

ILLINOIS POLLUTION CONTROL BOARD  
March 7, 1985

JANET HOESMAN AND )  
BYRON HOESMAN, )  
 )  
Petitioners, )  
 )  
v. ) PCB 84-162  
 )  
CITY COUNCIL OF THE CITY )  
OF URBANA, ILLINOIS AND )  
THE CITY OF URBANA, ILLINOIS )  
 )  
Respondents. )

MR. MERVIN BEIL APPEARED ON BEHALF OF PETITIONERS.

MR. KENNETH BETH APPEARED ON BEHALF OF THE RESPONDENTS.

ORDER OF THE BOARD (by J. D. Dumelle):

This matter is before the Board on an appeal filed pursuant to Section 40.1(b) of the Environmental Protection Act (Act) by Janet and Byron Hoesman (Petitioners). The Petition contests the determination of the Urbana City Council (Council) granting site location suitability approval to a new regional pollution control facility pursuant to Section 39.2 of the Act.

On March 7, 1985, at its regularly scheduled Board Meeting, the Board met to take final action on this appeal. The Board by statute is composed of seven members and an affirmative vote of four members is required in order for the Board to take any action. (See Section 5(a) of the Act.) Two motions were offered. The first motion moved the Board to reverse the determination of the Council. That motion failed to carry by a vote of 2-3, with 5 members of the Board present.\* A second motion moved the Board to uphold the determination of the Council. That motion failed to garner the votes of a statutory majority of the Board (4), and, therefore, also failed by a vote of 3-2. Therefore, the Board is unable to take final action on this appeal.

Pursuant to Section 40.1 (a) and (b) of the Act, if there is no final action by the Board within 120 days from the date the petition is filed, the respondent (in a Section 40.1(b) appeal) may deem the site location approved. Respondents, by letter, provided a limited waiver of their right to a decision within 120 days and extended the decision period through March 7, 1985.

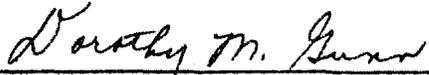
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\*Mr. Nega was absent because he is recuperating from an illness. The seventh Board Member seat is currently vacant.

Due to the failure of separate motions to gain the necessary four votes to affirm or reverse the Council's action, and the termination of the statutory decision period, it is the Board's opinion that the Respondent may deem the site location in question approved by operation of law. (See Section 40.1(a) and (b). Also see Cement Mfg. Co. v. Pollution Control Board (1980), 84 Ill. App. 3d 434, 405 N.E. 2d 512); Illinois Power Company v. Illinois Pollution Control Board (1983), 112 Ill. App. 3d 457, 445 N.E. 2d 820.)

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 7<sup>th</sup> day of March, 1985, by a vote of 5-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board