

ILLINOIS POLLUTION CONTROL BOARD
June 28, 1977

CITY OF CHILLICOTHE,)	
)	
Petitioner,)	
)	
)	
v.)	PCB 77-6
)	
)	
ENVIRONMENTAL PROTECTION AGENCY,)	
)	
Respondent.)	

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

On March 25, 1977, Petitioner City of Chillicothe (City) submitted a petition seeking variance from the final cover requirement of Rule 305(c) of the Board's Solid Waste Management Regulations for a landfill site located within its boundaries. The Agency filed its Recommendation on June 9, 1977, 76 days after the filing of the variance petition. No hearing has been held in this matter. The Agency Recommendation, which was filed too late to allow the Board to schedule a hearing, recommends denial of the variance and contradicts certain factual allegations in the petition. The City has filed a waiver of the statutory 90-day decision period until June 28, 1977.

In Material Service Corporation v. Environmental Protection Agency and Pollution Control Board, 41 Ill.App.3d 192, 354 N.E.2d 37 (1976), the Illinois Appellate Court addressed a situation in which the Agency filed a recommendation of denial of the variance based on factual allegations contradicting those in the petition and the Board then denied the petition without a hearing. The Court held that the recommendation must be considered an "objection" to the petition and that, under the Act and Procedural Rules, the Board could not deny the petition on the merits without a hearing.

Because the Recommendation was not received by the Board until 17 days prior to the date on which a decision was due in this matter, the Board has been unable to schedule a hearing. We are precluded


under the Act and our Procedural Rules from deciding this case on its merits. The Board, therefore, dismisses the petition without prejudice and grants the City leave to refile should it so choose.

This Opinion constitutes the finding of facts and conclusions of law of the Board in this matter.

ORDER

It is the Order of the Pollution Control Board that the Variance Petition filed by the City of Chillicothe on March 25, 1977, be and is hereby dismissed without prejudice.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 28th day of June, 1977 by a vote of 4-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board