of Petitioners’ participation is a factual issue that has not yet been fully developed and is therefore not ripe for adjudication at the pleading stage. Moreover, this argument asks the Board to resolve the pleadings in favor of Area Disposal when, at the pleading stage, they must be resolved in favor of Petitioners. Further, Petitioners acknowledge the Board’s precedent that, generally, submitting a written public comment alone does not qualify as participation for standing purposes under Section 40.1(b) of the Act. But, here, submission of written public comment does qualify as participation requisite for standing because Respondent Village of Rantoul’s (the “Village’s”) Ordinance 2796 made such comments part of the public hearing record and restricted a third party’s ability to participate beyond submission of written public comments. It would be unfair and inconsistent with the Act to hold that Petitioners’ submission of thoughtful, written, public

comments does not count as participation for the purposes of standing when, on the face of the Village's Ordinance 2796, they were prohibited from other forms of participation on the record.

Finally, Petitioners' fundamental fairness allegations do not fail as a matter of pleading or law. The Petition identifies specific record citations describing prefiling communications between Area Disposal and Village staff and consultants, and specific public statements made at the June 16, 2026 Special Meeting at which the siting application was approved, together with a link to the video recording of that meeting. Those allegations, taken as true as they must be on a motion to dismiss, are sufficient to state a claim. Whether they ultimately prove fundamental unfairness due to prejudgment is a question for the merits, not the pleadings. And Area Disposal's forfeiture argument suffers the identical defect: it asks the Board to conclude, without any evidentiary record, that individual residents "knew or should have known" the specific facts underlying non-public prefiling communications between the Applicant and Village officials in time to object before the vote—a factual question this Board cannot resolve on the pleadings.

For these reasons, set forth more fully below, the Board should deny Area Disposal's Motion in its entirety.

#### **BRIEF FACTUAL AND PROCEDURAL BACKGROUND**

Petitioners incorporate by reference the factual background set forth in their Petition and, for the Board's convenience, highlight the following facts material to this Response:

1. On June 10, 2025, the Village passed Ordinance 2796, "An Ordinance Amending Chapter 28 'Solid Waste' of the Rantoul Code In Connection With Pollution Control Facilities" because "a proposal for a pollution control facility has been made to locate such a facility within the Village." (Mot. at Ex. A, Ordinance 2796). Hereinafter, Chapter 28 "Solid Waste" of the Rantoul Code, as amended by Ordinance 2796, is referred to as "Ordinance 2796."
2. On December 22, 2025, Area Disposal submitted an application for siting approval for a recycling and transfer station to be located at 896 West Champaign Avenue in Rantoul (hereinafter, the "Rantoul Transfer Station" or "RTS").

3. On March 24, 2026, Area Disposal sent, via certified mail, a Notice of Public Hearing for the application for the RTS to the Village of Rantoul, certain elected officials representing residents of Rantoul, the Champaign County Board, Illinois Environmental Protection Agency and certain businesses, members of the public and/or property owners located in the Village of Rantoul, which, among other things, made them aware that:
  - a. The public hearing concerning the application would commence on April 17, 2026 at 9:00am;
  - b. “Individuals who attend the public hearing in person will be given an opportunity to make limited oral public comment;” and
  - c. “The Village of Rantoul is intending to livestream the public hearing at: <https://myrantoul.com/507/Live-Streaming-Video>.” (C1588 at ¶5; C1591-1592).<sup>1</sup>
4. On March 27, 2026, Area Disposal published a Notice of Public Hearing for the application for the RTS in the News-Gazette, a daily newspaper of general circulation in Champaign County, including the Village of Rantoul, and which, among other things included that:
  - a. The public hearing would commence on April 17, 2026 at 9:00am;
  - b. “Individuals who attend the public hearing in person will be given an opportunity to make limited oral public comment;” and
  - c. “The Village of Rantoul is intending to livestream the public hearing at: <https://myrantoul.com/507/Live-Streaming-Video>.” (C1587; *see also* C1589 at ¶6).
5. On April 17, 2026, the Village conducted a public hearing on Area Disposal’s application for local siting approval of its proposed RTS (hereinafter, the “Hearing”). (C1330-1531).
6. Petitioners stated in their Petition that “[p]ursuant to Ill. Admin. Code §§ 107.200, 107.208(b)” they “are proper petitioners” that “participated in the local siting proceedings [the Hearing]....” (Petition at 44-45).

---

<sup>1</sup> References to the Record certified by the Village Clerk on August 25, 2026 and filed by the Village into the record in this matter (PCB 2027-002) on August 26, 2026 are cited as “C####” herein.

7. At the Hearing, the Hearing Officer opened the floor to live oral public comment, explaining that he did so to “promote fundamental fairness,” and enlarged the ordinarily applicable public comment time-limit from three minutes per person to five minutes per person, while declining to impose the thirty-minute cap on total public comment that ordinarily applies at Village Board meetings. (C1889-1890; C1344; C1911, Finding No. 40). The Hearing Officer further reported that, “[t]hough no individual had registered pursuant to sec 28-110 of the [the Village’s] Ordinance [2796]” as a party to the local siting approval proceeding, he invited the public to participate by opening “the floor for live public comment at the Hearing and announced the ability to provide such comment throughout the Hearing.” (C1889; *see also* C1344 (“As I [the Hearing Officer] mentioned, though there were not any formal appearances filed prior to the hearing, this is one area where I have made the decision in fundamental fairness to permit individuals here to speak at this hearing if they would like to be heard”)).
8. Nine members of the public spoke at the Hearing and gave oral public comment. (C1504-1525; C1890). Petitioners Hess, Adams, and Shields were among those who provided oral public comment on the record at the Hearing. (C1509-1514; C1521-1525).
9. At the Hearing, the Hearing Officer further advised the public and the parties that there is an opportunity for submission of written public comment in the 30 days following the Hearing. (C1345, C1525, C1529; C1504-1505). According to the Hearing Officer, the Village received written comments from the public and Area Disposal through May 18, 2026. (C1890).
10. Following the Hearing, Petitioners Adams, Borchers, Rooney, Archibald, Taylor-Hudson, and Reifsteck,<sup>2</sup> timely submitted written public comments on or before May 18, 2026. (C1806-1813; C1823; C1843-1845; C1854-1860; C1876).
11. On June 16, 2026, the Village held a Special Meeting where three Village Trustees voted in opposition of approving the RTS with conditions. (Petition at Ex. 3; C1940-1942). Three Village Trustees and the Village Mayor voted to approve the RTS with conditions. *Id.* The

---

<sup>2</sup> Petitioner Mary Mann Reifsteck’s written public comment does not appear in the record available to Petitioners. Petitioner pled that she believes that her written public comment was submitted on or about May 15, 2026, a few days before the May 18, 2026 deadline. (Petition at 45).

result of the vote was that the Village approved with conditions Area Disposal's application for the RTS. *Id.*

12. On July 21, 2026, Petitioners, collectively and individually, timely filed a Petition for a Hearing to Contest the Village of Rantoul's Approval of Area Disposal's RTS with the Board.

### **ARGUMENT & AUTHORITIES**

#### **I. Area Disposal's Motion Should Be Denied Because Petitioners Have Standing to Pursue This Third Party Appeal.**

##### ***A. The Board's Established "Mere Attendance" Standard—Not the Village's Ordinance Definition of "Party"—Governs Standing Under Section 40.1(b).***

Area Disposal argues that Petitioners, as **third parties**, do not have standing to petition the Board for review because they did not participate in the Hearing as **parties** pursuant to the Village's Ordinance 2796, which provides procedures for the Hearing. Area Disposal knows better. It knows that this argument is wholly contrary to the Act and well settled precedent established by this Board.

Section 40.1(b) of the Act grants a right to appeal a local siting decision to any "third party" who "participated in the public hearing" on a siting application. 415 ILCS 5/40.1(b). The Board has long and consistently construed "participated in" to require nothing more than a third party's "mere attendance" at the hearing. *See, e.g., Valessares*, PCB 87-36 (July 16, 1987); *Zeman*, PCB 92-174, PCB 92-177 (consol.) (Dec. 17, 1992); *Amer. Disposal Servs. of Illinois, Inc.*, PCB 11-60 (Feb. 16, 2012), 2012 WL 586817 at \*33; *Board of Trustees of Casner Township, Jefferson County Illinois, et al.*, PCB 84-175, PCB 84-176 (consol.) (April 4, 1985), 1985 WL 21285, at \*5. Area Disposal does not dispute that it has been the Board's consistent position that attendance at the public hearing is sufficient to establish standing to appeal; it asks the Board to drastically depart from it. *See Mot.* at 7. Area Disposal's exclusive basis for ignoring the Board's well settled law is the court's holding in *Stop the Mega-Dump v. Board of De Kalb County*, 2012 IL App (2d) 110579 as applied to the Village's Ordinance 2796. But neither *Stop the Mega-Dump* or Ordinance 2796 construe, apply, or even discuss the "mere attendance" line of Board precedent or address a third party's Section 40.1(b) standing at all.

The question presented in *Stop the Mega-Dump* was whether a county board's ordinance, which defined a narrow class of "participants" entitled to actively litigate at the hearing itself, such as by presenting evidence and cross-examining witnesses, rendered the county board's public hearing fundamentally unfair to a citizens' group that sought broader participation rights. *Stop the Mega-Dump*, 2012 IL App (2d) 110579, ¶¶ 40–47. The court held that the county's procedures for participation did not render the hearing unfair, in part because the county's procedures were, if anything, more generous and provided more opportunities for public citizens to litigate at the hearing than the Act itself requires, and because the hearing officer had relaxed the ordinance's limitations to allow greater public participation at the hearing. *Id.* ¶¶ 44–46. Thus, the county's ordinance and related procedures had not "prevented any person who wished to participate in the siting proceedings from doing so." *Id.* ¶47. Nowhere did the court hold, or even suggest, that a local siting authority's municipal definition of who may formally litigate as a "party" also defines—and can narrow—who has "participated in the public hearing" for purposes of the, entirely separate, standing inquiry under Section 40.1(b) of the Act. That distinction is not a technicality; it is dispositive.

Here, the Village's Ordinance 2796 sets forth procedures, such as filing an appearance 10 days in advance of a public hearing, that any "qualified person or entity (other than the applicant)" must follow if that person or entity "desires to participate in the public hearing **as a party** []" (Mot. at Ex. A, Ordinance 2796 at §28-110(A) (emphasis added)). Under Section 28-110 (B)-(D), participating as an actual party grants that party greater, "active[]," participation rights at the hearing than those afforded to third parties that did not file an appearance 10 days in advance of the hearing. *Id.* at (D). For example, a party has the right to present testimony and cross-examine witnesses at the hearing. *Id.* at (B)-(C). A third party, on the other hand, may only attend the hearing or submit written public comment. *See Id.* at (D); *see also* §28-113 ("The public hearing shall be open to the public").

There is nothing in Section 28-110 or any other part of Ordinance 2796 that prohibits third parties, like Petitioners, from bringing the "third party" appeal expressly allowed under Section 40.1(b) of the Act. Indeed, Area Disposal's contorted interpretation of the Act and the Village's

Ordinance 2796 to mean that only a **party** to the proceeding, as defined by Section 28-102 of the Ordinance 2796, could ever have standing to bring a **third party** appeal under Section 40.1(b) of the Act is not reasonable or fundamentally fair. It is also plainly contrary to the text of Section 40.1(b), which allows “third parties”, i.e., persons who were not parties to the hearing, to appeal a local siting decision. 415 ILCS 5/40.1(b).

A local siting authority like the Village may adopt its own hearing procedures only “so long as those rules are fundamentally fair and not inconsistent with the Act.” *Stop the Mega-Dump*, 2012 IL App (2d) 110579, ¶ 12. A local ordinance provision that has the effect of stripping third party participants in a public hearing of the appeal rights the Illinois General Assembly conferred to them in Section 40.1(b) of the Act—simply because they did not satisfy an unrelated, ten-day advance-filing requirement created to manage active litigation party status at the hearing—is entirely inconsistent with the Act and fundamentally unfair. If a municipality or county could define third party “participation” for purposes of Section 40.1(b) however narrowly it chose through its own local ordinance, it could effectively insulate its siting decisions from this Board’s review altogether—an outcome flatly at odds with the Illinois General Assembly’s decision to make this Board, not the local siting authority, the arbiter of whether a member of the public or other third parties may appeal. And, it is an outcome that obviously frustrates the Act’s emphasis on encouraging public participation, as the Board has previously explained on multiple occasions:

“... the question is whether this ‘mere’ attendance is sufficient. The Board believes that it is. One of the clear purposes of the county level hearing requirement...is to encourage public participation in siting decisions. Allowing public access to environmental proceedings and the (sic) encouraging citizen participation are some of the fundamental policies of the Act. To require some higher level of ‘participation’ for a third party appeal would discourage that clear policy.”

*Zeman*, PCB 92-174, PCB 92-177 (consol.) (Dec. 17, 1992), 1992 WL 404121, at \*4 (quoting *Board of Trustees of Casner Township, Jefferson County Illinois*, PCB 84-175, PCB 84-176 (consol.) (April 4, 1985), 1985 WL 21285, at \*5). The Village’s Ordinance 2796 is a permissible mechanism for organizing who may formally litigate as a “party” at the hearing; it is not, and cannot be, a

mechanism by which the Village and Area Disposal may contract away this Board's statutory appellate jurisdiction or Petitioners' right of third party appeal.

Therefore, Area Disposal's motion should be denied in its entirety. Alternatively, it should be denied at least as to Petitioners Hess, Adams, Shields, and John and Joyce Borchers, because even at this early pleading stage without a fully developed record, the evidence shows they attended the Hearing, and their attendance is all that is required to establish standing under Section 40.1(b) of the Act. (C1509-1514; C1521-1525; Ex. A, Declaration of John Borchers; Ex. B, Declaration of Joyce Borchers).

***B. Petitioners Hess, Adams, and Shields also Participated in the Hearing By Making Oral Public Comments.***

Area Disposal argues that even Petitioners Hess, Adams, and Shields, who not only attended the Hearing but also provided oral comment on the record at the Hearing, do not have standing because they did not register to participate as parties ten days in advance of the Hearing under the Village's Ordinance 2796. This argument is illogical and contrary to the Act, as discussed in Section I(A), above. It also ignores the reality that, despite Ordinance 2796, Petitioners Hess, Adams, and Shields were allowed to actively participate by giving oral comments, on the record at the Hearing, as to why the application for the RTS did not meet the requisite criteria for approval on the record at the Hearing. (C1509-1514; C1521-1525).

Thus, even if something more than mere attendance were required to participate sufficient for standing—it is not—the Petition states and the record establishes that Petitioners Hess, Adams, and Shields did far more than merely attend. They spoke in opposition to the RTS, under the Hearing Officer's express invitation, at the Hearing on the record. (Petition at 44-45; C1509-1514; C1521-1525). Despite Ordinance 2796's restriction of third party participation to mere attendance of the Hearing and written public comment, the local Hearing Officer opened the floor to oral public comment specifically "to promote fundamental fairness." (C1889). Moreover, Area Disposal itself notified the public via publication in a newspaper and via direct mail to the Village and certain members of the public that "[i]ndividuals who attend the public hearing in person will be given an opportunity to make limited oral public comment." (C1587; C1591). Having invited

and received oral public comment as part of the very record on which the Village Board based its decision, Area Disposal cannot now credibly or fairly maintain that speaking at the Hearing does not count as participating in it. At an absolute minimum, the Motion should be denied as to Petitioners Hess, Adams, and Shields.

***C. Petitioners' Standing Should Not Be Resolved at the Pleading Stage.***

Area Disposal's motion should also be denied as to all Petitioners because it asks the Board to dismiss Petitioners' well plead Petition now, at the pleading stage, prior to the development of the record and evidence concerning Petitioners' standing and the fundamental fairness of the Hearing procedures related to Petitioners' participation. Petitioners' standing is therefore not ripe for adjudication.

A petition for review of a local siting decision must include a "statement as to how the filing party is a proper petitioner under Section 107.200...." 35 Ill.Adm.Code 107.208 (b). Under Section 107.200, "[a]ny person who has participated in the public hearing conducted by the unit of local government and is so located as to be affected by the proposed facility may file a petition for review of the decision to grant siting." 35 Ill.Adm.Code 107.200. Sections 107.208 and 107.200 do not establish a heightened fact pleading standard. Rather, unless the Board determines that a petition is "duplicative or frivolous," the Board will hear the petition. 415 ILCS 5/40.1(b); 35 Ill.Adm.Code 107.200(b); *see also Sierra Club and Jim Bensman v. City of Wood River and Norton Environmental*, PCB 98-43 (November 6, 1997), 1997 WL 728170 at \*1-2. An action is frivolous if it is "a request for relief that the Board does not have the authority to grant, or a complaint that fails to state a cause of action upon which the Board can grant relief." 35 Ill.Adm.Code 101.202. In assessing the sufficiency of pleadings, this Board has previously recognized that "pleading requirements for administrative review are less exacting than for other causes of action." *Sierra Club*, PCB 98-43 (November 6, 1997), 1997 WL 728170 at \*2 (citing *Mueller v. Board of Fire and Police Commissioners of the Village of Lake Zurich*, 267 Ill.App.3d 726, 733-734 (2nd Dist. 1994)). A petitioner is not required "to plead all facts specifically in the petition, but to set out ultimate facts which support his cause of action." *Id*; *Amer. Disposal Servs. of Illinois, Inc.*, PCB

11-60 (Feb. 16, 2012), 2012 WL 586817 at \*32. In ruling on a motion to dismiss, the Board draws all reasonable inferences from well-pled allegations in favor of the non-movant. *See Amer. Disposal Servs. of Illinois, Inc.*, PCB 11-60 (Feb. 16, 2012), 2012 WL 586817 at \*33; *Environmental Recycling and Disposal Services, Inc., v. Will County, Illinois; Will County Board; and Waste Management of Illinois, Inc.*, PCB 16-76 (March 3, 2026), 2016 WL 4400835, at \*5.

Here, each Petitioner pled that they “are proper petitioners” that “participated in the local siting proceedings” (Petitioner at 44-45). These are the ultimate facts which support their standing to bring this petition for review, i.e., cause of action. This Board has already reviewed the Petition and determined that it “states that the petitioners participated in the Village of Rantoul’s public hearing and that the nine petitioners are so located as to be affected by the proposed facility. Petitioners specify the grounds for the appeal and include a copy of the Village of Rantoul’s siting decision. The petition appears to meet the content requirements of 35 Ill. Adm. Code 107.208.” *Hess, et al. v. Area Disposal, et al.*, PCB 27-02 (August 6, 2026).

Area Disposal does not acknowledge the Board’s Order. Instead, Area Disposal attempts to leapfrog the Board’s Order and the pleading stage altogether by asking the Board, prior to the full development of the facts and evidence in this matter, to delve into the merits of whether each Petitioner’s participation activities were sufficient to render them proper petitioners. But, it would be improper and unfair to rule, on the pleadings alone, that Petitioners did not adequately participate in the hearing and therefore lack standing to bring their Petition. All of the facts and evidence as to each Petitioners’ participation in the hearing and standing are not necessarily included in the record filed by the Village or in Petition. Nor is such detailed evidence required to have been included. *E.g.*, *Sierra Club*, PCB 98-43 (November 6, 1997), 1997 WL 728170 at \*2 (“Illinois is a fact-pleading state and, as such, does not require petitioner to plead all facts specifically in the petition, but to set out ultimate facts which support his cause of action”); *Amer. Disposal Servs. of Illinois, Inc.*, PCB 11-60 (Feb. 16, 2012), 2012 WL 586817 at \*32.

In *Velassares*, applicant Waste Management brought a similar motion to dismiss arguing that one of the petitioners lacked standing because he “did not participate in the county level proceedings in a manner that confers standing to appeal” as he “did not participate in the county

level hearing” and his “post-hearing written filing” did not qualify as participation. *Peter Velassares and Edward F. Heil, Petitioners, Richard L. Cooper, Peter Cooper and Tobey Cooper, Intervenor, v. the Cnty. Board of Kane Cnty., Illinois, and Waste Management of Illinois, Inc., Respondents* (PCB 87-36, April 30, 1987), 1987 WL 124856, at \*1. The petitioner responded that “he participated in the manner prescribed in Section 39.2(c) of the Act and in accordance with the procedures suggested by the Kane County hearing officer at the hearing. [He] also states that his post-hearing written public comment was docketed and incorporated as part of the record of proceedings before the Kane County Board.” *Id.* The Board denied the motion because:

[i]t is apparent from the motions and briefs that the issues raised involve mixed questions of law and fact. While the parties provided a limited stipulation of facts in order to dispose of these issues, the factual record before the Board is presently inadequate. The issue of [petitioner’s] participation is in factual dispute regarding both degree and effect and could be intertwined with the fundamental fairness of the hearing procedure, in light of the hearing officer’s statements on ‘participation’....These factual issues should be addressed at the scheduled Pollution Control Board hearing. [Waste Management] is at liberty to renew its motion to dismiss after an opportunity to develop a sufficient factual record has been afforded. *Id.*

Here, too, Petitioners’ standing raises questions of fact regarding at least (1) the nature of Petitioners’ participation; and (2) the effect the fundamental fairness of the Hearing procedures had on their participation.

**1. The factual record of the extent of Petitioners’ participation in the Hearing is not yet fully developed.**

First, Petitioners Borchers, Rooney, Archibald, Taylor-Hudson, and Reifsteck do not now “concede that their sole involvement in this case was filing (or possibly filing, in the case of Reifsteck) written public comment,” as Area Disposal mistakenly claims. Mot. at 8. The Petition does not necessarily state all of the ways in which Petitioners participated in the Hearing or provide all of the details concerning their participation, nor does it need to. *See Sierra Club*, PCB 98-43 (November 6, 1997), 1997 WL 728170 at \*2. The Petition states that “[p]ursuant to 35 Ill. Admin. Code §§ 107.200, 107.208(b)”, Petitioners Borchers, Rooney, Archibald, Taylor-Hudson, and Reifsteck “are proper petitioners” that “participated in the local siting proceedings” and then goes

on to describe their written public comments as an example of their participation. (Petition at 44-45). Those statements are sufficient to give notice of the basis of their standing and gives Area Disposal what it needs to learn the full contours of their participation and build an affirmative defense. That is all that is required at this pleading stage, as this Board already found. *Hess, et al. v. Area Disposal, et al.*, PCB 27-02 (August 6, 2026); *see also Velassares*, PCB 87-36 (April 30, 1987), 1987 WL 124856. By asking the Board to find that those Petitioners' written comment was their only method of participation and that such comment does not qualify to give them standing under the circumstances present here, Area Disposal impermissibly asks the Board to draw inferences from the pleadings in favor of it and against Petitioners, when the opposite is what is required. *See Amer. Disposal Servs. of Illinois, Inc.*, PCB 11-60 (Feb. 16, 2012), 2012 WL 586817 at \*33.

Petitioners' attendance at the Hearing, and their participation in it beyond submission of a written comment, are fact-driven inquiries that cannot be resolved on the face of the Petition or the record of the local siting hearing, especially where there was no record of the attendance of third parties taken at the Hearing. (*See generally* C1-1964). By way of example, as the more fully developed factual record will ultimately reflect, Petitioners John and Joyce Borchers not only submitted written comments, they also attended the Hearing, which is sufficient participation in it to give them standing.<sup>3</sup> (Ex. A, Declaration of John Borchers; Ex. B, Declaration of Joyce

---

<sup>3</sup>Joyce Borchers attended the Hearing virtually via the Village's livestream. (Ex. B, Declaration of Joyce Borchers). Whether her virtual attendance qualifies as participation requisite for standing is yet another issue that should not be determined on the face of the pleadings, without development of the record. It does not appear that the Board or any reviewing appellate court has directly addressed the question of whether virtual attendance of a hearing qualifies as sufficient participation to give a third party standing to appeal under the Act. There are several compelling reasons that the Board should find that it does. First, the Village sponsored the livestream and made it available to the public live, throughout the entirety of the Hearing, and afterwards making, or at least giving the impression that, it was an official location where the public could attend the Hearing. Second, Area Disposal itself gave the public advanced written notice of the Village's virtual livestream of the Hearing and even provided the public with the link to the location of the livestream. (C1587; C1592). Third, virtual attendance is consistent with the Act's fundamental purpose of encouraging public participation—especially for the working public that may not be able to take off a full day for a hearing they had no part in scheduling, families that are unable to obtain childcare, as well as senior citizens and individuals with physical health and mobility problems. Fourth, since the Covid-19 pandemic, the public has grown accustomed to participating in important societal matters, such as court hearings and school, virtually via livestream and video conference. Just as in the courtroom or the classroom, virtual attendance of the Hearing is no less important than physical attendance and requires the same amount of time and attention.

Borchers.) Thus, just as in *Velassares*, the Board should deny Area Disposal's Motion as to all Petitioners because the factual record has not been fully developed and the issue of their standing is therefore not ripe for adjudication.

**2. Here, written public comment fairly qualifies as participation requisite to establish standing.**

Second, Petitioners Borchers, Rooney, Archibald, Taylor-Hudson, and Reifsteck are mindful of the authority Area Disposal cites on the point that, generally, submission of post-hearing written public comment alone is not sufficient participation in a local siting hearing to give a commenter standing. But, Petitioners submit that authority should not be applied under the circumstances here—at least not at the pleading stage where the record and evidence are not yet fully developed, as discussed further in Section I(C)(1), above. A peek at some of the merits and the Village's procedures demonstrate why, here, submission of written public comment should qualify as having participated in the Hearing pursuant to Section 40.1(b) of the Act.

The Village's Ordinance 2796 mandates Hearing procedures that make timely submitted written public comments count as participation in the Hearing. Ordinance 2796 makes Petitioners' written comments part of the record of the public hearing itself: "[a]ny written comment received by the Village Clerk or postmarked not later than thirty (30) days after the last date of the public hearing ***shall be made part of the record of the public hearing....***" (Mot. at Ex. A, Ordinance 2796 at §28-155(C) (emphasis added); *see also* §28-116(A)-(B)(5)). And, under Ordinance 2796, the Village is required to consider such written public comments in reaching its final determination on the application. (*Id.* at §28-115(C); *see also* C-1336-1337.) Area Disposal notified the public that any timely received written comment "shall be made a part of the record." (C902; C922). The local Hearing Officer further suggested that written public comments had equal weight to oral public comments given at the Hearing, certainly giving the impression that submission of written comments is a way that the public can participate in the Hearing. (*E.g.*, C1344-1345, C1525, C1529; C1503-1505; C1525). For example, at the conclusion of the oral public comment the local Hearing Officer instructed "[i]s there anyone else wishing to give public comment at this time? As a probably fifth reminder, there is a 30 day period of time following the closure of this hearing for

written public comment to be submitted to the clerk which will become part of the written record that is transmitted by me to the board for their consideration.” (C-1525).

Additionally, contrary to the Act’s encouragement of public participation of third parties in local siting hearings, Ordinance 2796 further provides that “[o]nly the applicant and other parties who have complied with this section can actively participate in the public hearing. All other persons and entities are limited to submitting written comments as allowed in section 28-119.” (Mot. at Ex. A, Ordinance 2796 at §28-110(D)). Especially because section 28-119 says nothing about the submission of written comments, it is fair for third parties, like Petitioners, to understand from the face of Ordinance 2796 that the only way they can participate in the hearing on the record, is by submitting written comments.<sup>4</sup> Under these circumstances, it would be fundamentally unfair to hold that submission of written comments alone is insufficient participation to establish standing. Moreover, similar to the arguments the Board considered in *Velassares*, this fundamental fairness argument illustrates why Petitioners’ standing should be resolved on the merits, after development of the evidence, not determined on the face of their Petition. See *Velassares*, PCB 87-36 (April 30, 1987), 1987 WL 124856. (“The issue of [petitioner’s] participation is in factual dispute regarding both degree and effect and could be intertwined with the fundamental fairness of the hearing procedure”).

In sum, the Board should deny Area Disposal’s Motion because Petitioners sufficiently pled that they participated in the Hearing and the issue of whether their methods of participation, in the context of the Village’s Ordinance 2796, are sufficient to give them standing is not ripe for adjudication at the pleading stage. Alternatively, Petitioners should be granted leave to amend their Petition to add further explanation of their participation.

## **II. Area Disposal’s Motion Should Be Denied Because Petitioners Adequately Pled Fundamental Fairness.**

Area Disposal argues that Petitioners’ fundamental unfairness basis for appeal should be dismissed for failure to plead facts of prejudgment. But the very fact-pleading standard the Area

---

<sup>4</sup> Although certain of Area Disposal’s public notices subsequently notified the public that limited oral public comment would be accepted at the Hearing, the existence of the contrary Ordinance renders the participation procedures unfairly confusing.

Disposal invokes to make this argument is satisfied here. *See Selby v. O'Dea*, 2020 IL App (1st) 181951, ¶ 59. The Petition lays out well pled facts and does not rest on bare conclusions of law as Area Disposal argues. It identifies specific transcript pages—"R-1342-1343" and "R-1443-1444"<sup>5</sup>—describing prefilng review of the RTS Application by Village staff and an outside consultant, and it identifies a specific, named, public meeting, the June 16, 2026 Special Meeting, at which Petitioners allege that Village Trustees, officials, and their representatives made statements bearing on prejudgment and bias, supported by a citation to the video recording of that meeting. (Petition at 42–43.) That is materially more than the "bare, unsupported allegations" rejected in *Residents Against a Polluted Environment v. Illinois Pollution Control Board*, 293 Ill. App. 3d 219, 225 (3d Dist. 1997) where the petition failed to name even the parties involved in their bias claim,<sup>6</sup> and more than the wholly conclusory pleading at issue in *Kaczka*, which had nothing to do with fundamental fairness allegations or an application for local siting approval, and where the petitioner identified no specific supporting evidence whatsoever. *See Kaczka v. Ret. Bd. of Policemen's Annuity & Ben. Fund of City of Chicago*, 398 Ill. App. 3d 702 (2010).

Petitioners' Petition is also far more factually detailed than petitions the Board has previously held sufficiently stated a claim. *E.g.*, *Timber Creek Homes, Inc., Petitioner v. Village of Round Lake Park, Round Lake Park Village Board and Groot Industries, Inc., Respondent*, 2014 WL 1117954, at \*1 (petitioner's bias and prejudgment claim was sufficient where petition stated "members of the Village Board prejudged the Application and were biased in favor of Groot [the applicant]."); *Environmental Recycling and Disposal Services*, PCB 16-76 (March 3, 2026), 2016 WL 4400835 (petition was sufficient where it stated "Will County Board prejudged the application, Will County Solid Waste Planning and Land Use 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").

---

<sup>5</sup> In the record filed by the Village, those pages appear at C1347-1348 and C1448-1449.

<sup>6</sup> Additionally, the sufficiency of petitioners' fundamental unfairness pleadings in *Residents Against a Polluted Environment*, 293 Ill. App. 3d 219 at 225 ("Given the numerous opportunities the appellants had to point to specific *ex parte* contacts, and their continued failure to do so, we refuse to send this cause back for a third set of public hearings based upon bare, unsupported allegations").

Area Disposal's real complaint is not that the Petition lacks factual specificity, it's that it disputes the legal significance of certain facts Petitioners have identified and asks the Board to construe those facts in favor of it—arguing that prefiling review by Village staff is permissible as a general matter and that *Stop the Mega-Dump* and *Land & Lakes Co.*, establish that such contact does not, as a matter of law, render a siting process unfair. That argument goes to the merits, not the sufficiency of the pleading. Indeed, *Stop the Mega-Dump* and *Land & Lakes Co.* are appeals of the Board's decisions to the appellate court—both of which turned on the merits and evidence from a fully developed record, and had nothing to do with the sufficiency of allegations in the petition. See *Stop the Mega-Dump*, 2012 IL App (2d) 110579; *Land & Lakes Co. v. Illinois Pollution Control Bd.*, 319 Ill. App. 3d 41 (2000).

Moreover, the facts in the Petition must be construed in favor of the Petitioners—not Area Disposal—at this stage. *E.g.*, *Environmental Recycling and Disposal Services*, PCB 16-76 (March 3, 2026), 2016 WL 4400835 at \*5. Undeniably, whether the specific prefiling interactions here—including their “precise circumstances, nature, and timing” (Petition at 43)—crossed the line from permissible staff-level review into improper prejudgment by the decision-making body itself is a factual question this Board cannot resolve without a developed record. Dismissal at the pleading stage on that basis would require the Board to weigh and resolve factual disputes in Area Disposal's favor before Petitioners have had any opportunity to develop the record—precisely what a motion to dismiss does not permit. See *Environmental Recycling and Disposal Services*, PCB 16-76 (March 3, 2026), 2016 WL 4400835 (“[I]t is well established that a cause of action should not be dismissed with prejudice unless it is clear that no set of facts could be proved which would entitle the plaintiff to relief.”) (quotations and citations omitted).

Nor does the Petition improperly invoke discovery to manufacture a claim Petitioners do not already have, as Area Disposal suggests. Petitioners have already identified specific record citations and a specific public meeting underlying their claim. Their acknowledgment that further discovery may develop additional detail regarding communications that, by their nature, occurred largely outside the public hearing record, does not transform an otherwise adequately pled claim into an impermissible fishing expedition; it simply reflects the ordinary reality that evidence of

behind-the-scenes prejudgment is rarely fully apparent on the face of a public record. For example, in *Timber Creek Homes, Inc.*, the Board rejected the applicant's argument that petitioners' fundamental unfairness claim was an unsupported "fishing expedition" and denied the applicants' similar motion to dismiss finding that the petition under review there "sets forth sufficient facts and allegations to allow respondents to prepare a defense. While the petition does not set forth all facts necessary to prove the allegations, the Board finds that the petition contains the specificity necessary to proceed." *Timber Creek Homes, Inc. v. Village of Round Lake Park, et al.*, PCB 14-99 (March 20, 2014), 2014 WL 1117954 at \*10-12.

### **III. Petitioners' Fundamental Fairness Claim Is Not Forfeited.**

Area Disposal's forfeiture argument suffers from the identical defect: it asks the Board to resolve, on the pleadings, a factual question the Petition does not concede—namely, whether Petitioners actually knew, or reasonably should have known, the specific facts underlying their prejudgment claim in time to object before the Village Board's June 16, 2026 vote.

The authority Area Disposal relies upon involved parties with demonstrated, on-the-record, evidence of actual knowledge of the very facts underlying their bias claims well before the vote at issue.<sup>7</sup> In *Peoria Disposal Co. v. Illinois Pollution Control Board*, 385 Ill. App. 3d 781, 799 (3d Dist. 2008), the evidence showed that the objecting company learned, at the meeting itself and before the vote was taken, that specific board members were members of the Sierra Club—the precise fact underlying its bias claim—and said nothing. Similarly, in *Fox Moraine, LLC v. United City of Yorkville*, 2011 IL App (2d) 100017, ¶ 75, the objecting applicant had multiple identified opportunities—immediately after the relevant election, during public commentary, and at the deliberations meeting—to raise a bias objection based on facts it already possessed, and did not act on any of them.

Here, by contrast, neither the Petition nor the record establishes that Petitioners possessed comparable actual knowledge of the "precise circumstances, nature, and timing" of the prefiling interactions between the Area Disposal, the Village, and the Village's consultants before the June

---

<sup>7</sup> Moreover, both decisions Area Disposal relies upon were based on consideration of a complete appellate record—not consideration of what was available at the pleading stage.

16, 2026 vote. (Petition at 43). Unlike the sophisticated corporate litigants represented by counsel in *Peoria Disposal Co.* and *Fox Moraine*, Petitioners are individual residents who were not represented by counsel at the time of the Hearing and who, under the very ordinance Area Disposal relies upon to attempt to defeat their standing, had no right to call or cross-examine witnesses, or otherwise probe the extent of prefiling communications between the Area Disposal and Village staff. (Mot. at Ex. A, §28-110(D).) Area Disposal cannot simultaneously argue that Petitioners lacked any cognizable role in the proceeding sufficient to confer standing to appeal, while arguing that those same Petitioners were nonetheless obligated to detect and formally object to non-public prefiling communications in real time on pain of forfeiting their claim entirely.

Whether Petitioners knew or should have known enough to trigger an obligation to object before the vote is, at minimum, a disputed question of fact not appropriately resolved on a motion to dismiss. *See Peoria Disposal Co.*, 385 Ill. App. 3d at 798 (forfeiture turns on whether a party “knowingly withheld” a claim); *Slates v. Illinois Landfills, Inc.*, PCB 93-106 (September 23, 1993), 1993 WL 387195 at \*11 (“we find no evidence that the other petitioners knew or had [reason] to know of the alleged conflict of interest prior to the local hearing. Therefore, we find that the other four petitioners have not waived this issue”). The Motion should be denied on this ground as well.

### **CONCLUSION**

For the foregoing reasons, Petitioners respectfully request that the Illinois Pollution Control Board deny Respondent Area Disposal Service, Inc.’s Motion to Dismiss Petition for Hearing in its entirety, and grant Petitioners other and further relief as the Board deems just and appropriate. Alternatively, Petitioners respectfully request that the Illinois Pollution Control Board grant them leave to file an amended petition with additional facts bearing on their standing to bring, and fundamental fairness basis of, their petition for this Board’s review.

Dated: September 1, 2026

Respectfully submitted,

/s/ Margaret E. Galka

Margaret E. Galka (IL Bar #6329705)  
**COLLINS LAW GROUP, P.C.**  
1770 Park St. #200  
Naperville, Illinois 60563  
Phone : (630) 527-1595  
mgalka@collinslaw.com

*Counsel for Petitioners*

# **EXHIBIT A**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

Kenda C. Hess, Theresa Adams, )  
Lori Shields, John and Joyce )  
Borchers, Lois Rooney, Charles )  
Archibald, Yolanda )  
Taylor-Hudson, and Mary Mann )  
Reifsteck, )

Petitioners, )

v. )

Area Disposal Service, Inc., )  
And Village of Rantoul, )

Respondents. )

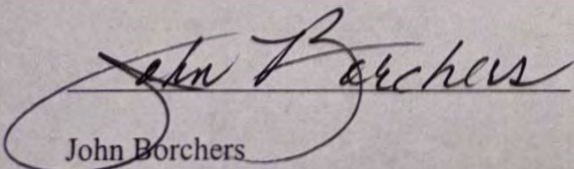
PCB 2027-002  
(Third-Party Pollution Control Facility  
Siting Appeal)

DECLARATION OF PETITIONER JOHN BORCHERS

I, John Borchers, declare as follows:

1. On April 17, 2026, I physically attended the morning session of the Village of Rantoul's public hearing concerning Area Disposal Service, Inc.'s application for local siting approval for a recycling and transfer station to be located at 896 West Champaign Avenue in Rantoul, Illinois.
2. On April 17, 2026, I virtually attended, via the Village of Rantoul's video livestream, the afternoon session of the Village of Rantoul's public hearing concerning Area Disposal Service, Inc.'s application for local siting approval for a recycling and transfer station to be located at 896 West Champaign Avenue in Rantoul, Illinois.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the foregoing statements are true and correct.

  
John Borchers

Dated: 30 Aug 2026

# **EXHIBIT B**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

|                                |   |                                         |
|--------------------------------|---|-----------------------------------------|
| Kenda C. Hess, Theresa Adams,  | ) |                                         |
| Lori Shields, John and Joyce   | ) |                                         |
| Borchers, Lois Rooney, Charles | ) |                                         |
| Archibald, Yolanda             | ) |                                         |
| Taylor-Hudson, and Mary Mann   | ) |                                         |
| Reifsteck,                     | ) |                                         |
|                                | ) |                                         |
| Petitioners,                   | ) | PCB 2027-002                            |
|                                | ) | (Third-Party Pollution Control Facility |
|                                | ) | Siting Appeal)                          |
| v.                             | ) |                                         |
|                                | ) |                                         |
|                                | ) |                                         |
| Area Disposal Service, Inc.,   | ) |                                         |
| And Village of Rantoul,        | ) |                                         |
|                                | ) |                                         |
| Respondents.                   | ) |                                         |

DECLARATION OF PETITIONER JOYCE BORCHERS

I, Joyce Borchers, declare as follows:

1. On April 17, 2026, I virtually attended, via the Village of Rantoul's video livestream, the Village of Rantoul's public hearing concerning Area Disposal Service, Inc.'s application for local siting approval for a recycling and transfer station to be located at 896 West Champaign Avenue in Rantoul, Illinois.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the foregoing statements are true and correct.

Joyce Borchers  
Joyce Borchers

Dated: 8/30/2026

**NOTICE OF FILING**

To: See Attached Service List

PLEASE TAKE NOTICE that on September 1, 2026, I caused to be electronically filed with the Office of the Clerk of the Illinois Pollution Control Board the foregoing PETITIONERS' RESPONSE IN OPPOSITION TO RESPONDENT AREA DISPOSAL SERVICE, INC.'S MOTION TO DISMISS PETITIONERS' PETITION, a copy of which is hereby served upon you.

/s/ Margaret E. Galka

Margaret E. Galka (IL Bar #6329705)  
**COLLINS LAW GROUP, P.C.**  
1770 Park St. #200  
Naperville, Illinois 60563  
Phone : (630) 527-1595  
mgalka@collinslaw.com

*Counsel for Petitioners*

**CERTIFICATE OF SERVICE**

I hereby certify that, on September 1, 2026, I served a copy of the foregoing NOTICE OF FILING and the foregoing PETITIONERS' RESPONSE IN OPPOSITION TO RESPONDENT AREA DISPOSAL SERVICE, INC.'S MOTION TO DISMISS PETITIONERS' PETITION, on the parties on the attached service list, by sending a copy to the email addresses designated on the service list on or before 4:30pm on September 1, 2026.

/s/ Margaret E. Galka

Margaret E. Galka (IL Bar #6329705)  
**COLLINS LAW GROUP, P.C.**  
1770 Park St. #200  
Naperville, Illinois 60563  
Phone : (630) 527-1595  
mgalka@collinslaw.com

*Counsel for Petitioners*

**Service List**

Janaki Nair  
Lane G. Alster  
Elias, Meginnes & Seghetti, P.C.  
416 Main Street, Suite 1400  
Peoria, Illinois 61602-1611  
309-637-6000  
jnair@emrslaw.com  
lalster@emrslaw.com

Don Brown  
Clerk of the Board  
Illinois Pollution Control Board  
60 E Van Buren St Suite 630  
Chicago IL 60605  
312-814-3620  
don.brown@illinois.gov

Carol Webb  
Hearing Officer  
60 E Van Buren St Suite 630  
Chicago IL 60605  
312-814-3669  
Carol.Webb@illinois.gov

David B. Wesner  
Evans, Froehlich, Beth & Chamley  
44 Main Street Suite 310  
Champaign IL 61820  
217-359-6494  
217-359-6468  
dwesner@efbclaw.com

William R. Andrichik  
Michael Best  
444 West Lake Street Suite 3200  
Chicago IL 60606  
312-222-0800  
312-222-0818  
William.Andrichik@michaelbest.com

Ann M. Zwick  
Taft Stettinius & Hollister LLP  
111 E. Wacker Dr. #2600  
Chicago, IL 60601  
312-836-4133  
azwick@taftlaw.com

Ryan G. Rudich  
Taft Stettinius & Hollister LLP  
111 E. Wacker Dr. #2600  
Chicago, IL 60601  
312-836-4133  
rrudich@taftlaw.com