ILLINOIS POLLUTION CONTROL BOARD
March 7, 2013

MARTIN MAGGIO,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 13-10
	)	(Third-Party Pollution Control Facility
COUNTY OF WINNEBAGO,	)	Siting Appeal)
WINNEBAGO COUNTY BOARD, and	)	
WINNEBAGO LANDFILL COMPANY,	)	
LLC,	)	
	)	
Respondents.	)	

MICHAEL BLAZER OF JEEP & BLAZER, LLC APPEARED ON BEHALF OF MARTIN MAGGIO;

DAVID KURLINKUS OF WINNEBAGO COUNTY STATE'S ATTORNEY OFFICE APPEARED ON THE BEHALF OF THE COUNTY OF WINNEBAGO; and

GEORGE MUELLER OF MUELLER ANDERSON, P.C. AND CHARLES HESTON OF HINSHAW & CULBERTSON LLP APPEARED ON THE BEHALF OF WINNEBAGO LANDFILL COMPANY, LLC.

OPINION AND ORDER OF THE BOARD (by D. Glosser):

Under Section 39.2 of the Environmental Protection Act (Act) (415 ILCS 5/39.2 (2010)), before a new or expanded pollution control facility can be issued a permit, the site must obtain siting approval for the facility from the local government, *i.e.*, the county board if in an unincorporated area or the governing body of the municipality if in an incorporated area. If the local government approves siting, third parties may appeal the local government's decision to the Board. *See* 415 ILCS 5/40.1(b) (2010); 35 Ill. Adm. Code 107. In this case, Martin Maggio (petitioner appeals local siting approval of an expansion of a facility on the grounds that the Winnebago County Board (County Board) did not have proper jurisdiction to site the Winnebago Landfill Company (WLC) pollution control facility expansion and that the County Board's proceedings were not fundamentally fair. On January 2, 2013, the petitioner voluntarily dismissed the portion of the appeal relating to the allegation that the County Board's proceedings were fundamentally unfair.

As discussed in the opinion below, the Board finds that WLC properly served all adjacent landowners within the 14-day deadline as required by Section 39.2(b) of the Act. *See* 415 ILCS 5/39.2(b) (2010). The Board also finds that WLC reasonably calculated the delivery of the pre-application notifications by sending the pre-application notifications 21 days prior to submitting

an application for local siting approval. Accordingly, the County Board had jurisdiction to approve WLC's pollution control facility expansion. The Board therefore affirms the County Board's siting approval for the WLC's pollution control facility expansion.

The Board will begin with a description of the procedural history of this case and follow with the legal background. Next the Board sets forth the relevant facts and the issue before the Board. The Board then summarizes the parties' arguments and discusses the Board's decision.

PROCEDURAL HISTORY

On August 15, 2012, the petitioner timely filed a petition (Pet.) asking the Board to review a July 12, 2012 decision of the County Board. *See* 415 ILCS 5/40.1(b) (2010); 35 Ill. Adm. Code 101.300(b), 107.204. The County Board granted an application filed by WLC to site a pollution control facility expansion at WLC's facility located north of Edson Road and west of U.S. Interstate 39 in southern Winnebago County. On August 23, 2012, the Board accepted the petition for hearing.

The Board held a hearing on December 4, 2012, before the Board hearing officer assigned to this case, Bradley Halloran. At the hearing, petitioner orally withdrew his fundamental unfairness claim and, on January 2, 2013, he filed a written motion for partial voluntary dismissal. Additionally, petitioner's deposition subpoena served on Derke Price, the County Board's hearing officer, was addressed at the hearing. On November 8, 2012, Derke Price filed a motion to quash the subpoena. At the hearing, petitioner orally withdrew the deposition subpoena, making the motion to quash moot. On January 2, 2013 and January 29, 2013, the petitioner filed a post-hearing brief and post-hearing reply brief. On January 23, 2013, WLC filed a post-hearing brief while the County of Winnebago and the County Board submitted a post-hearing brief adopting WLC's post-hearing brief in its entirety.[1]

LEGAL BACKGROUND

Section 40.1(b) of the Act provides:

> If the county board . . . grants approval under section 39.2 of this Act, a third party other than the applicant who participated in the public hearing conducted by the county board . . . may within 35 days after the date on which the local siting authority granted siting approval, petition the Board for a hearing to contest the approval of the county board . . . . 415 ILCS 5/40.1(b) (2010).

Section 39.2(b) of the Act provides:

[1] The petitioner's post-hearing brief will be cited as "Pet. Br. at" and petitioner's post-hearing reply brief cited as "Pet. Reply at". WLC, the County of Winnebago, and the County Board will be collectively referred to as the respondents. All citations referencing the respondents' post-hearing brief are to WLC's post-hearing brief and are cited as "Res. Br. at".

> 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, on the owners of all property within the subject area not solely owned by the applicant, and on owners of all property within 250 feet in each direction of the lot line of the subject property, said owners being such persons or entities which appear from the authentic tax records of the County in which such facility is to be located. 415 ILCS 5/39.2(b) (2010).

FACTS

On December 27, 2011, George Mueller, on behalf of WLC, mailed pre-application notices to all of the property owners entitled to notice pursuant to Section 39.2(b) of the Act (415 ILCS 5/39.2(b) (2010)) by certified mail, return receipt requested.[2] Exh. 1 at 1-2. The mailings were placed in a U.S. Post Office box in Ottawa, on December 27, 2011. *Id.* On December 28, 2011, WLC published the pre-application notification in *The Rockford Register*. Exh. 1 at 13.

On January 17, 2012, WLC submitted an application for siting approval to the County Board. Exh. 5 at 1. The siting application was for the expansion of WLC's municipal solid waste landfill operation in Winnebago County. *Id.* The pollution control facility expansion proposes a new disposal unit located to the east of its current landfill operations, to the North of the Edson Road, and to the west of Interstate 39. *Id.* Along with the application, WLC included an affidavit by George Mueller on behalf of WLC that indicated that pre-application notifications were mailed to all individuals and entities entitled to a pre-application notification pursuant to Section 39.2(b) by certified mail, return receipt requested. Exh. 5 at 5; *see also* Exh. 1 at 4-7. The County Board conducted a hearing on April 23, 2012. No party objected to WLC's compliance with the notice requirements of Section 39.2(b) of the Act before the County Board. Exh. 5 at 5.

Since the application was filed on January 17, 2012, January 3, 2012 was the 14-day notification deadline pursuant to Section 39.2(b) of the Act (415 ILCS 5/39.2(b) (2010)). By January 3, 2012, eight of the 102 pre-application notifications remained unclaimed by the property owners which "were later returned to Mueller with no certified mail return receipt having been executed." Exh. 1 at 2; *see also* Exh. 1 at 46. Further, three pre-application notifications all related to the same parcel, addressed to the Hildebrand Trust, were not received until after WLC submitted the application for siting approval. Exh. 1 at 46. The tracking information indicates that all of the pre-application notifications had arrived at the postal units on December 29, 2011, ready to be delivered. Exh. 1 at 47-62.

ISSUE

The sole issue now presented in this case is whether WLC has satisfied the notice requirements of Section 39.2(b) of the Act (415 ILCS 5/39.2(b) (2002)). Failure to meet the

[2] All exhibits will be cited to as "Exh. _ at _"

strict notice requirements of Section 39.2(b) of the Act (415 ILCS 5/39.2(b) (2010)) divests the County Board of jurisdiction to hear the matter. Browning Ferris Industries of Illinois v. IPCB, 162 Ill. App. 3d 801, 805, 516 N.E.2d 804, 807 (5th Dist. 1987); Ogle County Board v. IPCB, 272 Ill. App. 3d 184, 649 N.E.2d 545 (2nd Dist 1995) (Ogle County). A jurisdictional defect is dispositive of a case *ab initio*. Illinois Power Co. v. IPCB, 137 Ill. App. 3d 449, 484 N.E.2d 898 (4th Dist. 1985); Kane County Defenders, Inc. v. IPCB, 139 Ill. App. 3d 588, 487 N.E.2d 743 (2nd Dist. 1985). As stated above, the petitioner voluntarily dismissed his argument that the County Board hearings were fundamentally fair, and the opinion will only address the issue of whether the WLC complied with the pre-application notice requirements of Section 39.2(b) of the Act.

ARGUMENTS

The following section will summarize the arguments of the petitioner and respondents in this matter regarding the notice requirements found in Section 39.2(b) of the Act.

Petitioner's Arguments

Petitioner argues that WLC failed to serve all persons entitled to a pre-application notice and, therefore, the County Board lacked jurisdiction to decide the application. Pet. Br. at 4. Petitioner argues that the notice requirements of Section 39.2(b) of the Act were previously clarified by the Illinois Appellate Court, which concluded that: "the 'return receipt requested' provision of section 39.2(b) of the Act reflects the intent of the legislature to require actual receipt of the notice, as evidenced by the signing of the return receipt . . .." *Id.*; *see* Ogle County v. IPCB, 272 Ill. App. 3d 184, 196 (2nd Dist. 1995). Petitioner argues that Ogle County is "directly on point and has never been overruled by Illinois Appellate Court or the Illinois Supreme Court." *Id.*

Petitioner then takes issue with the Board's more recent decision in City of Kankakee v. County of Kankakee. City of Kankakee v. County of Kankakee, PCB 03-125 (Aug. 7, 2003). In that case the Board stated:

> Based on that review, the Board is convinced that the Illinois Supreme Court's decision in People *ex rel.* Devine v. $30,700 U.S. Currency ($30,700 U.S. Currency), 199 Ill. 2d 142, 766 N.E.2d 1084 (2002) effectively overrules the Illinois Appellate Court's decision in Ogle County. Thus, under Section 39.2(b) of the Act (415 ILCS 5/39.2(b)(2002), an applicant can properly serve by mailing the pre-application notice to property owners certified mail return receipt and the service is proper upon mailing." Pet. Br. at 3-4; *citing* City of Kankakee v. County of Kankakee, PCB 03-125, slip op. at 14 (Aug. 7, 2003).

Petitioner asserts that the Board does not have the authority to "effectively overrule" the Illinois Appellate Court's decision in Ogle County. Pet. Br. at 4. The petitioner states that the Board as an "administrative agency lacks the authority to ignore any portion of its enabling statute." Pet. Br. at 5; *citing* Eckman v. Board of Trustess for the Police Pension Fund, 143 Ill. App. 3d 757, 765 (2nd Dist. 1986). Additionally, the petitioner reasons that an effective overruling would be

beyond the bounds of the statutory authority as authorized to the Board in accordance with the Act. *Id.*

Petitioner maintains that the Board's reliance on the Illinois Supreme Court's decision in $30,700 U.S. Currency in the City of Kankakee v. County of Kankakee opinion is "misplaced." Pet. Br. at 7; *citing* $30,700 U.S. Currency, 199 Ill. 2d 142, 766 N.E.2d 1084 (2002). The petitioner argues that the Drug Asset Forfeiture Procedure Act (DAFPA), 725 ILCS 150/1 *et seq.* (2010), which was at issue in $30,700 U.S. Currency is fundamentally different than Section 39.2(b) of the Act, 415 ILCS 5/39.2(b) (2010). *Id.* The petitioner argues that the expressed language found in the notice requirements of Section 39.2(b) of the Act, 415 ILCS 5/39.2(b) (2010), is different than the expressed language found in DAFPA, 725 ILCS 150/1 *et seq.* (2010). *Id.* at 7-8. The petitioner reasons that DAFPA includes language in the statute that service may be conducted by "mailing," which is not included in Section 39.2(b) of the Act, 415 ILCS 5/39.2(b) (2010). *Id* at 9.

Respondents' Arguments

Respondents argue that WLC complied with the pre-application notification requirements found in Section 39.2(b) of the Act, 415 ILCS 5/39.2(b) (2010). Reply at 3. Respondents state that WLC mailed pre-filing notifications on December 27, 2011, 21 days prior to the filing of the siting application. *Id.* The respondents acknowledge that the pre-application notifications were sent via "certified mail, return receipt requested." *Id.* However, the respondents state that the Board has recognized that certified mailing is the functional equivalent of registered mail for the purposes of establishing compliance with Section 39.2(b) of the Act. Reply at 4; *citing* Environmentally Concerned Citizens' Organization v. Landfill, LLC, PCB 98-98 (May 7, 1998), County of Kankakee v. Pollution Control Board, 396 Ill. App. 3d 1000, 955 N.E. 2d 1 (3rd Dist. 2009). The respondents also claim, by mailing the pre-application notifications 21 days prior to filing the application for local siting approval, WLC has "reasonably calculated" the delivery within the 14-day deadline. Reply at 5.

Respondents assert that the petitioner's reliance on the Ogle County decision is misplaced and that the Board did not "effectively overrule" the Illinois Appellate Court in City of Kankakee v. County of Kankakee. Reply at 6. The respondents maintain that it is the Board's duty to apply controlling case law and the Illinois Supreme Court's interpretation in $30,700 U.S. Currency directly applies to Section 39.2(b) of the Act. *Id.* The respondents also point out that the decision in City of Kankakee v. County of Kankakee was affirmed by the Illinois Appellate Court in Waste Management of Illinois v. IPCB. *Id.*, *citing* Waste Management of Illinois v. IPCB, 356 Ill.App.3d 229, 826 N.E.2d 586 (3rd Dist. 2005).

Regarding the language of the Act, the respondents urge the Board to implement the plain language of Section 39.2(b) of the Act. Reply at 8. According to the respondents, the statute requires only "return receipt requested" and does not mandate "return receipt required." The respondents add that the Illinois Supreme Court in $30,700 U.S. Currency acknowledges that different statutes may require the addressee to receive actual notice, but the legislature could have used language to express its intent. *Id.* at 9. Finally, the respondents argue that the Board

should follow its own precedent as set forth in City of Kankakee v. County of Kankakee, which was ultimately affirmed by the Illinois Appellate Court. *Id.* at 10.

Petitioner's Reply

Petitioner's post-hearing reply brief argues that Appellate Court in Ogle County ruled that the language of Section 39.2(b) requires actual receipt in order for the intended recipient to be properly served and that the respondents have mischaracterized the court's holding as dicta. Pet. Reply at 3-4. The petitioner adds that the Board has previously held that Section 39.2(b) of the Act requires physical receipt of the pre-application notification. *Id.* at 4; citing City of Columbia v. County of St. Clair, PCB 85-177 slip. op. (Apr. 3, 1986); Waste Management v. Village of Bensenville, PCB 89-29 (Aug. 10, 1989); Carmichael v. Browning-Ferris Industries, PCB 93-114 (Oct. 7, 1993). The petitioner then states that WLC did not reasonably calculate enough time to ensure delivery of pre-application notifications, because there were two holidays, New Year's Eve and New Year's Day, between the date of mailing and the 14-day deadline. *Id.* at 6. The petitioner adds that WLC could have used the U.S. Postal Service's "Track & Confirm" database to easily determine that the pre-application notifications were undelivered. *Id.*

The petitioner also adds that the legislature presumably knew prevailing case law when enacting Section 39.2(b) of the Act. According to the petitioner, the prevailing case law stated "registered mail requires the addressee to sign for the item in acknowledgement of delivery, the date of signed acknowledgment is the date the item was received and thus the date of service." *Id.* at 8; citing A-1 Security Services, Inc. v. Stackler, 61 Ill. App. 3d 285, 287-288 (1st Dist. 1978). The petitioner also argues that the Board and Illinois Appellate Court did not address the differences between DAFPA, 725 ILCS 150/1, *et. seq.*, as discussed in $30,700 U.S. Currency and Section 39.2(b) of the Act. Pet. Reply at 11. The petitioner asserts that the two statutes are starkly different, because DAFPA explicitly states that notice is effective upon the mailing of the notice, which is not stated in Section 39.2(b) of the Act. *Id.* The petitioner lastly claims that any departure from long-standing precedent would be functionally amending Section 39.2(b) of the Act. *Id.*

DISCUSSION

The issue in the case is whether WLC properly notified landowners before applying to the County Board for local siting approval of a pollution control facility expansion in accordance with Section 39.2(b) of the Act. Siting applicants must strictly follow the notice requirements of Section 39.2(b) to vest a county board with the jurisdiction to hear a landfill siting proposal. *See* Kane County Defenders, Inc. v. IPCB, 139 Ill. App. 3d 588, 593, 487 N.E.2d 743, 746 (2nd Dist. 1985). If the pre-application notification requirements are not followed, then the County Board would lack jurisdiction to hear the siting appeal. City of Kankakee v. County of Kankakee, PCB 03-125 (August 7, 2003). Whether the County Board had jurisdiction to approve the local siting of the pollution control facility expansion is a question of law, and the Board will apply a d*e novo* standard of review. *See* Panhandle Eastern Pipe Line Company v. IEPA, 314 Ill. App. 3d 296, 734 N.E.2d 18, 21 (4th Dist. 2000).

Statutory Interpretation of "Return Receipt Requested"

The petitioner has argued that according to Section 39.2(b) of the Act, persons are properly served when the pre-application notifications have been delivered to the required recipients. The petitioner's interpretation of the notice requirements of Section 39.2(b) of the Act contradicts the Board's most previous decision regarding this exact issue in City of Kankakee v. County of Kankakee, PCB 03-125, slip op. at 16 (August7, 2003) *aff'd. sub nom.* County of Kankakee v. Pollution Control Board, 396 Ill. App. 3d 1000, 955 N.E. 2d 1 (3rd Dist. 2009). The Board need look no further than its own precedent applying Illinois Supreme Court decisions and the plain language of Section 39.2(b) of the Act (415 ILCS 5/29.2(b) (2010)).

When dealing with an issue of statutory interpretation, the Illinois Supreme Court has stated:

> The fundamental principle of statutory construction is to ascertain and give effect to the legislature's intent. The language of the statute is the most reliable indicator of the legislature's objectives in enacting a particular law. We give statutory language its plain and ordinary meaning, and, where the language is clear and unambiguous, we must apply the statute without resort to further aids of statutory construction. We must not depart from the plain language of the Act by reading into it exceptions, limitations, or conditions that conflict with the express legislative intent. Moreover, words and phrases should not be construed in isolation, but must be interpreted in light of other relevant provisions of the statute. Town & Country Utilities, Inc. v. IPCB, 225 Ill.2d 103, 866 N.E.2d 227 (March 22, 2007) (internal citations omitted).

The plain language of Section 39.2(b), which has not been amended in recent history, provides in part:

> 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 . . . . 415 ILCS 5/39.2(b) (2010).

The Board has ruled on the meaning of the phrase "return receipt requested" and has stated that the phrase plainly means that the local siting jurisdiction will exist if the applicant has sent the pre-application notifications through "registered mail, return receipt requested" or its functional equivalent.[3] City of Kankakee v. County of Kankakee, PCB 03-125 (August 7, 20003); *aff'd by* Waste Management of Illinois v. IPCB, 356 Ill.App.3d 229, 826 N.E.2d 586 (3rd Dist. 2005). The Illinois Appellate Court upheld the Board's decision by relying upon the Illinois Supreme Court's interpretation of the exact same phrase "certified mail, return receipt requested" in $30,700 U.S. Currency. Waste Management, 826 N.E.2d at 590. In $30,700 U.S.

[3] The Board has consistently held that certified mail is the functional equivalent of registered mail in order to fulfill the notice requirements of Section 39.2(b) of the Act, 415 ILCS 5/39.2(b) (2010). *See* Ash v. Iroquois County Board, PCB 87-29 (July 10, 1987).

Currency, the Supreme Court ruled that mailing of certified mail, return receipt requested was sufficient to satisfy the notice requirements and that actual receipt of the notification was not required. People *ex rel*. Devine v. $30,700 U.S. Currency, 199 Ill. 2d 142, 162, 766 N.E.2d 1084, 1092 (2002)

The Board acknowledges that the application of $30,700 U.S. Currency in this case and the City of Kankakee v. County of Kankakee must be reconciled. The Board did so in City of Kankakee v. County of Kankakee stating:

> The Board has reviewed Ogle County, in which the appellate court ruled that actual receipt of prefiling notice was required to effectuate service under the Act, and the Supreme Court's decision in $30,700 U.S. Currency in which the Supreme Court found mailing of certified mail return receipt requested was sufficient to satisfy notice requirements. Based on that review, the Board is convinced that the Supreme Court's decision in $30,700 U.S. Currency effectively overrules the appellate court's decision in Ogle County. Thus, under Section 39.2(b) of the Act (415 ILCS 5/39.2(b) (2002)), an applicant can effect service by mailing the prefiling notice to property owners certified mail return receipt and the service is proper upon mailing. City of Kankakee v. County of Kankakee, slip. op 16 (Aug. 7, 2003).

Further, the Board notes that the Ogle County reasoning was based on the Illinois Supreme Court's ruling in Avdich v. Kleinert. Ogle County, 649 N.E.2d at 554; *citing* Avdich v. Kleniert, 69 Ill. 2d 1, 370 N.E.2d 504 (1977). The notice requirement of the forcible entry and detainer statute, which was at issue in Avdich, included the language "registered mail, with a returned receipt from the addressee. . . ." Avdich, 69 Ill. 2d. at 5; *See* 735 ILCS 5/9-211 (2010). The Illinois Supreme Court in $30,7000 U.S. Currency stated that the notice requirement at issue in Avdich v. Kleinert is not applicable to a notice requirement that includes the language "return receipt requested." $30,700 U.S. Currency, 766 N.E.2d at 1091. The Illinois Supreme Court reasoned that:

> Avdich is not authority for the proposition that all enactments which contain the "return receipt" requirement demand return of the receipt to perfect service. In fact, Avdich, like the enactments previously referred to, illustrates our legislature's ability to *expressly* condition service upon receipt of the signed receipt. *Id.*

The Board reiterates its finding from City of Kankakee v. County of Kankakee that the Illinois Supreme Court's decision in $30,700 U.S. Currency is controlling. The legislature plainly intended two different meanings by the phrase "with a returned receipt from the addressee," which requires actual signed receipt of the notification, and the phrase "return receipt requested," which allows service to be properly served upon mailing. As the Illinois Supreme Court stated in $30,700 U.S. Currency, "[i]f we afford the language in each provision its plain and ordinary meaning, one demands the return of the receipt while the other merely demands a request." 766 N.E.2d at 1091.

The Board's interpretation of the "registered mail, return receipt requested" as stated above in Section 39.2(b) of the Act was originally stated in City of Kankakee v. County of Kankakee and was ultimately upheld by the Illinois Appellate Court. Waste Management of Illinois v. IPCB, 356 Ill.App.3d 229, 826 N.E.2d 586 (3rd Dist. 2005). The Illinois Appellate Court explicitly stated:

> All that is required by . . .[Section 39.2(b) of the Act]…is that notice is sent by registered mail, return service requested. Jurisdiction is not premised on the recipient's actions, once the letter is received, but on the form of the sending of the letter; jurisdiction will exist as long as the letter is sent by the prescribed method. *Id.* at 590.

Applying the facts in this matter stipulated by the parties, the pre-application notifications were mailed on December 27, 2011, via certified mail, return receipt requested. Therefore, WLC properly served the required recipients when the pre-application notifications were mailed certified mail, return receipt requested.

Reasonable Time to Ensure Delivery

Also at issue in this case is whether WLC reasonably calculated enough time to ensure the delivery of the pre-application notifications prior to the 14-day deadline on January 3, 2012. The Board has previously held that registered mailings must be reasonably calculated to result in timely receipt. City of Columbia v. County of St. Clair, PCB 85-177 (April 3, 1986); Waste Management v. Village of Bensenville, PCB 89-177 (August 10, 1989). In some instances, the Board has held that sending the notices three days prior to the deadline has not ensured the delivery of the pre-application notifications prior to the deadline. Carmichael v. Browning Ferris Industries, PCB 93-114 slip op. at 6 (October 7, 1993). The Board has also previously followed a rebuttable presumption contained within the Board's procedural rules that mail sent will be delivered within four days. Waste Management v. Village of Bensenville, PCB 89-177 (August 10,1989); *See also* 35 111. Adm. Code 101.300(c) (2010).

The petitioner argues that the pre-application notifications were not sent within a reasonable time to ensure that the notifications would be delivered prior to the 14-day deadline required by Section 39.2(b) of the Act. Although the stipulated facts indicate that at least six recipients of the pre-application notice did not receive the pre-application notice until after January 3, 2012, the stipulated facts and exhibits presented by the petitioner do not offer any reason for the delay in delivery. Exh. 1 at 1 and 47-62. The petitioner argues that due to New Year's Eve and New Year's Day the notices were not reasonably sent in time for delivery before the 14-day deadline. Pet. Reply at 6. However, Exhibit 1 contains the tracking information for all of the undelivered pre-application notifications at issue. Exh. 1 at 47-62. According to the tracking information, the pre-application notifications "arrived at the unit" ready for delivery on December 29, 2012, for all parcels at issue in this case. *Id.* The facts also indicate that 94 of the 102 pre-application notifications were delivered prior to January 3, 2012 deadline, and only one parcel did not receive the pre-application notification prior to the submission of WLC's local siting approval application. Exh. 1 at 2. Since the pre-application notifications were sent seven days before the deadline even accounting for New Year's Day , WLC reasonably calculated that

the mailing of the pre-application notifications would ensure delivery no later than 14 days before January 17, 2012, the date the application was filed.

The petitioner further argued that WLC ought to have been more diligent when the pre-application notifications had been undelivered. Section 39.2(b) of the Act does not require additional measures to be taken by the applicant if recipients of a pre-application notification do not accept the pre-application notification. Thus, WLC complied with Section 39.2(b) of the Act. Therefore, the Board finds by sending the pre-application notifications via certified mail, return receipt requested 7 days prior to the 14-day deadline, WLC has reasonably calculated the mailing of the pre-application notifications to ensure the delivery to required recipients to comply with Section 39.2(b) of the Act.

Board's Authority

Petitioner alleges that the Board does not have the authority to "effectively overrule" the Illinois Appellate Court's decision in Ogle County and that an "administrative agency lacks the authority to ignore any portion of its enabling statute." Pet. Br. at 4, 5; *citing* Eckman v. Board of Trustees for the Police Pension Fund, 143 Ill. App. 3d 757, 765 (2nd Dist. 1986). The Board agrees that it cannot ignore the Act, nor can the Board overrule the Appellate Court's decisions. However, in this instance the Board has done neither. The Board is applying the plain language of the Act and following the Illinois Supreme Court's case law regarding identical language in DAFPA. Therefore, the Board has not exceeded its authority in finding that the notice requirements of Section 39.2 of the Act (415 ILCS 5/299.2 (2010)) were met.

This opinion constitutes the Board's findings of fact and conclusions of law.

CONCLUSION

The Board finds that WLC has complied with the pre-application notice requirements of Section 39.2(b) of the Act, 415 ILCS 5/39.2(b) (2010) and properly served all required recipients by sending the pre-application notification via "certified mail, return receipt requested." The Board also finds that WLC reasonably calculated the delivery of the pre-application notifications by sending the pre-application notifications 21 days prior to submitting an application for local siting approval. The Board affirms the decision of the Winnebago County Board.

ORDER

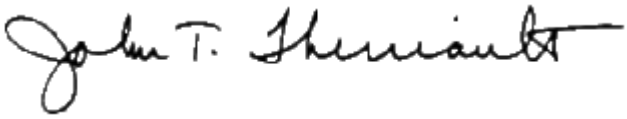
The decision of the Winnebago County Board approving Winnebago Landfill Company's 2012 application to site a pollution control facility expansion is affirmed for the reasons expressed in the Board's opinion.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2010); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706.

Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on March 7, 2013, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board