

ILLINOIS POLLUTION CONTROL BOARD  
July 3, 1990

WASTE MANAGEMENT OF	)	
ILLINOIS, INC.,	)	
	)	
Petitioner,	)	PCB 90-40
	)	(Permit Appeal)
v.	)	
	)	
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (J. Marlin):

This matter comes before the Board on a motion to withdraw documents dated May 31, 1990 filed by Waste Management of Illinois, Inc. (WMII). That motion requests that the Board "allow the withdrawal of all documents referenced in WMII's Appeal of Permit Conditions filed March 20, 1990." The Board dismissed the permit appeal by its order of May 10, 1990, in response to WMII's May 4, 1990 motion for withdrawal of the appeal.

The documents requested include a November 16, 1989 application for supplemental permit, a August 9, 1989 technical report by a consultant, the February 13, 1990 letter from the Agency that granted the supplemental permit with conditions, and a February 26, 1990 application for an operating permit. WMII asserts that the technical consultant's report includes business information that WMII considers confidential.

The Board notes that WMII did not request protection of any of this information under 35 Ill. Adm. Code 120 when it originally filed it with the Board. As is customary practice for information not properly claimed as protected pursuant to those rules, the Board has distributed copies of the information submitted to each of its members. As is also customary for such information not properly claimed, the Board has imposed no restriction on internal copying of the documents, has not imposed restrictions on inspection and copying by members of the public, and has not kept track of any copies so made.

Upon review of WMII's request for withdrawal of the information it now claims as confidential, the Board encountered statutory provisions that might preclude return of the requested information. The State Records Act, Ill. Rev. Stat. 1989, ch. 116, par. 43.4 et seq., appears to render all documents filed with the Board in the course of a proceeding state records and prohibit their disposal except under particular circumstances. Section 7 of the Environmental Protection Act, Ill. Rev. Stat. 1989, ch. 111½, par. 1007, might not only preclude their


protection at this point, but appears to possibly mandate that they be retained for public inspection and copying.

Rather than deny WMII's request without further insight into the issues involved, the Board hereby grants WMII and the Agency an opportunity to brief those issues. The Board grants WMII and the Agency until the close of business on July 17, 1990 to submit briefs that address the general propriety of a return of the requested documents and address a few more specific issues:

1. Explain the applicability or lack of applicability of Ill. Rev. Stat. 1989, ch. 116, par. 43.4 et seq., and Ill. Rev. Stat. 1989, ch. 111½, par. 1007 to the documents at issue;
2. Explain whether the Board can lawfully return the documents to WMII as requested in light of these statutory provisions;
3. Explain whether a return of the documents is tantamount to "dispose" for the purposes of the State Records Act;
4. Explain how the Board could now grant protection from disclosure in light of 35 Ill. Adm. Code 120 and the facts briefly recited above; and
5. Explain what the Board is to do with regard to copies made and distributed internal to the Board.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above Order was adopted on the 5<sup>th</sup> day of July, 1990, by a vote of 7-4.

  
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 Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board