

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, |) | |
| |) | |
| Defendants. |) | |

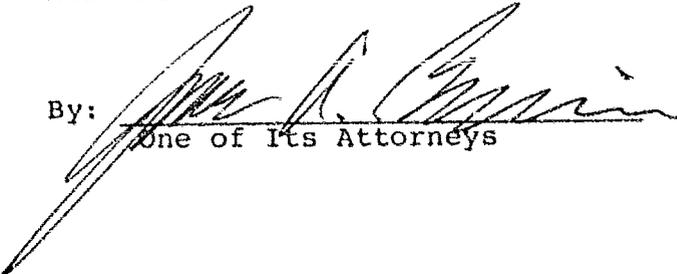
NOTICE OF FILING

TO: William D. Ingersoll
Mary V. Rehman
ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY
2200 Churchill Road
Springfield, IL 62706

John E. Norton
JOHN E. NORTON & ASSO-
CIATES, P.C.
105 W. Washington Street
P. O. Box 565
Belleville, IL 62222

PLEASE TAKE NOTICE that I have today filed with the Clerk of the Pollution Control Board of the State of Illinois, a Motion to Strike Exhibit, Petitioner's Motion for Partial Decision Based on the Amended Petition, the Response, and the Administrative Record, and Memorandum in Support of Petitioner's Motion for Partial Decision, copies of which are being served on you with this notice.

MONSANTO COMPANY

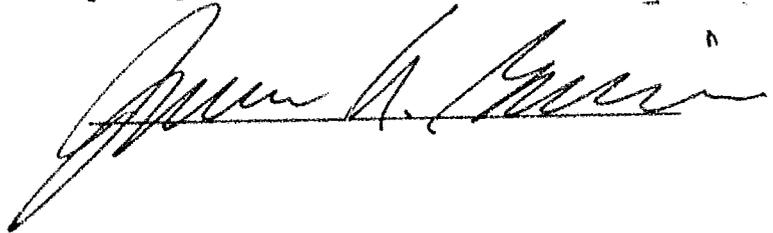
By: 
One of Its Attorneys

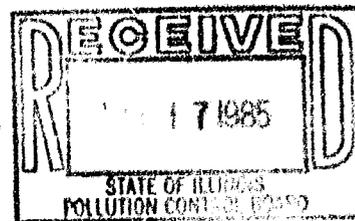
James A. Geocaris
JENNER & BLOCK
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

Dated: May 17, 1985

CERTIFICATE OF SERVICE

James A. Geocaris, an attorney, certifies that he caused copies of the foregoing Notice of Filing to be placed in the U.S. Mail, first class postage prepaid, addressed to William D. Ingersoll and Mary V. Rehman, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois, 62706 and to John E. Norton, John E. Norton & Associates, P.C., 105 W. Washington Street, P. O. Box 565, Belleville, Illinois, 62222, on Friday, May 17, 1985 before 5:00 P.M.

A handwritten signature in cursive script, appearing to read "James A. Geocaris", written over a horizontal line.



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MOTION TO STRIKE EXHIBIT

Petitioner the Monsanto Company ("Monsanto") by its attorneys, moves the Pollution Control Board (the "Board") to strike Exhibit 22 from the administrative record of the Illinois Environmental Protection Agency (the "IEPA") in this trade secrets proceeding. In support of its motion, Monsanto states as follows:

1. The IEPA has filed the administrative record for this trade secrets proceeding. The Board has directed that this record should consist of documents and "other material the IEPA relied upon in making its determination." Monsanto Company v. IEPA, PCB 85-19 (February 20, 1985).

2. Exhibit 22 was not relied upon by the IEPA in making its determination that the three items at issue on

this appeal are not trade secret. One of the attorneys for the IEPA in these proceedings, William Ingersoll, so stated on May 10, 1985 in the pre-hearing conference for these proceedings.

3. Exhibit 22 is a copy of Exhibit 21, a printed chart prepared by Monsanto that is one of the items at issue here. Exhibit 22 contains handwritten notes made on a copy of Exhibit 21 by IEPA personnel. According to the IEPA, these notes had nothing to do with the agency's determination that Exhibit 21 should not have trade secret protection.

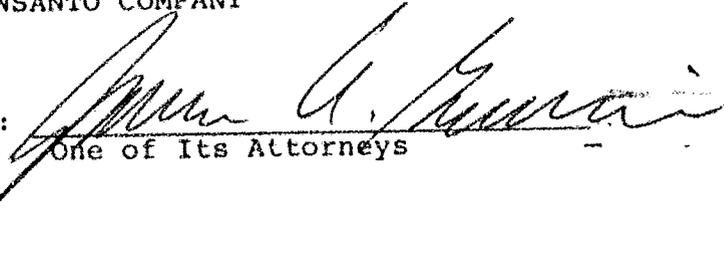
4. Leaving the irrelevant Exhibit 22 in the record would be confusing because of its similarity to Exhibit 21, one of the documents at issue. Furthermore, leaving Exhibit 22 of record will prolong these proceedings because, according to IEPA counsel Ingersoll, the IEPA will be required to call two witnesses at the hearing to explain how the IEPA's notations on Exhibit 22 were made and why those notations are not relevant to this trade secrets proceeding.

5. Because Exhibit 22 was not relied upon by the IEPA in making the trade secrets determinations at issue on this appeal, that exhibit should be stricken from the administrative record for this appeal.

WHEREFORE, petitioner the Monsanto Company prays for entry of an order striking Exhibit 22 from the administrative record and directing the Illinois Environmental Protection Agency to withdraw all copies of that exhibit from the record in this case.

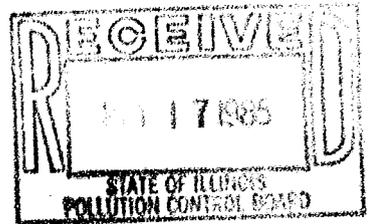
Respectfully submitted,

MONSANTO COMPANY

By: 

One of Its Attorneys

James A. Geocar
JENNER & BLOCK
One IBM Plaza
Chicago, Illinois 60611
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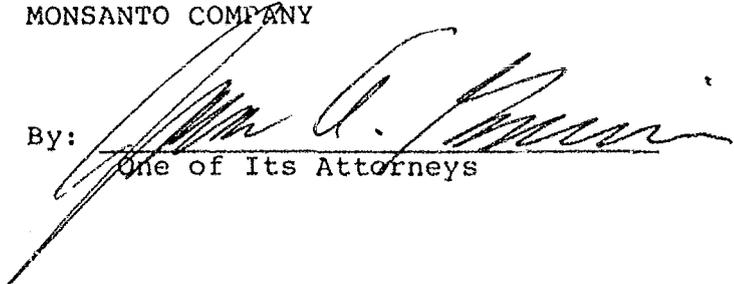
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PETITIONER'S MOTION FOR PARTIAL
DECISION BASED ON THE AMENDED PETITION, THE
RESPONSE, AND THE ADMINISTRATIVE RECORD

Petitioner the Monsanto Company ("Monsanto"), by its attorneys, moves for a determination in its favor and against the Illinois Environmental Protection Agency on the trade secret status of Exhibits 16, 21, and 22 in the administrative record submitted by the IEPA in this proceeding, based on that administrative record, Monsanto's Amended Petition for Review of Adverse Trade Secret Determination, the Response to Amended Petition of the IEPA, and the supporting memorandum submitted with this motion.

Respectfully submitted,

MONSANTO COMPANY

By: 
One of Its Attorneys

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

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MEMORANDUM IN SUPPORT OF PETITIONER'S
MOTION FOR PARTIAL DECISION

INTRODUCTION

It is undisputed that three of the documents at issue, Exhibits 16, 21 and 22, pertain to facilities and processes that Monsanto never built or used at the Krummrich plant. See Monsanto's Amended Petition for Review of Adverse Trade Secret Determinations (the "Amended Petition"), the Response to Amended Petition of the Illinois Environmental Protection Agency ("IEPA") (the "Response"), and the administrative record for this appeal. Information relating to facilities and processes that are never built or used are not subject to the disclosure requirement of Section 7(d) of the Environmental Protection Act. Ill. Rev. Stat., ch. 111 1/2, § 1007(d). Therefore, the IEPA's determination

disposal facility pursuant to the permit application that included the chart. Amended Petition, ¶¶ 4 and 5.

The IEPA admits that the contested chart was included in Monsanto's permit application for the incinerator and further admits that Monsanto never built that incinerator and withdrew its application. The IEPA also admits that nothing was done with the wastes listed in the chart pursuant to the withdrawn permit application which included Exhibits 21 and 22. Response, ¶ 4.

Exhibit 16 was part of permit Application No. 8406008 for a proposed new manufacturing process for a group of Monsanto products called "Santoflex." In Exhibit 16 Monsanto disclosed the precise chemical composition of the wastes from this process. Subsequently, Monsanto decided not to use this new process and withdrew its permit application. None of the wastes described in Exhibit 16 were placed in landfills or other disposal facilities pursuant to the application. Amended Petition, ¶ 6.

The IEPA admits the basic purpose of this permit application and further admits that Monsanto decided not to use this process and withdrew the application. The IEPA also admits that none of the wastes described in the application were placed in landfills or other disposal facilities pursuant to the withdrawn permit which included Exhibit 16. Response, ¶ 6.

not authorize landfilling or placing any substance in a waste disposal facility, the issue was the interpretation of the statutory term "to be placed." The application contained information about a residue and sludge that were to be stored on the plant site under the proposed permit. Later, those wastes might be disposed of under the IEPA's supplemental waste stream permit and manifest system. Under this system, American would have to obtain another permit later for any material it disposed of in the future.

The Board held that Section 7(d) should apply only to information relating to the later stage of actual disposal of any substances. The Board reasoned that this later disposal stage 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. Id. at 6.

Similarly, because the incinerator in this case was never built and the Santoflex process was never used, the residues and other materials described in Exhibits 16, 21 and 22 were anticipated waste products only. They were never disposed of in the unbuilt incinerator relating to

Exhibits 21 and 22 and never even generated by the unused process relating to Exhibit 16.

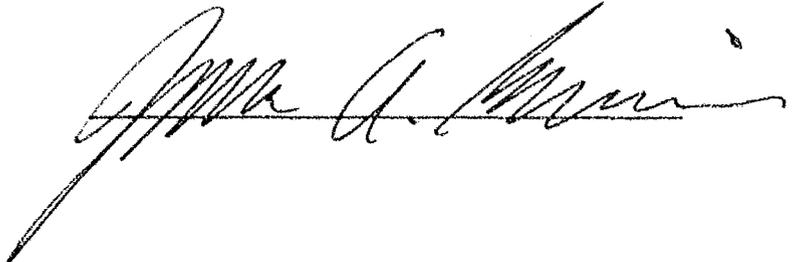
Moreover, if Monsanto had stored any of the materials noted in Exhibits 21 and 22 at the Krummrich plant, Monsanto would have to obtain a permit to dispose of them off-site, just as American had to do in Outboard Marine. At that point, the data relating to that disposal permit would fall under Section 7(d). Under Outboard Marine, information about the anticipated residues that are generated by a process that actually is used but that remain on the plant site do not fall under Section 7(d). Hence, information about the materials that were to be involved in a facility that was never built and in a process that was never used on the plant site cannot fall under the disclosure requirement of Section 7(d).

CONCLUSION

It is undisputed that Exhibits 21 and 22 relate to a facility that Monsanto never built and Exhibit 16 relates to a process that Monsanto never used. As a matter of legal interpretation, Section 7(d) of the Environmental Protection

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James A. Geocaris, an attorney, certifies that he caused copies of the foregoing Petitioner's Motion for Partial Decision Based on the Amended Petition, the Response, and the Administrative Record and Memorandum in Support of Petitioner's Motion for Partial Decision, to be placed in the U.S. Mail, first class postage prepaid, addressed to William D. Ingersoll and Mary V. Rehman, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois, 62706 and to John E. Norton, John E. Norton & Associates, P.C., 105 W. Washington Street, P. O. Box 565, Belleville, Illinois, 62222, on Friday, May 17, 1985 before 5:00 P.M.

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