

ILLINOIS POLLUTION CONTROL BOARD  
July 21, 1994

CONCERNED CITIZENS FOR A )  
BETTER ENVIRONMENT, )  
 )  
Petitioner, )  
 )  
v. ) PCB 94-44  
 ) (Landfill Siting Appeal)  
 )  
CITY OF HAVANA and SOUTHWEST )  
ENERGY CORPORATION, )  
 )  
Respondent. )

ORDER OF THE BOARD (by G. T. Girard):

On June 6, 1994, the Board received a motion filed by the City of Havana (Havana) and Southwest Energy Corporation (Southwest) for reconsideration and clarification of the Board's May 19, 1994 opinion and order in this case. On June 21, 1994 the Board received a response filed by Concerned Citizens for a Better Environment (CCBE). For the reasons set forth below the Board denies the motion.

In ruling upon a motion for reconsideration the Board is to consider, but is not limited to, error in the previous decision and facts in the record which may have been overlooked. (35 Ill. Adm. Code 101.246(d).) In Citizens Against Regional Landfill v. The County Board of Whiteside County (March 11, 1993), PCB 93-156, we stated that "[t]he intended purpose of a motion for reconsideration is to bring to the court's attention newly discovered evidence which was not available at the time of the hearing, changes in the law or errors in the court's previous application of the existing law. (Korogluyan v. Chicago Title & Trust Co. (1st Dist. 1992), 213 Ill. App.3d 622, 572 N.E.2d 1154.)

Havana and Southwest allege that the Board erred in reversing this matter rather than remanding the case to Havana. Havana and Southwest assert that any "prejudice stemming from the earlier proceedings will be adequately addressed by noticing and holding a remanded hearing, providing for a new post-hearing comment period, and allowing interested parties an opportunity to review the evidence presented to the City Council members in the earlier proceeding. . .". (Mot. at 5-6.)

The Board hereby denies the motion for reconsideration and affirms its decision to reverse the Havana decision granting siting approval. It is established law that local siting decisions are quasi-judicial actions subject to adjudicative due process. (E & E Hauling Inc., v. Illinois Pollution Control Board, 116 Ill.App.3d 586, 451 N.E. 2d 555(2nd Dist. 1983), aff'd in part 107 Ill.2d 33, 481 N.E. 2d 664 (1985).) Havana's action

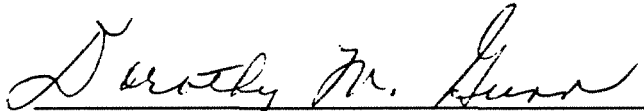
was so patently not quasi-judicial that the limited first aid available under remand is incapable of rehabilitating the record to the point where the record can support a proper decision.

Havana and Southwest also request that the Board clarify whether current members of the Havana City Council may participate in a decision if this matter were brought before the City Council again. The Board denies the motion to clarify. However, the Board does note that the rule of necessity which allows an otherwise disqualified adjudicator to hear a case if the case could not be heard otherwise may be applicable in this circumstance. (United States v. Will, 449 U.S. 200, 211-16(1980).)

IT IS SO ORDERED.

Chairman Claire A. Manning abstains.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above order was adopted on the 21<sup>st</sup> day of July, 1994, by a vote of 5-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board