

ILLINOIS POLLUTION CONTROL BOARD
January 21, 1988

A.R.F. LANDFILL CORPORATION,)
)
 Petitioner,)
)
 v.) PCB 87-34
)
 VILLAGE OF ROUND LAKE PARK)
 AND LAKE COUNTY,)
)
 Respondent.)

ORDER OF THE BOARD (By J. Marlin):

This matter comes before the Board on a Motion to Dismiss Siting Application Appeal filed by the Village of Round Lake Park (Village) on December 7, 1987. On December 16, 1987, A.R.F. Landfill, Inc. (A.R.F.) filed a Response to this motion. Since the Board issued an Opinion and Order in this matter on July 16, 1987, the Board will construe the Village's motion as a motion to vacate pursuant to 35 Ill. Adm. Code 103.241(b)(1) as well as a motion to dismiss. The Village filed an Objection to A.R.F.'s Response on December 24, 1987. On January 6, 1988, A.R.F. filed a Motion for Leave to File a Response to the Village's Objection.

In its Objection, the Village requests that the Board strike A.R.F.'s Response for being untimely filed. The certificate of service on the Village's Motion to Dismiss indicates that a copy of the motion was mailed to counsel for A.R.F. on December 4, 1987. Therefore, it is presumed that A.R.F. received the motion on December 10th. Service by mail is presumed complete four days after mailing (35 Ill. Adm. Code 103.123), and Saturdays and Sundays are not to be counted for the four-day time period (35 Ill. Adm. Code 101.105). Since a response to a motion is due seven days after service (35 Ill. Adm. Code 103.140), A.R.F.'s response was due December 17. As a result, A.R.F.'s Response was timely filed, and the Board will not strike it. The Board's procedural rules do not provide the moving party with an opportunity to reply to a response to a motion. The remainder of the Village's Objection constitutes a reply which the Board has not considered. Since the Board has not considered the Village's Objection, it will not consider A.R.F.'s response to that Objection. As a result, the Board denies A.R.F.'s Motion for Leave to File a Response.

On February 10, 1987, the Village, by resolution, "declined to exercise jurisdiction" and dismissed A.R.F.'s application for site location suitability approval. In its July 16th Order, the Board vacated the Village's dismissal of A.R.F.'s application and remanded the application for hearing and decision pursuant to Section 39.2 of the Illinois Environmental Protection Act

(Act). Vital to the Board's decision was the Board's conclusion that the Village's purported annexation of a parcel of land, commonly referred to as the Heartland Property, must be considered valid until the circuit court ruled on a pending quo warranto action. A.R.F.'s landfill expansion proposal included the Heartland Property. Since the Heartland Property was considered by the Board to be within the Village's jurisdiction, the Board found it necessary for A.R.F. to procure site location suitability approval from the Village for that portion of the landfill proposed to be located on the Heartland Property.

In support of its motion, the Village states that on September 25, 1987, the Circuit Court of Lake County, Nineteenth Judicial Circuit, issued a Judgement Order in the quo warranto action. In the Judgement Order, the Circuit Court found the annexation by the Village of the Heartland Property to be void ab initio. The Village also states that on October 15, 1987, the Appellate Court of Illinois, Second District, granted a motion made by Lake County thereby dismissing A.R.F.'s appeal of the Board's July 16th decision. Lake County had argued that the appeal was moot, since the Circuit Court had found the Heartland annexation void ab initio. Also, on November 10, the Second District denied a motion by A.R.F. to vacate the October 15th Order.

In its Response, A.R.F. asserts that the Board should deny the Village's motion because of two pending appeals. Apparently, A.R.F. sought to intervene in the Circuit Court quo warranto action and was denied intervention. Subsequent to the Circuit Court's September 25th order, A.R.F. moved the Circuit Court to reconsider its denial of A.R.F.'s petition for intervention as well as to vacate its September 25th order. Those motions were denied. A.R.F. asserts that it is currently appealing those denials by the Circuit Court in the Appellate Court of Illinois, Second District.

Also, A.R.F. has filed with the Supreme Court of Illinois an appeal of the Second District's October 15th and November 10th Orders concerning A.R.F.'s appeal of the Board's July 16th decision. The Board notes that this appeal has been docketed by the Supreme Court as #66291.

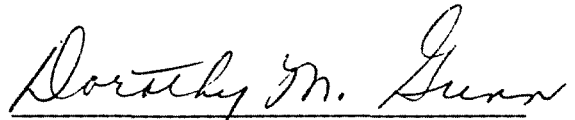
Although the Village has brought to the attention of the Board relevant factual information which was not before the Board when it made its decision on July 16th, the Board finds that it may not now act on the Village's motion. That is, the Board does not currently have jurisdiction over this matter since an appeal of this matter is still pending. However, once the Supreme Court disposes of this appeal, the Board will be free to act upon the Village's motion, pursuant to 35 Ill. Adm. Code 103.241(b)(1) and 103.241(c)(2), in a manner that is consistent with the Court's Order. Therefore, the Board will deny the Village's motion with leave to refile after action is taken by the Supreme Court in

this matter.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1985 ch. 111¹/₂ par. 1041, provides for appeal of final Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

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, 1988, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board