

ILLINOIS POLLUTION CONTROL BOARD  
August 9, 1990

WASTE MANAGEMENT OF	)	
ILLINOIS, INC.,	)	
	)	
Petitioner,	)	PCB 90-40
	)	(Permit Appeal)
v.	)	
	)	
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (J. Marlin):

This matter comes before the Board on a motion to withdraw documents dated May 31, 1990 filed by Waste Management of Illinois, Inc. (WMII). That motion requests that the Board "allow the withdrawal of all documents referenced in WMII's Appeal of Permit Conditions filed March 20, 1990." The Board dismissed the permit appeal by its order of May 10, 1990, in response to WMII's May 4, 1990 motion for withdrawal of the appeal.

The documents requested include a November 16, 1989 application for supplemental permit, a August 9, 1989 technical report by a consultant, the February 13, 1990 letter from the Agency that granted the supplemental permit with conditions, and a February 26, 1990 application for an operating permit. WMII asserts that the technical consultant's report includes business information that WMII considers confidential.

The Board notes that WMII did not request protection of any of this information under 35 Ill. Adm. Code 120 when it originally filed it with the Board. As is customary practice for information not properly claimed as protected pursuant to those rules, the Board has distributed copies of the information submitted to each of its members. As is also customary for such information not properly claimed, the Board has imposed no restriction on internal copying of the documents, has not imposed restrictions on inspection and copying by members of the public, and has not kept track of any copies so made.

Upon review of WMII's request for withdrawal of the information it now claims as confidential, the Board encountered statutory provisions that might preclude return of the requested information. By its order of July 3, 1990, the Board requested that the parties brief the Board on issues relating to the return of the requested documents. These issues arise under the State Records Act, Ill. Rev. Stat. 1989, ch. 116, par. 43.4 et seq., and Section 7 of the Environmental Protection Act, Ill. Rev. Stat. 1989, ch. 111½, par. 1007. The Board ordered the parties

to address the general propriety of a return of the requested documents and address a few more specific issues:

1. The applicability or lack of applicability of Ill. Rev. Stat. 1989, ch. 116, par. 43.4 et seq., and Ill. Rev. Stat. 1989, ch. 111½, par. 1007 to the documents at issue;
2. Whether the Board can lawfully return the documents to WMII as requested in light of these statutory provisions;
3. Whether a return of the documents is tantamount to "dispose" for the purposes of the State Records Act;
4. How the Board could grant protection from disclosure in light of 35 Ill. Adm. Code 120 and the facts briefly recited above; and
5. What the Board was to do with regard to copies made and distributed internal to the Board.

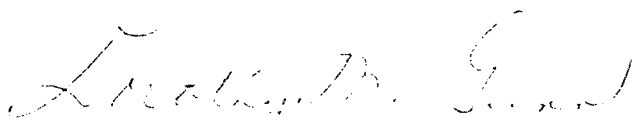
The Board received the Agency's response on July 12, 1990. The Agency states that it "has no objection to the [Board] either granting or denying the motion." The Board has not received a timely response from WMII.

For the foregoing reasons, the Board hereby denies withdrawal of the documents at this time.

As to WMII's claims of confidentiality for these documents, the Board hereby denies them any special protection at this time. WMII has not submitted a claim for protection pursuant to either 35 Ill. Adm. Code 120 or 35 Ill. Adm. Code 101.161. Further, WMII has not informed the Board how any information publicly submitted into the docket can retain any confidential status once it has been subjected to public inspection and copying.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above Order was adopted on the 9th day of August, 1990, by a vote of 6-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board