ILLINOIS POLLUTION CONTROL BOARD
October 15, 2026

KENDA C. HESS, THERESA C. ADAMS, LORI SHIELDS, JOHN AND JOYCE BORCHERS, LOIS ROONEY, CHARLES ARCHIBALD, YOLANDA TAYLOR-HUDSON, and MARY MANN RIEFSTECK,	)	
Petitioners,	)	
v.	)	PCB 27-02
	)	(Third-Party Pollution Control Facility
AREA DISPOSAL SERVICE, INC., and VILLAGE OF RANTOUL,	)	Siting Appeal)
Respondents.	)	

ORDER OF THE BOARD (by A. Tin):

On July 21, 2026, nine individuals, Kenda C. Hess, Theresa C. Adams, Lori Shields, John Borchers, Joyce Borchers, Lois Rooney, Charles Archibald, Yolanda Taylor-Hudson, and Mary Mann Reifsteck (Petitioners), filed a third-party petition with the Board, seeking review of the Village of Rantoul's (Village) June 16, 2026, decision granting siting approval to Area Disposal Service, Inc. (Area Disposal) for a proposed recycling and waste transfer station at 896 West Champaign Avenue in Rantoul, Champaign County. On August 19, 2026, Area Disposal filed a motion to dismiss the petition.

In this order, the Board denies Area Disposal's motion to dismiss as to Hess, Adams, Shields, John Borchers, and Joyce Borchers. The Board finds that the alleged in-person attendance of Hess, Adams, Shields, and John Borchers, and the alleged livestream attendance of Joyce Borchers, are sufficient at this stage to satisfy the participation requirement for third-party standing under Section 40.1(b) of the Environmental Protection Act (Act) (415 ILCS 5/40.1(b) (2024)). The Board grants the motion to dismiss as to Rooney, Archibald, Taylor-Hudson, and Reifsteck because their submission of written comments, without attendance at the local siting hearing, does not satisfy that requirement. The Board also denies Area Disposal's motion for leave to file a reply and does not reach the parties' arguments concerning fundamental fairness.

PROCEDURAL HISTORY

On July 21, 2026, Petitioners filed a petition (Pet.) seeking review of the Village's June 16, 2026, decision granting siting approval to Area Disposal. The petition challenges the Village's determinations under the criteria in Section 39.2(a) of the Act (415 ILCS 5/39.2(a) (2024)) concerning necessity, protection of public health, safety, and welfare, compatibility with the surrounding area and property values, and traffic impact, and alleges fundamental unfairness in the local siting proceeding.

On August 6, 2026, the Board entered an order accepting the petition for hearing. The Board directed the Village to file the record of the proceeding within 21 days.

Also on August 6, 2026, the hearing officer held a telephone status conference with the parties. Area Disposal indicated that it intended to file a motion to dismiss by August 19, 2026, and agreed to extend the statutory decision deadline to December 17, 2026. The hearing officer directed the Village to file the record of its proceedings by August 27, 2026, and scheduled a further status conference for September 3, 2026.

On August 10, 2026, Area Disposal filed a waiver extending the decision deadline to December 17, 2026. On August 19, 2026, Area Disposal filed a motion to dismiss the petition (Mot.), arguing that Petitioners lack standing under Section 40.1(b) of the Act. On August 26, 2026, the Village filed the record of its proceedings, consisting of 1,964 pages.[1] On September 1, 2026, Petitioners filed a response opposing the motion (Resp.).

On September 3, 2026, the parties participated in another telephone status conference with the hearing officer. The hearing officer scheduled the hearing on the petition for November 4, 2026, at 9:00 a.m. at the Rantoul Municipal Building, Board Room, 333 S. Tanner, Rantoul, Illinois. Area Disposal agreed to extend the statutory decision deadline to January 21, 2027, and filed the corresponding waiver that day. The hearing officer also noted that Area Disposal intended to seek leave to file a reply in support of its motion to dismiss.

On September 15, 2026, Area Disposal filed a motion for leave to file a reply in support of its motion to dismiss (Mot. for Leave) and attached its proposed reply (Proposed Reply). On September 28, 2026, Petitioners filed a response opposing Area Disposal's motion for leave to file a reply, arguing that Area Disposal had not demonstrated that a reply was necessary to prevent material prejudice (Resp. to Mot. for Leave).

DISCUSSION

The Board first reviews the statutory framework governing third-party appeals of local siting decisions and the legal standards applicable to motions to dismiss. The Board then summarizes the parties' arguments and addresses Area Disposal's motion for leave to file a reply. Finally, the Board determines whether each Petitioner has sufficiently alleged participation in the local siting hearing to satisfy Section 40.1(b) of the Act.

Statutory Framework

Section 39.2 of the Act establishes the process by which a county board or municipal governing body determines whether to approve a proposed new pollution control facility, such as a waste transfer station. The local siting authority must determine whether the proposed facility satisfies the nine statutory criteria. *See* 415 ILCS 5/39.2(a)(i)-(ix) (2024). Those criteria include whether the facility is so designed, located, and proposed to be operated that the public health,

[1] The Record is cited as "C___".

safety, and welfare will be protected, whether 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, and whether the facility is located so as to minimize the impact on traffic flow. An applicant must obtain local siting approval before the Illinois Environmental Protection Agency (IEPA or Agency) may issue a permit for the facility. *See* 415 ILCS 5/39(c) (2024).

Section 40.1 of the Act governs appeals of local siting decisions to the Board. An applicant may appeal a local siting authority's decision to deny or grant siting approval subject to conditions. 415 ILCS 5/40.1(a) (2024). When the local siting authority grants approval, a qualifying third party may petition the Board to contest that decision under Section 40.1(b) of the Act. That Section provides, in relevant part:

> If the county board or the governing body of the municipality . . . grants approval under Section 39.2 of this Act, a third party other than the applicant who participated in the public hearing conducted by the county board or governing body of the municipality may, within 35 days after the date on which the local siting authority granted siting approval, petition the Board for a hearing to contest the approval of the county board or the governing body of the municipality. Unless the Board determines that such petition is duplicative or frivolous, or that the petitioner is so located as to not be affected by the proposed facility, the Board shall hear the petition . . . . 415 ILCS 5/40.1(b) (2024).

The Board's procedural rules similarly address who may petition for review of a local siting decision. Section 107.200(b) provides, in relevant part:

> Any 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. Associations that file a petition before the Board must be represented by an attorney . . . . 35 Ill. Adm. Code 107.200(b).

Accordingly, Section 40.1(b) and the Board's procedural rules require a third-party petitioner to have participated in the local public hearing and to be located so as to be affected by the proposed facility. The question here is whether each Petitioner's alleged participation satisfies the statutory requirement.

Legal Background

In ruling on a motion to dismiss, the Board takes all well-pled allegations as true and draws all reasonable inferences from them in favor of the non-movant. *See*, *e.g.*, Beers v. Calhoun, PCB 04-204, slip op. at 2 (July 22, 2004); *see also* In re Chicago Flood Litigation, 176 Ill. 2d 179, 184, 680 N.E.2d 265, 268 (1997); Board of Education v. A, C & S, Inc., 131 Ill. 2d 428, 438, 546 N.E.2d 580, 584 (1989). "To determine whether a cause of action has been stated, the entire pleading must be considered." LaSalle National Trust N.A. v. Village of Mettawa, 249 Ill. App. 3d 550, 557, 616 N.E.2d 1297, 1303 (2d Dist. 1993), *citing* A, C & S, 131 Ill. 2d at 438, 546 N.E.2d at 584 ("[T]he whole complaint must be considered, rather than taking a myopic

view of a disconnected part[,]" *quoting* People ex rel. William J. Scott v. College Hills Corp., 91 Ill. 2d 138, 145, 435 N.E.2d 463, 466-67 (1982)).

"[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." Smith v. Central Illinois Regional Airport, 207 Ill. 2d 578, 584-85, 802 N.E.2d 250, 254 (2003); *see also* Chicago Flood, 176 Ill. 2d at 189, 680 N.E.2d at 270 ("[T]he trial court must interpret all pleadings and supporting documents in the light most favorable to the nonmoving party."); People v. Peabody Coal Co., PCB 99-134, slip op. at 1-2 (June 20, 2002); People v. Stein Steel Mills Services, Inc., PCB 02-1, slip op. at 1 (Nov. 15, 2001).

Section 101.506 of the Board's procedural rules generally provides for "motions to strike, dismiss, or challenge the sufficiency of any pleading filed with the Board." 35 Ill. Adm. Code 101.506. Further, the Board "may entertain any motion the parties wish to file that is permissible under . . . the Code of Civil Procedure." 35 Ill. Adm. Code 101.500(a). The Board may look to the Code of Civil Procedure "for guidance where the Board's procedural rules are silent." 35 Ill. Adm. Code 101.100(b).

Area Disposal's Motion to Dismiss

On August 19, 2026, Area Disposal filed a motion to dismiss the petition for hearing to contest the Village of Rantoul's approval of a waste transfer station. Area Disposal argues the petition is subject to dismissal in its entirety due to lack of standing. Mot. at 1. Alternatively, if the Board decides Petitioners do have standing, Area Disposal argues the Petitioners' fundamental fairness claim regarding the siting hearing should be dismissed. *Id*.

Standing

Area Disposal argues the Act only confers standing to third parties who participated in the public hearing, and that Petitioners did not participate in the public hearing as prescribed by the Village's ordinance. Mot. at 4. Area Disposal contends that the Illinois Appellate Court held that the Act does not grant the general public the right "to act as 'participants' in local siting proceedings." *Id*. at 5, *citing* Stop the Mega-Dump v. Bd. of De Kalb County, 2012 IL App (2d) 110579, ¶ 41. Area Disposal further claims the Act only grants the general public the right to inspect the application on file and to file written comments on the appropriateness of the proposed site for its intended purpose. *Id*., *citing* Stop the Mega-Dump, 2012 IL App (2d) 110579, ¶ 42.

Area Disposal points to Stop the Mega-Dump to argue that municipalities may use local ordinances to narrow who can act as a "participant" at public hearings. Mot. at 5, *citing* Stop the Mega-Dump, 2012 IL App (2d) 110579, ¶ 40. Area Disposal argues that siting authorities are not bound by the siting approval procedures, criteria, or appeal procedures provided by the Act. *Id*. at ¶ 12. Rather, they may establish their own rules governing conduct of a siting hearing as long as they are fundamentally fair and not inconsistent with the Act. *Id*. Here, the Village adopted ordinances for persons who desire to participate in public hearings, and Area Disposal attached them as Exhibit A. Mot. at 6. Area Disposal argues that only persons who have

complied with the ordinances may "participate" in the public hearing. *Id*. Anyone who did not comply with the ordinances is limited to only submitting written public comments. *Id*.

The Village of Rantoul ordinances provide in part:

> "[a]ny qualified person or entity (other than the applicant) who desires to participate in the public hearing as a party as defined in this article shall file an entry of appearance with the Village Clerk at least ten (10) days prior to the public hearing and serve a copy upon the hearing officer." *Id*., *see also* Ex. A, §28-110(A), p. 10.

The ordinance defines "party" as "any person, in addition to the applicant, who complies with the prehearing filing requirements set forth in Section 28-1[10] and who may be affected by the proposed facility." *Id*., *see also* Ex. A, §28-100, p. 2. Further, the ordinance provides "[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." *Id*., *see also* Ex. A, §28-110(D), p. 10.

Area Disposal argues that Petitioners were not "participants" for purposes of the Act because they did not comply with §28-110(A) of the Village of Rantoul's ordinance. Mot. at 6. Area Disposal contends the only participants in the public hearing were the Village of Rantoul and the applicant. *Id*. Area Disposal maintains that the Petitioners had the opportunity to become participants but chose not to do so when they did not file entries of appearances with the Village of Rantoul Clerk ten days prior to the public hearing as required by the ordinance. *Id*. at 7. Because the Petitioners' only involvement in the public hearing was through oral or written public comments, Area Disposal argues they did not "participate" under the Village of Rantoul ordinance and therefore have no standing, and the petition should be dismissed. *Id*.

Area Disposal acknowledges its position is contrary to certain past decisions by the Board interpreting "participation," including where the Board held "mere attendance" by an individual at a public hearing was adequate "participation." Mot. at 7, *citing* Peter Valessares and Edward F. Heil v. County Board of Kane County, Illinois and Waste Management of Illinois, Inc., PCB 87-36 (July 16, 1987); Alice Zeman, et al. v. Village of Summit and West Suburban Recycling and Energy Center, Inc., PCB 92-174 (Dec. 17, 1992); American Disposal Servs. of Illinois, Inc. v. County Bd. of McLean County, Illinois, PCB 11-60 (Feb. 16, 2012). But Area Disposal acknowledges the Board has not ruled on this issue since the Appellate Court's decision in Stop the Mega-Dump, or in the context of this specific ordinance of the Village of Rantoul. Mot. at 7.

Area Disposal argues that if the Board decides not to dismiss the petition entirely, those Petitioners who only submitted, or purportedly submitted, written public comments do not have standing and should be dismissed from the petition. Mot. at 8. Area Disposal further states that the Board has held in the past that mere written public comment is insufficient to establish "participation in a public hearing" under Section 40.1(b) of the Act and therefore does not confer standing. Mot. at 8, *citing* Valessares, PCB 87-36, slip op. at 6; Janis Rosauer and Batavia, Illinois Residents Opposed to Siting of Waste Transfer Station v. Onyx Waste Services Midwest, Inc. and City of Batavia, Illinois, PCB 05-1, slip op. at 6 (Oct. 7, 2004). Area Disposal contends

that Petitioners John and Joyce Borchers, Rooney, Archibald, Taylor-Hudson, and Reifsteck's sole involvement in the public hearing was filing written public comments and therefore should be dismissed for lack of standing. *Id*.

Fundamental Fairness

Area Disposal asks the Board to dismiss Petitioners' claim that the siting hearing was not fundamentally fair because the siting authority prejudged the application. Mot. at 9. Area Disposal states that Illinois is a fact pleading state, and that the Board requires fact pleading in siting appeals. *Id*., *citing* Sierra Club and Jim Bensman v. City of Wood River and Norton, PCB 98-43, 1997 WL 728170, at *2 (November 6, 1997). Conclusions of law or conclusory factual allegations restating the elements of a cause of action alone are not enough when reviewing a motion to dismiss. *Id*., *citing* Selby v. O'Dea, 2020 IL App (1st) 181951, ¶ 59; City of Des Plaines v. Metro. Sanitary Dist. of Greater Chicago., 60 Ill. App. 3d 995, 1001 (1st Dist. 1978).

Area Disposal contends that a claim alleging a siting decision was not fundamentally fair faces a high bar because the siting authority's role is both quasi-legislative and quasi-adjudicative. Mot. at 9, *citing* Fox Moraine, LLC v. United City of Yorkville, 2011 IL App (2d) 100017, ¶ 60. Area Disposal also adds that fundamental fairness only requires "minimal standards of procedural due process", and that members of a local siting authority are presumed to have made their determination fairly and objectively. *Id*. at 9-10, *also citing* Peoria Disposal Co. v. Illinois Pollution Control Bd., 385 Ill. App. 3d 781, 797 (3d Dist. 2008). Petitioners must provide specific evidence showing siting authority members prejudged a determination. Mot. at 10, *citing* Stop the Mega-Dump, 2012 IL App (2d) 110579, ¶ 56; Residents Against a Polluted Env't v. Illinois Pollution Control Bd., 293 Ill. App. 3d 219, 225 (3d Dist. 1997).

Area Disposal argues that under these standards, Petitioners' claim that the siting authority prejudged the application lacks specific facts and should be dismissed. Mot. at 10. Area Disposal contends that the only facts Petitioners allege regarding this predetermination are from a transcript referencing a prefiling review of the application by Village of Rantoul staff and an outside expert. *Id*. Area Disposal argues that a prefiling conference is a legal requirement under the Village of Rantoul's ordinances. *Id*., *see* Ex. A, §28-101. Regardless, Area Disposal states that the Board has long held prefiling communications are permissible and do not mean the siting process is unfair. *Id*., *citing* Stop the Mega-Dump, 2012 IL App (2d) 110579, ¶ 16; Land & Lakes Co. v. Illinois Pollution Control Bd., 319 Ill. App. 3d 41, 49 (3d Dist. 2000); Sierra Club v. Will County Board, PCB 99-136 (August 5, 1999).

Next, Area Disposal addresses Petitioners' claim of prejudgment at a special meeting that took place June 16, 2026. Mot. at 11. Area Disposal argues that Petitioners failed to cite any statements to support their claim and merely provided a link to a video recording of the meeting. *Id*. Therefore, Area Disposal argues the allegations are merely conclusions of law without specific facts and should be dismissed. *Id*., *citing* Kaczka v. Ret. Bd. of Policemen's Annuity & Ben. Fund of City of Chicago, 398 Ill. App. 3d 702 (1st Dist. 2010).

Area Disposal adds that in addition to what they deem to be substantive deficiencies in the fundamental fairness allegations, Petitioners forfeited their claim to fundamental fairness by

failing to raise the issue during the original siting proceeding. Mot. at 12, *citing* Peoria Disposal, 385 Ill. App. 3d at 798. Area Disposal contends that all of Petitioners' alleged facts for the fundamental fairness allegation were available prior to the final vote on the siting application and Petitioners failed to raise it. Mot. at 12-13. Because Petitioners do not allege they raised any objections during the siting proceeding Area Disposal argues Petitioners have waived this claim and it should be dismissed. *Id*. at 13.

Petitioners' Response

On September 1, 2026, Petitioners filed a response opposing Area Disposal's motion to dismiss. Petitioners argue that Area Disposal's motion to dismiss seeks to "strip Illinoisians of their statutory right to appeal a local siting decision as third parties" and should be denied in its entirety. Resp. at 1, 3.

Standing

Petitioners contend that they have standing to pursue a third-party appeal and therefore Area Disposal's motion should be denied. Resp. at 6. First, Petitioners argue that Area Disposal's claim that Petitioners lack standing is contrary to the Act and Board precedent. *Id*.

Petitioners distinguish Stop the Mega-Dump from the facts in this matter by arguing that neither the ordinance involved in that case, nor the Village of Rantoul's ordinance construe, apply, or even discuss the Board's "mere attendance" precedent in third-party siting appeals. Resp. at 6. Petitioners continue, arguing Stop the Mega-Dump evaluated whether a county board ordinance could narrow a class of participants entitled to actively participate in a hearing as a party that presents evidence and cross-examines witnesses. *Id*. at 7. Petitioners further argue the court did not hold or suggest that a local municipality's definition of who may participate as a "party" in a hearing could also narrow the qualifications of standing under Section 40.1(b) of the Act. *Id*.

Petitioners argue that Area Disposal's interpretation of the Act and Village of Rantoul ordinance within the motion is that only a "party" to a proceeding could ever have standing to bring a third-party appeal. Resp. at 7-8. Petitioners argue this would be unreasonable, fundamentally unfair, and contrary to the plain language of what a "third-party" is. *Id*. at 8. Petitioners state that a local municipality may only adopt its own hearing procedures if they are fundamentally fair and are not inconsistent with the Act. *Id*. Petitioners contend that Area Disposal's interpretation of the Village of Rantoul's ordinance strips third parties of their rights to appeal local siting decisions given by the Illinois General Assembly. *Id*. This interpretation would be inconsistent with the Act and fundamentally unfair. *Id*. Petitioners argue that the Illinois General Assembly emphasized public participation in local siting proceedings and this interpretation would effectively allow local municipalities to narrow "participation" in a way that would insulate their decisions from Board review. *Id*.

Due to the Board's "mere attendance" precedent for standing in siting appeals, Petitioners argue that at minimum Area Disposal's motion to dismiss should be denied as to Hess, Adams, Shields, and the Borchers. Resp. at 9. Petitioners state that John Borchers attended the public

hearing in person and that Joyce Borchers attended the hearing through the Village of Rantoul's livestream. *Id*. at 13, *see* Exhs. A and B. If the Board were to require more than "mere attendance," Petitioners argue that Hess, Adams, and Shields further participated by giving oral comments during the public hearing. *Id*. at 9, *see* C1509-14 & C1521-25. Petitioners bolster their position by pointing out that Area Disposal in its notice invited members of the public to provide oral public comment at the hearing. *Id*., *see* C1587 and C1591.

Petitioners also argue that the issue of standing should not be resolved at the pleading stage before development of the record or evidence. Resp. at 10. Petitioners further argue Sections 107.200 and 107.208, which set forth who may file a petition to review a siting decision, do not include a heightened fact pleading standard. *Id*. Petitioners contend the Board has held that "pleading requirements for administrative review are less exacting than for other causes of action." *Id*., *citing* Sierra Club & Bensman, PCB 98-43, 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 (2d Dist. 1994)). When reviewing a motion to dismiss the Board must draw all reasonable inferences from well-pled allegations in favor of the non-movant party. *Id*. at 11, *citing* Amer. Disposal, 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, 2016), 2016 WL 4400835, at 5. In this petition, Petitioners argue that all petitioners pled that they are proper petitioners that participated in the siting proceedings. *Id*., *see also* Pet. at 44-45.

Petitioners argue that the issue of standing in this petition is analogous to Valessares, where the Board found questions of fact regarding the nature of Petitioners' participation and the effect fundamental fairness issues had on participation. Resp. at 11-12. Petitioners contend that a petition does not need to list out all of the ways a petitioner participated in the hearing, as long as it properly pleads that they "are proper petitioners" and that they "participated in the local siting proceedings." *Id*. at 12-13. Petitioners argue that anything beyond that are fact driven inquiries that "cannot be resolved on the face of the Petition or the record of the local siting hearing." *Id*. at 13. Because of this, Petitioners ask the Board to dismiss Area Disposal's motion to dismiss. *Id*. at 14.

Next, Petitioners argue that written public comments should qualify as participation requisite to establish standing. Resp. at 14. Petitioners contend that the Village of Rantoul's ordinance makes Petitioners' written comments part of the record of the public hearing itself. *Id*., *see* Mot. at Exh. A at §28-155(C); *see also* §28-116(A)-(B)(5). Additionally, Petitioners argue the hearing officer responsible for the hearing stated that written comments had equal weight to oral comments given at the hearing. *Id*., *see* C1344-1345, C1525, C1529; C1503-1505; C1525. Petitioners contend the motion to dismiss should be dismissed because Petitioners sufficiently pled that they participated in the hearing and any further questions would be questions of fact not ripe for decision at the pleading phase. *Id*.

Petitioners' response also relies on declarations from John Borchers and Joyce Borchers. John Borchers states that he attended the morning session of the local siting hearing in person and watched the afternoon session by livestream. Resp. Exh. A. Joyce Borchers states that she attended the hearing by livestream. Resp. Exh. B.

Fundamental Fairness

Petitioners argue Area Disposal's motion to dismiss should be denied as to the claims regarding fundamental fairness. Resp. at 15. Petitioners argue they set forth well-pled facts including specific transcript pages and a citation for the video recording of that meeting. *Id*. at 16. Petitioners maintain that this level of pleading is more detailed than petitions the Board has previously held sufficient. *Id*., *citing* Timber Creek Homes, Inc., Petitioner v. Village of Round Lake Park, Round Lake Park Village Board and Groot Industries, Inc., PCB 14-99, 2014 WL 1117954 at 1; Environmental Recycling, PCB 16-76, 2016 WL 4400835.

Next Petitioners distinguish Area Disposal's reliance on Stop the Mega-Dump, by arguing that decision was made in the court of appeals on a fully developed record before the Board. Resp. at 17. Petitioners maintain that this motion must be decided in the light most favorable to them, rather than Area Disposal. *Id*. Petitioners further state that its fundamental fairness claim cannot be resolved without a developed record and reflects the "ordinary reality that evidence of behind-the-scenes prejudgment is rarely fully apparent on the face of a public record." *Id*. at 17-18. Petitioners admit the petition does not set forth all facts necessary to prove the allegations but contains the specificity necessary to proceed. *Id*.

Lastly, Petitioners argue they did not waive their fundamental fairness claim. Resp. at 18. Petitioners distinguish the cases cited by Area Disposal, arguing that in both instances evidence existed showing petitioners had knowledge of facts supporting their bias claims, but chose not to comment on it prior to the local municipalities' votes. *Id*. Additionally, like above, Petitioners argue these motions were decided on complete appellate records, rather than at the pleading stage as in this case. *Id*.

Petitioners note that they are individual residents who were not represented by counsel at the time of the public hearing, rather than sophisticated corporate litigants. Resp. at 19. Per the Village of Rantoul's local ordinances Petitioners had no right to call witnesses, present evidence, or cross-examine any witnesses to inquire regarding the extent prefiling communications could have impacted the decision. *Id*. At minimum, Petitioners ask the Board to find that whether they should have known enough to trigger an obligation to object is a question of fact not appropriate for dismissal at the pleading stage. *Id*.

Board Analysis and Findings

Motion for Leave to File a Reply

Under 35 Ill. Adm. Code 101.500(e), a party may file a reply only with the Board's or hearing officer's permission. Area Disposal seeks leave to reply to Petitioners' arguments concerning fundamental fairness. The Board has reviewed Area Disposal's motion for leave, the proposed reply attached to the motion, and Petitioners' response opposing leave. Because the Board resolves the motion to dismiss based on the statutory participation requirement and does not reach the parties' arguments concerning fundamental fairness, the proposed reply is

unnecessary to the Board's disposition. The Board therefore denies Area Disposal's motion for leave to file a reply.

Standing

Area Disposal has challenged the standing of the nine petitioners to bring this third-party appeal. The Act establishes the elements for standing to appeal a pollution control siting decision. Section 40.1(b) provides, in relevant part:

> (b) If the county board or the governing body of the municipality as determined by paragraph (c) of Section 39 of this Act, grants approval under Section 39.2 of this Act, a third party other than the applicant who participated in the public hearing conducted by the county board or governing body of the municipality may, within 35 days after the date on which the local siting authority granted siting approval, petition the Board for a hearing to contest the approval of the county board or the governing body of the municipality. Unless the Board determines that such petition is duplicative or frivolous, or that the petitioner is so located as to not be affected by the proposed facility, the Board shall hear the petition in accordance with the terms of subsection (a) of this Section and its procedural rules governing denial appeals, such hearing to be based exclusively on the record before county board or the governing body of the municipality. The burden of proof shall be on the petitioner. 415 ILCS 5/40.1(b) (2024).

Section 40.1(b) requires a third-party petitioner to have participated in the local public hearing. It also provides that the Board will not hear a petition that it determines is duplicative or frivolous or that is brought by a petitioner so located as not to be affected by the proposed facility. The present motion turns on whether each Petitioner's alleged participation satisfies the statutory requirement. The Board addresses that question separately for each Petitioner.

Village of Rantoul's Ordinance.

Area Disposal argues that the Village of Rantoul adopted an ordinance establishing requirements to "participate" in its pollution control siting hearings. *See* Mot. Exh. A (*citing* Village Ordinance 2796). Under the ordinance, a person seeking formal party status must file an entry of appearance at least ten days before the hearing. Mot. Exh. A § 28-110(A). The ordinance defines a "party" as a person, other than the applicant, who complies with the applicable prehearing filing requirements and may be affected by the proposed facility. *Id.* § 28-100. The ordinance further provides that only the applicant and parties who comply with those requirements may "actively participate" in the hearing; all other persons and entities are limited to submitting written comments. *Id*. § 28-110(D).

The Appellate Court has held that a local siting authority "is not bound by the siting approval procedures, criteria, or appeal procedures provided for in the Act and may establish its own rules governing conduct of a siting hearing so long as those rules are fundamentally fair and not inconsistent with the Act." Stop the Mega-Dump, 2012 IL App (2d) 110579, ¶ 12.

Area Disposal argues that Section 40.1(b) of the Act confers third-party appeal standing only on those persons who participated in the local siting hearing. The Act provides that "a third party other than the applicant who participated in the public hearing" may appeal a siting approval. 415 ILCS 5/40.1(b)(2024). The Board agrees that Section 40.1(b) requires participation in the local public hearing, but disagrees that the absence of formal party status under the Village's ordinance necessarily means that a person did not participate within the meaning of the Act.

Section 39.2(c) of the Act permits any person to "file written comment" concerning the appropriateness of a proposed site and requires the local siting authority to consider "any comment" received or postmarked within 30 days after "the last public hearing." 415 ILCS 5/39.2(c) (2024). Section 40.1(b) of the Act, which provides for appeals by third parties, does not mention "written comment." Instead, it authorizes a third-party appeal by a person who "participated in the public hearing." 415 ILCS 5/40.1(b) (2024). In Valessares, the Board interpreted the latter requirement to mean that attendance at the public hearing is necessary and adequate, and that submitting written comments after the hearing closes does not, by itself, satisfy the requirement. PCB 87-36, slip op. at 4-6; *see also* Ill. State Treasurer v. Ill. Workers' Comp. Comm'n, 2015 IL 117418 ¶ 28 ("Where, as here, the legislature uses certain language in some instances and wholly different language in another, settled rules of statutory construction require us to assume different meanings or results were intended.").

Area Disposal relies on Stop the Mega-Dump to argue that Petitioners did not participate in the hearing. The court's discussion concerned the local siting procedures and the rights associated with formal party status in the local proceeding. Stop the Mega-Dump, 2012 IL App (2d) 110579, ¶ 41. Although a local siting authority may establish rules governing the conduct of its hearing, the question here is whether each Petitioner's conduct satisfies the statutory prerequisite for a third-party appeal before the Board. Stop the Mega-Dump does not hold that formal party status under a local ordinance is a prerequisite to standing under Section 40.1(b).

The Board's precedent confirms that formal party status is not a prerequisite to third-party standing under Section 40.1(b). In Valessares, the Board concluded that Section 40.1(b) does not require a petitioner to have intervened or been admitted as a party in the local proceeding. PCB 87-36, slip op. at 6. The Board explained that the General Assembly expressly required intervention and full party status under Section 39.3 of the Act but did not impose those requirements under Section 40.1(b). *Id.*

In Valessares, the Board looked to the definition of "participate" in Black's Law Dictionary and found that the definition "is sufficiently broad to cover those individuals who take the time and effort to attend the public hearing and listen to the testimony, even if they do not ask questions or make statements on the record. For those reasons, the Board holds that personal attendance at a county board hearing is adequate participation to meet this element of standing." PCB 87-36, slip op. at 6.

The Board has consistently applied that interpretation. In Rosauer, the Board held that "mere attendance at a local hearing is sufficient to constitute participation under Section 40.1(b)

of the Act." PCB 05-01, slip op. at 6. Similarly, in Board of Trustees of Casner Township et al. and John Prior v. County of Jefferson, the Board held:

> … 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… 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. PCB 84-175, 84-176 (consolidated), slip op. at 6 (July 16, 1987).

In Quilty v. Board of Trustees and Mayor of Summit and West Suburban Recycling & Energy Center, Inc., the Board "construes the 'participated' requirement as satisfied for the purposes of Donna Quilty's standing to appeal. She has shown that she physically appeared at the hearing." PCB 92-174, 92-177 (consolidated), slip op. at 6 (Dec. 17, 1992). The Board later reiterated that it has consistently held that mere attendance at a local hearing is sufficient to constitute participation under Section 40.1(b). Amer. Disposal, PCB 11-60, slip op. at 35 (Feb. 16, 2012).

Petitioners argue that standing should not be resolved at the pleading stage because the nature of each petitioner's participation presents factual questions. Resp. at 10–13. The Board recognizes that, in considering a motion to dismiss, it must draw reasonable inferences in favor of the nonmoving party. That principle, however, does not preclude the Board from determining whether the alleged participation, accepted as true for purposes of the motion, satisfies Section 40.1(b) as a matter of law. The Board therefore considers the forms of participation asserted by Petitioners in turn, distinguishing between the factual question of what each petitioner allegedly did and the legal question of whether that conduct satisfies the statutory requirement.

In-person Attendance.

In Valessares, the Board held that personal attendance at a county board hearing is adequate participation to satisfy this element of standing. PCB 87-36, slip op. at 6. The Board has consistently applied that rule. *See* Amer. Disposal, PCB 11-60, slip op. at 35.

Here, the parties agree that Petitioners Hess, Adams, and Shields attended the local siting hearing in person and provided oral public comment at the hearing. Resp. at 4. Taking these facts as true and viewing them in the light most favorable to the Petitioners, the Board finds that Hess, Adams, and Shields satisfy the participation requirement of Section 40.1(b) of the Act. The Board therefore denies Area Disposal's motion to dismiss as to these three petitioners.

The Board's determination concerning John Borchers and Joyce Borchers requires consideration of declarations submitted with Petitioners' response to the motion to dismiss. Because the petition does not allege all facts concerning their attendance, the Board identifies the declarations as the source of those additional allegations. For purposes of resolving this motion, the Board accepts the asserted attendance as true and draws reasonable inferences in Petitioners' favor. The Board makes no final evidentiary finding concerning either declarant's participation.

The petition asserts that John Borchers participated in the local siting proceedings by submitting written public comments. Pet. at 44. In their response to the motion to dismiss, Petitioners submitted a declaration from John Borchers stating that he attended the morning session of the hearing in person and watched the afternoon session by livestream. Resp. Exh. A. For purposes of resolving the motion, the Board considers the declaration and accepts the asserted in-person attendance as true. The Board finds that John Borchers' alleged in-person attendance is sufficient to satisfy the participation requirement of Section 40.1(b) of the Act at this stage. *See* Valessares, PCB 87-36, slip op. at 6; Rosauer, PCB 05-1, slip op. at 6; American Disposal, PCB 11-60, slip op. at 35. The Board therefore denies Area Disposal's motion to dismiss as to John Borchers.

Attending the Livestream.

Whether attendance at a local siting hearing by livestream satisfies the participation requirement of Section 40.1(b) of the Act is an issue of first impression for the Board.

In their response to the motion to dismiss, Petitioners submitted a declaration from Joyce Borchers stating that she attended the hearing by livestream. Resp. Exh. B. The Village's notice of public hearing announced that the hearing would be livestreamed and provided a link to access the livestream. Resp. at 4.

Petitioners argue that recognizing livestream attendance as participation "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." Resp. at 13, n.3. The Board finds this argument consistent with its interpretation of Section 40.1(b).

Section 40.1(b) requires a third party to have "participated in the public hearing" but does not expressly require physical presence at the hearing location. 415 ILCS 5/40.1(b) (2024). In Valessares, the Board interpreted this requirement to include an individual's attendance at the hearing without requiring the individual to ask questions, make statements, or obtain formal party status. PCB 87-36, slip op. at 6. The Board has consistently applied that interpretation. *See* Rosauer, PCB 05-1, slip op. at 6; Amer. Disposal, PCB 11-60, slip op. at 35.

The Board concludes that, when a local siting authority offers a livestream as a means of attending its public hearing, a person's attendance through that livestream may satisfy the participation requirement of Section 40.1(b). The statutory language does not expressly limit participation to physical attendance, and the Board's precedent recognizes that participation does not require an individual to speak or otherwise actively participate in the hearing. Where the local siting authority itself provides a means for members of the public to observe the hearing remotely, the Board concludes that attendance through that officially provided means satisfies the statutory requirement.

For purposes of resolving the motion to dismiss, the Board accepts Joyce Borchers' asserted livestream attendance as true and draws reasonable inferences in Petitioners' favor. The

Board therefore finds that Joyce Borchers has sufficiently alleged participation to satisfy Section 40.1(b) of the Act at this stage and denies Area Disposal's motion to dismiss as to Joyce Borchers.

Providing Written Public Comment.

In Valessares, the Board held that submitting comments after the close of the public hearing was insufficient to establish participation under Section 40.1(b). PCB 87-36, slip op. at 4.

Petitioners argue that their written comments qualify as participation because the Village's ordinance provides for written comments to be included in the hearing record and the hearing officer stated that written comments would receive equal weight to oral comments. Resp. at 14. The Board recognizes that the Village's procedures permitted written comments to be considered by the local siting authority. However, the question under Section 40.1(b) is whether a petitioner participated in the public hearing within the meaning of the Act, not merely whether the petitioner submitted material for the local siting authority to consider.

Although Valessares did not address the precise local procedures at issue here, the Board's interpretation rests on Section 40.1(b)'s requirement that a petitioner have participated in the public hearing. Here, the Village accepted written comments through May 18, 2026, after the April 17, 2026 public hearing. Pet. at 6, 45. The Board recognizes that the Village's procedures allowed those comments to be included in the record and considered by the local siting authority. However, the Village's acceptance of written comments as part of its local siting process does not, by itself, satisfy the statutory participation requirement. Accordingly, submitting written comments without attending the public hearing does not satisfy Section 40.1(b).

The petition alleges that Rooney, Archibald, Taylor-Hudson, and Reifsteck submitted written comments but did not attend the local siting hearing. Pet. at 45; Mot. at 4. Although Reifsteck's written comment does not appear in the record, the Board accepts the petition's allegation that she submitted a comment for purposes of resolving the motion to dismiss. Taking those allegations as true and drawing reasonable inferences in Petitioners' favor, the Board concludes that none of these four Petitioners satisfies Section 40.1(b)'s participation requirement. The Board therefore grants Area Disposal's motion to dismiss as to Rooney, Archibald, Taylor-Hudson, and Reifsteck.

Although these individuals are dismissed as petitioners and will no longer be parties to this appeal, they may still attend the Board's hearing as members of the public. Under the Board's procedural rules, persons who are not parties to a siting appeal are considered participants and may offer comment at a time designated by the hearing officer. 35 Ill. Adm. Code 101.110(b), 107.404. Any oral or written public comments remain subject to the Board's procedural rules and the hearing officer's directions. 35 Ill. Adm. Code 101.628(c).

Fundamental Fairness

Because the Board resolves the motion to dismiss on the basis of the statutory participation requirement, it does not reach Area Disposal's arguments concerning the sufficiency of Petitioners' fundamental-fairness allegations or whether Petitioners forfeited that claim by failing to raise it during the local siting proceeding.

CONCLUSION

The Board grants Area Disposal's motion to dismiss as to petitioners Rooney, Archibald, Taylor-Hudson, and Reifsteck, and denies the motion to dismiss petitioners Hess, Adams, Shields, John Borchers, and Joyce Borchers. The Board also denies Area Disposal's motion for leave to file a reply. The Board does not reach Area Disposal's arguments concerning fundamental fairness.

ORDER

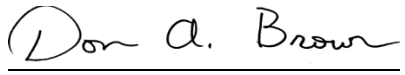
1. The Board grants Area Disposal's motion to dismiss as to Petitioners Rooney, Archibald, Taylor-Hudson, and Reifsteck, and denies the motion as to Petitioners Hess, Adams, Shields, John Borchers, and Joyce Borchers.

2. The Board denies Area Disposal's motion for leave to file a reply in support of its motion to dismiss.

3. The Board directs the Clerk to remove petitioners Rooney, Archibald, Taylor-Hudson, and Reifsteck from the caption of this appeal.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 15, 2026, by a vote of 5-0.



Don A. Brown, Clerk
Illinois Pollution Control Board