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McLEAN COUNTY, ILLINOIS
DEC 01 2023
Kathy Michael
COUNTY CLERK

VIA EMAIL ONLY

Ms. Catherine Metsker, Chair
McLean County Board
115 East Washington Street
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Ms. Erika Reynolds
McLean County State's Attorney
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Re: ***Lakeshore Recycling Systems, LLC Siting Application***

Dear Chairwoman Metsker and State's Attorney Reynolds:

Our firm represents Republic Services, Inc. I am writing regarding the application for site approval for a new regional pollution control facility ("PCF") submitted by Lakeshore Recycling Systems, LLC ("LRS") on August 18, 2023, which will be the subject of an upcoming hearing with the County pursuant to Section 39.2 of the Illinois Environmental Protection Act, 415 ILCS 5/39.2 and relevant companion provisions of the McLean County Code. While we are prepared to attend the scheduled hearing, we do so without waiving objections we have to the County's jurisdiction to move forward with this application – specifically that statutory notice and setback requirements have not been met, and those requirements are jurisdictional.

In the spring of 2021, Henson Disposal, Inc. filed a similar Siting Application with the County Board and, prior to proceeding, we sent a letter to then Chairman McIntyre and then State's Attorney Knapp outlining certain fatal flaws with that application. The application was subsequently withdrawn by the Applicant prior to hearing. We believe problems related to notice and setbacks continue to exist in this application, as follows.

Ex. 4

In the instant application, LRS inappropriately relies on parcels and boundaries that are not yet legally established or recognized by the McClean County Recorder of Deeds or the McClean County Assessor's Office. In fact, the parcels that the applicant has identified in its application as 21-15-151-021, 21-15-151-022, and 21-15-151-023 cannot be found by a search through McClean County records. While the Notice of Recording and plat of survey are contained in the application, such documents do not describe or legally create an existing real estate property. Thus, the only property "lot line" that exists for purposes of this application is the line that creates the boundary of the entire existing property (referred to in the application as the 45-acre Henson Recycling Campus or HRC). The fiction created in this application was recognized in the County Department of Public Health's preliminary staff report which criticized the Criterion 2 discussion in the application as "confusing" since it "implies the lot exists when it does not".

This flaw is especially important as to the statutory pre-hearing notice requirement which is explicitly spelled out in Section 39.2(b) of the Act – and, as courts have held, must be explicitly followed:

> (b) No later than 14 days before the date on which the county board or governing body of the municipality receives a request for site approval, the applicant shall cause written notice of such request to be served either in person or by registered mail, return receipt requested, <u>on the owners of all property within the subject area not solely owned by the applicant, and on the owners of all property *within 250 feet in each direction of the lot line of the subject property*</u>, said owners being <u>such persons or entities which appear from the authentic tax records of the County in which such facility is to be located</u>; provided, that the number of all feet occupied by all public roads, streets, alleys and other public ways shall be excluded in computing the 250 feet requirement; provided further, that in no event shall this requirement exceed 400 feet, including public streets, alleys and other public ways.
>
> 415 Ill. Comp. Stat. Ann. 5/39.2

As noted by the McLean County Department of Public Health, the only relevant lot line at this time, and at the time of application, is the lot line that surrounds the existing parcel and the 250-foot pre-hearing notice needed to be given to "owners of all property within 250 feet" of that lot line. This cannot now be rectified; we believe that any decision the County makes on this application will be found by the Illinois Pollution Control Board and/or the courts on appeal to be without jurisdiction (i.e., void). See <u>Env't Control Sys., Inc. v. Long</u>, 301 Ill. App. 3d 612, 622–23, 703 N.E.2d 1001, 1009 (1998), involving an almost identical siting application issue:

> [Applicant] contends that the statute requires notification only to those landowners living in that 250–foot proximity to the RPCF. Taking [Applicant's] argument to an extreme situation, no landowner would need to be notified if the parcel of land was sufficiently large and the RPCF was located in the middle of that parcel.
>
> The language of the statute requires notification of owners of land within 250 feet of the *lot line.* Ill.Rev.Stat.1989, ch. 111 ½, par. 1039.2(b). The record reflects that the lot lines at issue are detailed on the authentic tax records and assessor's map. The lines on the map and tax records coincide with parcel five. The parcel is not further divided. The RPCF is located within a section of parcel five.
>
> Statutes should be given their plain and ordinary meaning. *R.P. Lumber Co. v. Office of State Fire Marshal,* 293 Ill.App.3d 402, 406, 227 Ill.Dec. 898, 688 N.E.2d 379, 383 (1997). As the PCB stated in its decision, the statute calls for notification to owners of land within 250 feet of the lot line— "not 250 feet from some other point within the lot lines." We conclude that *lot line* refers to the greater parcel line, and not simply the RPCF line. To conclude otherwise could result in abuse, with property owners in close proximity to a proposed RPCF not receiving notification because the applicant owns enough land surrounding the proposed RPCF to negate the 250–foot rule.

The application also mischaracterizes the access road to the facility that runs off of Bunn Road in Section 2.5.2.1 of application. That section states that "the access road for the facility will be at the end of HDI Court which ***will be*** a public street." (emphasis added). However, that statement cannot be taken as verifiable support of the application. As stated above, a final plat of the subdivision has not been approved nor recorded, and therefore, no steps can have yet been taken to obtain county approval of that road as public. In Section 2, Sheets 5 and 6, refer to the access road and the conceptual facility not as they are today, but how they might be in the future. This is not appropriate support that statutorily required notice and set-back requirements have been met.

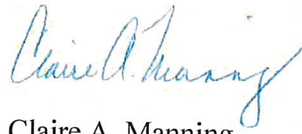
Similarly, Section 22.14(a) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/22.14(a) contains setback criteria (also jurisdictional) prohibiting the establishment of any waste transfer station "which is located less than 1000 feet from the nearest property zoned for primarily residential uses or within 1000 feet of any dwelling, except in counties of at least 3,000,000 inhabitants." In an obvious effort to place the WTS outside the setback (e.g., more than 1000 feet from the trailer park), the applicant filled in a portion of the lakes at the eastern end of the property. Having done so, apparently without authority, it now faces an ongoing enforcement action against it by the Illinois EPA, who claims such filling was unlawful and seeks removal of the fill.

While the application identifies an approximately 3.09-acre area as the site of the facility, under Illinois Pollution Control Board regulations "site" means the entire "location, place or tract of land used for waste management" and it "may include one or more units." See 35 Ill. Admin. Code. §807.104. In reviewing the proposed "site" in relation to required setbacks, we believe the County should recognize that the entrance from Bunn Street (the only existing public access to and from the proposed WTS), as well as the planned road to the WTS, as necessarily a part of the site. On this point, the application proposes that the road from Bunn Street to the WTS will be a "public road" – no doubt to avoid consideration of this road (and its entrance) as part of the site for purposes of setback. We question the propriety of establishing a "public road" – for the purpose of traffic flow to and from the proposed WTS – on property that is now currently and wholly owned by the applicant.

Finally, any anticipated interrelationship between the proposed WTS and the existing waste management units at HRC further bolsters our assertion that the entire HRC site, not the proposed 3.09-acre area, must be considered for purposes of statutory notices and setback.

We appreciate your time and consideration of the concerns we voice on behalf of Republic Services, Inc. who for many years have been valued partners with the County in its delivery of waste services.

Sincerely,



Claire A. Manning

CAM/jcf