

ILLINOIS POLLUTION CONTROL BOARD  
September 11, 1986

IN THE MATTER OF: )  
 )  
TRADE SECRET DETERMINATION ) PCB 86-146  
FOR ABBOTT LABORATORIES )

ORDER OF THE BOARD (by J. D. Dumelle):

This matter comes before the Board upon a September 11, 1986 request for a determination of confidentiality filed on behalf of Abbott Laboratories and a September 10, 1986 motion for extension of time to respond to that request filed on behalf of the Illinois Environmental Protection Agency (Agency). Both of these documents were filed under docket R86-10. The unusual sequence of these filings results from Abbott's submission of a justification to the Agency and the Board in response to an Agency request for such justification for certain materials which Abbott had submitted to the Agency under a claim of confidentiality. Those materials have also been submitted to the Board, also under a claim of confidentiality. A letter to the Clerk of the Board requesting a determination of confidentiality apparently was to have accompanied the materials submitted in justification of the claim, and a copy of such letter was apparently received by the Agency. However, the Board has no record of the receipt of that letter. It was only after receipt of the Agency's September 10, 1986 motion that the Board made inquiries to Abbott and the Agency to attempt to determine to what document the motion was responsive. When the Board discovered that the request was missing, Abbott filed it immediately. Further, the Board redocketed the filings under PCB 86-146 as a new case since confidentiality determinations are properly quasi-adjudicatory cases.

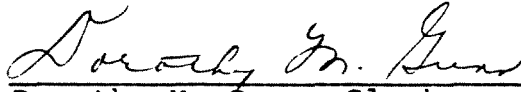
Thus, confidentiality determinations have been requested of both the Agency and the Board concerning the same documents. The Board finds that proceeding before both forums concurrently is procedurally improper since the Board stands in an appellate posture regarding Agency trade secret determinations. Furthermore, such a procedure would result in administrative inconvenience. The materials at issue were originally submitted to the Agency in the underlying regulatory proceeding, and the Agency requested a justification which was submitted to it, thereby triggering the Agency decision process. If the Board were to make a decision at this time, the Agency process might either be rendered moot by the Board's decision, or alternatively, the Board might be required to make a second determination regarding the same information in response to an appeal to the Board of the Agency's decision.

The Board finds that the proper procedure in this case is for the Board to dismiss this proceeding, thereby allowing the Agency to proceed to a determination regarding the information before it. If Abbott disagrees with that determination, it may appeal that decision to the Board which then will have the benefit of arguments by both Abbott and the Agency before it to reach a more fully reasoned decision. Of course, the Board will continue to protect the documents unless there is a final determination that some or all of the materials are subject to public disclosure. This decision renders the Agency's motion moot.

Therefore, the Board hereby denies the Agency's motion for extension of time and dismisses this proceeding.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 11<sup>th</sup> day of September, 1986 by a vote of 6-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board