ILLINOIS POLLUTION CONTROL BOARD
October 16, 2014

AMERICAN DISPOSAL SERVICE OF ILLINOIS, INC.,	)	
Petitioner,	)	
v.	)	PCB 11-60
	)	(Third-Party Pollution Control Facility
COUNTY BOARD OF McLEAN COUNTY, ILLINOIS; HENSON DISPOSAL, INC.; and TKNTK, LLC;	)	Siting Appeal)
Respondents.	)	

ORDER OF THE BOARD (by J.D. O'Leary):

On March 22, 2011, American Disposal Services of Illinois, Inc. (ADS) timely filed a petition (Pet.) asking the Board to review a February 15, 2011 decision of the County Board of McLean County, Illinois (McLean County Board). *See* 415 ILCS 5/40.1(b) (2012); 35 Ill. Adm. Code 101.300(b), 107.204 (Time for Filing Petition). The McLean County Board granted an application by Henson Disposal, Inc. (Henson) for approval of the site of a pollution control facility recycling construction and demolition materials on property owned by TKNTK, LLC (TKNTK) at 2148 Tri Lakes Road, 510 East Hamilton Road, and 2014 Bunn Street, Bloomington, McLean County.

On August 7, 2014, the Board adopted an order denying a motion to stay filed by Henson and TKNTK and granting ADS's motion for summary judgment on the issue of jurisdiction. The Board found that Henson failed to provide notice of its application as required by Section 39.2 of the Environmental Protection Act (Act) (415 ILCS 5/39.2 (2012)) and that the McLean County Board therefore lacked jurisdiction to consider that application. The Board vacated the decision of the McLean County Board to approve that application. Henson and TKNTK and the McLean County Board have filed motions to reconsider that order, and ADS has filed its response. Henson and TKNTK have filed a motion for leave to reply accompanied by their reply.

The Board first provides an abbreviated procedural history of this matter before summarizing the August 7, 2014 order. Next, the Board addresses the preliminary matter of the motion for leave to file and grants the motion. The Board then summarizes the motions to reconsider filed by Henson and TKNTK and by the McLean County Board, the responses filed by ADS, and the reply filed by Henson and TKNTK. The Board then discusses the issues and reaches its conclusion to deny the motions for reconsideration.

ABBREVIATED PROCEDURAL HISTORY

On April 4, 2014, ADS filed a motion for summary judgment on the issue of jurisdiction. Accompanying the motion was an exhibit entitled "Stipulated Facts" (Stip.). McLean County responded on May 13, 2014, and Henson and TKNTK responded on May 27, 2014. ADS filed its reply on June 16, 2014.

On June 18, 2014, Henson and TKNTK filed a motion to stay proceedings. ADS responded on June 30, 2014.

On August 4, 2014, the Board adopted an order denying the motion to stay and granting the motion for summary judgment (Board Order).

On September 15, 2014, Henson and TKNTK filed a motion to reconsider the Board's August 7, 2014 order (Henson Mot.). Attached to the motion was a single exhibit, the affidavit of Ms. Tonja Gibson. Also on September 15, 2014, the McLean County Board filed a motion to reconsider that order (County Mot.). On September 29, 2014, ADS filed its response to the motion filed by Henson and TKNTK (Henson Resp.). On October 3, 2014, ADS filed its response to the motion filed by the McLean County Board (County Resp.). On October 7, 2014, Henson and TKNTK filed a motion for leave to file a reply (Mot. Leave), accompanied by their reply (Reply). Attached to the reply was a single exhibit, the affidavit of Mr. Thomas Gibson.

PRELIMINARY MATTER

On October 7, 2014, Henson and TKNTK moved that the Board grant them leave to file a reply in support of their motion to reconsider. Henson and TKNTK state that leave to file a reply is within the Board's discretion. Mot. Leave at 1, citing 35 Ill. Adm. Code 101.500(e). Henson and TKNTK argue that "[a] Reply is appropriate in this case to correct certain errors and misstatements and to provide additional evidence that has been obtained by the Henson Respondents." Mot. Leave at 1. Attached to the motion was the reply.

Section 101.500(e) of the Board's procedural rules provides in its entirety that "[t]he moving person will not have the right to reply, except as permitted by the Board or the hearing officer to prevent material prejudice. A motion for leave to file a reply must be filed within 14 days after service of the response." 35 Ill. Adm. Code 101.500(e).

The motion for leave to file refers to the correction "of certain errors and misstatements" and evidence responding to petitioner's response. *See* Henson Resp. at 8. The Board construes this reference as seeking to prevent material prejudice. In the interest of administrative efficiency and to aid in the consideration of the issues presented, the Board grants the motion for leave and accepts the reply, which is summarized below.

SUMMARY OF BOARD'S AUGUST 7, 2014 ORDER

In its opinion and order, the Board first denied the motion to stay filed by Henson and TKNTK. Board Order at 7.

The Board then noted the parties' stipulation that "[a]ll documents supporting Henson's pre-filing, jurisdictional notice, are contained in the Record on Appeal, and no party believes there are additional documents or proof to be identified at a later time." Stip. at 2 (¶17). The Board also noted the parties' stipulation that "[t]here are no other material facts concerning jurisdiction that any party believes will be identified or otherwise disclosed at a hearing in this matter." *Id*. (¶16). The parties also stipulated that, "inclusive of this Stipulation, the entire record on the issue of pre-filing, jurisdictional notice is before the Board at this time and no material fact is disputed." *Id*. (¶18). The Board concluded that there were no issues of material fact and that summary judgment was appropriate. Board Order at 26.

The Board then stated that "whether the applicant provided proper notice to all landowners required to receive it under Section 39.2(b) of the Act is a threshold question in the appeal of pollution control facility siting." Board Order at 27, citing 415 ILCS 5/39.2(b) (2012). The Board cited case law stating that those requirements "are jurisdictional prerequisites that the applicant must follow in order to vest the county board with the power to hear a landfill proposal." Board Order at 27, citing Maggio v. PCB, 2014 IL App (2d) 130260 (¶15), 9 N.E.3d 80 (2nd Dist. 2014). The Board noted that "[t]he failure of notice is a jurisdictional issue; the county board does not have jurisdiction if all landowners have not been given notice according to the statute." Board Order at 27, citing Waste Management of Illinois v. PCB, 356 Ill. App. 3d 229, 234, 826 N.E.2d 586, 591 (3rd Dist. 2005) (citations omitted).

The Board cited the parties' stipulation that the taxpayer of PIN 21-176-226-004 was "entitled to pre-filing, jurisdictional notice for the Henson Disposal Inc. siting application. . . ." Stip. at 1 (¶5). The parties also stipulated that "[t]he taxpayer of PIN 21-16-226-004 was not sent or served, in any form, pre-filing notice by Henson Disposal, Inc." *Id*. (¶14); *see* Board Order at 27.

The County argued that, because only a small part of PIN 21-16-22-004 fell within the statutory 250-foot radius in which personal or registered mail service is required, this case warrants a more liberal construction of the notice requirement. The Board rejected this argument as a departure from the plain language of the Act. Board Order at 27-28, citing Town & Country Utilities, Inc. v. PCB, 225 Ill.2d 103, 117, 866 N.E.2d 227, 235 (2007). The Board also noted that the County had not cited caselaw or other authority in support of its position. Board Order at 28.

The Board concluded that Henson's failure to serve notice of its application on the taxpayer of PIN 21-16-226-004 did not meet the clear requirements of Section 39.2(b) of the Act. Board Opinion at 27, citing 415 ILCS 5/39.2(b) (2012). Because Henson failed to meet this requirement, the Board found that the County Board lacked jurisdiction to review Henson's application for site approval. Accordingly, the Board granted ADS's motion for summary judgment on jurisdiction and vacated the County Board's determination to approve that application. Board Order at 28.

SUMMARY OF HENSON'S AND TKNTK'S MOTION TO RECONSIDER

The motion argues that reconsideration is appropriate because "there are material facts related to pre-filing notice that have been discovered since the [August 7, 2014 Board] Order was issued." Henson Mot. at 1. The motion claims that these facts constitute "new evidence indicating that the Order was in error." *Id*., citing 35 Ill. Adm. Code 101.902. While the motion acknowledges the parties' stipulation that "[t]here are no other material facts concerning jurisdiction that any party believes will be identified or otherwise disclosed at a hearing in this matter" (Stip. at 2 (¶16)), it states that the stipulation "does not preclude the possibility of new evidence." Henson Mot. at 1 n.1.

The motion states that "[t]he owner of PIN 21-16-226-004, Tonja Gibson, has come forward and stated that she had actual notice regarding the Facility." Henson Mot. at 2. Attached to the motion is Ms. Gibson's affidavit, which states that she is the owner of 1901 Bunn Street, Bloomington, identified by the McLean County Tax Assessor with Tax Identification number 21-16-226-004. Henson Mot., Exh.1 (¶¶1, 2). Her affidavit further states that she is and was "a recipient of the Pantagraph newspaper at the time the notice was published concerning the hearing for the site application filed by Henson Disposal, Inc. . . ." *Id*. (¶3). Her affidavit also states that she did not and does not have "any objection to the siting of the Henson Disposal, Inc. pollution control facility." *Id*. (¶4).

The motion contends that "[t]he Fourth District of the Appellate Court of Illinois, by whom an appeal in this matter would be heard, has not specifically addressed the issue of whether actual notice is sufficient to satisfy the jurisdictional prerequisite of Section 39.2." Henson Mot. at 2. The motion states that the Court has held that "notice that contains errors in the description of the property location, but which is nonetheless sufficient to apprise concerned citizens and adjoining landowners of the location of the proposed site, meets the requirements of Section 39.2(b)." *Id*., citing Tate v. PCB, 188 Ill.App.3d 994, 1018, 544 N.E.2d 1176 (4th Dist. 1989). The motion argues that Section 39.2 "should not be construed so as to lead to absurd consequences." Henson Mot. at 2, citing Daubs Landfill, Inc. v. PCB, 166 Ill. App. 3d 778, 782, 520 N.E.2d 977 (5th Dist. 1988). The motion claims that "[i]t would be an absurd consequence to vacate the properly issued siting approval in this matter based on the fact that a landowner who had actual notice, and who *does not object* to the siting of the Facility, was not also mailed notice." Henson Mot. at 2 (emphasis in original).

The motion argues that "several courts have held that a party entitled to notice need not have actually received the notice in order for the siting authority to have jurisdiction." Henson Mot. at 3, citing Maggio v. PCB, 2014 Ill. App. (2d) 130260 (2nd Dist. 2014). The motion claims that, "in light of cases that have upheld approvals where the landowners did not even receive pre-filing notice," the Board should not vacate the McLean County Board's approval of the Henson site. Henson Mot. at 3.

The motion concludes that, in light of the new evidence submitted, the Board should reconsider its August 7, 2014 order and deny ADS's motion for summary judgment. Henson Mot. at 3.

SUMMARY OF McLEAN COUNTY BOARD'S MOTION TO RECONSIDER

The McLean County Board also moved the Board to reconsider its August 7, 2014 order vacating approval for the site of Henson Disposal's pollution control facility. County Mot. at 1. The McLean County Board joins the motion to reconsider filed by Henson Disposal and TKNTK "and incorporates by reference all arguments made therein." *Id*.; *see* Henson Mot. The McLean County Board argues that vacating its approval does nothing to further the interest in providing notice and an opportunity to be heard and elevates form over substance. County Mot. at 1. The McLean County Board argues that vacating its site approval allows "a third-party competitor of the applicant to remain silent during the siting process only to later engage in a game of legal 'gotcha.'" *Id*. at 1-2.

SUMMARY OF ADS'S RESPONSE TO HENSON'S AND TKNTK'S MOTION

ADS first claims that the McLean County Board's motion, which joined Henson's motion, was filed more than 35 days after service of the Board's August 7, 2014 opinion and order. ADS claims that it was untimely and should be denied. Henson Resp. at 1.

Without waiving the issue of timeliness, ADS argues for denial of the motion on three grounds: that Henson and the McLean County Board waived any argument in support of new evidence; that Henson failed to meet the standard for support of a motion for reconsideration; and that, even if the affidavit submitted by Henson met that standard, it would not justify any change in the Board's August 7, 2014 opinion and order. Henson Resp. at 1-2. The Board reviews these arguments separately in the following subsections of the order.

Waiver

ADS states that the Board's August 7, 2014 opinion and order relied on the parties' stipulation that "the taxpayer of PIN 21-16-226-004 was entitled to jurisdictional, pre-filing notice and did not receive it." Henson Resp. at 2, citing Stip. at 1, 2 (¶¶5, 7, 14). ADS adds that the parties also stipulated to the following:

> 16. There are no other material facts concerning jurisdiction that any party believes will be identified or otherwise disclosed at a hearing in this matter.
>
> 17. All documents supporting Henson's pre-filing, jurisdictional notice, are contained in the Record on Appeal, and no party believes there are additional documents or proof to be identified at a later time.
>
> 18. The parties stipulate that, inclusive of this Stipulation, the entire record on the issue of pre-filing, jurisdictional notice is before the Pollution Control Board at this time and no material fact is disputed. Henson Resp. at 2, citing Stip. at 2.

ADS defines a "judicial admission" as "a deliberate, clear, unequivocal statement of a party about a concrete fact within that party's peculiar knowledge." Henson Resp. at 3, citing Hansen v. Ruby Constr. Co., 155 Ill. App. 3d 475, 480, 508 N.E.2d 310, 303-04 (1st Dist. 1987). ADS argues that the parties' stipulation was an unequivocal and binding judicial admission that "the entire record on jurisdictional, pre-filing notice was before the Board." Henson Resp. at 3. ADS argues that "a party cannot create a factual dispute by contradicting a previously made judicial admission." Henson Resp. at 3, citing Hansen, 155 Ill. App. 3d at 480, 508 N.E.2d at 303-04. ADS further argues that "[a] party may not create a genuine issue of material fact by taking contradictory positions, nor may he remove a factual question from consideration just to raise it anew when convenient." Henson Resp. at 3 (citations omitted). ADS claims that Henson and McLean County cannot now contradict the stipulated facts to which they had agreed. *Id*.

ADS defines "waiver" as "the intentional relinquishment of a known right." Henson Resp. at 3 (citations omitted). ADS claims that Henson and McLean County waived a hearing on the issue of jurisdiction and "stipulated that the facts in the record were the entire record on the issue of jurisdictional, pre-filing notice." *Id*. ADS adds that "it is well established that arguments raised for the first time in [a] motion for reconsideration are waived." *Id*. at 4, citing Hajicek v. Nauvoo Restoration, Inc., 2104 IL App (3d) 121013 (¶18), 7 N.E. 3d 911, 916 (3rd Dist. 2014). ADS argues that Henson and McLean County waived arguments outside of the record before the Board at the time of its August 7, 2014 order and waived any argument based on actual notice. Henson Resp. at 4. ADS concludes that the motion of reconsideration should be denied on these grounds. *Id*.

Standard for Reconsideration

ADS argues that, of the potential grounds for reconsideration, Henson's motion addresses only "newly-discovered evidence which was not available at the time of hearing." Henson Resp. at 4-5 (citations omitted). ADS claims that Henson's arguments and affidavit contain "no evidence as to why, with due diligence, the information contained in the affidavit could not have been timely discovered." *Id*. at 5. ADS notes the statement in the motion that the affiant "has come forward." *Id*., citing Henson Mot. at 1 (¶3). ADS suggests that, in the absence of any indication when, why, and to whom the affiant came forward, there is no basis to determine that the affidavit is "newly-discovered evidence." Henson Resp. at 5. ADS concludes that the motion should be denied on this basis. *Id*.

Affidavit Submitted by Henson

ADS argues that, even if the affidavit satisfied the standard for reconsideration and was admissible, it does not justify any change in the Board's August 7, 2014 opinion and order.

ADS first claims that "'actual notice' is not sufficient to meet jurisdictional requirements for per-filing notice under Section 39.2 of the Illinois Environmental Protection Act when the siting applicant makes no attempt to serve the property owner." Henson Resp. at 5; *see* 415 ILCS 5/39.2 (2012). Citing the statutory notice requirements, ADS argues that "[t]he failure to attempt service on even one person who is required to be served under Section 39.2 of the Act is fatal and jurisdiction does not vest." Henson Resp. at 6 (citations omitted). ADS notes the

parties' stipulation that neither Henson nor any other party attempted to serve the owner of PIN 21-16-226-004 with notice of the application as required. *Id*. at 7, citing Stip. at 1, 2 ((¶¶5, 7, 13-14). ADS argues that, in the absence of such an attempt, actual notice does not satisfy the requirements of the Act and does not cure the jurisdictional defect. Henson Resp. at 7 (citations omitted).

Second, ADS argues that Henson's claim to have provided actual notice "is faulty as it is asserted on behalf of only one of the two owners of PIN 21-16-226-004." Henson Resp. at 8, citing Exhibit B (McLean Count Real Estate Tax Bill for Parcel No. 21-16-226-004). ADS notes that only one of the two listed owners signed the affidavit attached to Henson's motion. Henson Resp. at 8. ADS claims that "sending notice to only one of two owners is insufficient to meet the jurisdictional requirements of the Act." *Id*., citing City of Kankakee *et al*. v. County of Kankakee, *et al.*, PCB 03-123, 03-133, 03-135, slip op. at 34-35 (Aug. 7, 2003), *aff'd*. Waste Mgmt. of Ill., Inc. v. PCB, 336 Ill. App. 229, 826 N.E.2d 586 (3rd Dist. 2005). ADS stresses that, in this case, written notice was not sent to either of the two owners of PIN 21-16-226-004. Henson Resp. at 8.

Third, ADS argues that the affidavit submitted with Henson's motion does not satisfy the jurisdictional notice requirements of Section 39.2 of the Act. Henson Resp. at 8. ADS adds that the affidavit does not comply with the requirements of Supreme Court Rule 191. *Id*. ADS claims that it does not, for example, attach certified copies of documents showing her ownership of PIN 21-16-226-004, does not provide documentation of her newspaper subscription and awareness of notice published there. *Id*. at 8-9. ADS concludes that the affidavit should be struck. *Id*. at 9.

Fourth, ADS argues that, even if the Board "were to find the affidavit sufficient, change the law on both owners being sent notice, and change the law concerning actual notice, there are other deficiencies with Henson's pre-filing notice that were a subject of the motion for summary judgment." Henson Resp. at 9. ADS notes that the Board did not address those issues after granting summary judgment on the basis of statutory notice requirements. *Id*. ADS argues that Henson did not address these other deficiencies in its motion for reconsideration, and ADS incorporates its arguments on those matters from its motion for summary judgment. *Id*.

Finally, ADS argues that, if the Board changes the law by determining that actual notice satisfies statutory notice requirements, then the motion for reconsideration "should be denied as untimely, as Henson's counsel was present at the Board's decision in August 7, 2014, an received actual notice of it." Henson Resp. at 9.

Summary

ADS argues that the Board should deny the motion for reconsideration "and maintain its precedent concerning the jurisdictional notice requirements of Section 39.2 of the Act." Henson Resp. at 9.

SUMMARY OF ADS'S RESPONSE TO COUNTY BOARD'S MOTION

ADS first addresses the timeliness of the County Board's response. Based on certified mail receipts in the Board's docket, the McLean County Board Chair, McLean County Clerk, and an Assistant State's Attorney received the Board's August 7, 2014 opinion and order on August 11, 2014. County Resp. at 1 n.1. Based on this date, ADS states that the 35-day deadline for the McLean County Board to file a motion for reconsideration was September 15, 2014. *Id*. ADS argues that, "[i]f the postmark on the County Board's filing with the Board was after September 15, 2014, or the filing was not otherwise in conformance with Board Rule 101.302, the County Board's motion should be stricken as it is not timely, as it was filed with the Board more than 35 days after service of the Board's Opinion and Order on the County Board." *Id*.

ADS argues that, without waiving the issue of timeliness, the McLean County Board's motion should be denied. County Resp. at 1. ADS notes that the McLean County Board joins the separate motion for reconsideration filed by Henson and TKNTK. *Id*. ADS cites and incorporates its September 29, 2014 response to that motion. *Id*. at 1-2, citing Henson Resp. ADS stresses the argument in its earlier response "that the Respondents waived any arguments, such as they are raising now, by entering into the Stipulated Facts." County Resp. at 2.

ADS also notes the McLean County Board's claim that it has played a game of "gotcha." County Resp. at 2. ADS argues that this claim intends only to provoke, lacks support in or outside of the record, and provides no basis for reconsideration. *Id*. ADS argues that jurisdiction has been an issue through this proceeding, as shown in the County's record on appeal and in its own petition for review by the Board. *Id*. ADS further argues that it was only during discovery that facts supporting its position on this issue were revealed. *Id*. at 2, 3. ADS claims that "[t]he Stipulated Facts were known or discoverable to the Respondents long before they were disclosed to ADS" and argues that the McLean County Board's motion should be denied. *Id*. at 3.

In addition, ADS requests that the Board find "that Henson's Illinois EPA permit to develop and operate that is predicated on siting, is void, as the County had no jurisdiction on February 15, 2011, to approve Henson's siting application." *Id*.

SUMMARY OF HENSON'S AND TKNTK'S REPLY

Henson and TKNTK first challenge ADS's argument that the stipulated facts waive any argument related to new evidence on that issue. Reply at 1. Henson and TKNTK note the parties' stipulation that "[t]he are no other material facts concerning jurisdiction that any party believes will be identified or otherwise disclosed at a hearing in this matter." *Id*., *see* Stip. at 2. (¶16). Henson and TKNTK argue that this "is not an unequivocal declaration that there were no material facts and certainly did not foreclose the possibility that such material facts might later be discovered, as they were here." Reply at 1. Henson and TKNTK argue that the Board' rules concerning reconsideration provide that the Board cannot ignore new evidence such as that raised in its motion for reconsideration. *Id*. at 1-2, citing 35 Ill. Adm. Code 101.902.

Henson and TKNTK note ADS's arguments that respondents lacked diligence in discovering jurisdictional facts. Reply at 2. They claim that this argument recognizes that

respondents did not know those facts at the time of the stipulation. *Id*. Henson and TKNTK claim that ADS's argument about diligence raises the question whether ADS "had reason to know that the Gibsons had actual knowledge of the filing of the siting application." *Id*. Henson and TKNTK argue that, if ADS "did not have such knowledge, then it is in no position to claim a lack of diligence by the Henson Respondents." *Id*. Henson and TKNTK further argue that, if ADS did know, "then it negotiated stipulated facts in bad faith." *Id*. They argue that, in either case, the newly-discovered evidence warrants reconsideration of the Board's order. *Id*.

Henson and TKNTK discount ADS's argument "that actual notice is not relevant to the jurisdictional question." Reply at 2. Henson and TKNTK claim that ADS "ironically argue that Respondents waived their actual notice argument because their counsel has *actual notice* of the PCB's ruling granting summary judgment. *Id*. (emphasis in original). Henson and TKNTK argue that their notice of the Board's August 4, 2014 ruling is not relevant to the jurisdictional question raised in the motion for reconsideration. *Id*.

Henson and TKNTK also discount ADS's argument that the claim of actual notice is insufficient because the affidavit submitted with the motion for reconsideration is made by only one of the two owners of the property at issue. Reply at 3. Henson and TKNTK claim that this argument is inapplicable because they have attached the affidavit of the other owner, Mr. Gibson. *Id*.; *see* Exh. 2. Henson and TKNTK claim that ADS's argument about sufficiency of actual notice has become inapplicable. Reply at 3.

Finally, Henson and TKNTK address ADS's argument that the affidavits are inadequate because they fail to comply with Supreme Court Rule 191. Reply at 3 n.1. Henson and TKNTK argue that those affidavits "contain sworn statement of facts made on the personal knowledge of the affiants." *Id*. They further argue that the affiants "are competent to testify to the admissible facts contained in their affidavits" and that "[t]hey are not testifying in reliance on any documents which would be required to be attached to the affidavits." *Id*.

Henson and TKNTK conclude by requesting that the Board grants their motion for reconsideration and deny ADS's motion for summary judgment. Reply at 3.

RECONSIDERATION

Standard of Review

A motion to reconsider may be filed in order "to bring to the [Board's] attention newly discovered evidence which was not available at the time of the hearing, changes in the law or errors in the [Board's] previous application of existing law." Citizens Against Regional Landfill v. County Board of Whiteside County, PCB 92-156, slip op. at 2 (Mar. 11, 1993), citing Korogluyan v. Chicago Title & Trust Co., 213 Ill. App. 3d 622, 627, 572 N.E.2d 1154, 1158 (1st Dist. 1991); *see* 35 Ill. Adm. Code 101.902. A motion to reconsider may also specify "facts in the record which were overlooked." Wei Enterprises v. IEPA, PCB 04-23, slip op. at 3 (Feb. 19, 2004).

Board Discussion of Motions

ADS has raised the issue of the timeliness of the McLean County Board's motion. Henson Resp. at 1, County Resp. at 1, n.1. Review of the Board's docket shows that the Board served its August 7, 2014 Opinion and Order on Mr. Matt Sorenson, Ms. Kathy Michael, and Ms. Hanna Eisner as representatives of the McLean County Board on August 11, 2014. American Disposal Services of Illinois, Inc. v. County Board of McLean County, Illinois, Henson Disposal, Inc. and TKNTK, LLC, PCB 11-60 (Aug. 13, 2014). Accordingly, the McLean County Board's deadline to file a motion to reconsider was September 15, 2014. 35 Ill. Adm. Code 101.520(a) (35-day deadline). Review of the Board's docket also shows that the McLean County Board electronically filed its motion to reconsider on that date. American Disposal Services of Illinois, Inc. v. County Board of McLean County, Illinois, Henson Disposal, Inc. and TKNTK, LLC, PCB 11-60 (Aug. 15, 2014). McLean County Board separately submitted by mail a printed copy of that motion, which the Board received on September 18, 2014. The Board finds that the McLean County Board's motion for reconsideration was timely and considers it below.

The Board has carefully reviewed the motions for reconsideration. The motion filed by Henson and TKNTK claims that the affidavit of Ms. Gibson is new evidence on the issue of notice indicating that the Board's August 7, 2014 order was in error. The County Board's motion incorporates by reference the arguments made by Henson and TKNTK. The motions do not raise any change in the law.

The Board is not persuaded that the affidavit of Ms. Gibson is "newly-discovered evidence unavailable at the time of hearing." The Board finds no basis in either of the motions to conclude that the statements in the affidavit became available to respondents only after the date on which the Board decided the motion for summary judgment. The Board finds that it did not err in its applying the notice requirements of Section 39.2 of the Act to grant the motion for summary judgment. Accordingly, the motions for reconsideration are denied.

CONCLUSION

For the reasons stated above, the Board grants the motion for leave to file a reply filed by Henson and TKNTK, and the Board denies the separate motions for reconsideration filed by Henson Disposal and TKNTK and by the McLean County Board.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 16, 2014, by a vote of 4-0.

John T. Therriault, Clerk
Illinois Pollution Control Board