

ILLINOIS POLLUTION CONTROL BOARD  
December 16, 1976

J.D. TURNER, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 76-240  
 )  
 )  
 ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 Respondent. )

DISSENTING STATEMENT (by Mr. Dumelle):

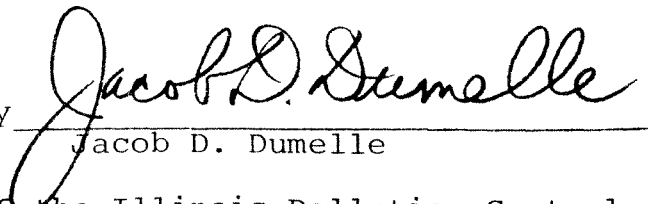
My reason for dissenting in the Interim Order issued this date is that the Petitioner's statutory right to a decision in a variance proceeding within 90 days has been postponed and thus denied.

The case was filed September 27, 1976 and thus was due for Board decision by December 26, 1976. An Illinois Environmental Protection Agency Recommendation was due October 27, 1976 but in fact was not filed until December 7, 1976, some 40 days late. An amendment to the Recommendation was received December 10 which is 73 days after filing.


The Board in issuing its Order is now flatly stating that the Petition is inadequate without a hearing. I do not so find that to be the case. In any event, that determination should have been made by this Board upon the filing of the Petition and not on the 80th day after filing. To now insist upon a waiver under pain of dismissal because of a gross failure by the Agency to timely file its Recommendation does not give the Petitioner his 90-day decision as contemplated by the Act. He is put to the considerable expense of a hearing (unless proverty is shown) and his right to a decision will be postponed perhaps for several more months.

I would have decided the case based upon what was before us.

Submitted by

  
\_\_\_\_\_  
Jacob D. Dumelle

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Dissenting Statement was submitted on the 23rd day of December, 1976.

  
\_\_\_\_\_  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board