

ILLINOIS POLLUTION CONTROL BOARD  
October 14, 1982

JOHN PRIOR,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 82-65
	)	
ILLINOIS ENVIRONMENTAL PROTECTION	)	
AGENCY,	)	
	)	
Respondent.	)	

GEORGE C. LACKEY, ATTORNEY AT LAW, APPEARED ON BEHALF OF PETITIONER.

PHILLIP VAN NESS, STAFF ATTORNEY, APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by I. G. Goodman):

This matter is an appeal by John Prior (Prior) from the April 23, 1982 denial by the Illinois Environmental Protection Agency (Agency) of an application for a permit to develop a non-regional solid waste disposal site located in Grand Prairie Township, Jefferson County, Illinois. Hearing has been held in this matter and the Board has received no public comment. On October 6, 1982 the parties herein filed a joint Motion for Expedited Consideration, citing the existence of a new amendment to the Illinois Environmental Protection Act (Act). The motion is granted.

The proposed landfill, which is the subject of this permit appeal, has endured a rather tangled legal situation which the Board need not address in this case. At hearing the Agency and Prior presented a Stipulation before the Board which purports to narrow the issues in this matter to a single issue which is the sole basis for the Agency's denial of Prior's permit application. The basis of the denial was "the Agency has received notice that Grand Prairie Township adopted a Zoning Ordinance. Your application does not indicate that zoning approval has been received from Grand Prairie Township." The parties broke that issue into subsidiary issues concerning whether the Zoning Ordinance applied any valid requirements on Prior's proposed landfill and whether there was sufficient proof of the existence of the Zoning Ordinance before the Agency.

A subsequent occurrence renders these issues moot for practical purposes.

On September 8, 1982 an amendment to the Act, P.A. 82-972, became effective. That amendment to the Act deletes that part of Section 39(c) which precluded Agency approval of a permit application for the development or construction of a new facility other than a new regional pollution control facility unless the applicant had submitted proof that all necessary zoning approvals from the local unit of government had been obtained. Section 39(c) now states, in pertinent part:

"Except for those facilities owned or operated by sanitary districts organized under 'An Act to create sanitary districts and to remove obstructions in Des Plaines and Illinois Rivers', approved May 29, 1889, as now or hereafter amended and except for new regional pollution control facilities as governed by Section 39.2, and except for fossil-fuel mining facilities, the granting of a permit under this Act shall not relieve the applicant from meeting and securing all necessary zoning approvals from the unit of government having zoning jurisdiction over the proposed facilities."

This amendment (P.A. 82-972) in effect eliminates zoning approval as a prerequisite to Agency issuance of permits for non-regional pollution control facilities but requires applicants to obtain zoning approval before commencing operation pursuant to a permit. The Board shall apply the law as it exists today and finds that the Agency denial based upon lack of zoning approval is in error. The Board shall therefore reverse and remand this matter to the Agency for further consideration consistent with this Opinion.

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

#### ORDER

The denial by the Illinois Environmental Protection Agency of an application by John Prior for a permit to develop a non-regional solid waste disposal site located in Grand Prairie Township, Jefferson County, Illinois is hereby reversed. This matter is remanded to the Illinois Environmental Protection Agency for further consideration consistent with the Opinion herein.

IT IS SO ORDERED.

I, Christan L. Moffet, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 14<sup>th</sup> day of October, 1982 by a vote of 5-0.

  
 Christan L. Moffet, Clerk  
 Illinois Pollution Control Board