

Illinois Official Reports

Appellate Court

<p><i>Lakeshore Recycling Systems, LLC v. Pollution Control Board,</i> 2025 IL App (3d) 240169</p>
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Appellate Court
Caption

LAKESHORE RECYCLING SYSTEMS, LLC, Petitioner, v. THE POLLUTION CONTROL BOARD, PROTECT WEST CHICAGO, PEOPLE OPPOSING DUPAGE ENVIRONMENTAL RACISM, THE CITY OF WEST CHICAGO, and THE WEST CHICAGO CITY COUNCIL, Respondents.

District & No.

Third District
No. 3-24-0169

Filed

February 5, 2025

Decision Under
Review

Petition for review of order of Illinois Pollution Control Board, Nos. 23-107, 23-109.

Judgment

Board decision affirmed.

Counsel on
Appeal

George Mueller, of Mueller Anderson & Associates, of Winfield, and Karen Donnelly, of Karen Donnelly Law, LLC, of Ottawa, for petitioner.

Kwame Raoul, Attorney General, of Chicago (Jane Elinor Notz, Solicitor General, and Benjamin F. Jacobson, Assistant Attorney General, of counsel), for respondent Illinois Pollution Control Board.

Ricardo Meza, of Chicago, for respondent Protect West Chicago.

No brief filed for other respondents.

Panel JUSTICE PETERSON delivered the judgment of the court, with opinion.
Presiding Justice Brennan and Justice Anderson concurred in the judgment and opinion.

OPINION

¶ 1 Petitioner, Lakeshore Recycling Systems, LLC (Lakeshore), appeals the opinion and order of the Pollution Control Board (Board) that vacated the decision of respondents, the City of West Chicago and West Chicago City Council (collectively, the City), to approve Lakeshore's application for siting approval for a waste transfer station. Specifically, Lakeshore argues that the Board erred by finding that it failed to comply with prefiling notice requirements of section 39.2(b) of the Environmental Protection Act (Act) (415 ILCS 5/39.2(b) (West 2022)). We affirm.

¶ 2 I. BACKGROUND

¶ 3 Lakeshore filed its application for siting approval for a waste transfer station on September 16, 2022. Lakeshore provided prefiling notice to various property owners via certified mail, return receipt requested, on August 23, 2022. Prefiling notice sent to Canadian National Railway via United Parcel Service (UPS) was delivered on August 24, 2022. The proof of delivery indicates that it was given to a person named Helene at the dock. An engineer hired by Lakeshore described the service of the notice to Canadian National Railway as personal delivery.

¶ 4 The City held public hearings on the application. Respondent, Protect West Chicago (PWC), filed a motion to dismiss the application. The motion was based, in part, on lack of jurisdiction due to failure to comply with prefiling notice requirements and, specifically, improper service on Canadian National Railway. Lakeshore responded and argued that Canadian National Railway was served via personal service. The City denied the motion and approved Lakeshore's application. PWC filed a petition seeking review by the Board. PWC again argued that the City lacked jurisdiction to consider the application because Lakeshore did not comply with prefiling notice requirements. The Board vacated the City's decision. It found that the City lacked jurisdiction because Lakeshore did not comply with the prefiling notice requirements of section 39.2(b) of the Act. Specifically, the Board found that Lakeshore did not effectuate service of the notice personally or through registered mail, return receipt requested, as required. Lakeshore appeals.

¶ 5 II. ANALYSIS

¶ 6 Lakeshore argues that it complied with the prefiling notice requirements of section 39.2(b) of the Act (*id.*) and, thus, the City had jurisdiction to approve its application. Specifically, Lakeshore argues that the authentic tax records demonstrated that Canadian National Railway was the record owner of a parcel of property subject to the notice requirement. It further argues that service on Canadian National Railway via third-party commercial carrier (UPS) was personal service and that the service requirements should be liberally construed.

¶ 7 Section 39.2(b) of the Act provides that, no later than 14 days prior to a request for siting approval, the applicant must provide written notice to various property owners, as determined by the county's authentic tax records, and that such notice is "to be served either in person or by registered mail, return receipt requested." *Id.* "This requirement is jurisdictional and must be followed to vest the local siting authority with power to hear" the siting application. *County of Kankakee v. Pollution Control Board*, 396 Ill. App. 3d 1000, 1008 (2009). "The interpretation of section 39.2(b) presents a question of statutory construction, which is a question of law" reviewed *de novo*. *Maggio v. Pollution Control Board*, 2014 IL App (2d) 130260, ¶ 14. "When determining statutory meaning, the court must give effect to the intent of the legislature, which is discovered through an examination of the plain language of the statute." *Waste Management of Illinois, Inc. v. Pollution Control Board*, 356 Ill. App. 3d 229, 233 (2005). If the "language is plain and unambiguous, the court may not depart from the plain language by reading into it exceptions, limitations, or conditions not expressed by the legislature." *Id.*

¶ 8 Initially, we note that the parties dispute whether Lakeshore utilized the authentic tax records of the county to determine the property owners entitled to prefiling notice and whether or not Canadian National Railway was properly identified as an owner by Lakeshore. However, we need not decide that issue, as we conclude that, assuming for the sake of analysis that Canadian National Railway was the proper party to be served with notice according to the authentic tax records, as argued by Lakeshore, service was not effectuated through the manner set forth in section 39.2(b).

¶ 9 At issue here is the interpretation of the service provision in section 39.2(b) of the Act. Lakeshore argues that the statute should be construed liberally and that service by a third-party commercial carrier was sufficient. However, this court has previously rejected an argument for a liberal construction. See *id.* (noting the argument for a liberal construction of the Act and stating "[w]e find no legal authority for the petitioner's expansive interpretation of the statute"); see, e.g., *Scott v. City of Chicago*, 2015 IL App (1st) 140570, ¶ 30 (interpreting a similar notice provision and concluding "that strict compliance with the presuit notice provision is required"). Further, as stated in *Waste Management*, "[t]he plain language of the statute requires that notice be provided 'in person or by registered mail, return receipt requested.' This language is not in the least bit ambiguous." *Waste Management*, 356 Ill. App. 3d at 233. Notably, the court in *Waste Management* determined that, even if actual notice was provided but it was not "achieved by the statutorily required means[,] *** actual notice would not overcome that failure of compliance." *Id.* at 235.

¶ 10 Contrary to Lakeshore's arguments, service by a third-party commercial carrier is not the same as personal service. See, e.g., 35 Ill. Adm. Code 101.300(c) (2019) (providing the date service is considered effective for different types of service and listing personal service and service by third-party commercial carrier as distinct types of service with different

requirements for determining the date of service). Lakeshore acknowledges that service in person is not defined in the Act and, as such, we may look to other statutes and rules, such as the Code of Civil Procedure (Code) (735 ILCS 5/1-101 *et seq.* (West 2022)) for guidance in our interpretation of the requirement that service be in person. Although not necessarily determinative, the Code's requirements regarding personal service are instructive. We note that the Code, in section 2-204 (*id.* § 2-204), sets forth the ways in which a corporation may be served, including by leaving a copy of the process with the registered agent or any officer or agent of the corporation found in Illinois, none of which have been shown to have been complied with by Lakeshore. Further, section 2-208 of the Code (*id.* § 2-208(b)) provides for personal service outside of Illinois and states that "[a]n affidavit of the server shall be filed stating the time, manner and place of service." No such affidavit was provided in this matter. Instead, Lakeshore submitted a proof of delivery from UPS, which did not contain any identifying information for or signature of the individual who delivered the notice, such that it clearly is not equivalent to the required affidavit.

¶ 11 In sum, section 39.2(b) of the Act sets forth two manners in which the required notice may be served, and third-party commercial carrier is not one of them. Therefore, service of the notice on Canadian National Railway was not in conformance with section 39.2(b). As the requirement is jurisdictional, the City did not have jurisdiction to consider Lakeshore's application, and the Board properly vacated the City's decision regarding the application. See *Waste Management*, 356 Ill. App. 3d at 234 (noting that (1) the language of that statute clearly and unambiguously required notice to be given by registered mail, return service requested, or personal service; (2) neither type of service was utilized with respect to a certain property owner; and (3) such failure of notice was a jurisdictional issue).

¶ 12 III. CONCLUSION

¶ 13 The opinion and order of the Pollution Control Board is affirmed.

¶ 14 Board decision affirmed.