

ILLINOIS POLLUTION CONTROL BOARD
April 1, 1982

AMERICAN FLY ASH CO., et al.,)
)
) Petitioners,)
)
) v.) PCB 81-188
)
) ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)
)
) Respondent.)

ORDER OF THE BOARD (by J. Anderson):

On January 21, 1982 the Board dismissed this permit appeal. The Board found that there was no valid permit over which the Board could exercise jurisdiction, given the retroactive application of SB 172 (P.A. 82-0682) to a permit granted October 27, 1981 for what "the parties have impliedly assumed [without briefing] is a 'new regional pollution control facility'" as defined in SB 172 (Order, p. 1). On February 23, 1981 petitioners filed a Motion for Rehearing, which was supplemented March 17, 1982. The Agency has filed no response. The Board hereby grants petitioners' motion, which it construes as a motion for reconsideration. Upon reconsideration, the Board vacates its Order of January 21, 1982, with the result that this action is reinstated.

The Board need not reach the estoppel issue which was the basis of petitioners' original Motion, as the new argument contained in the Supplement that the site is not a "new regional pollution control facility" raises the dispositive issue. The Board had anticipated that the threshold question of whether the site was a regional or non-regional one would be addressed in the parties' briefs in response to the Board's December 17, 1981 Order. It was not. The Board therefore accepted at face value the parties' implied agreement that the site was a "regional pollution control facility" as defined by SB 172.

The current motion for the first time argues that the site is not regional. It states that disposal site is located in an unincorporated area of Tazewell County, and is intended to serve only one customer, the Commonwealth Edison Powerton Plant, also located in an unincorporated area of Tazewell County. Subsection 3(t) of the Act, as amended by SB 172 provides in pertinent part that a

"'Regional Pollution Control Facility' is any... waste disposal site... that accepts waste from or extends over the boundaries of any local general purpose unit of government ..." (emphasis added).

The Board notes that this action is one of three permit appeals which were the subject of special Board consideration in December, 1981 in the light of the enactment of SB 172 with its significantly altered permitting requirements, and the Board's 90 day decision deadline. On December 22, 1981 the Board made a request to the Attorney General for an Opinion construing some of the language contained in SB 172. The Board's request stated its concern that

"Misclassification or conflicting classification of affected facilities as "regional" or "not-regional" by those involved in approval, permitting and appeals during the siting process could lead to chaos, especially considering the differences in the entities and individuals involved in each process and the statutory time limits for decisionmaking by the entities involved with "regional" facilities."

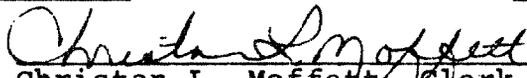
In his Opinion of February 18, 1982 (File No. 82-003), the Attorney General states his conclusion that "'local general purpose unit of government' includes only counties and municipalities" (A.G. Opinion at 10).

Based on petitioners' new argument and on this recent statutory construction, the Board finds that the instant site does not serve or extend over the boundaries of Tazewell County, and further does not serve a municipality within the borders of that county (see A.G. Opinion at 13). Therefore, the site is not a "regional pollution control facility", and is not subject to the dictates of SB 172 which became effective as to permits concerning non-regional facilities November 12, 1981, 16 days after the issuance of the permit whose condition is the subject of this appeal.

This case was dismissed on the 52nd day after its filing. As petitioners had waived the 90-day decision period for the 14 day period of a continuance in a briefing schedule, upon reinstatement there are 52 days remaining in the decision period. Hearing shall therefore be scheduled and held as expeditiously as is practicable.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 1st day of April, 1982 by a vote of 4-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board