

ILLINOIS POLLUTION CONTROL BOARD
September 6, 1972

ENVIRONMENTAL PROTECTION AGENCY)
)
 Complainant,)
)
 v.) PCB 72-49
)
BENJ. HARRIS and COMPANY)
)
 Respondent.)

OPINION AND ORDER ON APPLICATION FOR NON-DISCLOSURE (by
Mr. Parker):

This is an enforcement case brought by the Agency in which Respondent, by Application filed August 30, 1972, seeks entry of an Order of Non-Disclosure pursuant to our Procedural Rule 107. According to the Application, which is supported only by argument of counsel, the information sought to be protected by the Order is contained in documents which are assertedly "privileged against introduction in judicial proceedings and... kept confidential as a matter of course" (par. 1 of Application) and "contain 'trade secrets!'" (par. 2 of Application). The documents, which apparently relate to salaries and sources of supply of raw materials, have not been submitted for consideration by the Board.

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", is "privileged against introduction in judicial proceedings", or concerns "secret manufacturing processes or confidential data" (eg. see Procedural Rule 107 (b) (1), (2) 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.

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 nondisclosure 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, whether information should in fact be treated as privileged, and the fact that data is and has been treated as confidential.

Respondent's instant application fails to satisfy the requirements of the Act and of Procedural Rule 107. Petitioner has failed to identify the precise material, or parts of material, sought to be withheld from the public (Rule 107 (c) (1)). It follows that Petitioner also has failed to cite the particular category eligible for non-disclosure into which each item of material falls (Rule 107 (c) (2)).

Petitioner's statement of reasons supporting non-disclosure (Rule 107 (c) (3)) is generalized, and thus inadequate, e.g. that disclosure "would or might adversely financially effect Respondent". The application on page 2 invokes the "trade secret" exception, but no attempt is made to identify what it is that Respondent considers to be a trade secret and why. 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 (see our decision dated August 10, 1972 in Olin Corporation v. EPA, PCB 72-253). The same applies to factual showings of privilege.

The application for non-disclosure is denied without prejudice to respondent'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 27th day of September, 1972 by a vote of 4 to 0.



Christan Moffett