ILLINOIS POLLUTION CONTROL BOARD
January 21, 1993

RICHARD WORTHEN, CLARENCE BOHM, HARRY PARKER, GEORGE ARNOLD, CITY OF EDWARDSVILLE, CITY OF TROY, VILLAGE OF MARYVILLE, and VILLAGE OF GLEN CARBON,	)	
Petitioners,	)	
v.	)	PCB 90-137 (Landfill Siting Review)
VILLAGE OF ROXANA and LAIDLAW WASTE SYSTEMS (MADISON), INC.	)	
Respondents.	)	

ORDER OF THE BOARD (by J. Theodore Meyer):

This matter is before the Board on a remand order from the appellate court. The Board originally issued its final decision in this landfill siting appeal on November 29, 1990. Respondent Laidlaw Waste Systems (Madison), Inc. (Laidlaw) did not file a motion for reconsideration. On January 3, 1991, the Board received Laidlaw's notice of appeal in the appellate court. The appellate court issued its decision on June 18, 1992, reversing the Board's decision, and remanding the matter to the Board. (Laidlaw Waste Systems (Madison), Inc. v. Pollution Control Board (5th Dist. 1992), 230 Ill.App.3d 132, 595 N.E.2d 600, 172 Ill.Dec. 239.) The individuals and municipalities that were petitioners before the Board filed a petition for leave to appeal with the supreme court. That petition for leave to appeal was denied in September 1992. The Board received the appellate court's mandate on November 9, 1992.

In its November 1990 opinion and order, the Board reversed the Village of Roxana's decision granting site approval to Laidlaw for expansion of Laidlaw's Cahokia Road landfill. The Board found that because Laidlaw's application for siting approval had been filed within two years of the disapproval of a previous application that was substantially the same as that application, Roxana had no jurisdiction to consider the application pursuant to Section 39.2(m) of the Environmental Protection Act (Act). That subsection states:

> An applicant may not file a request for local siting approval which is substantially the same as a request which was disapproved pursuant to a finding against the applicant under any of criteria (i) through (ix) of subsection (a) of this Section within the preceding 2

years. (Ill.Rev.Stat. 1989, ch. 111½, par. 1039.2(m).)

On appeal, the appellate court reversed the Board's decision and remanded the case to the Board. The appellate court upheld the Board's finding that the two-year period referred to in Section 39.2(m) begins to run as of the disapproval of a previous application. However, the appellate court overturned the Board's finding that the two applications in this case were "substantially the same." The court construed the Board's decision as stating that where two applications for local siting approval seek approval for expansion of the same facility, those facilities are "substantially the same." The court found that conclusion to be erroneous, and remanded the case to the Board "for further proceedings not inconsistent with this order."

After reviewing the appellate court decision, and the record in this case, the Board finds that it must remand this proceeding to Roxana. As the appellate court noted, it is not clear what, if any, factual determination was made by Roxana with respect to the issues raised in subsection (m). The hearing officer who presided over the local hearing found both that the present application was not filed within two years of the previous application, and that the two applications were not substantially the same. It is impossible to tell from the record whether Roxana adopted either or both of these findings when approving Laidlaw's application.[1] The Board finds, after reviewing the appellate court decision, that the issue of whether an application is "substantially the same" as a previous application pursuant to subsection (m) is a question of fact that must be determined by the local decisionmaker--in this case, the Roxana Village Board. Therefore, this case is remanded to Roxana for a decision whether the application at issue in this proceeding is "substantially the same" as the previous application.

This remand is limited to a decision on this issue. The Village Board's decision is to be based only on the written record developed at the local level, and no further hearings or arguments are to be held. If the Village needs to refer to the record it filed with the Board, Roxana should contact the Clerk to make arrangements for the return of the local record. The Clerk is hereby authorized to release that record if necessary. Roxana's determination on this issue shall be made within 90 days of the date of this order, and shall be sent, in writing, to the Board.

[1] The Board notes that Laidlaw did not raise the issue of whether the applications were substantially similar before the Board, and that the Board's finding that the applications were substantially the same was based on the Board's own review of the record.

Finally, the Board notes that after it made its determination in this case, Laidlaw filed another application for expansion approval with Roxana. Roxana approved that application, and that decision was appealed to the Board. On October 10, 1991, this Board affirmed that decision. (Worthen v. Village of Roxana (October 10, 1991), PCB 91-106. (Roxana II.)) The petitioners in Roxana II appealed the Board's decision, and the case is currently pending in the Fifth District. Because no decision has yet been finally reached in Roxana II, the Board does not believe that the instant proceeding is moot. (See Moore v. Wayne County Board (June 2, 1988), PCB 88-24, appeal dismissed (March 5, 1991), No. 5-88-0684.)

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 21st day of January, 1993, by a vote of 6-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board