

ILLINOIS POLLUTION CONTROL BOARD
November 10, 1977

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

OPINION AND ORDER OF THE BOARD (by Mr. Young):

A Petition for Variance was filed with the Board on August 24, 1977, by the City of Decatur and the Sanitary District of Decatur requesting the extension of a prior variance granted by the Board in PCB 76-2 for the proposed modification of their McKinley Avenue Diversion Control Facility in Decatur, Illinois.

On September 23, 1977, the Environmental Protection Agency filed a Recommendation adverse to the grant of the variance and on October 13, 1977, the Board ordered a hearing on the Petition. Since no waiver of the 90-day decision period established by Section 38 of the Environmental Protection Act was filed by Petitioners, and finding no hearing record before us, the Board has no alternative but to dismiss the Petition with leave to refile. Until a hearing is held and the evidentiary facts in support of the Petition and Recommendation become a part of the record, the Board is not able to render a decision on the merits.

In Material Service Corporation v. Illinois Environmental Protection Agency, et al., 41 Ill.App.3d 192, 354 N.E.2d 37, (Third District, 1976), the court held that either Petitioner or the Respondent Agency are absolutely entitled to a hearing on a Variance Petition when the Agency has filed a Recommendation adverse to a grant of the Petition prior to action by the Board.

The foregoing constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

The Petition for Variance filed by Petitioners City of Decatur & Sanitary District of Decatur filed August 24, 1977, is hereby dismissed with leave to refile.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 10th day of November, 1977 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board