ILLINOIS POLLUTION CONTROL BOARD
December 3, 1981

ZYX DIXON CORP.,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	PCB 81-167
Respondent,	)	
	)	
and	)	
	)	
COUNTY OF LEE,	)	
	)	
Intervenor.	)	

ORDER OF THE BOARD (by J. Anderson):

On November 19, 1981 the Board directed the parties to this action to brief the applicability to and effect of SB 172, P.A. 82-0682. A brief was filed by each party on December 1, 1981.

As previously noted, ZYX submitted an application for a permit to develop a hazardous waste storage site to the Agency on July 13, 1981 (Rec. Ex. 1). The facility is to be located near Amboy in unincorporated Lee County, and it anticipates accepting waste from facilities located in Illinois, not necessarily restricted to Lee County (ZYX Appeal of October 27, 1981 at 2). The Agency denied the permit on October 8, 1981 (Rec. Ex. 16). ZYX filed its appeal before the Board 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."

There is no argument that the ZYX site is not a "new regional pollution control facility" within the meaning of the Act. The Agency and Lee County contend that the new county approval requirement must be satisfied by ZYX before a permit can be issued, and

that this appeal should be dismissed. ZYX argues that the new requirement should not be applied to it, and that this appeal should proceed. The Board is persuaded by the authority cited by the Agency, and will dismiss this action.

Hogan v. Bleeker, 29 Ill.2d 181, 184 (1963) establishes the proposition that

> "As a general rule...statutes will not be construed retroactively unless it clearly appears such is the legislative intention. But this general rule is not ordinarily applied to statutes which relate merely to remedies and forms of procedure and which do not affect substantive rights" (citations omitted).

The statute applies to this action under either rule.

On July 1, 1981 SB 172 was passed by the legislature. It defined "new regional pollution control facility" as one "not permitted on or before July 1, 1981," after which local approval certification was a requirement for Agency permit issuance. The Governor's amendatory veto message of September 24, 1981 specifically referred to this date, stating clarification was needed, as "Only those new sites seeking first-time approval after July 1, 1981 should be included." The Senate accepted this amendatory veto with the July 1 date on October 15, 1981, as did the House on October 28, 1981. The changes were certified by the Governor November 12, 1981.

Senate Bill 172 contains no savings clause. As the Supreme Court noted in Board of Education v. Brittini, 11 Ill.2d 411, 143, N.E.2d 555, 557-8 (1957):

> "The legislature unquestionably knew of this Court's holdings...to the effect that unless there is a savings clause all pending actions must abate unless in conformity with the amendatory act... There is no difference whether the cases were in the administrative stage, as here, or the court of record state...[w]here a law is changed and given retroactive effect, reservation of any proceeding or parts thereof had under the old law must be expressly manifested" (citations omitted).

In addition, the statute being given retroactive effect relates to changes in procedures. The Supreme Court has consistently directed that "such statutes should be complied with as far as is practicable in all pending and undetermined causes." McQueen v. Conner, 385 Ill. 455, 459 (1944). See also Nelson v. Miller, 11 Ill.2d 378, 143 N.E.2d 673 (1957) and cases cited therein.

It is the Board's opinion that SB 172 deprives the Agency of statutory authority to grant the permit in question here unless and until it receives certification of local approval. It is also the Board's belief that the Board itself would lack statutory authority to order the Agency to issue this permit in contravention of SB 172's requirements, even were the Board to find that the permit was improperly denied for the reasons stated pursuant to the Act as it existed October 8, 1981.

While the unanticipated and unintended fundamental procedural flaws in this action could conceivably be cured by supplementation of the record consistent with Section 40(c) of the Act, the Board believes that all parties are ill-served by such course of action. The parties' Section 41 right to a speedy appeal of this Order would be prejudiced by the resulting delay, and proper computation on remand of the statutory deadlines for various actions by local authorities, the Agency, and the Board would be rendered nearly impossible amidst the inevitable welter of argument concerning legislative intent under such peculiar, unimagined circumstances. Issuance of a permit by operation of law as a result of administrative uncertainty would run absolutely counter to the legislature's intent in its passage of SB 172.

For the foregoing reasons, this appeal is dismissed.

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 3RD day of December, 1981 by a vote of 5-0.

Christan L. Moffett, Clerk
Illinois Pollution Control Board