ILLINOIS POLLUTION CONTROL BOARD March 28, 1991

CWM CHEMICAL SERVICES, INC.,	
Petitioner,	
v.)	PCB 89-177 (Permit Appeal)
ILLINOIS ENVIRONMENTAL	(reimic Appear)
PROTECTION AGENCY,	
Respondent.))

ORDER OF THE BOARD (by B. Forcade):

On March 21, 1991, the Illinois Environmental Protection Agency ("Agency") filed the Administrative Record of this RCRA Part "B" Permit Denial Appeal. On March 22, 1991, the Agency filed a correction to that record. Together, these documents state that certain portions of the record have been subject to a recent trade secret confidentiality determination by the Agency. Those documents include all of Book E, and selected portions of "Book A, Volumes V & VI" and "Book D". All these materials are still subject to confidential protections; while the materials in Book A & D were determined not to be trade secrets by the Agency, the time for appeal of that decision has not run. The Board continues to maintain these materials in the Clerk's confidential files.

The Board notes that the Agency record filing does not comport with Board regulations. Board procedural rules at 35 Ill. Adm. Code 120.315 provide:

Section 120.315 Transmission of Article Between Agencies

Prior to transmitting any article which is claimed or determined to represent a trade secret to another agency, the agency shall insure that the article is properly marked pursuant to Sections 120.305 and 120.310 and is clearly distinguished and segregated from other transmitted materials.

The documents in Book A and Book D were not segregated. Additionally, the procedural rules, at 35 Ill. Adm. Code 120.325, provide for public inspection of certain material pertaining to trade secret determinations:

Section 120.325 Public Access to Information Related to Article

- a) A copy of the claim letter submitted pursuant to Section 120.201(a)(1) shall be open to public inspection
- b) Where an article was determined to represent a trade secret prior to the effective date of this Part and no claim letter exists, the agency shall prepare a statement which shall be open to public inspection which names and briefly describes the article.
- c) Where a page, part or portion of an article is claimed or determined to represent a trade secret, a copy of the article shall be open to public inspection, with the part or portion deleted which is claimed or determined to represent a trade secret or which would lead to disclosure of the trade secret.

The Board requests comment by the parties, not later than April 19, 1991, on whether the Board needs additional information (such as the claim letters and/or expurgated versions of the documents) in order to maintain the material in Book A, D, and E, confidential during the appeal period, consistent with the above public access requirements. The Board will maintain all of Book A, D, and E confidential until further Board Order. The Board also requests comment on whether the document described in the March 22, 1991 Agency filing as confidential, "pages 14-17 in the April 17, 1989 letter from CWM to IEPA regarding closure cost estimates" is located anywhere in the record other than Book D. If so, what portions of the record must the Board maintain as confidential to protect this document.

IT IS SO ORDERED.

J. Theodore Meyer abstained.