ILLINOIS POLLUTION CONTROL BOARD
July 16, 1987

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

MESSRS. RICHARD J. KISSEL AND BRADLEY R. O'BRIEN, MARTIN, CRAIG, CHESTER & SONNENSCHEIN, APPEARED ON BEHALF OF THE PETITIONERS.

MR. HOWARD R. TEEGEN, SOFFIETTI, JOHNSON, TEEGEN & PHILLIPS, LTD., APPEARED ON BEHALF OF RESPONDENT VILLAGE OF ROUND LAKE PARK.

MESSRS. FRED L. FOREMAN, STATE'S ATTORNEY OF LAKE COUNTY, AND LARRY M. CLARK, ASSISTANT STATE'S ATTORNEY, APPEARED ON BEHALF OF RESPONDENT LAKE COUNTY.

OPINION AND ORDER OF THE BOARD (by J. Marlin):

This matter comes before the Board on a siting Application Appeal (Petition) filed by A.R.F. Corporation (A.R.F.) on March 12, 1987. Specifically, A.R.F. appeals the action taken by the Village of Round Lake Park (Village) regarding A.R.F.'s application for site location suitability approval for a proposed sanitary landfill expansion to its existing 80-acre facility. A.R.F. sought approval from the Village pursuant to Section 39.2 of the Environmental Protection Act (Act). Ill. Rev. Stat. 1985, ch. 111 ½, par. 1039.2. By its Order of March 19, 1987, the Board joined Lake County (County) as a party respondent for the purposes of determining whether the County was a necessary party to this action. After receiving motions on this issue, the Board found that the County was a necessary party, and by its Order of April 16, 1987 the Board granted the Village's and County's motions for joinder and denied A.R.F.'s motion to exclude the County. On May 1, 1987, William Alter and LaSalle National Bank (Alter) filed a Motion to Dismiss A.R.F.'s appeal. After considering A.R.F.'s response, the Board struck Alter's motion from the record by the Order of May 14, 1987. In that Order, the Board also denied the County's Motion for Consolidation of this docket with PCB 87-51. On May 11, 1987, a hearing was held in this matter; members of the public were present. The last post-hearing brief was filed June 4, 1987.

Due to the unique circumstances that serve as a backdrop to this proceeding, it is necessary for the Board to review, in chronological order, the events leading up to A.R.F.'s appeal.

There are essentially no issues of fact in this proceeding; the parties agree to the following facts.

In January, 1981, the Village passed an ordinance which purported to annex property commonly referred to as the Heartland property. (Village Exh. #1). On June 3, 1981, the County, and several other parties, filed suit against the Village, LaSalle National Bank as trustee under Trust No. 44264, and Lake Properties Venture in the Circuit Court of Lake County. The complaint, in part, challenges the Village's Heartland annexation by writ of quo warranto. (Village Exh. #3).

On October 3, 1986, A.R.F. filed with the Village a Request for Site Approval concerning its proposed landfill expansion. A.R.F. is proposing to expand its existing landfill by adding three areas, Areas 2, 3, and 4. Areas 3 and 4 are indisputably in unincorporated Lake County; Area 2 is a part of the Heartland property. (R. 39-40).

The County, the Village of Grayslake (another plaintiff to the circuit court action), LaSalle National Bank, and Lake Properties Venture entered into a Settlement Agreement and Release (Agreement) on October 16, 1986. The Agreement states that the Village and Lake Properties Venture shall file stipulations with the circuit court for entry of a judgement in favor of the plaintiffs on the quo warranto count and for the dismissal of all other counts. According to the Agreement, the stipulations should also admit that the Heartland annexation was void ab initio. The Agreement states that the stipulations must incorporate the terms of the Agreement by reference. The Agreement further provides that "if any party fails or is unable to comply with any provisions of paragraphs 3-5 of this Agreement, LPV [Lake Properties Venture] and the Village of Round Lake Park may withdraw such stipulations for the entry of judgment and have such stipulations expunged from the record of the state litigation." (Pet. Exh. #1, p. 4). The Village filed a stipulation according to the terms of the Agreement on October 31, 1986. (County Exh. #4).

The Village never held a hearing on A.R.F.'s application. On February 10, 1986, the Village, by resolution, declined to "exercise jurisdiction over the A.R.F. application" and dismissed the application due to the pending settlement agreement and fact that the County was holding hearings on the application. (Village Exh. #4). Subsequently, A.R.F. filed this appeal before the Board.

It is from the above uncontroverted facts that the parties argue their respective positions.

A.R.F. argues that the portion of the proposed landfill expansion located in the Village should be deemed approved pursuant to Section 39.2 of the Act. (A.R.F. Reply, p. 2). A.R.F. initially states that the Village had jurisdiction to act

upon A.R.F.'s application. Secondly, the Village did not hold a hearing within 90 to 120 days of A.R.F.'s application as required by Section 39.2(d). Finally, A.R.F. claims that the portion of the proposed landfill expansion located in the Village is deemed approved under Section 39.2(d) since the Village did not render a decision on the six criteria of Section 39.2(a). (A.R.F. Reply, p. 5). In the alternative, A.R.F. asserts that even if the Board does not find the proposed landfill expansion deemed approved, the information in the record is sufficient to show that A.R.F. has satisfied the six criteria and that local approval should be granted.

It is the position of the Village that A.R.F. filed a single unified application with both the County and the Village and that as a result, A.R.F. invited local site suitability approval from either the County or the Village, or both. In other words, it is the Village's position that the request for siting approval entailed the complete expansion that A.R.F. proposed, including Areas 3 and 4 which are indisputably in unincorporated Lake County. The Village claims that the application presented by A.R.F. does not single out Area 2 for approval on its own, but rather the whole expansion is presented for approval as one unit.

Secondly, the Village argues that its decision declining jurisdiction is consistent with the Act. The Village asserts that the Act only requires that a hearing be held by a county or governing body of a municipality. Given the pending suit concerning the validity of the Heartland annexation, the Village believes that it acted properly by defering jurisdiction to the County.

Finally, the Village claims that the jurisdictional requirements have not been met by A.R.F. due to inadequate proof of notices served on adjacent landowners and legislators pursuant to Section 39.2(b). The Village asserts that certified mail receipts, as presented at hearing, do not prove that the proper type of notice was sent. Also, the testimony by A.R.F.'s office manager was inconclusive as to what was sent, according to the Village. As a result, the Village concludes that A.R.F. did not prove that the Village had jurisdication to hear A.R.F.'s application.

The County contends that Area 2 of A.R.F.'s proposed expansion is in unincorporated Lake County. The County bases its position upon the fact that the Village's stipulation, filed in the circuit court, "was in effect" at all times during and subsequent to the 90 to 120 day period after A.R.F. filed its application with the Village. (County Brief, p. 5). At hearing, the County presented other evidence, some of which was not admitted, in an effort to support its position that subsequent to the Village's filing of the stipulation, the Village has not exercised authority over the Heartland property.

The County also reiterates the Village's position that the Village lacked the jurisdiction, since A.R.F. did not prove that adequate notice was sent to adjacent landowners and legislators.

Finally, the County states that if the Board finds that the Village did have jurisdiction over A.R.F.'s application, the application itself is deficient in the proof of the six criteria.

JURISDICTION AND HEARING ISSUES

The threshold question for the Board to decide is whether the Village had jurisdiction to approve the site location suitability, pursuant to Section 39.2, of the proposed landfill expansion as presented by A.R.F. in its application which was filed with the Village on October 3, 1986. Section 39.2 of the Act states that the "county board of the county or governing body of the municipality, as determined by paragraph (c) of Section 39 of this Act shall approve the site location suitability...." Section 39(c) of the Act provides in part that the location of a regional pollution control facility must be approved "by the County Board of the county if in an unincorporated area, or the governing body of the municipality when in an incorporated area in which the facility is to be located in accordance with Section 39.2 of the Act."

As stated previously, the only part of A.R.F.'s proposed landfill expansion which could arguably be located in the Village is Area 2. Area 2 is a part of the Heartland Property which the Village purportedly annexed in 1981. The Heartland Property is also the subject of the pending quo warranto action brought in the circuit court against the Village by the County, among other parties. Although a settlement agreement has been reached and stipulations have been filed, the action is still pending since the settlement and stipulation were contingent upon certain events taking place. There is no evidence in the record to indicate that these events have occurred. In addition, no consent decree has been issued by the court. It is also no small matter to note that the Village, although it filed a stipulation, is not a party to the Agreement.

The courts have repeatedly held that the "legality of proceedings by which additional territory is added to a municipality cannot be inquired into except upon a direct proceeding by quo warranto". Village of Bridgeview v. City of Hickory Hills, 1 Ill. App. 3d 931, 274 N.E.2d 925, 927 (1st Dist. 1971). In North Maine Fire Protection District v. Village of Niles, 53 Ill. App. 3d 389, 368 N.E.2d, 516, 519-20, (1st Dist. 1977) the First District refused to decide an issue that was dependent upon a determination as to the validity of an annexation when there existed a separate, quo warranto action. The court stated:

> Whether or not the noncontiguity was created in 1966 depends, of course, upon the validity

> of that annexation which is being challenged in the pending quo warranto proceeding [citation omitted]. The question of whether parcels have been legally annexed can only be tried by quo warranto proceedings and cannot be raised collaterally. Village of Bridgeport, [citation omitted]. The question of noncontiguity is therefore not properly before this court.
>
> Id., 368 N.E.2d at 520.

The County's position that the Village has no jurisdiction to decide A.R.F.'s application, amounts to a collateral attack upon the validity of the Village's Heartland annexation.

As the above case law illustrates, the validity of an annexation can only be questioned in a quo warranto action. The instant proceeding is a landfill siting application appeal not a quo warranto action. As a result, the Board may not question the validity of the Village's annexation. Until the circuit court acts upon the pending quo warranto action, the Board must treat the annexation as valid. Therefore, the Village has jurisdiction to decide site location suitability for any proposed landfill located on the Heartland property.

Although the Board finds that the Village has jurisdiction over any proposed landfill located on the Heartland property, the Board rejects A.R.F.'s contention that the proposed landfill expansion is deemed approved. Section 39.2(e) of the Act states, "if there is no final action by the county board or governing body of the municipality within 180 days after the filing of the request for site approval the applicant may deem the request approved." Section 39.2(d) requires that a hearing must be held by the county board or governing body of the municipality in the period between 90 to 120 days after the filing of the application. A.R.F. seems to argue that since the Village did not hold a hearing within that time frame, the proposal is deemed approved. However, the deemed approved language relates to the 180-day final action deadline not the 120-day hearing deadline.

A.R.F. relies on Marquette Cement Manufacturing Company v. Illinois Environmental Protection Agency, 84 Ill. App. 3d 434, 405 N.E.2d 512 (1980) as authority for requiring the Board to find that local site location suitability approval of A.R.F.'s proposal is deemed approved. According to A.R.F., the instant situation is "in all relevant aspects identical to that in Marquette Cement." (A.R.F. Reply, p. 4). The Board disagrees.

Marquette Cement concerned a permit appeal before the Board for an air operating permit denial. In that case, the 1977 version of Section 40 of the Act applied. The Third District found that the permit, the denial of which was the subject of the appeal, was granted by operations of law since the Board could

not hold a hearing within 90 days of the appeal's filing. The Board did vote to dismiss the appeal within the 90-day period.

The situation in Marquette Cement is significantly different than the situation presently before the Board. In Marquette Cement, the final action taken by the Board, although improper, went to the merits of the permit appeal in an attempt to prevent the permit from being granted by operation of law. On the other hand, the Village dismissed A.R.F.'s application for jurisdictional reasons. That is, by expressly declining to exercise jurisdiction and dismissing the application, the Village negated the need to reach a decision on the merits at that point. Of course, this was an erroneous action of the Village but an action that has consequences nonetheless.

The decision by a county board or governing body of the municipality as to whether it has jurisdiction to evaluate an application on its merits is fundamental to the whole site location suitability approval process. The Board believes that there are only two ways by which a local unit of government may avoid making a decision on the merits of an application. The first is the instance when a local unit of government fails to take a final action within 180 days of the filing of the application. The application is then deemed approved by Section 39.2(e). The second method is the situation when the local unit of government disposes of the application for jurisdictional reasons, as the Village has done in this case.

The intent behind the statutory structure of the site location suitability approval process is to maximize the public's participation in that process. The public is directly involved in the approval process through its ability to participate at public hearings. In addition, local elected representatives are the decision makers in that process. Consistent with that underlying purpose, the Act provides that the only way the public's involvement may be bypassed in the site location suitability process is when a local governing body fails to take a final action within 180 days. The result of that course of action is that the application is deemed approved.

A.R.F. is asking the Board to declare its siting request deemed approved although the Village dismissed the application for jurisdictional reasons. The Board finds no reason to expand upon the Act's provision which clearly defines the instance when an application may be deemed approved. To increase the ways in which an application may be deemed approved necessarily decreases the opportunity for public involvement. Such an action would contravene the intent behind the Act's site location suitability approval process. Therefore, the Board finds that when a local unit of government takes an action upon an application for jurisdictional reasons even those which stem from procedural errors of the applicant, the deemed approved provision of Section 39.2(e) does not apply.

Consistent with this holding, a local unit of government may dispose of an application for jurisdictional reasons without fear that failure to render a decision on the merits will result in the application being deemed approved. Presently, local units of government may hold hearings on an application and render a decision on the merits in an effort to avoid deemed approved status, even though they believe that they do not properly have jurisdiction to decide the issue. The Board's holding today will save the local units of government large amounts of time and money that could be incurred by holding merit hearings in such instances. However a hearing on the jurisdictional matters is well advised.

It is also important to note that the resolution of the Village which dismissed A.R.F.'s application was passed 130 days after A.R.F. filed its application with the Village. This action, appealable to the Board, was certainly taken in a timely manner.

In summary, because the Village's dismissal of A.R.F.'s application was based on jurisdictional reasons, not on the merits of the application, the deemed approved provision of the Act is inapplicable. Correspondingly, Marquette Cement is not controlling.

Even if the Board did not distinguish Marquette Cement in the manner as above, the Board would still be unconvinced that Marquette Cement requires that A.R.F.'s application be deemed approved. In Marquette Cement, the court emphasized the concurrent nature of the two statutorily required actions:

> The statute clearly contemplates and requires that both the hearing and final agency action shall occur within 90 days from the filing of the petition for review. [original emphasis]
>
> Marquette Cement, 84 Ill. App. 3d at 437.

The court later repeated its position:

> The statute contemplates both a hearing and a final decision within 90 days. If either is not forthcoming within that time, then the permit is deemed issued under the Act.
>
> Id. at 439.

The situation in the instant proceeding is different from the one in Marquette Cement. In this proceeding, the operative portions of the Act are Subsections 39.2(d) and (e). Unlike Marquette Cement, here the operative statutory provisions provide for two distinct time deadlines concerning the requirements for a hearing and final action. That is, the county board or governing

body of the municipality must hold a hearing between 90 to 120 days after the application is filed; a final action must be taken within 180 days. Secondly, the statutory "deemed approved" language is found only in Subsection (e) and is tied to the final action deadline. The hearing deadline is found in Subsection (d) where no deemed approved language is present. The Board must assume that the two distinct deadlines are present in the Act for a purpose. If the Board accepts A.R.F.'s reasoning, that purpose would be frustrated.

In its Reply Brief A.R.F. states, "Even if this [the Village's resolution] is construed as a decision (which it is not) [A.R.F.'s parenthetical statement], the appellate court in Marquette Cement found that a refusal to hold a hearing could not be cured after the fact by issuing a decision."

Consequently, A.R.F. is asking the Board to hold that the failure of the Village to conduct a hearing in the period from 90 days to 120 days after A.R.F. filed its application is alone sufficient to consider the application deemed approved. If this were the case, an application could be deemed approved on day 121 if a hearing had not been held. However, the statute clearly states,

> If there is no final action by the county or governing body of the municipality within 180 days after the filing of the request for site approval the applicant may deem the request approved. [emphasis added]
>
> Section 39.2(e) of the Act. Ill. Rev. Stat. 1985, ch. 111 1/2 par. 1039.2(e).

It also follows from A.R.F.'s reasoning that if a local body dismissed an application ten days after it was filed and subsequently never held a hearing, that application could still be deemed approved on day 121. If an application could be deemed approved on day 121, what value would the 180 day deadline retain? Applying the holding of Marquette Cement to the situation at hand would clearly contradict a plain reading of the statute. Given that, plus the facts that Marquette Cement concerned an air permit appeal and an interpretation of a completely different section of the Act, the Board finds little value in applying Marquette Cement to this case.

A.R.F. also cites Illinois Power Company v. Illinois Pollution Control Board 112 Ill. App. 3d 457, 445 N.E.2d 820 (1983) as support for its deemed approved argument. A.R.F., in its Brief, states, "Illinois Power mandates that the Board find that A.R.F.'s local siting approval is deemed approved by operation of law." (A.R.F.'s Brief, p. 5). After reviewing Illinois Power, the Board fails to see this "mandate". Illinois Power cites Marquette Cement as authority only for the general

rule that if the Board fails to act within a 90-day period, the permit is issued as a matter of law. In Illinois Power the Board admitted that it took no final action within the 90-day period. The primary issues of Illinois Power were whether the approval by operation of law applied to NPDES permits and whether permits granted by operation of law contained conditions.

The Board similarly finds A.R.F.'s reference to Board of Trustees of Casner Township et al v. County of Jefferson and Southern Illinois Landfill, PCB 84-175 (January 10 and April 4, 1985) of little value in this matter. In Board of Trustees of Casner Township, a County Board deadlocked and was unable to approve or deny an application for site location suitability approval pursuant to Section 39.2 of the Act. The County Board remained deadlocked for 120 days after the application had been filed. (At that time, the "deemed approved" provision was triggered after 120 days, unlike the present 180 days.) The Board stated that the application was "deemed approved" as an operation of law. However, the real question before the Board was not whether the application had been deemed approved but rather whether a deemed approved application is subject to appeal before the Board. Although relating to deemed approved application, Board of Trustees of Casner Township casts no additional light on the issues presently before the Board.

Throughout this proceeding, the Village has never stated that it does not have jurisdiction over the Heartland property. However, it still maintains that it was consistent with the intent of the Act to decline to exercise jurisdiction thereby deferring to the County on that issue. The Board disagrees. The legislative history of the landfill siting provisions of the Act, Senate Bill 172, addresses the jurisdiction issue specifically. Prior to a vote in the House of Representatives which passed S.B. 172 through the adoption of the Conference Committee Report #1, Representative Breslin, while discussing the bill, stated,

> They must before getting a permit from the EPA, first secure the permit from the County or the local unit of government in which they lie. If they lie totally within a municipality then they get it from the municipality, if they lie in the county, in the unincorporated area then they get the permission from the county, if they overlap they get it from both. And this must be granted prior to the EPA going ahead with its siting approval.
>
> 82nd General Assembly, House of Representatives, July 1, 1981, p. 191-92.

Therefore, since the Village had jurisdiction with regard to the portion of A.R.F.'s proposed expansion that would be located

on the Heartland property, A.R.F. would need to get site location suitability approval from the Village as well as from the County, which has jurisdiction over the remaining portions of A.R.F.'s proposed expansion. Since it is statutorily necessary for the Village to decide the issue of site location suitability for part of A.R.F.'s proposed expansion, the Village could not properly defer this duty to the County. In E & E Hauling, Inc. v. Pollution Control Board, 116 Ill. App. 3d 586, 451 N.E.2d 555, 567 (2d Dist. 1983), affirmed 107 Ill. 2d 33, 481 N.E.2d 664 (1985), the Second District rejected an argument that a county board could have transferred its obligation to decide site location suitability to another unit of local government. The court found that the Act prohibited such a transfer. Consequently, it is improper for the Village to conclude that it had the authority to defer to the County concerning site location suitability approval with respect to proposed activities on the Heartland property.

UNIFIED APPLICATION ISSUE

The Village and County contend that A.R.F. filed a unified application for its entire proposed facility before the Village even though the Village could exercise no jurisdiction in the portion located in unincorporated areas of the County. They believe that A.R.F. should have filed separate and distinct applications with both entities covering only those areas within each jurisdiction.

As stated above, when a proposed facility is located in a municipality and unincorporated area, each must approve an application. It follows, therefore, that an application must be sent to each. Under normal conditions, an application should clearly delineate the portion of the facility that the governmental unit is expected to review and exercise jurisdiction over. It is unrealistic to expect that the application to each unit of government attempt to precisely delineate the scope of information related to the six criteria each unit will consider as within its jurisdiction. However, the information clearly relevant only to one jurisdiction's portion of a facility should at a minimum be summarized in one place if relevant detailed information is scattered throughout the application. The applications are expected to contain much overlapping if not identical information on such matters as geology, operating plans and service areas, for example. Each governmental unit is required to consider the application it receives. They may agree to hold a joint hearing but must reach separate decisions based on consideration of the hearing record.

In its post-hearing brief, A.R.F. stated: "On October 3, 1986, A.R.F. filed a request with the Village of Round Lake Park ("Round Lake Park") for the siting of a proposed 28.6 acre municipal waste landfill that would be located in Round Lake Park adjacent to the present A.R.F. landfill. ("Round Lake Park facility")." (A.R.F. Brief, p. 1). In response to the Village's

claims that A.R.F.'s application to Village requested approval for the entire proposed expansion rather then just the portion located in the Village, A.R.F. asserts that "[t]he Round Lake Park facility is separate and independent from a proposed A.R.F. facility located solely in unincorporated Lake County that is subject to a different appeal (PCB 87-51)." (A.R.F.'s Reply, p. 18). A.R.F. states further in its Reply, "A.R.F.'s proposed facility that is located solely in Round Lake Park is an independent facility that must be issued local approval by operation of law as a result of Round Lake Park's refusal to abide by the Act." Id. at 19. In footnote 5 of A.R.F.'s Reply, A.R.F. states that "the introduction to the application clearly states that A.R.F. was seeking approval from Round Lake Park for the 28.6 acre [Area 2] facility located solely in Round Lake Park."

A different position, though, was enunciated in A.R.F.'s Petition before the Board. The Petition states, "On October 3, 1986, A.R.F. filed a request for local siting approval with Round Lake Park for a proposed approximately 105 acre nonhazardous, primarily municipal waste facility which would be partially located in Round Lake Park." (Pet., p. 1). This statement suggests that A.R.F. requested site location suitability approval for the complete 105-acre proposed expansion. In its petition, A.R.F. reasons:

> Because A.R.F.'s proposed site lies in part within Round Lake Park, Round Lake Park has jurisdiction and was required to grant or deny A.R.F.'s siting request under Section 39.2 of the Act. [emphasis added]
>
> Petition, p. 5

Later in the Petition, A.R.F. declares "this site application must be deemed granted by this Board. [emphasis added]" (Pet. p. 7). Consequently, it is apparent that A.R.F.'s position concerning the extent of its request to the Village has not been clearly consistent throughout the course of this proceeding. Consequently, the Board must look to the words of the application that A.R.F. filed with the Village.

In its Petition, A.R.F. refers the Board to Exhibit A of the Petition as the application which it filed with the Village. The Board notes that Exhibit A appears to be a copy of a request for site approval that was submitted to the County. Part II of Exhibit A is entitled:

> REQUEST FOR SITE APPROVAL TO THE COUNTY BOARD, LAKE COUNTY, WAUKEGAN ILLINOIS TO THE CHAIRMAN AND MEMBERS OF THE COUNTY BOARD.

The Board also reviewed the Village's certified record on appeal which contains A.R.F.'s application. The Executive Summary of A.R.F.'s application states:

> A.R.F. Landfill Corp. hereby presents to the Village Board of the Village of Round Lake Park, Illinois it's Request for Siting Approval for expansion of an existing solid waste management facility, a portion of which is located in Round Lake Park, Illinois. [emphasis added]
>
> (Exh. #1 to Village Record, p., i).

The application further states:

> Land areas as described below, designated for the proposed facility represented herein, and consisting of an appropriate 105-acre expansion of its existing 80-acre IEPA-licensed facility. [emphasis added]
>
> (Id. at II-1)

The application's prayer for relief is as follows:

> AND DO HEREBY PETITION YOUR HONORABLE BOARD TO APPROVE THE ATTACHED REQUEST FOR SITE APPROVAL IN ORDER TO ESTABLISH THE FOLLOWING PROPOSED FACILITY: [emphasis added]
>
> (Exh. #1 to Village Record, p. II-2).

The application then proceeds on to detail the site characteristics and operation of the complete 105-acre expansion.

The plain meaning of the language of the application indicates that A.R.F. sought site location suitability approval from the Village for the entire proposed expansion not just the portion of the expansion loacted in the Village. Although the application indicates that Area 2 is the only portion of the proposed expansion that lies within the Village, the application never expressly limits its request for approval to Area 2.

The Board cannot accept the contention that the application was limited to the 28.6 acres in the Village. However, the Board believes that in this particular instance the application as filed, although awkward, was not fatally flawed.

Given that Area 2 was in a location subject to an annexation dispute, A.R.F. understandably faced some difficulty in determining, or predicting which body could, or would exercise

jurisdiction over its application. It may be understandable that A.R.F. requested the County to approve all areas, just in case. However, it is less understandable why A.R.F. made the same request of the Village. A.R.F. chose to file virtually an identical application before the Village. In the least, A.R.F. should have made it clear in its application that it was requesting site location suitability approval for only the portion of the proposed expansion over which the Village had jurisdiction.

OTHER ISSUES

As stated earlier, the Village and the County contend that A.R.F. did not adequately prove service of the type of notice required under Section 39.2(b). At hearing, copies of certified mail receipts were presented by A.R.F. and admitted as Petitioner's Exhibit #2. The Village and the County assert that these receipts are insufficient proof of the type of notice sent.

At hearing, A.R.F.'s Office Manager, Shirlee Josephsen, testified that the type of notice sent out "was like" the legal notice that was printed in the News Sun newspaper. (R. 37). She also stated that she did not know whether the newspaper notice and the notice which was sent were "word for word" the same. (R. 38). She further testified that the notice which was sent out included "a copy of the letter that detailed our intentions and the legal description of the property that would be involved in our intent." (R. 37). After reviewing the legal notice that was printed in the newspaper (Pet. Exh. # 2(c)), the Board concludes that the newspaper notice sufficiently set forth the informational requirements under the Act. The testimony of A.R.F.'s office manager indicates that a similar type of notice was sent out to the persons indicated by the certified mail receipts.

More importantly, the Board notes that Appendix 10 of A.R.F.'s application contains copies of the notices, signed by Ms. Josephsen, which were sent to adjacent landowners and legislators. The notices appear to fulfill the statutory requirements. These copies as well as the testimony of Ms. Josephsen are sufficient to prove that A.R.F. sent the proper type of notice. The notices in Appendix 10 also successfully rebut the County's claim that the application lacked proof of the type of notice sent by A.R.F. The Board further notes that this issue could have been resolved with relative ease if A.R.F. had presented the notices of Appendix 10 in conjunction with Ms. Josephsen's testimony at hearing.

Finally, the Board will address a few other matters raised at hearing and in the post-hearing briefs. At hearing, the County moved that the Board take official notice of the record in PCB 87-51, which concerns A.R.F.'s appeal of the County's denial of site location suitability approval. The Board denies that

motion since such official notice was unnecessary for the resolution of this matter. Additionally, the Board upholds all the evidentiary rulings of the Hearing Officer. After reviewing the evidence which was excluded at hearing by the Hearing Officer but included in the record as an offer of proof, the Board finds that even if such evidence had been admitted, the outcome of this proceeding would not have been altered.

In summary, given the circumstances of this proceeding, the Board finds that the Village has jurisdiction to decide the issue of site location suitability for that portion of A.R.F.'s proposal which would be located on the Heartland property. Although it was an error for the Village to decline to exercise jurisdiction and not hold a hearing in this matter, the Village's action dismissing A.R.F.'s application was based upon jurisdictional reasons. As a result, the siting request may not be deemed approved. Accordingly, the Board will remand A.R.F.'s application so that the Village may conduct a hearing and render a decision pursuant to Section 39.2 of the Act. A hearing will allow the Village officials to properly evaluate A.R.F.'s application and interested persons to participate in that process. The hearing requirement does not necessarily preclude the Village from incorporating and considering the record of the hearing that the County held on A.R.F.'s application. The Board notes that its action today does not in any way concern the merits of A.R.F.'s application.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

The Board hereby vacates the Village of Round Lake Park's dismissal of A.R.F. Landfill Corporation's application for site location suitability approval and remands the application for hearing and decision pursuant to Section 39.2 of the Act.

IT IS SO ORDERED.

Board Members J.T. Meyer and J.D. Dumelle concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 16th day of July, 1987, by a vote of 6-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board