

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE

TO:

Dorothy Gunn, Clerk
 Illinois Pollution Control Board
 State of Illinois Center
 100 West Randolph Street
 Suite 11-500
 Chicago, Illinois 60601

James A. Geocaris
 Jenner & Block
 One IBM Plaza
 Chicago, Illinois 60611

John E. Norton & Assoc.
 105 West Washington Street
 Post Office Box 565
 Belleville, Illinois 62222

PLEASE TAKE NOTICE that I have today filed with the Office of the
 Clerk of the Pollution Control Board the Response to Motion,
Memorandum

of the Illinois Environmental Protection Agency, a copy of which is herewith
 served upon you.

ENVIRONMENTAL PROTECTION AGENCY
 OF THE STATE OF ILLINOIS

BY: William D. Ingersoll
 William D. Ingersoll
 Attorney
 Enforcement Programs

DATE: May 24, 1985
 Agency File #: 7447

2200 Churchill Road
 Springfield, Illinois 62706
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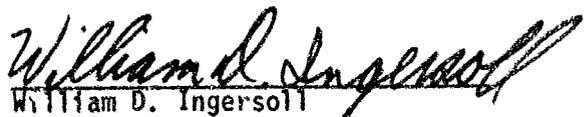
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Petitioner,)
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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY)
and JOHN E. NORTON & ASSOCIATES,)
Respondents.)

RESPONSE IN OPPOSITION TO PETITIONER'S
MOTION FOR PARTIAL DECISION

Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, hereby
requests that Petitioner's Motion for Partial Decision, filed on May-
17, 1985, be DENIED. See attached Memorandum in Opposition.

Respectfully submitted,
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

BY: 
William D. Ingersoll
One of Its Attorneys

William D. Ingersoll
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MEMORANDUM IN OPPOSITION
TO MOTION FOR PARTIAL DECISION

INTRODUCTION

Monsanto has moved the Board for a partial decision in its favor in the above-captioned matter. This motion is stated to be "in the nature of a motion for summary judgement." Monsanto infers too much from the Agency's cited responses. The Agency did not admit sufficient facts to show, as a matter of law, that the wastes indicated in Exhibits 16, 21 and 22 were not subject to disclosure under Section 7(d) of the Illinois Environmental Protection Act. Therefore, Petitioner's Motion for Partial Decision should be denied.

I

Monsanto attempts to imply, in Section I of its memorandum, that the wastes listed in Exhibits 16, 21 and 22 of the Agency Record are only "anticipated." This reads more than what was actually stated into the Agency's Response to Amended Petition in paragraphs 4 and 6.

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The Agency admitted that the wastes were not placed in landfills or hazardous waste treatment, storage or disposal facilities pursuant to those permits. This is not to say that the wastes are, or were, nonexistent.

The Wastes listed in Application No. I8001004 were intended by Monsanto to be incinerated at the Krummrich plant. At the time the information was submitted it properly would have been subject to public review pursuant to Section 7(d) in order that the public could be informed and act accordingly with regard to the substances "to be placed" at the facility.

The wastes listed in Application No. 84060008 may not have been produced up to this time. However, please note in Exhibit 8 with the Agency's Response to Amended Petition, the information and modifications contained in that permit application have been incorporated into Permit No. 84060045. Permit No. 84060045 does not expire until June 30, 1987.

II

The case cited by Monsanto (Outboard Marine Corp. v. IEPA and American Toxic Disposal, Inc., PCB 84-26) does not adequately support

its claim that the waste information contained in Exhibits 16, 21 and 22 does not fall under the disclosure requirements of Section 7(d). With regard to the wastes listed in Application No. 18001004, it cannot be said that these are anticipated wastes. The wastes actually existed. The construction permitting process was completed and barring the change of heart by Monsanto (some two years later), some incineration of these wastes could have legally taken place at the Sauget facility. Also, as mentioned above, the process in Application No. 84060008 is still a legally viable alternative by its incorporation into Permit No. 84060045.

Monsanto seems to imply that these wastes never approached a stage at which the public had a right to know of their existence or identity. Does this mean that citizens in and around Sauget would need no opportunity to inform themselves of the handling of wastes in their neighborhood? The Agency contends that they do. Therefore, at the time the permits were being considered and during the time that they were extant the public surely had a right to know pursuant to Section 7(d), the "quantity and identity" of those wastes.

Subsequent business decisions by Monsanto cannot alter the nature of information contained in Agency files. The court in Bast v. U.S. Dept. of Justice, 665 F. 2d 1251 (D.C. Cir.) considered a similar

issue concerning the status of information in a government agency's files as affected by changed conditions. In Bast, the plaintiff sued for disclosure of documents which were denied him because they were claimed to be "investigatory records." Bast argued that the documents lost this status because the government had subsequently decided not to prosecute. The court rebuffed this argument saying "(t)o the contrary, it is well settled that the agency's purpose in compiling documents, not the ultimate use of the documents, determines whether they are within the exemption..." This holding would be adaptable to the facts in the matter here. The purpose of Section 7(d) would have required disclosure at those earlier times as mentioned above and Monsanto's later decisions have no effect on the status of information within Agency files.

CONCLUSION

Neither the facts in the record nor the Outboard Marine case show, as a matter of law, that the information at issue in this motion is outside the scope of Section 7(d) of the Illinois Environmental Protection Act. Petitioner's motion should therefore be DENIED.

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Respectfully submitted,
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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