

ILLINOIS POLLUTION CONTROL BOARD
October 13, 1977

CITY OF DECATUR & SANITARY)
DISTRICT OF DECATUR,)
)
 Petitioners,)
)
 v.) PCB 77-218
)
 ENVIRONMENTAL PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by Mr. Young):

In the Petition for Variance filed August 24, 1977, the Petitioners requested that the record of the Board proceedings in a prior case, PCB 76-2, 23 PCB 127, be incorporated as a part of the petition herein and further requested that the variance be granted without hearing on the record made in PCB 76-2.

On September 23, 1977, the Environmental Protection Agency filed with the Board, pursuant to Section 37 of the Environmental Protection Act and Rule 405 of the Board's Procedural Rules, a Recommendation that the variance requested be denied.

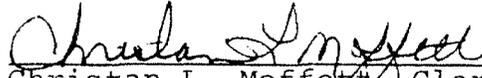
In Material Service Corporation v. Illinois Environmental Protection Agency et al. 41 Ill.App.3d 192, 354 N.E.2d 37, (3rd Dist. 1976), the court held that the Environmental Protection Act requires that a hearing be granted to a variance petitioner when the Agency has filed an objection in the form of a recommendation to deny prior to final action by the Pollution Control Board.

The Recommendation of the Agency makes several allegations which, on proof, might be dispositive of the issue and a central issue relates to the delay in making the modifications permitted by the Order in PCB 76-2. Since the record in PCB 76-2 does not squarely address the issues raised in the Recommendation, the Board will order a hearing to allow for the presentation of evidence in support of the allegations of the petition and the Agency Recommendation.

The Hearing Officer is directed to schedule a hearing on this petition as soon as possible consistent with the requirements of the Act and Part IV of the Procedural Rules of the Board.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted on the 13th day of October, 1977 by a vote of 5 0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board