

ILLINOIS POLLUTION CONTROL BOARD  
October 17, 1996

HARRIS MARCUS GROUP, INC.	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 95-156
	)	(Variance - Air)
	)	
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

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

On September 16, 1996, the Illinois Environmental Protection Agency's (Agency) filed an amended recommendation which included an affidavit of Robert P. Smet. On September 24, 1996 the petitioner filed a motion to strike affidavit (MTS) and a response to the Agency's amended recommendation. On October 7, 1996 the Agency filed a response to petitioner's motion to strike (RMTS), a motion for leave to file a reply to petitioner's response and the reply.

Petitioner argues that the affidavit attached to the Agency's amended recommendation should be struck because it contains and relies on hearsay. (MTS at 2.) Petitioner argues that the Agency included the affidavit for the truth of the matter asserted by Mr. Dean Schreffler of Morton International, who did not testify at hearing. (Id.) The Agency maintains that the affidavit is offered to support the Agency's "belief that Petitioner has failed to justify variance relief". (RMTS at 2-3.) The motion to strike the affidavit is denied. The Board accepts the affidavit as support of the Agency's position. The Board is aware that Mr. Schreffler did not testify and the Board will weigh the evidence accordingly.

The motion to file a reply is granted. The Board notes that this record is now complete, and consistent with prior requests the Board will proceed to decision in this matter.

IT IS SO ORDERED.

Board Member K. M. Hennessey abstains.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the \_\_\_\_ day of \_\_\_\_\_, 1996, by a vote of \_\_\_\_\_.

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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board