

ILLINOIS POLLUTION CONTROL BOARD
August 10, 1972

OLIN CORPORATION,)
)
) Petitioner)
)
) v) PCB 72-253
)
) ENVIRONMENTAL PROTECTION AGENCY,)
)
) Respondent)

Opinion and Order on Application for Non-Disclosure (by Mr. Parker):

Petitioner Olin Corporation seeks a variance for a period of one year from certain of the Board's emission and effluent standards and provisions as applied to Olin's Joliet, Illinois plant producing phosphates and other chemical products. By Order dated June 27, 1972 we authorized a public hearing to be held. Such a hearing is presently scheduled to be held August 14, 1972.

By Application filed August 4, 1972 Petitioner Olin Corporation seeks entry of an Order of Non-Disclosure pursuant to Section 7(a) of the Act, and Rules 107(b) and (c) of this Board's Procedural Rules. According to the Application, which is supported only by argument of counsel, the information sought to be protected by the Order "constitutes a trade secret and concerns secret manufacturing processes and confidential data," and consists of certain pre-hearing depositions and affidavits and exhibits thereto. During a hearing conducted today on the Application, Petitioner's counsel handed over to the Board three depositions and two affidavits the entirety of which were represented to contain information meant to be included under the Application. This information has been disclosed by Olin to the Attorney General, representing the Agency, pursuant to a stipulation of confidentiality between them. While Olin's restricted disclosure may provide the Attorney General's office with information it needs to test Olin's grounds for the requested variance, it obviously fails to provide the public with the same capability.

The relevant portions of the Act, and of our Procedural Rules, provide that information may be subject to non-disclosure if it "constitutes a trade secret", or concerns "secret manufacturing processes or confidential data" (eg. see Procedural Rule 107(b) (1) and (3)).

Mindful of the statutory requirement that hearings held pursuant to the Act be open to the public, this Board in adopting Procedural Rule 107 emphasized the public nature of the proceedings and documents generated therein. The exceptions to this general Rule of public access are limited in number and narrowly defined in section (b) of the Rule. Those exceptions involved here, as noted above, are a "trade secret" (Rule 107 (b) (1)), "secret manufacturing processes"

(Rule 107 (b) (4), and "confidential data" (Rule 107 (b) (4)).

Importantly, an application for non-disclosure must, in keeping with Rule 107 (c), contain:

1. identification of the precise material, or parts of material, for which nondisclosure is sought;
2. citation of the particular category eligible for non-disclosure into which the material falls; and
3. a concise statement of the reasons supporting non-disclosure.

Needless to say, the showings made in accordance with Rule 107 (c) must be adequate to show the existence of the statutory exceptions themselves, i.e. here the existence of a trade secret, the fact that manufacturing processes are and have been kept secret, and the fact that data is and has been treated as confidential.

Olin's instant application fails to satisfy the requirements of the Act and of Procedural Rule 107 in several ways.

Petitioner has failed to identify the precise material, or parts of material, sought to be withheld from the public (Rule 107 (c) (1)). It was apparent from our examination of the three Olin depositions and the two affidavits shown to us at the hearing on the application that they included a considerable amount of material not falling within any of the statutory exceptions. We were provided with no way of identifying which portions were sought to be excluded from public view.

Likewise, Petitioner failed to cite the particular category eligible for non-disclosure into which each item of material falls (Rule 107 (c) (2)). We cannot tell, for example, which material assertedly constitutes what the law recognizes as a trade secret, and which material is believed to constitute confidential data.

Petitioner's statement of reasons supporting non-disclosure (Rule 107(c) (3)) is generalized, and in some respects incomplete and inadequate. For example the application on page 1 invokes the "trade secret" exception, but no mention of the term appears elsewhere and no attempt is made to identify what it is that Olin considers to be a trade secret and why. It would seem that even a minimal showing should include an affidavit or other verified statement from an individual capable of speaking for the company and having knowledge of the trade secret facts.

We note that information on market shares and fiscal projections and payout is exactly what we on the Board (and the public) have to weigh in these proceedings for variances. If the costs are confidential then the public is really excluded and we have repealed the Act's intent.

The application for non-disclosure is denied without prejudice to petitioner's later submission of an amended application conforming to the requirements of the Act and Procedural Rules and consistent with this opinion and order.

I, Christan Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted this 10th day of August, 1972, by a vote of 4-0.


Christan Moffett, ~~Clerk~~
Pollution Control Board