

ILLINOIS POLLUTION CONTROL BOARD  
June 2, 1994

IN THE MATTER OF: )  
 )  
PETITION OF ENVIRITE ) AS 94-10  
CORPORATION FOR A REVISED ) (Adjusted Standard)  
ADJUSTED STANDARD FROM )  
35 ILL. ADM. CODE 721 )  
SUBPART D )

ORDER OF THE BOARD (by M. McFawn):

On May 10, 1994, Envirite Corporation (Envirite) filed a petition for a revised adjusted standard for its hazardous waste treatment facility in Harvey, Cook County, Illinois. In conjunction with its petition, Envirite submitted a request for trade secret protection for certain portions of its petition. The specific portions for which Envirite seeks trade secret protection are as follows:

- 1) Section 6.0, "Description of Current Processes"
- 2) Section 9.0, "New Processes"
- 3) Section 15.0, "Claim of Confidentiality"

Under Section 7 of the Environmental Protection Act (Act) (415 ILCS 5/7) all files and records of the Board must generally be open to reasonable public inspection. Several exceptions are provided, including an exception for information which constitutes a trade secret.

Part 120 of the Board's procedural rules governs how trade secrets are to be identified and protected. Subparts B and C thereunder contain the rules under which Envirite is to proceed to protect the delineated portions of its adjusted standard application as trade secrets. The standards for making a trade secret determination are found at Section 120.230(a), which provides that an article shall be determined to represent a trade secret if and only if:

- 1) the owner has substantially complied with the procedures for making a claim and justification...; and
- 2) The statement of justification demonstrates that:
  - A) The article has not otherwise been published, disseminated or otherwise become a matter of public knowledge; and
  - B) The article has competitive value.

In determining whether the information has been treated as a trade secret, Section 120.230(b) provides that there is a rebuttable presumption that an article has not been published if the statement of justification contains a certification to that effect, and if the owner has taken reasonable steps to protect it from disclosure to persons other than those designated to have access.

#### Compliance with Procedural Requirements

Envirite has submitted a claim letter as required in Section 120.201(a)(1), which describes with particularity the articles claimed to represent a trade secret. It has also submitted a marked copy of its petition which indicates those portions for which trade secret protection is sought, and an additional copy of the petition from which those portions for which protection is sought have been deleted, in accordance with Section 120.305. Finally, Envirite has submitted a statement of justification in accordance with the requirements of Section 120.202. The statement of justification includes a description of the procedures used to protect the information, a description of the persons who have access to the information, a discussion of why Envirite believes the information is of competitive value, and a certification by Envirite's Vice President, Stephen B. Smith, that the information has not to his knowledge been published, disseminated, or otherwise become a matter of general public knowledge. We therefore find that Envirite has complied with the procedural requirements for submitting a trade secret protection claim. We now examine the substantive merit of that claim.

#### Measures Taken to Prevent Disclosure

In its statement of justification, Envirite indicates that the information it seeks to protect is subject to extensive internal measures to prevent its disclosure. It asserts that the information is kept in secure office areas, desks, or cabinets, with restricted access. The information is accessible only on a need to know basis, and this restriction is applied to Envirite's own executives, senior managers, and technical staff.

For contractors, the information is only provided on an absolute need to know basis, and execution of a confidentiality agreement is required, as well as a letter of transmittal acknowledging receipt. At the end of the contract period, Envirite requires that contractors return all information supplied.

Envirite also asserts that copies of the information it seeks to protect would not be made available to the general public, the community, or visiting customers. If any of these parties demonstrates a need to know, disclosure will only be made under a non-disclosure agreement. Furthermore, the information

is only submitted to regulatory agencies under a claim of confidentiality, with a stipulation that the information is to be used only for internal regulatory purposes and is not for general dissemination.

Again, Section 120.230(b) provides that there is a rebuttable presumption that an article has not been published if the statement of justification contains a certification to that effect, and if the owner has taken reasonable steps to protect it from disclosure to persons other than those designated to have access. Envirite has provided the necessary certification, and has describe substantial measures that have been taken to protect the information from disclosure. We therefore find that Envirite has taken reasonable steps to protect the information from disclosure.

#### Competitive Value

Finally, the Board must determine whether the information for which protection is sought has competitive value. Envirite asserts that it has developed the information contained in Sections 6 and 9 of its revised adjusted standard petition through considerable expenditure of time, money, and engineering and design effort. It includes equipment, process, design, and technological information unique to Envirite's process of significant competitive value. Disclosure of this information would enable competitors to construct and operate a similar facility without incurring the substantial costs associated with its development and design.

We find that Envirite has demonstrated that the information contained in Sections 6 and 9 of its petition for an adjusted standard is entitled to protection as a trade secret. It is apparent that this information would be of significant competitive value in the marketplace.

Envirite also seeks trade secret protection for its Statement of Justification, which is contained in Section 15 of its application for a revised adjusted standard. We find that the statement of justification contains none of the information which Envirite sought to protect, and contains no information which is of competitive value. We therefore deny trade secret protection for Section 15 of Envirite's petition for an adjusted standard.

For the reasons stated above, the Board hereby grants Envirite's request for trade secret protection for Sections 6 and 9 of its petition for an adjusted standard, and denies Envirite's request for trade secret protection for Section 15 of its petition.

The Clerk of the Board is hereby directed to protect from disclosure as representing trade secrets Sections 6 and 9 of Enviro's application for an adjusted standard.

Set for Hearing

Pursuant to 35 Ill. Adm. Code 106.415(a), a hearing is required in a RCRA adjusted standard proceeding. Accordingly, this matter shall proceed to hearing.

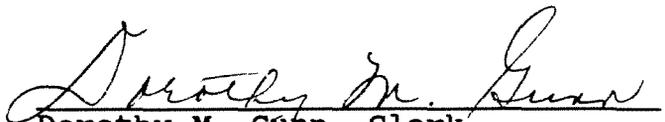
This is a type of case for which the Act prescribes no deadline for decision, although the Act requires the petitioner to timely pursue disposition of the petition. Therefore, hearing must be scheduled and completed in a timely manner, consistent with Board practices and 35 Ill. Adm. Code Part 101 and Part 106, Subpart G. A hearing officer will be assigned to conduct hearings. The Clerk of the Board shall promptly issue appropriate directions to the assigned hearing officer consistent with this order.

The assigned hearing officer shall inform the Clerk of the Board of the time and location of the hearing at least 40 days in advance of hearing so that public notice of hearing may be published. After hearing, the hearing officer shall submit an exhibit list, a statement regarding credibility of witnesses and all actual exhibits to the Board within five days of the hearing. Any briefing schedule shall provide for final filings as expeditiously as possible.

If after appropriate consultation with the parties, the parties fail to provide an acceptable hearing date or if after an attempt the hearing officer is unable to consult with the parties, the hearing officer shall unilaterally set a hearing date in conformance with the schedule above. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 22<sup>nd</sup> day of June, 1994, by a vote of 6-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board