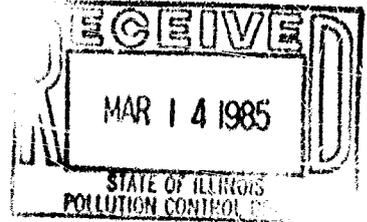


BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS



MONSANTO COMPANY, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 85-19  
 )  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY and )  
 JOHN E. NORTON, )  
 )  
 Respondents. )

NOTICE OF FILING

TO: Mr. Richard J. Carlson                    Mr. John E. Norton  
 and Mr. Joseph Svoboda                    JOHN E. NORTON & ASSOCIATES,  
 ILLINOIS ENVIRONMENTAL                    P.C.  
 PROTECTION AGENCY                        105 W. Washington Street  
 2200 Churchill Road                        P.O. Box 565  
 Springfield, IL 62706                        Belleville, IL 62222

PLEASE TAKE NOTICE that I have today filed with the Clerk of the Pollution Control Board of the State of Illinois an Amended Petition for Review of Adverse Trade Secret Determinations, a copy of which is attached hereto.

MONSANTO COMPANY

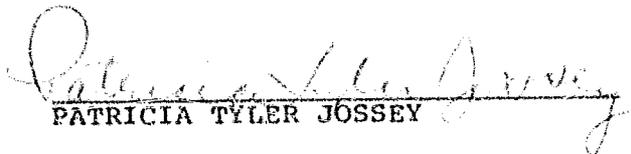
By: Gabrielle Sigel  
one of its Attorneys

Dated: March 14, 1985

James A. Geocaris  
Gabrielle Sigel  
JENNER & BLOCK  
One IBM Plaza  
Chicago, Illinois 60611  
(312) 222-9350

CERTIFICATE OF SERVICE

Patricia Tyler Jossey, on oath, states that she caused copies of the foregoing Amended Petition for Review of Adverse Trade Secret Determinations, to be placed in First Class U.S. Mail, postage prepaid, to Richard J. Carlson and Joseph Svoboda, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, IL 62706 and to John E. Norton, John E. Norton & Associates, P.C., 105 W. Washington Street, P.O. Box 565, Belleville, IL 62222, on Thursday, March 14, 1985, before the hour of the 5:00 p.m.

  
PATRICIA TYLER JOSSEY

Subscribed and Sworn to  
before me this 14th day  
of March, 1985.

  
Notary Public

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

MONSANTO COMPANY, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 85-19  
 )  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY and )  
 JOHN E. NORTON, )  
 )  
 Respondents. )

VERIFIED AMENDED PETITION FOR REVIEW OF  
ADVERSE TRADE SECRET DETERMINATIONS

Monsanto Company ("Monsanto"), by its attorneys, James A. Geccaris, Gabrielle Sigel and Jenner & Block, pursuant to Section 159.250 of the Pollution Control Board Procedures for Identifying and Protecting Trade Secrets, 35 Ill. Admin. Code Part 120, and this Board's order of February 20, 1985 in this case, hereby petitions the Pollution Control Board ("Board") for review of adverse trade secret determinations of the Illinois Environmental Protection Agency ("IEPA") against Monsanto. In support of its petition for review, Monsanto states as follows:

INTRODUCTION

1. On January 11, 1985, the IEPA made an adverse ruling on certain of Monsanto's requests for trade secret determinations. Specifically, the IEPA determined that, pursuant to Section 7(d) of the Environmental Protection Act

("Act"), Ill. Rev. Stat., ch. 111 1/2, § 1007(d), Monsanto could not have trade secret determinations for certain data describing characteristics of Monsanto's waste products as referred to in Monsanto's Application Numbers 84060008, 84010045, and 18001004. (Copies of the IEPA's determinations are attached to this petition as Exhibit A for Application Nos. 84060008 and 84010045 and Exhibit B for Application No. 18001004.)

2. Section 7(d) of the Act, provides:

Notwithstanding subsection (a) above [referring to non-disclosure of trade secrets], the quantity and identity of substances being placed or to be placed in landfills or hazardous waste treatment, storage or disposal facilities, and the name of the generator of such substances may under no circumstances be kept confidential.

Ill. Rev. Stat. ch. 111 1/2, § 1007(d).

#### THE CONTESTED APPLICATIONS

3. In response to the IEPA's August 2, 1984 Notice of Request for Trade Secret Claim Justification, on September 28, 1984, Monsanto requested trade secret determinations for approximately 3400 pages of Monsanto articles, many permit applications. (Monsanto's letter requesting trade secret determinations is attached to this petition as Exhibit C.) On January 11, 1985, the IEPA disallowed trade secret status on portions of three of Monsanto's permit applications. These three applications contain specific details of the chemical composition, physical properties, and transfer methods of certain of Monsanto's liquid and

solid wates. The IEPA stated that these articles contained disclosable information under Section 7(d) and refused to allow trade secret status.

A. Application No. I8001004

4. In Application No. I8001004, Monsanto submitted a detailed multiple page chart to the IEPA as part of its application for a permit to build an incinerator at its W.G. Krummrich Plant in Sauget, Illinois. Monsanto planned that the incinerator would process wastes from the Krummrich Plant and from another plant and research facility in St. Louis, Missouri. Subsequently, Monsanto decided not to build the incinerator and withdrew the permit application. The wastes from the Krummrich Plant were eventually disposed of in other facilities, and the identities and quantities of RCRA hazardous wastes actually disposed of are described and disclosed in other documents. However, the wastes as described in the chart attached to the incinerator permit application were never placed in landfills or other disposal facilities pursuant to the contested permit application. The IEPA now seeks to disclose the information in this withdrawn permit application.

5. The chart in Application No. I8001004 lists the waste's name, the waste's composition, including the chemical name and the percentage each chemical represents in the total waste compound, and each waste's transfer method, physical form, specific gravity, weight, weight and ash composition, viscosity, pH, flash point and other technical

information. (See chart attachment to Application No. 18001004 in the segregated, non-public portion of the Agency Record.) Monsanto does not claim protection for the waste name and quantity information on this chart, but seeks trade secret protection for all other technical information.

B. Application No. 84060008

6. Similarly, Application No. 84060008 refers to wastes resulting from a proposed new manufacturing process for a group of Monsanto products called "Santoflex." In its permit application for this process, Monsanto disclosed the precise chemical composition of the wastes from this process. (See part 10 of Application No. 84060008 in the segregated, non-public portion of the Agency Record.) Subsequently, Monsanto decided not to use this new process and withdrew its permit application. Although none of the wastes described in Application No. 84060008 were placed in landfills or other disposal facilities pursuant to the permit, the IEPA also wants to disclose the detailed waste composition data in this withdrawn permit. Monsanto seeks protection only for the detailed data in Part 10 of this application; it does not seek to protect any other part of this application.

C. Application No. 84010045

7. Application No. 84010045 refers to wastes resulting from an established Santoflex manufacturing process. Part 10 of the permit application for this process discloses the precise chemical composition of the wastes. (See Part 10

of Application No. 84010045 in the segregated, non-public portion of the Agency Record.) The IEPA seeks to disclose the detailed data in this application despite the fact that the application discloses much more than the identity and quantity of wastes required by Section 7(d). Monsanto seeks protection only for the detailed data in Part 10 of the application; it does not ask to protect any other portion of this application.

THE IEPA'S ADVERSE DETERMINATIONS MUST BE REVERSED

8. Section 7(d) of the Act requires disclosure only of the "quantity and identity of substances being placed or to be placed in landfills or hazardous waste treatment, storage, or disposal facilities." Ill. Rev. Stat. ch. 111 1/2, § 1007(d) (1983). Monsanto opposes disclosure of the contested articles for two reasons: 1) the wastes are not "being placed or to be placed" in any landfill or other disposal facility; and 2) the IEPA seeks to disclose more than the wastes' "quantity and identity."

A. The Wastes Described in Two of the Applications Were Never Placed In Disposal Facilities.

9. Application Numbers 18001004 and 84060008 relate to permits for projects which were never built. Therefore, they do not contain information on wastes "being placed or to be placed" in disposal facilities. In the opinion and order in Outboard Marine Corp. v. IEPA and American Toxic Disposal Inc., PCB 84-26 (June 20, 1984), this Board considered the scope of Section 7(d) and the

meaning of that section's "to be placed" language. (A copy of this Board's opinion and order is attached to this petition as Exhibit D.) This Board ruled that "the focus of Section 7(d) is on the disposition of the waste stream and its actual content or 'identity.'" Id. at 6. This Board found that "Section 7(d) does not require disclosure of data on the anticipated residues" of a manufacturing process. Id. (emphasis added.)

10. Based on this Board's opinion in Outboard Marine and the clear intent of the statute, Section 7(d) does not require disclosure of wastes which are merely anticipated to occur. Accordingly, Section 7(d) cannot apply to wastes from a project which never occurred. Application Numbers 18001004 and 84060008 contain data applying to a process and an incinerator which never existed. Thus, the wastes, as referred to in the permit applications, were never placed in any landfill or disposal facility. Therefore, Section 7(d) cannot require disclosure of that data.

B. The IEPA Seeks to Disclose Trade Secret Information Protected Under the Act.

11. Section 7(d) of the Act requires the disclosure of the "identity" and "quantity" of wastes. The information in all three of the contested applications contains scientific data much more detailed than that required to be disclosed by Section 7(d). The IEPA's adverse trade secret determinations allow disclosure of commercially valuable, secret

technical information in contravention of the Act's protection of trade secrets.

1. Monsanto Has Complied with the Appropriate Trade Secret Procedures.

12. Section 3(ii) of the Act, defines a trade secret as:

The whole or any portion or phase of any scientific or technical information, design, process (including a manufacturing process), procedure, formula or improvement, or business plan which is secret in that it has not been published or disseminated or otherwise become a matter of general public knowledge, and which has competitive value. A trade secret is presumed to be secret when the owner thereof takes reasonable measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

Ill. Rev. Stat., ch. 111 1/2, § 1003(ii) (1983).

13. Monsanto has met all the requirements of the Act and of the Illinois Administrative Code for establishing the data in the contested applications as trade secrets. See Ill. Rev. Stat. ch. 111 1/2, §§ 1003(ii), 1007.1 (1983); 35 Ill. Admin. Code Part 161.101 et seq. (1983). Specifically, pursuant to Part 161.201(b)(3) of the Code, Monsanto certified that it had no knowledge that any of the disputed data has ever been published, disseminated, or otherwise become a matter of general public knowledge. (Monsanto's Certificate of Non-Disclosure is attached to this petition as Exhibit E.) In addition, pursuant to Part 161.201(b)(1) and (2) of the Code, Monsanto certified that it discloses trade secret information only on a need-to-know basis in

conformance with its security manual and appropriate guidelines. (Monsanto's description of its trade secret policies filed as part of its Request for Trade Secret Determination is attached to this petition as Exhibit F.) Furthermore, pursuant to Part 161.201(b)(4) of the Code, Monsanto also provided a detailed discussion of the articles' competitive value. (Monsanto's discussion of the competitive value of the data in the contested applications is attached to this petition as Exhibit G for the proposed incinerator and Exhibit H for the Santoflex process.)

2. Disclosure of the Data in the Contested Applications Could Cause Monsanto Substantial Competitive Harm.

14. As explained above, the three contested applications contain precise technical data. Disclosure of this data would give an unwarranted commercial benefit to Monsanto's competitors. The Act's trade secret protections are designed to prevent disclosure of data which could cause this type of competitive damage.

3. Monsanto Can Disclose Waste Identity and Quantity Data Without Disclosing Trade Secrets.

15. Monsanto recognizes and concurs with the important right of the public to examine waste data. However, Monsanto believes that this public information can be disclosed without violating any of its trade secret rights. Monsanto is willing to provide waste data for all the contested applications as long as the data is restricted to Section 7(d)'s requirement of waste identity and quantity.

16. The data required to be disclosed under Section 7(d) as waste identity and quantity is similar to the data which Monsanto currently discloses in its Annual Hazardous Waste Reports. This information is less detailed than the data disclosed in the contested applications that Monsanto seeks to protect.

17. Pursuant to Part 725.175 of the Illinois Administrative Code, Monsanto must file with the IEPA an "Annual Hazardous Waste Report." (A copy of the relevant portion of that report is attached hereto as Exhibit I.) In Section XII of that report, which is labelled "Waste Identification," Monsanto provides a description of the waste, the USDOT hazard code, the RCRA hazardous waste number, the amount of waste, and the waste's density and handling method. The IEPA requires the following for its description of the waste in the annual report:

For hazardous wastes that are listed under Section 721, Subpart D . . . enter the USEPA (RCRA) listed name, abbreviated if necessary. Where mixtures of listed wastes were received, enter the description which you believe best describes the waste.

For unlisted hazardous waste identified by characteristic (i.e., ignitable, corrosive, reactive, or EP Toxic), under Section 721, Subpart C, please include the following: (1) the description from the list of characteristics in the Appendix which you believe best describes the waste; (2) the specific manufacturing or other process generating the waste; and (3) the chemical or generic chemical name of the waste; if known.

Illinois Environmental Protection Agency Hazardous Waste Treatment, Storage, Disposal Facility Annual Report for 1982 Instruction Booklet, p. 2 (Jan. 1983). (A copy of the

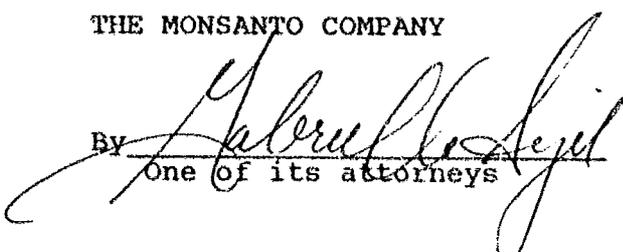
IEPA's Annual Report Instruction Booklet is attached to this petition as Exhibit J.)

18. Monsanto does not seek to protect the information on waste quantity or the information on basic waste identity in the contested applications. Moreover, where supplemental information on waste identity may be helpful, Monsanto will compile data complying with the same or similar standards applied in the Annual Report and substitute this information for the trade secret data in the contested applications. In this manner, Monsanto can comply with its public and statutory duty to disclose waste information without disclosing highly technical and valuable trade secrets that are protected under the Act.

WHEREFORE, Monsanto respectfully requests that the Board enter an order reversing the IEPA's adverse trade secret determinations.

Respectfully submitted,

THE MONSANTO COMPANY

By   
One of its attorneys

James A. Geocaris  
Gabrielle Sigel  
JENNER & BLOCK  
One IBM Plaza  
Chicago, Illinois 60611  
(312) 222-9350

STATE OF ILLINOIS     )  
                                  ) SS.  
COUNTY OF ST. CLAIR   )

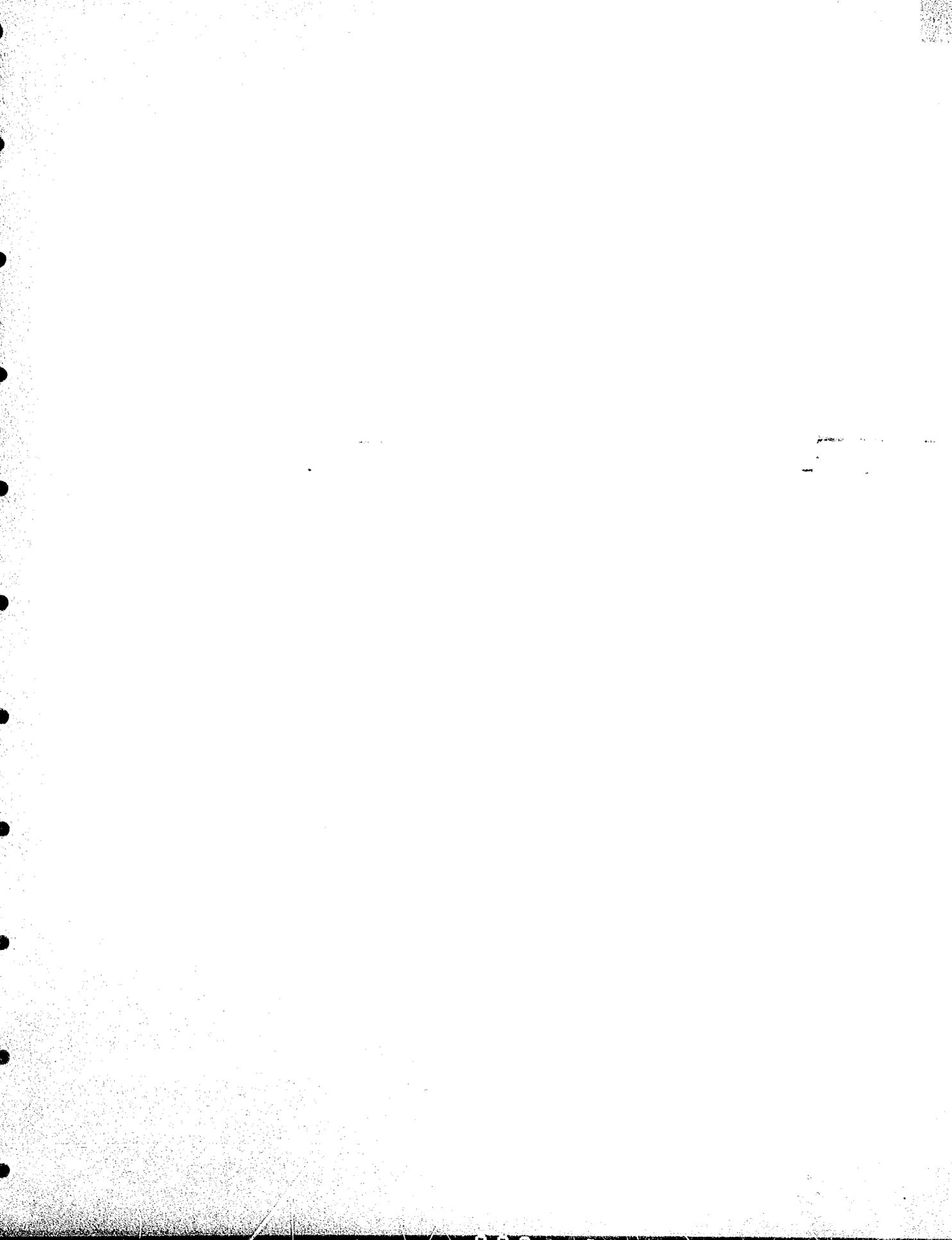
VERIFICATION

I, Andrew J. Quick, being first duly sworn, depose and state that I am the Environmental Specialist for the W.G. Krumrich Plant of the Monsanto Company in Sauget, Illinois, that I have read Monsanto Company's Amended Petition for Review of Adverse Trade Secret Determinations, that I have knowledge of the facts stated in that amended petition, and that those facts are true.

Andrew J. Quick  
ANDREW J. QUICK

Subscribed and sworn to before me this 13th. day of March, 1985.

Gary L. Pince  
Notary Public





CERTIFIED MAIL

AGENCY DETERMINATION OF  
TRADE SECRET CLAIM - CONCURS IN PART

217/782-2113

January 3, 1985

Monsanto Industrial Chemical Co.  
Attention: Jack W. Molloy  
Sauget, Illinois 62201

Re: Trade Secret Claim and Statement of Justification  
Name of Company: Monsanto  
I.D. Number(s): 163121AAC  
Application Number(s): 84010045 and 84060008

Dear Mr. Molloy:

The Agency has reviewed the trade secret claim and statement of justification of September 28, 1984 against the requirements set forth in 35 Ill. Adm. Code 161.204(b) and (c). The Agency has determined that the articles for which the claim of trade secret has been made, in part, constitute trade secret information pursuant to the Environmental Protection Act.

- A. Attached is a listing of those page(s), part(s) and portion(s) which are determined to represent trade secret information and are not subject to public disclosure under the Freedom of Information Act. They will be protected as trade secret information until such time as the Agency receives official notification of a final order by a reviewing body which reverses this determination and which is not subject to further appeal.
- B. Also attached is a listing of those page(s), part(s) and portion(s) which are determined not to represent trade secret information.

Specifically, the Agency has determined that:

Identity and the quantity of the waste cannot be kept confidential pursuant to Section 7(d) of the Environmental Protection Act.

You have the right to appeal the Agency's determination in regard to the information in paragraph (B), within 35 days by filing a petition for review with the Pollution Control Board in accordance with 35 Ill. Adm. Code 120.250. The Agency will not disclose this material until either the appeal period has lapsed or until such time as the Agency receives official notification of a final order which is not subject to further appeal.

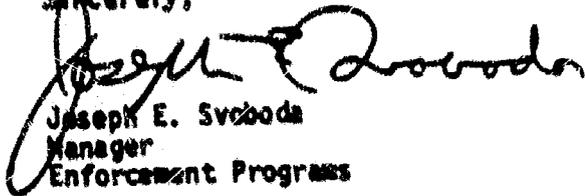
EXHIBIT A



Page 2

If you have any questions, please call Vir V. Gupta.

Sincerely,

  
Joseph E. Svoboda  
Manager  
Enforcement Programs

JES:VVG:ba/0016e/7-8

Attachment

cc: Region 3  
I.O. File 163121AC  
Permit Files



ATTACHMENT

Date:

Company:

I.D. Number(s): 163121AAC

Application Number(s): 84060008 and 84010045

Listing of those page(s), part(s) and portion(s) determined to represent trade secret information.

A. Application No. 84060008

Cover letter dated May 22, 1984:	item 1 only
Page 3, 6-13:	all
Page 14:	except items 1-4
Page 15, 17, 20, 23, 26, 29, 32:	all
Page 22:	item 11 only
Page 25:	item 7 & 9 only
Page 34:	item 8 only

B. Application No. 84010045

1. Submission dated January 18, 1984:

- a) Pages 2-7, 10-35, 38, 41, 44, 47, 50, 53, 56, 59, 62, 65, 68, 71, 74, 77, 80, 83, 86, 89, 92, 95, 98, 101, 104, 107, 110, 113, 116, 119, 122, 125, 128, 131, 134, 137, 140, 143, 146, 149, 152, 155, 158, 161, 164, 167, 170, 173, 176, 179, 182, 185, 188, 191, 194, 197, 200, 203, 206, 209, 212 and 231: All
- b) Item No. A, 6, 7 and 9 of Pages: 43, 46, 49, 52, 55, 58, 61, 64, 67, 169, 172, 175, 190, 193 and 196
- c) Item No. A, B, 6 & 7 of Page 73.
- d) Item No. 6, 7 & 9 of Pages : 37, 40, 133, 136, 166 & 187
- e) Item No. 6 of Pages: 76, 79, 139, 145, 148, 151, 154, 157, 184, 199, 202, 205, 208 and 211.
- f) Item No. A & 6 of Pages: 82, 85, 88, 91, 94, 97, 100, 103, 115, 118, 121, 124, 127, 130, 178 and 181.
- g) Item No. 8 of Page: 224



Page 2

h) Item No. 6 & 7 of Page 142

i) All except item A, 1, 2, 3 & 4 of Pages: 214-215

j) All except item A, B, 1, 2, 3 & 4 of Pages: 216-213

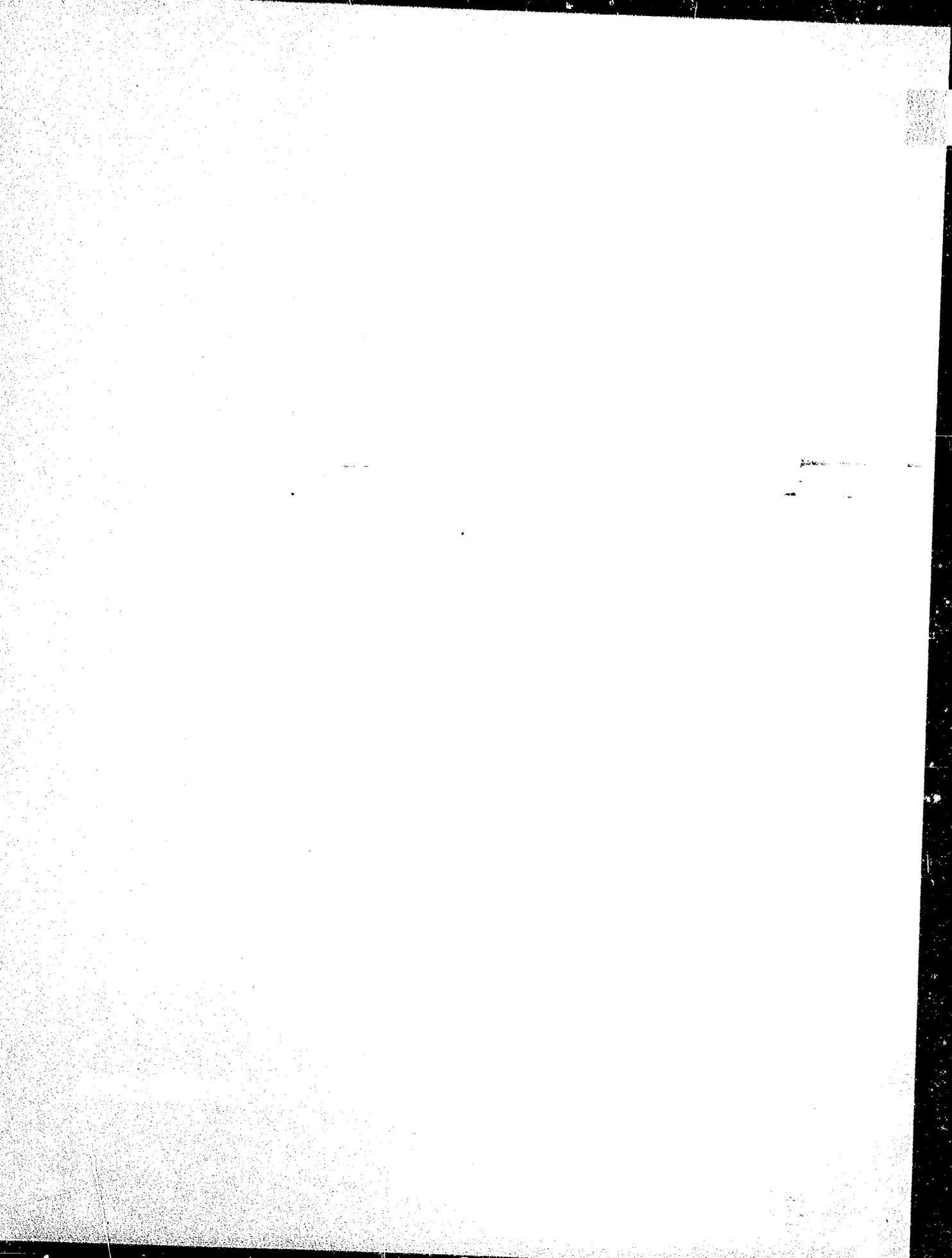
B. 2. Item No. 1 of letter dated May 22, 1984.

Listing of those page(s), part(s) and portion(s) determined not to represent trade secret information.

C. Application No. 84060008: Item 10 of Page 35 pursuant to Section 7(d) of the Environmental Protection Act.

D. Application No. 84010045: Item No. 10 of Page 225 pursuant to Section 7(d) of the Environmental Protection Act.

JES:WVG:ba/0016e/9-10





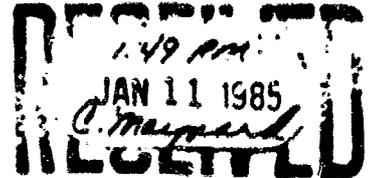
CERTIFIED MAIL

AGENCY DETERMINATION OF  
TRADE SECRET CLAIM - CONCURS IN PART

217/782-2113

January 3, 1985

Monsanto Industrial Chemical Co.  
Attention: Jack W. Molloy  
Sauget, Illinois 62201



Re: Trade Secret Claim and Statement of Justification  
Name of Company: Monsanto  
I.D. Number(s): 163121AAC  
Application Number(s): 18001004, 17601005, 17210001

Dear Mr. Molloy:

The Agency has reviewed the trade secret claim and statement of justification of September 28, 1984 against the requirements set forth in 35 Ill. Adm. Code 161.204(b) and (c). The Agency has determined that the articles for which the claim of trade secret has been made, in part, constitute trade secret information pursuant to the Environmental Protection Act.

- A. Attached is a listing of those page(s), part(s) and portion(s) which are determined to represent trade secret information and are not subject to public disclosure under the Freedom of Information Act. They will be protected as trade secret information until such time as the Agency receives official notification of a final order by a reviewing body which reverses this determination and which is not subject to further appeal.
- B. Also attached is a listing of those page(s), part(s) and portion(s) which are determined not to represent trade secret information.

Specifically, the Agency has determined that:

The identity and quantity of wastes as provided in application number 18001004 cannot be claimed trade secret pursuant to Section 7(d) of the Environmental Protection Act.

EXHIBIT B



Page 2

You have the right to appeal the Agency's determination in regard to the information in paragraph (B), within 35 days by filing a petition for review with the Pollution Control Board in accordance with 35 Ill. Adm. Code 120.250. The Agency will not disclose this material until either the appeal period has lapsed or until such time as the Agency receives official notification of a final order which is not subject to further appeal.

If you have any questions, please call Vir V. Gupta.

Sincerely,

Joseph E. Svoboda  
Manager  
Enforcement Programs

JES:WG:jab/13E/34-35

Attachment

cc: Region 3  
I.D. File  
Permit Files



ATTACHMENTS

Listing of those page(s), part(s) and portion(s) which are determined to represent trade secret information are:

A. Application No. I8001004

1. Steinhuller design document submitted with the letter dated May 1, 1981 from R. H. Sinise to Pat Dennis.
2. Engineering flow diagram and Plot plan:  
Dwg. No(s): F4S11421e, F4H11432d, KCS12498b, KCG12310c, KCS12381f
3. Article dated 12-31-1979:  
Page(s) 4 through 10, 13, 14, and 15  
Page 11 (except annual emission summary)  
Page 19 & 20 (except incinerator location)
4. Attachment to the letter from Jack Molloy to Eric Cohen, USEPA, dated January 11, 1980:  
Page(s) 7, 9 and 10  
Page 4 (except stack parameters)  
Page 22, 23 (except emission data)
5. Page 1, Item A (Tri-Mer Process) of letter dated August 22, 1980 from R. H. Sinise to Pat Dennis.  
Addendum 3 on page 5 except item 1 (about ESP problems) of letter dated August 22, 1980 from R. H. Sinise to Pat Dennis.

B. Application No. I7801005, Submission dated January 18, 1978:

Page 4 of 28 except item 1 (stack parameters)  
Page 8 through 10  
Page 19 except item A (emission to the atmosphere)

C. Application No. I7210001, submission dated February 8, 1973 (Agency's date August 5, 1974):

Page 2 except item; 22, 32 and 33  
Page 3, 4  
Page 96: except stack parameters

Listing of those page(s), part(s) and portion(s) which are determined not to represent trade secret information are:

Incinerable waste characteristics as provided in application number I8001004 pursuant to 7(d) of the Environmental Protection Act.



# Monsanto

MONSANTO INDUSTRIAL CHEMICALS CO.  
Sauget, Illinois 62201  
Phone: (618) 271-5835

September 28, 1984

*Hand carried 9/28/84*  
*Delivered to:*  
*V. G. Gentry*  
*R. Forbes* } *EPA*

Mr. Bharat Mathur  
Manager, Permit Section  
Air Pollution Control Division  
Illinois EPA  
2200 Church Hill Road  
Springfield, IL 62706

Re: Trade Secret Claim Justification 163121AAC

Dear Mr. Mathur:

Attached hereto is our response to your Notice of Request for Trade Secret Claim Justification, dated August 2, 1984. Included therein is information required for compliance with Agency procedures for making trade secret claims and statement of justification as prescribed in 35 Ill. Adm. Code 161.201.

As stated in our previous correspondence with you, the FOIA request that triggered these procedures was extremely broad and involved the processing of a tremendous volume of information submitted to Agency by Monsanto Company in past years. Also included in our review were articles submitted to the Agency's predecessor, the Air Pollution Control Board.

A significant portion of the Monsanto articles contained in the Air Pollution Control Division files is being claimed trade secret for reasons described in the attached claim letters. Copies of approximately 3400 pages of Monsanto articles claimed entirely or in part as trade secret have been modified to delete claimed information. The trade secret status of this information affects the confidentiality of 20 different processes currently or previously active at the W. G. Krummrich Plant.

As a practical matter, due to the sheer volume of information involved, we have organized our response as follows:

1. A single claim letter and justification is submitted for all trade secret information associated with a given process.

EXHIBIT C

2. Each claim letter identifies and briefly describes all Monsanto articles relating to the process whose trade secret status is being justified.
3. A detailed discussion of the competitive value of the trade secret information associated with a given process is included in the respective claim letter.
4. An FOIA copy of each Monsanto article claimed entirely or in part is trade secret is provided with the trade secret information deleted. All FOIA copies associated with a given process are attached to the respective claim letter. In cases where the only non-trade secret portion of a page of an article contains information disclosed elsewhere in the FOIA copy of the article (such as company name, address, etc.) then the entire page is claimed trade secret.
5. A single copy of the Monsanto Security Manual is provided for compliance with 35 Ill. Adm. Code 151.201 b)1), as this manual sets forth procedures used by Monsanto Company to protect all trade secrets from unauthorized disclosure.
6. A single statement is provided that sets forth guidelines used by the W. G. Krumrich Plant in conformance with the Monsanto Security Manual to designate the persons or class of persons to whom any trade secret information is disclosed.
7. A single certification is provided asserting that Monsanto Company has no knowledge that any of the trade secret information being claimed has become a matter of public knowledge.

We believe our response adequately justifies our trade secret claims. We therefore respectfully request that the agency render a determination consistent with our claims.

We have developed some concerns as a result of our review of agency files. We are concerned that information claimed and determined to be trade secret in Monsanto articles may be unwittingly disclosed to unauthorized persons via references contained in Agency articles or notes. As Monsanto Company is prohibited from marking Agency documents, we are relying on the Agency to review and withhold from disclosure to unauthorized persons Agency-generated articles containing Monsanto Company trade secrets.

In addition, we do not believe it serves the public interest or any other constructive purpose for the Agency to maintain air permit files relating to processes that have been eliminated from W. G. Krumrich Plant operations for more than 5 years. We understand and appreciate the current legal

restrictions governing disposal of such information as outlined in your letter to me dated September 12. We request, however, that the Agency utilize its authority to the fullest extent possible under current statutes and consistent with its role as caretaker of state property to develop a procedure to address this matter.

Sincerely yours,

Jack W. Molloy  
Plant Manager

JWM/jc  
Attachments

ILLINOIS POLLUTION CONTROL BOARD  
June 20, 1984

OUTBOARD MARINE CORPORATION, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 84-26  
 )  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY )  
 and AMERICAN TOXIC DISPOSAL, INC., )  
 )  
 Respondents. )

OPINION AND ORDER OF THE BOARD (by J. Anderson):

This matter is before the Board on the February 29, 1984 Petition for Review of Trade Secret Determination filed by Outboard Marine Corporation (OMC). It is the first appeal of a trade secret determination brought pursuant to Part 120 of the Board's regulations (35 Illinois Administrative Code 120) entitled "Identification and Protection of Trade Secrets" which became effective November 23, 1983. Section 120.250(a) provides that "an owner or requester who is adversely affected by a Final Determination of either the Environmental Protection Agency or the Department of Energy and Natural Resources pursuant to [the Board's regulations governing the identification and protection of trade secrets], may petition the Board for review within 35 days after the entry of a final agency determination". On April 5, 1984 the Board issued an Interim Order in this case outlining the basic format for this type of appeal. In addition, on June 8, 1984 the Board adopted a Resolution (RES 84-1) designating personnel authorized to have access to "trade secret" material for purposes of ruling on appeals of this type.

Briefly, OMC alleges that it is adversely affected by an Illinois Environmental Protection Agency (IEPA) determination that certain portions of a permit application filed by American Toxics Disposal, Inc. (ATD) represent trade secrets within the meaning of Part 120 and the Act. At issue are approximately 30 pages (including several design drawings) of an application for a permit for the construction and short-term operation of a demonstration project which would thermally extract polychlorinated biphenyls (PCBs) from contaminated sediment. The short-term permit was issued (effective from February 17 to August 31, 1984) for "a demonstration project to thermally extract polychlorinated biphenyls (PCBs) from contaminated sediment along with necessary air pollution control equipment, water pollution control equipment and storage facilities...".

The permit limits the amount of sediment to be processed to 25 wet tons or about 15 yd<sup>3</sup>. (IEPA answer, Attach. 1, June 1, 1984.) OMC has urged the Board to rule quickly on this matter.

### I. STANDING

an initial matter, the Board finds that OMC has standing to appeal under Section 120.250(a) as an adversely affected party. The Environmental Protection Act's general mandate that "all files, records, and data of the Agency, to the Board, and the Department shall be open to reasonable public inspection" requires that the Board adopt a broad construction of the required standing to contest determinations affecting public access to information. In this type of appeal, a petitioner is adversely affected if he can demonstrate that he made a request for access to an article within the possession of an agency and that the agency has made a final determination which denied the request. The Board notes that this broad construction of standing comports with the federal courts' interpretation of standing under the "Freedom of Information Act" (5 USC 552, as amended).

On a related issue, the Board also finds that OMC's amended petition was properly verified in that the attached affidavit of John Roger Crawford contained the allegations of fact in question.

### II. COMPLIANCE WITH THE PART 120 PROCEDURES FOR IDENTIFYING A TRADE SECRET

OMC alleges that ATD failed to comply with the Part 120 procedures for claiming a trade secret and that as a result OMC was prejudiced in its ability to comment on the experimental permit prior to its issuance. The specific question is whether ATD complied with Section 120.201(a) in making its claim. Section 120.201(a) provides...

"An agency shall consider any article submitted to or otherwise obtained by the agency as claimed to represent a trade secret and shall protect such article from disclosure pursuant to Subpart C of this Part, only if the agency is provided with the following...

- 3) Either a Statement of Justification for the claim meeting the requirements of Section 120.202 or a limited waiver of the statutory deadlines for any agency decision as provided in Section 120.203."

On December 5, 1983, when the request was made ATD had neither a Statement of Justification nor a Limited Waiver on file with the IEPA. Under Section 120.201(a), the absence of both of these documents would relieve the agency from considering the article as claimed to represent a trade secret. However, Section

120.265(b) provides a 60 day "grace period" for articles which were claimed to represent a trade secret prior to the effective date of Part 120. During this "grace period" such an article is deemed to have been claimed to represent a trade secret for the purpose of Part 120.

The dates involved here are not in dispute. The articles in question were filed and claimed to represent a trade secret on November 8, 1983. Thus, Section 120.265(b) applies. The request for access to these articles was made on December 5, 1983. Since Part 120 became effective on November 23, 1983, the 60 day grace period was in effect at that time and extended until January 22, 1984. During this time IEPA properly treated the articles in question as though they had been claimed pursuant to Section 120.201(a). On January 18, 1984 ATD fulfilled the Section 120.201(a) requirements by filing its Statement of Justification. Thus, the Board finds that the "claim" and IEPA's treatment of the claim complied with Part 120.

OMC did not directly address the effect of the 60 day grace period, but rather argued that ATD should have been required to extend the IEPA decision date by the 30 plus days that had been taken for submission of the Statement of Justification. As noted above, the Section 120.203 "Optional Limited Waiver of Statutory Deadlines" was not required to be filed in this situation, and IEPA was therefore bound by the statutory 90 day decision period. (See Section 39(a) of the Environmental Protection Act (Act), Ill. Rev. Stat. 1981, ch. 111, par. 1039(a).) The Board notes that, absent this waiver, IEPA did not have the option of extending this deadline pursuant to Section 120.270 even if that Section were found to apply in this situation.

### III. DATA REQUIRED TO BE DISCLOSED BY STATUTE

Having found that the respondents properly complied with the Part 120 procedures regarding the claim, the next issue to be addressed is the substantive question of fact as to whether the undisclosed articles contain emissions, effluent or waste data which is required to be disclosed by Section 7(b), (c) or (d) of the Act. These statutory provisions require disclosure of certain articles notwithstanding their trade secret (or otherwise confidential or privileged) status. Thus, this is always among the first questions that must be addressed by agencies making trade secret determinations.

OMC states that in reviewing the permit application in question it found certain information relating to projected emissions to the atmosphere to be unavailable, and no information concerning the point of discharge of the wastewater from the dredged spoils or the pilot plant itself. From this, plus the fact that some of the undisclosed application material was submitted by ATD in response to specific IEPA questions about

emissions, wastewater and waste solids, OMC infers that the undisclosed articles contain the type of data which is statutorily required to be disclosed.

ATD responds that neither the permit application nor the permit itself allow discharge into the receiving waters of the State or to any sewers, nor does it allow incineration or landfill deposits. With regard to air emissions, ATD states that any data relating to emissions in the confidential portion of the application is also set forth in the disclosed portion.

The question here is obviously one of fact requiring the Board to review the undisclosed articles. The Board will review each of these categories of data individually.

A. EFFLUENT DATA REQUIRED TO BE DISCLOSED UNDER SECTION 7(b) OF THE ACT

Section 7(b) states that effluent data may under no circumstances be kept confidential where the information involved is from or concerns persons subject to NPDES permit requirements. By its own terms this provision does not apply in this case as there is no NPDES permit involved. The permit in fact specifically prohibits the discharge of treated or untreated wastewater without obtaining additional approvals or permits. All wastewater generated by the demonstration project is to be stored in tanks onsite. (See Special Condition 10 of the February 17, 1984 permit, ATD Exhibit "A".) After a review of the undisclosed material the Board finds that this material contains no data relating to effluent from a point source which would be subject to an NPDES permit.

B. EMISSIONS DATA REQUIRED TO BE DISCLOSED UNDER SECTION 7(c) OF THE ACT

Section 7(c), in pertinent part, requires that all emission data reported to IEPA in connection with any proceeding under the Act shall be available to the public to the extent required by the Federal Clean Air Act Amendments of 1977 (P.L. 95-95), as amended. Section 114 of the Clean Air Act, which was readopted in P.L. 95-95, (42 USC 7414) requires disclosure of any "emission data" which the USEPA Administrator (or the State when so authorized) may reasonably require of any person who owns or operates an emission source. Both the disclosed and undisclosed material at issue here appears to contain data on emissions, i.e. gases which are being emitted to the atmosphere. The question before the Board is whether Section 7(c) requires that such data be disclosed repeatedly where ever it appears in the permit application. In this case the Board finds that there is no apparent advantage to the public interest in requiring the agency handling the information to "white-out" or "cut and paste" around the trade secret material. Therefore, the Board will not require that this be done.

The question remains whether there is any emissions data in the undisclosed material which has not been identified as having been disclosed elsewhere in the disclosed portions of the article. Answering this question has presented the Board with the difficult task of deciphering and comparing the undisclosed material with the disclosed material. In particular, the Board encountered certain information in the undisclosed material which may or may not be emission data depending upon whether it is exiting into the atmosphere. The Board was unable to determine this from the record before it. The Board believes the respondents bear the responsibility of demonstrating that this information does not fall within the statutory mandate for disclosure. Therefore, the Board will reverse the IEPA determination with regard to this specific piece of information.\* With regard to the rest of the undisclosed material, the Board finds that it contains no new emissions data.

C. SUBSTANCES REQUIRED TO BE DISCLOSED UNDER SECTION 7(d)  
OF THE ACT

Section 7(d) states that "the quantity and identity of - substances being placed or to be placed in landfills or hazardous waste treatment, storage or disposal facilities... may under no circumstances be kept confidential." As the permit application which is the subject of the OMC request does not authorize landfilling or placing any substance in a hazardous waste treatment, storage or disposal facility,\*\* the question before the Board is how to interpret the statutory phrase "to be placed." Broadly construed, this phrase could require disclosure of products and consumer items as they come off the assembly line on the basis that they are eventually destined for landfilling or hazardous waste facility. In this instance, a residue is involved which is to be stored on-site and may eventually be incinerated in a hazardous waste incinerator. In addition, there is reference to a non-hazardous sludge which is also to be stored on-site and eventually landfilled off-site. Special Condition 7 of the permit states that "Residues generated at this site as a result of the treatment process for disposal, storage, incineration or further treatment elsewhere shall be transported to the receiving facility under the Agency's supplemental waste stream permit and manifest system." Thus, another permit, specifically authorizing transport for treatment, storage or

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\*The Board notes that in the future where an owner argues that this problem of duplication exists, the owner must clearly indicate for the Board exactly what and where the information is duplicated. This may be done in a confidential addendum to the owner's brief.

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\*\*The storage involved here is not "hazardous waste storage" within the context of the Act and the Board's regulations.

disposal must be obtained before the substances involved can be moved off-site. The Board believes that this is the point at which these substances can be said to be substances which are "to be placed" in a landfill or hazardous waste facility. To rule otherwise, especially in this instance, could lead to absurd results. The data contained in this application for a construction and operating permit relates only to the anticipated content of the residues and sludges from the process. In contrast, the focus of Section 7(d) is on the disposition of the waste stream and its actual content or "identity". Thus, the Board finds that Section 7(d) does not require disclosure of data on the anticipated residues of the process at this time.

#### IV. APPLICATION OF THE SECTION 120.230 STANDARDS FOR DETERMINING A TRADE SECRET

Having concluded that the articles involved are not required to be disclosed by Section 7 of the Act, we now turn to the question of whether IEPA correctly determined that the undisclosed articles represent trade secrets within the Act's definition of "trade secret" and the standards established in Section 120.230. As stated previously, the record supports a finding that ATD substantially complied with the Part 120 procedures for making a claim and justifying it. The remaining question is whether the statement of justification demonstrates that 1) the articles have not been published, disseminated or otherwise become a matter of general public knowledge; and 2) the articles have competitive value.

##### A. HAVE THE ARTICLES BEEN PUBLISHED, DISSEMINATED OR OTHERWISE BECOME A MATTER OF GENERAL PUBLIC KNOWLEDGE?

Both the statutory definition of "trade secret" and Section 120.230(b) provide for a presumption of secrecy when the owner has taken reasonable measures to prevent an article from becoming available to other than selected persons for limited purposes. This type of presumption is useful in a situation such as this where the claimant is asked to "prove a negative." Pursuant to Section 120.202, the claimant has provided in the Statement of Justification a detailed description of the procedures used to safeguard the articles as well as a list of the persons to whom the articles have been disclosed. The Board notes that the owner has limited, and accounted for, access to both originals and copies of the articles, and has kept all copies stored in locked quarters when not in use. (Statement of Justification, p. 1.) ATD lists 11 persons to whom the articles have been disclosed. The list consists of regulators, equipment vendors, engineering consultants, investors and potential investors and business associates who have signed non-disclosure agreements, and attorneys of the owner and other permit application signatories. (Statement of Justification, p. 1.) ATD has also submitted a certification signed by its chairman and vice-president that it

has no knowledge that the undisclosed information has ever been published, disseminated or otherwise become a matter of general public knowledge. (See EPA's "Agency Record of Decision".) The Board finds that the Statement of Justification and Certification provide an adequate basis for raising the rebuttable presumption in Section 120.230.

This presumption having been established, the burden shifts to the requester to rebut this presumption with facts demonstrating that the secrecy of the article has been breached. OMC argues that the articles in question have in fact been published because the process for which the permit was sought has been patented. OMC concludes that because the patent process is sought to be permitted here, none of the information in the permit application can be withheld as a trade secret. (Petitioner's Memorandum of Law in Support of Amended Petition, p. 9.)

The Board acknowledges the legal proposition that the subject of a patent is by definition publicly disclosed. However, OMC's conclusion that the existence of a patent for the process requires disclosure of all information in the permit application is unsupported. We note that the Federal District Court cases cited by OMC do not address this issue. In fact the quotation from the Permagrain Products case cited by OMC may support the opposite proposition, i.e. that a patent is public disclosure only of trade secrets described in the patent specifications. (See Permagrain Products, Inc. v. U.S. Matt and Rubber Company, Inc., 489 F. Supp. 108 (E.D. Pa. 1980) as cited in Petitioner's Memorandum of Law, pp. 10-11.) The Board agrees with ATD that the fact that a patent exists on a portion of a process does not strip the rest of the process or all related information of its otherwise trade secret status. ATD's position is clearly supported by the case law as well as the common sense notion that the implementation of a patented process may require a work product, whether developed before or after the issuance of a patent, that goes well beyond the abstraction contained in the patent.

The question remains as to whether any of the undisclosed articles has been published in the patent. After reviewing the undisclosed articles, the Board finds that to the extent that any patented material exists in the undisclosed articles it cannot be conveniently separated from other trade secret material, and that furthermore such patented material is disclosed elsewhere in the application.

In conclusion on this point, the Board finds that OMC has failed to rebut the presumption that the undisclosed articles have never been published, disseminated or otherwise become a matter of general public knowledge.

B. DO THE ARTICLES HAVE COMPETITIVE VALUE?

The second component of a trade secret under the Act and Section 120.230 is that it must have competitive value. In its Statement of Justification (p. 2) ATD argues that the undisclosed articles contain paid-for work product the public closure of which would make costly secret design and planning information readily available to potential competitors. ATD also notes that the system involved is the first of its kind to be developed and that the potential market for a system which economically extracts hazardous material from sludge is enormous. OMC incorrectly states that "the sole justification given for non-disclosure was that ATD would incur economic harm because it would have to spend time defending patent claims rather than developing the process." (Petitioner's Memorandum of Law, p. 14.) While ATD does mention this under the heading "ANY OTHER PERTINENT INFORMATION WHICH WILL SUPPORT THE CLAIM," ATD also provides a detailed and persuasive discussion of the competitive value of the system in the preceding paragraph. On this basis, the Board finds that the undisclosed materials do have competitive value.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

For the reasons stated in paragraph III (B) above, the Board reverses IEPA's determination that with regard to the sentence beginning on line 9 and ending on line 10 of page 47, excluding the last four words on line 9 and the first word on line 10. Pursuant to Section 120.240 (c) and (d), the IEPA and the Clerk of the Board are hereby ordered to continue to protect this article as a trade secret pursuant to Subpart C of Part 120 for 35 days from the date of this Order. If within that 35 days, the Board does not receive notification of a petition for review of this Order by a court with proper jurisdiction with regard to this article, this article shall be made available for public inspection and both the petitioner and respondents shall be so notified.

In accord with the rest of the above discussion, the Board upholds IEPA's determination that the other articles and portions thereof which are the subject of this appeal represent trade secrets which are not subject to disclosure. Pursuant to Section 120.245(a), IEPA and the Clerk of the Board are hereby ordered to continue to protect these articles as trade secrets pursuant to Subpart C of Part 120.

IT IS SO ORDERED.

Board Member J. Theodore Meyer absent for the vote on the Opinion due to other Board business.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion was adopted by a vote of 5-0 and the above Order was adopted by a vote of 6-0 on the 21<sup>st</sup> day of June, 1984.

Dorothy M. Gunn  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board

CERTIFICATION OF NON-DISCLOSURE

IN COMPLIANCE WITH THE REQUIREMENT OF 35 ILL. ADM. CODE 161.201 b)3), I DO CERTIFY THAT MONSANTO COMPANY HAS NO KNOWLEDGE THAT ANY OF THE ARTICLES OR PORTIONS THEREOF HEREIN CLAIMED TRADE SECRET HAVE EVER BEEN PUBLISHED, DISSEMINATED, OR OTHERWISE BECOME A MATTER OF GENERAL PUBLIC KNOWLEDGE.

Jack W. Holloy  
Plant Manager  
Monsanto Company  
W. G. Krumrich Plant  
Sauget, Illinois  
62201

EXHIBIT E

## ARTICLE DISCLOSURE RESTRICTIONS STATEMENT

Disclosure of Monsanto Company trade secret or confidential information is and has been made on a need-to-know basis in conformance with the restrictions outlined in the attached Monsanto Security Manual and the following guideline.

### 1. Disclosure to Monsanto Company Personnel

Any current employee of Monsanto Company is granted access to trade secret information of the kind contained in Agency files should he require the information to perform some function or task within Monsanto Company. Generally, access to process information is limited to the following functions within Monsanto Company associated with the process.

- a) Manufacturing supervision and management.
- b) Maintenance supervision, engineering, and management.
- c) Technical services engineering support.
- d) Laboratory and Research support.
- e) Marketing and sales support.
- f) Environmental and Safety support personnel.

### 2. Disclosure to Non-Monsanto Company Personnel

Dissemination to the non-Monsanto Company personnel is prohibited with the following exceptions:

- a) Contract personnel performing a service for Monsanto Company who have signed a valid secrecy agreement with Monsanto Company and require the trade secret information to satisfactorily perform their service.
- b) Persons or companies under contract to a regulatory agency who:
  1. have satisfactory trade secret protection procedures in place and,
  2. are functioning as representatives of the regulatory agency and,

3. require the trade secret information to perform their function for the regulatory agency and,
  4. are duly authorized to obtain the information under appropriate legal authority.
- c) Regulatory agency personnel when that agency has proper authority to request the information and has satisfactory trade secret protection procedures in place.