

ILLINOIS POLLUTION CONTROL BOARD
December 3, 1981

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

ORDER OF THE BOARD (by J. Anderson):

This appeal, filed December 1, 1981, contests a condition of a developmental permit for a solid waste disposal site to be located in Tazewell County. This permit was issued by the Agency on October 27, 1981.

On November 12, 1981, the Governor certified SB 172, P.A. 82-0682, "An Act relating to the location of sanitary landfills and hazardous waste disposal sites." The act states that "no permit for the development or construction of a new regional pollution control facility may be granted by the Agency unless the applicant submits proof to the Agency that the location of said facility has been approved by the County Board...if [the facility is to be located in] an unincorporated area." A "new regional pollution control facility" is one "initially permitted for development or construction after July 1, 1981."

Paragraph 9 and Exhibit B to this appeal indicate that the parties have had some question concerning the effect and applicability of SB 172, as the grant of this permit falls into the "gap" between July 1, 1981 and November 12, 1981. Specifically, petitioner questions the lawfulness of the issuance of this permit.

The Board has held that SB 172 mandates certification of local approval prior to issuance of permits for "new regional pollution control facilities" not only applied for after July 1, 1981, but also denied by the Agency after that date. Two permit denial appeals were accordingly dismissed ZYX Dixon Corp. v. IEPA, PCB 81-167 and Prior v. IEPA, PCB 81-165 (December 3, 1981).

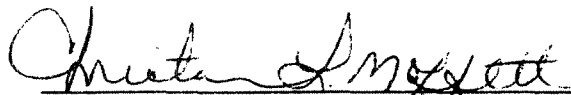
Particularly as the time for the filing of the Agency Record in this action has not run, this appeal on its face poses questions of fact and law concerning SB 172's relation to this action. The Board directs the parties in this action to brief the applicability and effect of SB 172 on this action, particularly in light of the Board's holdings today in ZYX and Prior.

These briefs should be filed on or before December 15. This short briefing schedule is deemed necessary in order to alternatively allow for a prompt dismissal of this action and any subsequent appeal, or an expeditious hearing and prompt decision by the Board within the statutory 90 day deadline.

The Clerk is directed to serve the parties with copies of the ZYX and Prior orders.

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 23rd day of December, 1981 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board