

ILLINOIS POLLUTION CONTROL BOARD
July 30, 1992

THE GRIGOLEIT COMPANY, an)	
Illinois Corporation,)	
)	
Petitioner,)	
)	
v.)	PCB 90-135
)	(Trade Secret)
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	
-----)	
IN THE MATTER OF:)	
)	
TRADE SECRET CLAIM BY,)	
THE GRIGOLEIT COMPANY, an)	PCB 92-110
Illinois Corporation,)	(Trade Secret)

CONCURRING OPINION (by. B. Forcade):

I respectfully concur in today's actions. I support the majority opinions, but feel additional comment is needed.

In order to determine the status of the material involved the Board makes two inquiries concerning the claimed items. The first question that is presented is whether the material is required to be disclosed pursuant to Section 7(b), (c) or (d) of the Act. If any of these sections apply to any portion of the material, that portion must be available to the public because Section 7 supersedes all other statutory or regulatory provisions. If the material is not subject to disclosure under Section 7, the next level of inquiry is whether the material represents a trade secret under the Act and Part 120 regulations. In determining a trade secret under the Act and Part 120, the Board applies a two-pronged test. The material must have been kept secret and it must have competitive value.


The record before the Board does not address the issue of whether the material is subject to disclosure under Section 7. Grigoleit has not carried its burden of showing the material is not subject to any mandatory disclosure under Sections 7(b), (c), or (d).

Section 120.305 requires that articles claimed to represent a trade secret be marked in a specific manner. Due to the nature in which these documents were obtained by the Agency, the Board provided Grigoleit with an opportunity to mark the documents in order to clarify which portions were to be considered as trade


secrets. Grigoleit replied by asserting a claim for the entire set of MSDSs. This is in conflict with the statement made at hearing by Mr. Little, "...we are making a claim for each of the individual sheets, although I will tell you quite frankly and in all honesty, that there are certain things there that we could care less whether they are disclosed." (Tr. at p. 60)

The articles involved in this proceeding consist of over 200 MSDSs each containing between 2-6 pages. Grigoleit claims that each sheet identifies a chemical that is involved in a unique process and releasing the identity of these chemicals will permit Grigoleit's competitors to duplicate Grigoleit's unique process. Considering Mr. Little's statement, I question whether each sheet represents a unique chemical or if some chemicals identified are commonly used by the industry. I further question whether some sections of each MSDS could be revealed without revealing the chemical identity.

MSDSs represent documents prepared by the manufacturer of a chemical to show safety and health related problems associated with use of that chemical. In some circumstances these sheets will represent the only source of information open to the public, from the Agency's files on that facility, relating to the danger of that chemical. Absent some substantial showing, I am reluctant to allow any petitioner to claim wholesale trade secret status for the only source of toxicity and safety data open to the public on over 200 of their chemicals. This is especially true where the petitioner has failed to justify omitting the exemptions of Section 7 of the Act, and where, "...I will tell you quite frankly and in all honesty, that there are certain things there that we could care less whether they are disclosed." (Tr. at p. 60). Accordingly, I concur.


 Bill Forcade, Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Concurring Opinion was filed on the 3rd day of August, 1992.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board