

ILLINOIS POLLUTION CONTROL BOARD
July 30, 1992

AMERICAN FLY ASH COMPANY,)
)
 Petitioner,)
)
 v.)
)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
)
 Respondent.)

PCB 92-106
(Permit Appeal)

ORDER OF THE BOARD (by J. Anderson):

On July 20, 1992, American Fly Ash Company (AFA) filed a "Petition for Review of Permit Denial". In its petition, AFA seeks review of the Illinois Environmental Protection Agency's (Agency) refusal to accept financial assurance tendered by AFA pursuant to 35 Ill. Adm. Code 805.605(c)(1), for the following three facilities:

Indian Creek Landfill located near Hopedale
in Tazewell County, Illinois,

Renwick landfill located near Lockport in
will County, Illinois, and

Newport Landfill located near Zion in Lake
County, Illinois.

AFA alleges that the Agency's refusal is manifested by the Agency's issuance of three Administrative Warning Letters, dated June 12, 1992, against the above-mentioned sites. In addition, AFA alleges that the Agency's failure to return 1991 letters of credit when offered substitute financial documentation representing funding for the closure and post-closure care cost estimates for the sites constitutes a refusal to approve a reduction in the amount of the letter of credit pursuant to 35 Ill. Adm. Code 805.605(c)(5).

AFA requests that the Board set this matter for hearing, enter an order staying "administrative enforcement proceedings" against the above-mentioned facilities until this case is resolved, and find AFA in compliance with the financial assurance provisions of 35 Ill. Adm. Code 807.603(a), 807.661(c), 807.664(c)(2), and 807.641.

The Board declines to set this matter for hearing at this time because AFA's petition is deficient. 35 Ill. Adm. Code 807.605(c) provides, in part, that the Agency's refusal to accept

0135-0187

financial assurance and to approve a reduction in the amount of a letter of credit may be appealed as a permit denial to the Board. The Environmental Protection Act (Act) and the Board's procedural rules provide that permit appeal hearings are to be held in the county in which the alleged violation occurred. (see Section 40 of the Act and 35 Ill. Adm. Code 103.125.) Because the facilities are located in three different counties, AFA must file separate petitions for each facility. Each petition should include the following information:

1. copies of the 1991 letters of credit drawn upon the First Midwest Bank, N.A. in Buffalo Grove, Illinois, and the 1992 letters of credit drawn upon LaSalle Bank Lake View in Chicago, Illinois; and
2. a copy of the applicable Agency Administrative Warning Notice, dated June 12, 1992;

The Board also directs both AFA and the Agency to provide the following information:

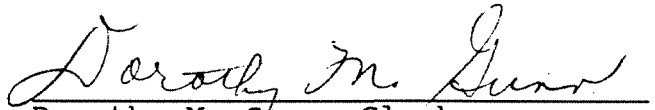
1. whether the Agency's issuance of the Administrative Warning Letters constitutes an appealable "Agency action", as that phrase is used in 35 Ill. Adm. Code 807.605(c),
2. if the Agency's issuance of the Administrative Warning Letters is not an appealable Agency action,
 - a) an identification of the Agency action, if any, that is appealable,
 - b) the date on which such action was taken, and
 - c) whether AFA's petition was timely filed before the Board.

The replacement petitions and the requested information must be received by the Board no later than September 15, 1992. The filing of separate petitions will restart the Board's time clock for purposes of calculating in Board's statutory decision deadline. If AFA does not file the separate petitions and the requested information within such time frame, this matter will be subject to dismissal. Finally, in light of the above deficiencies and because the Agency has not yet filed any administrative enforcement proceedings against AFA's three

facilities, the Board denies AFA's request that it enter an order staying "administrative enforcement proceedings".

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 30th day of July, 1992, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board