

**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,

Respondents.

No. PCB 11-60

(Pollution Control Facility Siting  
Application)

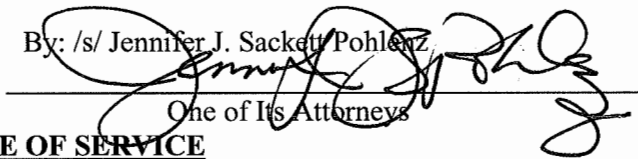
**NOTICE OF FILING**

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| <p><b>TO:</b> Richard T. Marvel<br/>Attorney at Law<br/>202 N. Center Street, Suite 2<br/>Bloomington, IL 61701<br/><i>Via U.S. Mail &amp; E-mail (marvelr@me.com)</i></p>                           | <p>Amy Jackson<br/>Rammelkamp Bradney, P.C.<br/>232 West State Street<br/>Jacksonville, Illinois 62650<br/><i>Via U.S. Mail &amp; E-mail (ajackson@rblawyers.net)</i></p>   |
| <p>Hannah Eisner<br/>McLean County State's Attorney's Office<br/>104 W. Front Street, Rm. 605<br/>Bloomington, IL 61702<br/><i>Via U.S. Mail &amp; E-mail (hannah.eisner@mcleancountyil.gov)</i></p> | <p>Hearing Officer Carol Webb<br/>Illinois Pollution Control Board<br/>1021 North Grand Avenue East<br/>P.O. Box 19274<br/>Springfield, Illinois 62794-9274<br/><i>Via E-mail ONLY (webbc@ipcb.state.il.us)</i></p> |
| <p>Charles Helston &amp; Rick Porter<br/>Hinshaw &amp; Culbertson<br/>100 Park Ave., PO Box 1398<br/>Rockford, IL <i>Via U.S. Mail &amp; E-mail</i><br/>dheaney@hinshawlaw.com</p>                   | <p>Don Knapp<br/>McLean County State's Attorney's Office<br/>104 W. Front Street, Rm. 605<br/>Bloomington, IL 61702 <i>Via U.S. Mail &amp; E-mail</i><br/>Don.Knapp@mcleancountyil.gov</p>                          |

**PLEASE TAKE NOTICE** that on September 29, 2014, we electronically filed with the Illinois Pollution Control Board: (1) this *Notice of Filing*; (2) the attached *PETITIONER'S RESPONSE IN OPPOSITION TO RESPONDENT COUNTY BOARD OF MCLEAN COUNTY'S MOTION FOR RECONSIDERATION*.

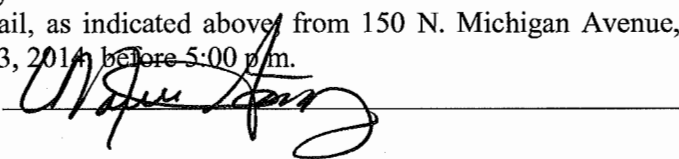
Dated: October 3, 2014  
Jennifer J. Sackett Pohlenz  
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Respectfully submitted,  
**AMERICAN DISPOSAL SERVICES OF  
ILLINOIS, INC.**

By: /s/ Jennifer J. Sackett Pohlenz  
  
One of Its Attorneys

**CERTIFICATE OF SERVICE**

I, Marci Frazier, a non-attorney, certify<sup>1</sup> that I served the documents identified above on the parties identified above *via* U.S. Mail and e-mail, as indicated above, from 150 N. Michigan Avenue, Suite 2700, Chicago, Illinois 60601, on October 3, 2014, before 5:00 p.m.



<sup>1</sup> Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the above signed certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the above signed certifies as aforesaid that he verily believes the same to be true.

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**PETITIONER'S RESPONSE IN OPPOSITION TO  
RESPONDENT COUNTY BOARD OF MCLEAN'S  
MOTION FOR RECONSIDERATION**

NOW COMES Plaintiff American Disposal Services of Illinois, Inc. ("ADS"), by and through its attorneys at Clark Hill PLC, and as its Response In Opposition to Respondent County Board of McLeans's Motion for Reconsideration ("Motion"), states as follows:

**ARGUMENT**

On September 18, 2014, Respondent County Board of McLean County ("County Board") filed a Motion to Reconsider the Illinois Pollution Control Board's August 7, 2014, Opinion and Order. The County Board served the parties with its Motion by U.S. Mail.

Without waiving the potential untimeliness of the County Board Motion<sup>1</sup>, the County Board's Motion for Reconsideration should be denied. The County Board makes two arguments in its Motion. First, it joins in Respondents Henson Disposal, Inc. and TKNTK, Inc.'s. In Response to this portion of the County Board's Motion, ADS repeats and incorporates its

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<sup>1</sup> If 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. Pursuant to the Board's docket, Hanna R. Eisner (an attorney with a filed appearance on behalf of the Board in this matter), Matt Sorenson (County Board Chairman), and Kathy Michael (McLean County Clerk) all received the Order and Opinion on August 11, 2014. (See, Certified Returned Receipts filed in the Board's docket on August 13, 2014). The 35th day from August 11, 2014, is Monday, September 15, 2014. The on-line docket does not contain the "postmark" as referenced in Board Rule 101.300(b)(2) and does not disclose whether "all requirements are met as set forth in Section 101.302." Thus, the Petitioner reserves this argument.

Response in Opposition to Respondents Henson Disposal, Inc. and TKNTK, Inc.'s Motion for Reconsideration. Included in the Response (but not limited to in the incorporation of the Response here) is the argument that the Respondents waived any arguments, such as they are raising now, by entering into the Stipulated Facts.

Second, the County Board alleges, without any factual basis inside or outside of the Record in this matter, that Petitioner engaged in a game of legal "gotcha." This allegation is offensive and made with the sole purpose of provocation. Paragraph 4 of the County Board's Motion should be stricken as it makes widely unsupported allegations based solely on imaginative conjecture. There is no "gotcha" being played and the record, in fact, supports the opposite. Moreover, there is no legal "gotcha" argument that forms a basis for a proper motion for reconsideration before the Board. This is nothing more than the County Board continuing to act out, aggressively against a public participant in a public process, and assert its favoritism toward Henson Disposal, Inc. and TKNTK, Inc. (collectively "Henson").

Indeed, jurisdiction has always been an issue in this siting proceeding, even though the information concerning the property owners to whom no Section 39.2 pre-filing notice was even attempted by Henson, was not revealed until the discovery process. On page C-133 of the Record, ADS reserves raising jurisdictional arguments (although reservation is not necessary, as the law allows a jurisdictional argument to be raised at any time). In its Petition for Review, ADS, again, raises the issue of jurisdiction (Petition ¶8). Although jurisdictional arguments existed, the facts and identification related to those issues did not become clear until discovery in the siting proceeding.

Even when the County Board filed the Record on Appeal, it was apparently taking the position that the Henson siting application filed on August 9, 2010, was an "amendment" rather

than a separate filing. (*See*, Certificate of Record on Appeal Index, p. 1). Obviously, the filing date of the application (which was not agreed by the parties when the Petition was filed), is a critical fact to identifying whether and what jurisdictional issues exist. In addition, the identification of facts that supported the jurisdictional issue on which the Board ruled did not occur until discovery in this case. For example, the County Board produced the documentation identifying that the 250' distance around the Henson facility that was used to send out the notices, failed to exclude roadways, as required by the law (Phil Dick Deposition Exhibit 6, also attached to the Stipulated Facts). The Stipulated Facts were known or discoverable to the Respondents long before they were disclosed to ADS. Therefore, for the reasons stated above, the Board should deny the County's Motion and maintain its precedent concerning the jurisdictional notice requirements of Section 39.2 of the Act.

The County Board, like Henson, is attempting to use its Motion as a shield, even though the Board denied Henson's motion to stay, to cover it from its continued violation of the Illinois Environmental Protection Act, as Henson continues to operate its facility with a void Illinois EPA permit. Petitioner request that this Board find in its Opinion and Order on the Motions for Reconsideration, 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.

Dated: October 3, 2014

Respectfully submitted,

Jennifer J. Sackett Pohlenz  
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**AMERICAN DISPOSAL SERVICES OF  
ILLINOIS, INC.**

By: /s/ Jennifer J. Sackett Pohlenz

One of Its Attorneys