

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

American Disposal Services of
Illinois, Inc

Petitioner

V

County Board of McLean County,
Illinois, Henson Disposal, Inc, and
TKNTK, LLC

Respondent



ORIGINAL

RECEIVED
CLERK'S OFFICE

MAY 13 2014

No. PCB 11-60
(Pollution Control Facility Siting Application)
STATE OF ILLINOIS
Pollution Control Board

Response to Petitioner's Motion for Summary Judgment

Based on Jurisdiction

NOW COMES Respondent the County of McLean, by and through its attorney, Hannah R. Eisner, and makes the following response to Petitioner's Motion for Summary Judgment Based on Jurisdiction.

Introduction

Petitioner argues that Respondent did not strictly comply with the pre-filing notice requirement in Section 39.2(b) of the Environmental Protection Act, 415 ILCS 5/39.2 and that therefore as a matter of law the County did not obtain jurisdiction to hear the pollutions control siting application filed by Respondent Henson Disposal. Petitioner contends that Respondent Henson Disposal committed three errors: it failed to attempt to serve a property owner within 250 feet of the proposed facility, the description of the rights of persons to comment on the application was insufficient and that there was no proof of receipt of three preapplication notices within 14 days of the filing.

The parties have stipulated to the facts concerning jurisdiction. (Exhibit A Petitioner's Motion for Summary Judgment Based on Jurisdiction) However Respondent disagrees with Petitioner that on these facts the Pollution Control Board must find as a matter of law that the County did not obtain jurisdiction.

1. The failure of Applicant (Respondent Henson Disposal) to attempt to serve pre-filing notice on the taxpayer of PIN 21-16-22-004 should not divest the County of jurisdiction.

Petitioner cites *City of Kankakee v County of Kankakee, et al*, PBC 03-125, upheld on appeal by *Waste Management of Illinois, Inc. v Illinois Pollution Control Board*, 336 Ill. App. 3d 229,826 N.E. 2d 586 (3d Dist. 2005) as authority for finding that the 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. Respondent acknowledges that the Illinois Pollution Control Board and the Courts have strictly construed the notice requirements of Section 39.2, but Respondent believes that the unique location of the parcel at issue in this case allows for a different conclusion.

Petitioner attached a map showing the properties within 250 feet of the proposed facility with Exhibit A of the Motion for Summary Judgment on the Basis of Jurisdiction. The parties agreed that the parcels within the area covered by hatch marks fall lie are within the 250 foot area for which preapplication notice was required. PIN 21-16-22-004 is the parcel just above the hand written note, "3-30-11". A copy of the map with a circle around PIN 21-16-22-004 is attached hereto as Exhibit A to assist in illustrating

the relative location of the parcel to the 250 foot zone. As shown on the map, a very small part of that parcel lies within the 250 of the proposed facility.

The Pollution Control Board is charged with adjudicating the Act in accordance with Appellate and Supreme Court decisions construing the statute. *Maggio v County of Winnebago, Winnebago County Board and Winnebago Landfill Company LLC PBC 13-10, 9*. Respondent could find no cases in which the Pollution Control Board or the Courts have been called upon to construe the phrase "within 250 feet". The statute is silent as to whether the entire parcel or just a portion of the property must lie within 250 to be entitled to preapplication notice. It is thus open to question whether a parcel so situated as PIN 21-16-22-004 should be considered to be within 250 feet and without a more definitive interpretation of the statute the Pollution Control Board should not rule that the County lacks jurisdiction as a matter of law.

2. The description of the rights of people to comment contained in the Section 39.2(b) Notice was not a substantial and material failure to follow the statute.

Petitioner cites two cases in support of the position that the description of the rights of the people to comment contained in the Section 39.2(b) notice were so deficient as to be grounds to divest the County of jurisdiction. The facts in both of those cases are distinguishable from those present in this matter.

The first case, *Kane County Defenders v Pollution Control Board 139 Ill, App. 3d 588, 487 N.E. 2d 743 (2nd Dist 1985)* is not relevant to the current situation. That case was decided under a previous version of Sec. 39.2 which limited public comment to 30 days after the filing of an application. It was the timing, not the content of the

preapplication notice that was at issue in that case. There is no question being raised with respect to the timing of the publication in this case.

The second case, *Everett Allen, Inc. v City of Mount Vernon*, PCB 86-34 addresses the content of the notice. Contrary to Petitioner's assertion, the notice in this case is not nearly identical to the one in *Everett Allen*. There were two errors in the notice in *Everett Allen* which compounded the problem. The full text of the notice as reported in the decision was as follows:

"Any person may file written comment with the Office of the City Clerk, 1100 Main Street, Mount Vernon, Illinois, concerning the appropriateness of the proposed site for its intended purpose. The City Council of the City of Mount Vernon shall consider any comment received or postmarked no later than 30 days from the date of receipt of the request in making its final determination. Additionally, at least one public hearing is to be held by the City Council of the City of Mount Vernon within 60 days of receipt of the request for site approval, such hearing is to be preceded by published notice in a newspaper of general circulation published in Jefferson County, Illinois" Id, 4.

The Pollution Control Board found that the misstatement of the period for public comment together with wrong hearing date, significantly impacted members of the public who would have relied on the notice to prepare for a hearing or to prepare comments. Id. 5. The Pollution Control Board in *Everett* did not find that any defects in notice, no matter how minor, will defeat jurisdiction. It is only those that constitute a "substantial and material failure" to state a description of the right of persons to comment. Id, 5.

The notice in this case differs from the one in *Everett Allen* in in several respects. First, the notice did not specify that the County Board would consider comments received within 30 days of the date of the filing. Nor, did it state the number of days within which a hearing would be held. The notice merely directed members of the

public that comments should be delivered to the County Clerk or post marked not later than 30 days after the filing date. Albeit this was not a complete statement of the public's right to comment, it did not rise to the level of limiting public comment as the Pollution Control Board found in *Everett*.

Petitioner suggests that the notice eliminated 90 days from the comment period. This is based on the notion that a member of the public could have incorrectly inferred that there would be no other opportunity to comment on the application. First, it should be noted that the County has no authority to limit the comment period and is bound to follow the statute regardless of the wording of the notice. 415 ILCS 5/39.2(g). Thus, while the wording of the notice may arguably have created a misapprehension of the right to comment it did not and could not have actually interfered with it.

Petitioner also fails to take into consideration that the County must publish notice of the hearing on an application a minimum of 14 days in advance of the hearing. 415 ILCS 39.2(d). Furthermore, McLean County has enacted an ordinance for siting Pollution Control Facilities which imposes greater publication requirements than the statute. (A copy of the County Ordinance is attached hereto as Exhibit) Section 33.13 (C)(1) and (C)(2) of the McLean County ordinance requires publication of the notice of hearing once per week for three successive weeks prior to the hearing and at least once during the week preceding the public hearing. The Board can take the County's local rules into consideration *Waste Management of Illinois, Inc. v Pollution Control Board* 175 Ill. App. 3d 1023,1035 530 N.E. 2d 682, 692 (Ill. App. 2d Dist. 1988).

The publication of the notice of hearing serves the same purpose as the preapplication notice in that it reminds the public that there is an application pending

and it gives them time to review the application to determine whether or in what manner they wish to further participate. The longer publication period required by the County ordinance mitigates the significance of the mistake in the preapplication publication in this case and therefore the Board should find that the notice was not so deficient as to deprive the County of jurisdiction.

3. The certified mailings of pre-filing notice to Raymond Fairchild, Kipp Connour and Nord Enterprises were properly served.

Petitioner invokes the “reasonably time to ensure delivery rule” that has been used by the Pollution Control Board to determine whether the requirements of Section 39.2(b) for service of preapplication notice have been met to argue that service of some notices in this case was defective. However, the need for and viability of that rule has been called into question in the recent Appellate Court decision of *Maggio v Pollution Control Board* 2014 WL 1280440. The court in that case upheld a decision by the Pollution Control Board finding Winnebago county obtained jurisdiction over a siting application even though there was no proof of receipt of some of the preapplication notices. The applicant mailed 102 preapplication notices by certified mail return receipt requested. *Maggio v County of Winnebago, Winnebago County Board, and Winnebago Landfill Company, LLC* PCB 13-10,3. 8 of the notices remained unclaimed as of the 14-day notification deadline and there was no proof of receipt for any of those notices. Id, 3. Additionally, 3 of the notices were not received until after the application for siting approval was filed. Id, 3.

The Pollution Control Board construed the statute in light of more recent Board and Court rulings on the matter and also applied the established “reasonable time to

ensure delivery rule” in reaching its conclusion in the case. The Board adopted its prior ruling in *City of Kankakee v County of Kankakee* PCB 03-125 (August 7, 2003), affirmed by *Waste Management of Illinois v IPCB* 356 Ill. App. 3d 229, 826 N.E. 2d 586 (3rd Dist. 2003) to find that jurisdiction is not premised on the recipient’s actions, but exists as long as the notice is sent by the prescribed method. *Maggio v County of Winnebago*, 8 The Board also found the timing of the mailing of the notices, which had been mailed seven days prior to the 14-day deadline, were reasonably calculated to insure delivery by the 14-day deadline. *Id.*, 9.

The Appellate Court agreed with the Pollution Control Board’s construction of the plain meaning of the statute, but because the Pollution Control Board upheld jurisdiction on the basis of both the plain meaning of the statute and the “reasonable time to ensure delivery rule”, it refrained from ruling on which was a proper interpretation. *Id.*, ¶ 40, 41. However, the Court questioned the stated purpose of the rule, giving landowners adequate time to comment on proposed site and found it was without merit, stating:

“...it is unclear how landowners would use that time to officially (and knowledgeable comment on the proposed site. Landowner comments will generally be heard after the public hearing on the application, with the public hearing occurring no sooner than 90 days after the county board receives the applications...Landowners may also comment in letters postmarked up to 30 days after the last public hearing...Therefore, the IPCB’s argument that it’s construction of “return receipt requested” furthers the statute’s purpose by giving surrounding landowners adequate time to comment on a proposed site is without merit.” *Id.*, ¶ 37


After *Maggio*, the language of the statute is open to two interpretations: one that relies on the plain language and looks only to delivery, without regard to receipt and another which still reads some requirement for receipt into the statute. Under the first interpretation, the service of the preapplication notices in this case meet the

jurisdictional requirement as having been mailed by certified mail, return receipt requested before the 14-day deadline. Respondent does not agree that the mailing was not done within a time to reasonably insure delivery, but nonetheless believes that the Board can properly interpret the statute to considering only the delivery without regard to receipt and in so doing find that McLean County properly obtained jurisdiction as a matter of law. In any event, the availability of two interpretations under *Maggio* precludes the Board from ruling that the notices did not meet jurisdictional requirements as a matter of law.

Dated: May 9, 2014

Respectfully submitted,

County of McLean

By: 

Its Attorney

Hannah R. Eisner
County of McLean
115 E. Washington, Rm. 401
Bloomington, IL 61601
(309) 888 5110
hannah.eisner@mcleancountyil.gov
ARDC No: 6192102

EXHIBIT A

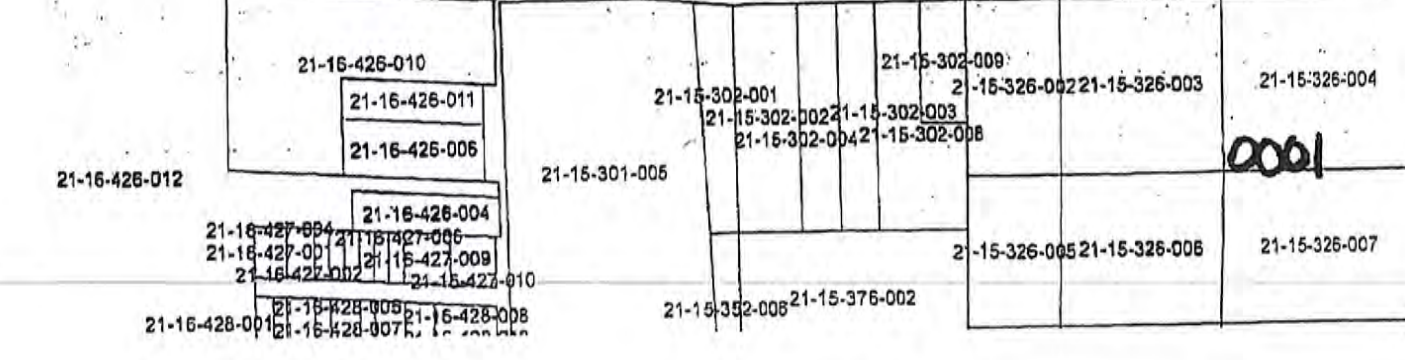
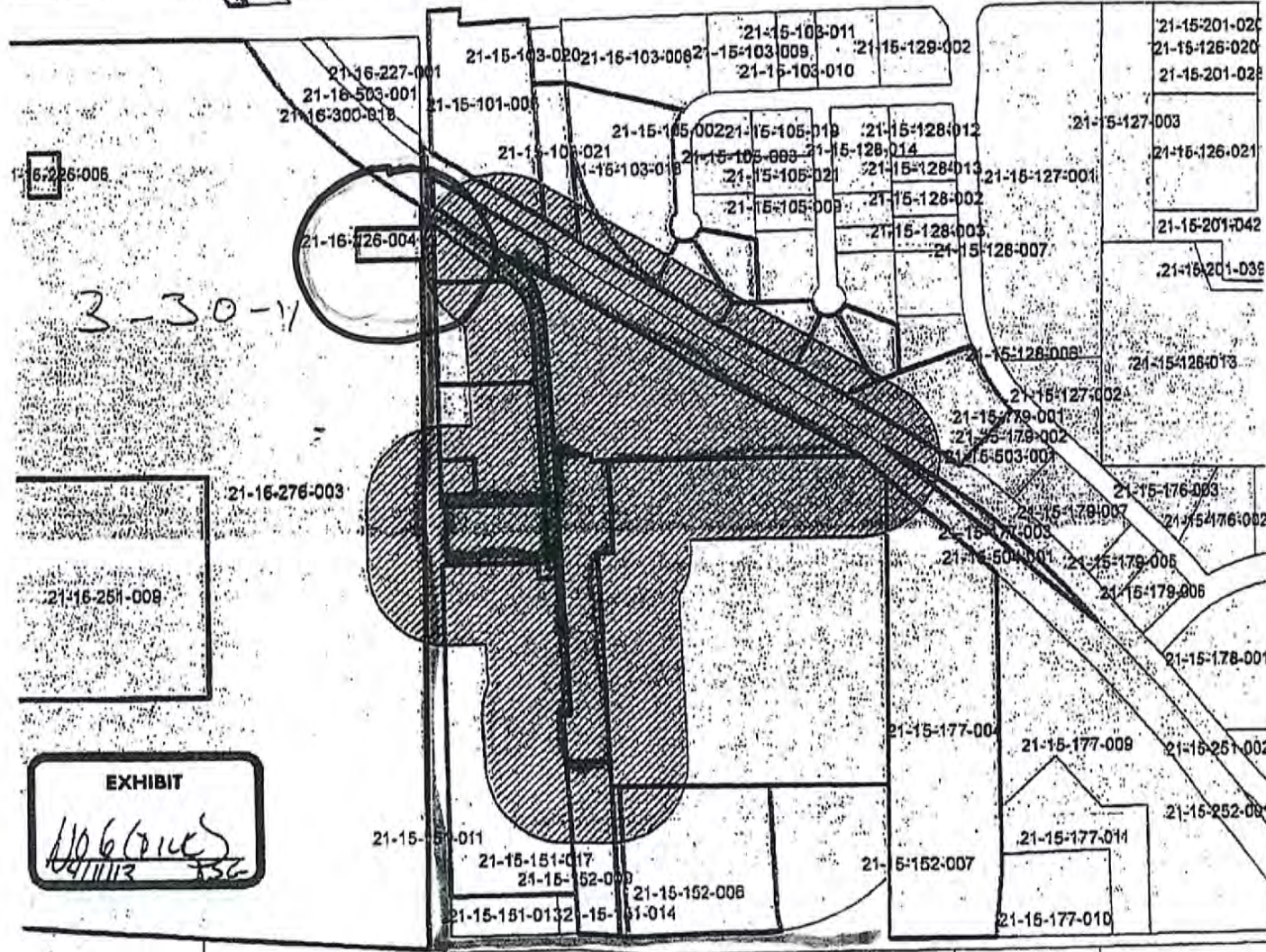
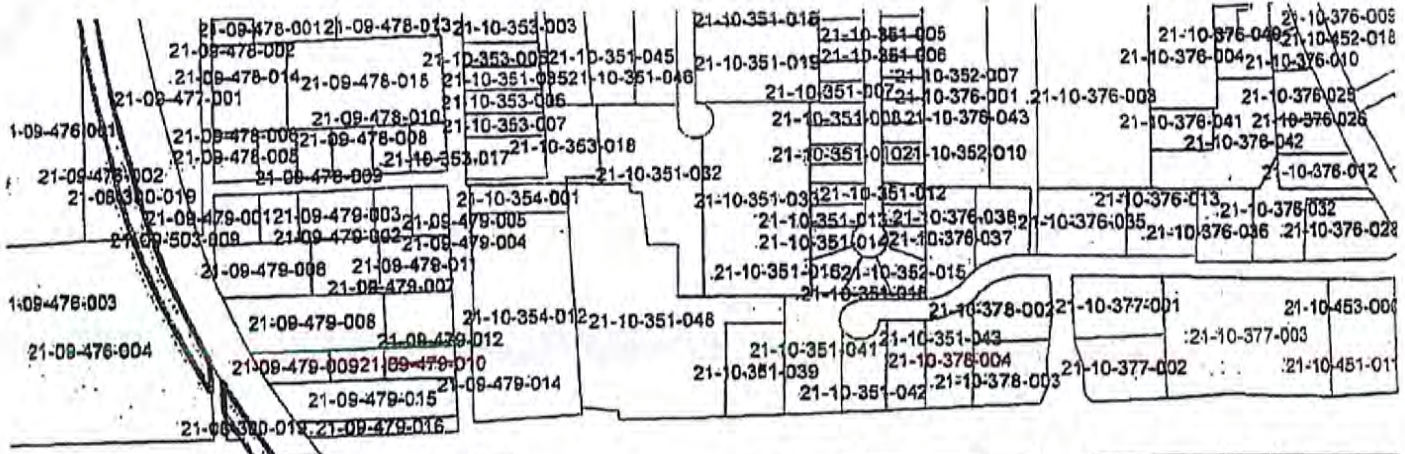


EXHIBIT
106 (lines)
9/11/13 *FSC*

3-30-11

CHAPTER 33Pollution Control Facilities33.01 DEFINITIONS

The terms used in these procedural rules and regulations shall have the same meanings as the same terms are defined in the Environmental Protection Act of the State of Illinois, in effect as of the date hereof and as said Act may be amended or modified from time to time.

33.02 FILING OF REQUEST

A minimum of thirty-five (35) complete copies of requests for site approval, shall be filed in the office of the County Clerk by the applicant. Upon receipt of any such requests and the filing fee as provided in Section 33.03, the County Clerk shall date stamp same, retain one copy, and deliver the remaining copies to the siting review coordinator as provided in Section 33.08. (Amended 7/20/93)

33.02-1 Requirements of request. The request for site approval shall include the substance of the applicant's proposal and all documents, if any, submitted to the Environmental Protection Agency pertaining to the proposed facility except trade secrets as determined in Section 7.1 of the Environmental Protection Act, as of the date said request is filed. The request shall also include sufficient details describing the proposed facility to demonstrate compliance with statutory criteria.

33.02-2 Filing of amended request. At any time prior to the completion by the applicant of the presentation of the applicant's factual evidence and an opportunity for cross-questioning by the McLean County Pollution Control Site Hearing Committee and any participants, the applicant may file not more than one amended request for site approval upon payment of an additional fee as set forth.

(A) In the event an amended request is filed, it shall comply with Sections 33.03 and 33.06.

(B) The time limitation for final action is set forth by the Environmental Protection Act shall be extended for an additional period of 90 days.

33.03 FILING FEE

There shall be paid to the County Clerk for delivery to the County Treasurer for deposit in a special fund at the time of the filing of a request for site approval a fee of \$125,000. In the event an amended request is filed, an additional filing fee of not to exceed \$125,000 shall accompany said amended request. (Amended 7/20/93)

33.03-1 Use of fee. The fee hereunder with any request shall be used only to defray the costs incurred by the County in connection with the application for site approval to which the fee is applicable. The County Board may use the fee to pay any costs incurred by the County in reviewing the request, employing qualified professional persons to evaluate the information contained in the request, to pay the costs involved in any hearing, including the fees of court reporters and expert witnesses employed by the County to clarify or refute any information contained in the request, to pay any costs incurred in the appeal of any decision of the County Board as to the request and to pay any other costs of expense in any way connected with the request.

33.03-2 Refund of fee. If the costs to the County are less than the amount paid by the applicant, the excess shall be refunded to the applicant pursuant to Section 33.18.

33.04 CONTENTS OF REQUEST FOR SITE APPROVAL

(A) The request shall be typed on paper 8 inches by 11 inches in size and shall be securely bound in the left-hand margin.

(B) The request shall be signed by the applicant, or if the request is filed by a corporation, it shall be signed by its principal executive director.

(C) The face sheet of the request shall contain only the following information:

- (1) A statement that it is a request for local siting approval for a new regional pollution control facility.
- (2) A statement indicating what type of regional pollution control facility site is being proposed for approval.
- (3) The applicant's full name, address and telephone number; if a partnership, the names and addresses of all partners and the telephone number of the partnership. If a corporation, the names and addresses of all officers and directors, and the names and addresses of all shareholders owning ten percent or more of the capital stock of said corporation and the telephone number of the corporation.
- (4) The name, address, telephone number and title of the person designated by the applicant as its agent for service of notices.

(D) The contents of any requests for site approval shall also comply with the provisions set forth in Section 33.03.

(E) The request shall also include proof that written notice has been served and published in accordance with Section 39.2(b) of the Environmental Protection Act.

33.05 WAIVER

The County Board may waive any of the above request requirements upon good cause shown as long as such waiver is not inconsistent with State or Federal law.

33.06 PUBLIC INSPECTION

A copy of the request shall be made available for public inspection in the offices of the County Clerk and members of the public shall be allowed to obtain a copy of the request or any part thereof upon payment of actual costs of reproduction to the County Clerk. All copying requests shall be fulfilled by the County Clerk in accordance with the Illinois Freedom of Information Act.

33.07 WRITTEN COMMENTS

The County Clerk shall receive and date stamp written comment from any person concerning the appropriateness of the proposed site for its intended purposes.

(A) Copies of written comments shall be made available for public inspection in the offices of the County Clerk, and members of the public shall be allowed to obtain a copy of any written comment upon payment of actual costs of reproduction. All copying requests shall be fulfilled by the County Clerk in accordance with the Illinois Freedom of Information Act.

(B) Any written comment received by the County Clerk or postmarked not later than 30 days after the date of the last public hearing shall be made part of the record of the public hearing as hereinafter described and the County Board shall consider any such timely written comments in making a final determination. In the event that the 30th day falls on a Saturday, Sunday, a Federal or McLean County holiday, the next day on which mail is received by the McLean County Clerk shall be considered the 30th day for purposes of this provision.

33.08 STAFF REVIEW

The County Board may, at its discretion, retain the services of one or more professional consultants to assist the Board and County staff in the process of reviewing any site approval request. Any expenses shall be paid from the filing fee, consistent with Section 33.07.

33.08-1 Staff siting review coordinator. McLean County Solid Waste Coordinator shall be the staff siting review coordinator. Upon receipt of copies of a request for site approval, the siting review coordinator shall be responsible for coordinating the review of the request with the following:

- (1) McLean County Solid Waste Management Program
- (2) McLean County Building and Zoning Department
- (3) McLean County Regional Planning Commission
- (4) McLean County Highway Department
- (5) McLean County Administrator's Office
- (6) McLean County State's Attorney's Office
- (7) McLean County Health Department
- (8) Any professional consultant retained by the County Board.

(A) The staff siting review coordinator is authorized to call inter-departmental meetings and set deadlines for the submittal of staff reports, recommendations and/or evidence.

(B) A representative of the forenamed departments shall attend the public hearings and may ask such questions as are needed to assist them in reaching their recommendation.

(Amended 7/20/93)

33.08-2 Power of departments. The forenamed departments are authorized to prepare and submit reports, recommendations and/or evidence in connection with the request.

(A) Preliminary reports prepared by the staff, summarizing and analyzing the proposed site request, the written comments, reports, studies and exhibits concerning the appropriateness of the proposed site may also be filed with the County Clerk in advance of the public hearings.

(B) Copies of any departmental reports shall be available for public inspection in the office of the County Clerk and members of the public shall be allowed to obtain a copy of said documents upon payment of the actual cost of reproduction.

33.08-3 Final reports and recommendations. Upon completion of the evidentiary hearings, the forenamed departments shall have reasonable time to file any final reports and recommendations with the County Clerk. Copies of the final reports shall be available for public inspection in the office of the County Clerk prior to reconvening the hearing and members of the public shall be allowed to obtain a copy of said documents upon payment of the actual cost of reproduction.

(Amended 1/20/87)

33.09 - 33.10 RESERVED

33.11 HEARING RECORD

The County Clerk of his/her designee shall be responsible for keeping the record of the hearing/and site review process.

33.11-1 Hearing record. The record shall consist of the following:

- (A) The request for siting approval.
- (B) Proof of notice as described in Section 33.30 C hereof;
- (C) Proof of notice given by applicant pursuant to Section 39.2(b) of the Environmental Protection Act (Ch. 111-1/2, par. 1039.2(b), Ill. Rev. Stat.).

- (D) Written comments filed by the public and received by the County Clerk or postmarked within 30 days of the last public hearing.
- (E) All reports and recommendations as described in Section 33.08.
- (F) All evidence, reports, studies, exhibits or documents admitted into evidence at the public hearing;
- (G) A complete transcript of the public hearing(s);
- (H) The findings of fact and recommendation of the McLean County Pollution Control Site Hearing Committee; and
- (I) A copy of the Resolution containing the final decision of the County Board.

33.11-2 Written certification. The County Clerk shall be responsible for certifying all copies of the record.

33.12 HEARING COMMITTEE

The McLean County Pollution Control Site Hearing Committee shall consist of the members of the McLean County Board's Land Use and Development Committee and the Chairman of the County Board.

(A) Chairman of Committee. The Chairman of the County Board shall serve as the Chairman of the Pollution Control Site Hearing Committee.

(1) In the event that said Chairman cannot serve, the Chairman of the Land Use and Development Committee shall assume the duties of Chairman of the Committee in relation to the public hearings on the application.

(2) In the event neither is in attendance at a public hearing, the members present shall select a chairman pro tem from among those members present who shall preside over the hearing session.

(B) Quorum. Four (4) members of the Committee shall constitute a quorum for the purpose of holding the public hearing.

33.13 PUBLIC HEARING PROCEDURES

(A) Within a reasonable time from the date the request for site approval is filed, the Chairman of the County Board shall determine the date, time and location upon which such public hearing shall be held. The initial public hearing shall be scheduled no sooner than ninety (90) days but no later than one hundred twenty (120) days from the date the request for site approval was filed with the County Clerk.

(B) If, in the Chairman's opinion, County facilities are not sufficient to accommodate the number of persons expected to attend the hearing, the Chairman may arrange for the hearing to be conducted at another site. In such an event, the Chairman is authorized to lease an adequate auditorium and sound system for the hearing. Any and all costs associated with such acquisition shall be paid from the filing fee, consistent with Section 33.03.

(C) The Chairman of the County Board shall promptly notify the County Clerk of the date upon which such hearing shall be held and the County Clerk shall cause notice of such hearing to be made as set forth in the Environmental Protection Act. (415 ILCS 5/39.2). Such notice shall be given as follows:

- (1) At least once per week for three successive weeks in the legal notice section of a newspaper of general circulation published in the County.
- (2) At least once during the week preceding the public hearing, as display as in a newspaper of general circulation throughout the County. Such notice shall consist of all items hereinafter described.
- (3) Written notice sent by certified mail to all members of the General Assembly from the district in which the proposed site is located.

- (4) Written notice sent by certified mail to the Illinois Environmental Protection Agency.
- (5) Such notice shall consist of the following:
 - (a) The name and address of the applicant requesting the site approval.
 - (b) The location of the proposed site.
 - (c) The nature and size of the proposed development.
 - (d) The nature of the activity proposed.
 - (e) The probable life of the proposed activity.
 - (f) The time and date of the public hearing.
 - (g) The location of the public hearing.
 - (h) A statement that all interested persons have the right to comment on the request at the public hearing.
- (D) The County Clerk shall promptly notify the applicant of the date, time and location of such hearing.
- (E) The State's Attorney, or an assistant, shall make the necessary arrangements to have a court reporter present at any public hearing for purposes of establishing a record and a transcript thereof.
- (F) The State's Attorney, or an assistant, shall serve as legal advisor for the McLean County Regional Pollution Control Site Hearing Committee.
- (G) Members of the public shall be allowed to obtain copies of any documents filed upon payment of the actual cost of reproduction.
- (H) All testimony at any public hearing shall be under oath or affirmation.
- (I) The applicant requesting site approval shall have the burden of going forward with evidence of the suitability of the site for its proposed use.
- (J) Any person appearing at the public hearing shall have the right to give testimony and comment on the suitability of the proposed use for the site location. Any person testifying shall be required to state their name and address.
- (K) The opportunity for any person appearing at the public hearing(s) to cross-examine any witness may be limited by the Committee. The Committee reserves the right to limit testimony, questions, comments and cross-examination to prevent argumentative comments, personal attacks on other parties, to maintain order and decorum during the hearing process, and to prevent cumulative, repetitive or irrelevant material in the record. The Committee reserves the right to ask questions of any party testifying in order to clarify an issue, statement or fact.
- (L) The Committee of County staff shall have the right to obtain and consider as evidence the previous operating experience and past record of convictions or admissions of violations of the applicant (and any subsidiary or parent corporation) in the field of solid waste management when considering statutory criteria ii and v in Section 39.2(a) of the Environmental Protection Act (415 ILCS 5/39.2).
- (M) The Committee may request the Illinois Department of Transportation to perform traffic impact studies of proposed locations for regional pollution control facilities.
- (N) Any person shall have the right to be presented by a licensed attorney-at-law at the public hearing(s). Such attorneys shall have the right of reasonable cross-examination.

(O) Upon the completion of all testimony, the Chairman of the Committee shall announce the evidence gathering portion of the hearing(s) to be closed. At that time, the department staffs and officials shall prepare their final reports and recommendations. The public hearing may be reconvened, upon notice to the applicant, to hear the staff reports. Any member(s) of the public who wish to be notified of the reconvened hearing may leave their names and addresses with the County Clerk. Notice of the reconvened hearing may be mailed not less than three (3) consecutive days prior to the hearing date.

33.14 - 33.15 RESERVED

33.16 PUBLIC REVIEW MEETING

After the public hearing(s) or any continuation thereof, the McLean County Regional Pollution Control Site Hearing Committee shall hold a public review meeting for purposes of establishing findings of fact and a recommendation concerning the site approval request. Any findings of fact and recommendation shall be supported by the record and shall be presented by the Committee to each County Board member.

33.17 DECISION BY THE COUNTY BOARD

The County Board shall consider the record of the public hearing, the findings of fact and the recommendations of the Pollution Control Site Hearing Committee and shall make written decision concerning a site approval request not more than 180 days from the date of the County Clerk's filing of the site approval request for site approval provided such conditions are reasonable and necessary to accomplish the purposes set forth in the Act (415 ILCS 5/39.2) and so long as the conditions are not inconsistent with regulations promulgated by the Illinois Pollution Control Board.

(A) Any determination by the County Board shall be supported by the record.

(B) No determination by the County Board of a site approval request may be reconsidered except as provided in the Act. (415 ILCS 5/1 et seq.).

33.18 ADMINISTRATION OF FEES AND COSTS

(A) The County Administrator, or his designee, shall establish a suitable accounting system for the acceptance, distribution and reconciliation of the fee in accordance with good accounting practices.

(B) The filing fee received shall be deposited with the County Treasurer. The County Treasurer is hereby authorized and directed to receive and hold said filing fee until payment is directed as described below.

(C) All expenses incurred by the County of McLean as a result of the request for site approval and the hearing process set forth herein shall be paid from the filing fee.

(D) The County Administrator must give preliminary approval before an expense chargeable to the filing fee is incurred; except notice and publication costs incurred by the County Clerk, court reporter fees and legal representation expenses by the State's Attorney.

(E) All costs incurred by the County, its staff officials and departments as a result of administering the hearing process herein shall be reported to the Auditor of McLean County.

(1) The Auditor shall submit said bills and expenditure requests to the County Board for approval. The Board shall authorize reimbursement for expenditures and payment of all bills upon proper documentation.

(2) Upon termination of any proceedings under the hearing process, the Auditor shall prepare a final accounting and summary of all bills and expenses which shall be presented for approval to the County Board.

(F) Any portion of the filing fee not required for reimbursement to the County for costs or expenses incurred by the County under the hearing process shall be returned to the Applicant. If the costs incurred by the County exceed \$125,000, the County Administrator shall present a claim to the Applicant for the excess. Payment of this excess is due

within 30 days of the date the claim is presented to the Applicant. (Amended 7/20/93)

33.19 APPEAL PROCEDURE

Appeals on the siting decision of the County Board shall be made in accordance with Section 40.1 of the Act. (415 ILCS 5/40.1).

33.20 RESERVED

33.21 SEVERABILITY

The sections, subsections, paragraphs, and provisions of this Resolution shall be deemed severable and the invalidity of any portion of this Resolution shall not affect the validity of the remainder.

33.22 REPEAL

Any or all Resolutions pertaining to a procedure for hearing site approval requests for new regional pollution control facilities prior to the enactment of this Resolution are hereby repealed.

33.23 EFFECTIVE DATE

This Resolution shall become effective upon its adoption by the County Board of McLean County, Illinois.

Adopted July 20, 1993

Illinois Revised Statutes, Chapter 111-1/2, par. 1001 et seq.

415 ILCS 5/1 et seq.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

AMERICAN DISPOSAL SERVICES OF)
ILLINOIS)
Petitioner)
VS)
COUNTY BOARD OF MCLEAN COUNTY,)
ILLINOIS, HENSON DISPOSAL, INC. and)
TKNTK, LLC,)
Respondents)

PCB 11-60

ORIGINAL

RECEIVED
CLERK'S OFFICE
MAY 13 2014

STATE OF ILLINOIS
Pollution Control Board

CERTIFICATE OF SERVICE

The undersigned certifies that she served the foregoing Response to Petitioner's Motion for Summary Judgment on the following named individuals by placing same in an envelope to the address indicated and depositing said envelope in the United States Mail, first class postage fully prepaid, at or about the hour of 5:00 p.m., this 9th day of May, 2014:

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, IL 62794-9274

Jennifer J. Sackett Pohlenz
Clark Hill PLC
150 N. Michigan Ave. Suite 2700
Chicago, IL 60601

Amy L. Jackson
Rammelkamp Bradney, P.C.
232 West State Street
Jacksonville, IL 62650

Richard T. Marvel
Attorney at Law
202 N. Center Street, Ste. 2
Bloomington, IL 61701

Hannah R. Eisner

Subscribed and sworn to before me
this 9th day of May 2014.





OFFICE OF THE ADMINISTRATOR

(309) 888-5110 FAX 888-5111

115 E. Washington St., Room 401 P.O. Box 2400 Bloomington, IL 61702-2400

May 9, 2014



ORIGINAL

RECEIVED
CLERK'S OFFICE

MAY 13 2014

STATE OF ILLINOIS
Pollution Control Board

John T. Therriault, Assistant Clerk
Pollution Control Board
100 West Randolph Street
James R. Thompson Center, Suite 11-500
Chicago, IL 60601-3218

Re: PCB 11-60 – Third Party Pollution Control Facility Siting Appeal

Dear Mr. Therriault,

Enclosed please find one original and nine copies of McLean County's Response to Petitioner's Motion for Summary Judgment Based on Jurisdiction and Certificate of Service on the parties to be filed in the above referenced matter.

Very truly yours,

Hannah R. Eisner
Attorney for McLean County