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STATE OF ILLINOIS
Pollution Control Board

June 12, 2000

Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, IL 60601

f.c. #13

Dear Ms. Gunn:

In the Matter of: Revision of the Illinois Pollution Control Board's
Procedural Rules: 35 Illinois Administrative Code 101-130
Docket Number R00-20

Thank you for allowing Devro-Teepak, Inc. to comment on the first notice of the Board's proposed Revision of the Board's Procedural Rules: 35 ILL. Adm. Code 101-130. It is apparent from the wording of the proposed regulation the Board is interested in easing their trade secret determination burden at the expense of the private property rights of Illinois businesses.

Below will be comments on particular sections of the proposal.

1. Section 130.200(a) "The owner of an article may claim that the article is a trade secret only ... at the time the owner submits the article to the agency."

Why? That certainly is the time when most claims are made, but why should it be the only time? Solely for the alleged concern for time sensitive determinations, IPCB will require the claim and the justification. Most Illinois businesses have no idea these changes are being proposed, and more and more information is being required through permit applications, reporting requirements, and responses to agency requests. An article that is supplied without a claim should be able to be claimed prior to its becoming general public knowledge.

Devro-Teepak understands the desire for expediency on the part of the IPCB, but the effort to speed up the process should not produce a procedure where Illinois businesses can accidentally lose their personal property rights.

2. Section 130.200(b)(3) "Any person wishing to have an article considered as a trade secret must file ... a statement of justification."

The proposed procedural wording seems to be setting up the disqualification of a trade secret claim if the justification is not made in a timely manner and is

considered deficient. The old procedure (35 IAC 120.215) worked well in identifying when a justification would be required. This is being dropped for the sake of expediency. Justifications are not needed and should not be required in all cases. Where time sensitive situations require them the IEPA, DNR, and IPCB should identify this requirement and spell out what is necessary to reply.

3. Section 130.200(b)(2) "Any person wishing to have an article considered as a trade secret must file ... a copy of the article marked as provided in Section 130.302."

This section would now set up a third specifically required way for an Illinois business to mark information that they wish to keep confidential. It must be marked either "Trade Secret", "Confidential", or "Public Record - Claimed Exempt". Articles sent simultaneously to the U.S. EPA may have to be marked differently. It is easy to conceive of a situation where truly confidential information could be marked incorrectly. It would then be considered disclosed. This is not right. The old regulation (35 IAC 120.230) deemed that a justification would be acceptable if the owner "substantially" complied. That term has been dropped from the proposal making the requirement more exacting and the denial easier.

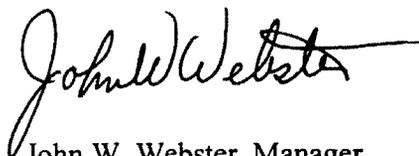
4. Section 130.220 Status of Article Determined or Claimed to be a Trade Secret Before the Effective Date of This Part

How are we to know what articles that were claimed to be a trade secret were not determined before the effective data of this Part?

Can we make a generic claim to cover all claimed articles?

How will IPCB make this requirement known to all whom have made such claims to IPCB, IEPA, and DNR.

Respectfully submitted,



John W. Webster, Manager
Regulatory Affairs