ILLINOIS POLLUTION CONTROL BOARD
February 7, 1985

CLASSIC FINISHING CO., INC.	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 84-174
	)	Docket A
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by J. Anderson):

On November 21, 1984, Classic Finishing Co., Inc. (Classic) filed a petition for variance from 35 Ill. Adm. Code 215.204(c). The petition was accompanied by an assertion that Appendices C through H thereto constitute trade secrets or other confidential business information protected from disclosure under Section 7 and 7.1 of the Environmental Protection Act (Act). On December 6, 1984, the Board requested, pursuant to 35 Ill. Adm. Code 120.215(a), that Classic justify its claim in accordance with the procedures in Section 120.202, specifically addressing the question as to whether Section 7(c) of the Act (Ill. Rev. Stat. 1983, ch. 111½, par. 1007(c)) applies to the appendices containing plant emission data. On January 9, 1985, Classic amended its claim to eliminate Appendix C and portions of Apendix F from the claimed material and filed a document entitled "Justification of Claim of Trade Secrets and Other Confidential Business Information" (Justification). On January 24, 1985, the Board entered an Order extending its decision period by an additional 10 working days or until February 7, 1985.

In order to determine the status of the material involved, the Board has made two inquiries with regard to the claimed items. In each case, the first question presented is whether the material is required to be disclosed pursuant to Section 7(c) of the Act. If Section 7(c) applies to any portion of the material, that portion must be available to the public because Section 7(c) supersedes all other statutory or regulatory provisions. If the material is not subject to Section 7(c), the next level of inquiry is whether it represents a trade secret under the Act and Part 120 regulations.

I. Is Disclosure required by Section 7(c) of the Act?

In its December 6, 1984 Order, the Board noted that its request for justification was made pursuant to 35 Ill. Adm. Code 120.102. That regulation is a general provision of Part 120 which, among other things, states that "Statutory requirements for disclosure and non-disclosure contained in Section 7 of the

Act...supersedes any conflicting requirements in this Part and should be referenced prior to undertaking any of the procedures contained in this Part." Section 7(c) of the Act is one such statutory requirement. It requires the following:

> "Notwithstanding any other provision of this Title or any other law to the contrary, all emission data reported to or otherwise obtained by the Agency, the Board, or the Department in connection with any examination, inspection or proceeding under this 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."

The Clean Air Act provision referenced (Section 114) requires disclosure of any emission data which the U.S. EPA Administrator (or the State when so authorized) may reasonably require of any person who owns or operates an emission source. Neither the Act nor Board rules define "emission data." However, federal regulation 40 CFR 2.301(a)(2) defines "emission data," in part, as "Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission which has been emitted by the source...or any, combination of the foregoing."

In its Justification, Classic contends that the material which is claimed to represent trade secrets in Appendices D through H is not "emission data" within the meaning of 40 C.F.R. 2.301 or Section 7(c) of the Act. The Board will review each of the claimed appendices or portions thereof separately for the purpose of determining whether "emission data" is involved.

Appendix D

Appendix D contains data on material processed and gallons of formulation applied broken down by machine and totaled for the plant. Classic contends that only the plantwide total of formulation applied is necessary for computing emissions and that, therefore, only the totals must be disclosed. (Justification p. 2.)

Classic appears to concede that information necessary to compute emissions is required to be disclosed by Section 7(c) and the Clean Air Act. The Board concurs with this positon. The federal definition of "emission data" is focused not only on the emissions figure, but also on "information necessary to determine...emissions." (Emphasis added.) The Board notes that emission data in many instances, as in this case, is a calculated rather than monitored number. Absent the data on the amount of coatings used or other such components of the equation, it is impossible to verify the calculated emissions figure. Therefore,

the quantities of formulation must be disclosed. However, it is not necessary to know the quantity of material processed in order to compute emissions. Therefore, the "Material Processed" columns in Appendix D are not subject to Section 7(c).

The question Classic raises with regard to Appendix D is whether the Act requires only plantwide totals to be disclosed or whether it also requires emission data from each piece of equipment within the plant to be disclosed. The pertinent language used in the Act is "all emission data"; therefore, a plain reading of Section 7(c) requires that equipment emission data must be disclosed. This comports with the definition of "emission source" in 35 Ill. Adm. Code 202.102, which identifies both the equipment and the facility as a whole as "emission source." in determining what is the "emission source" invloved (and, therefore, the point of emission), the Board looks to the point at which the source is regulated. In this case, the Petitioner in this proceeding seeks a variance from a rule which applies to individual coating lines. (The "Board Note" following 35 Ill. Adm. Code 215.204(c) actually uses the word "equipment" in describing the applicability of the prescribed paper coating emission limitation.) Therefore, the "coating line" or "equipment" is the emission source of interest. The Board also notes that Petitioner's compliance program relies, in part, on emission reductions from particular pieces of equipment. Given the significance of the individual coating line information to the facts at issue in the variance, the data on emissions by machine may very well be significant to members of the public wishing to participate in this proceeding. For all of the above reasons, machine by machine, as well as plantwide totals of formulation applied must be disclosable.

Appendix E

With regard to Appendix E, Classic reiterates its position taken on Appendix D that only plantwide totals must be disclosed. (Justification, p. 2). As stated above, the Board interprets Section 7(c) as requiring disclosure of all emission data, not just plantwide emission data. Therefore, Appendix E, as a whole, must be disclosable.

Appendix F

In its Justification Classic claims that the items in Appendix F under paragraphs I.b. and II.b contain "the amount of substantiate [sic] coated" and that this is not emission data nor is it necessary to compute emission data. (Justification p. 2). As stated in relation to Appendix D, the Board agrees that the emissions per measure of material coated (which is contained in these paragraphs) is not "information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission which has been emitted by the source" (see 40 CFR 2.301-(a)(2)) Rather, it is a restatement of the quantity of emissions

in terms of the quantity of material produced. This is descriptive of the process but is not "necessary." The necessary emission data is provided to the public elsewhere in Appendix F.

Appendix G

Appendix G, containing Classic's proposed compliance plan, also appears to contain emission data, i.e., estimated reductions in emissions resulting from implementation of a compliance program. Classic has claimed that the entire compliance plan is a trade secret and that it does not contain emission data. While there may be trade secrets or confidential data interspersed in the proposed compliance plan, the proposed reductions in emissions and anticipated emission levels under the variance are clearly "emission data" which must be treated as disclosable under Section 7(c) of the Act. Classic did not specify what, if any, other trade secret material is contained in the compliance plan. Therefore, rather than attempt to redraft the compliance plan to eliminate possible trade secret material, the Board believes it will be more expeditious in this case to hold that the entire plan is disclosable. If Classic chooses, it may submit an amended disclosable compliance plan and withdraw this one by filing a Motion to Withdraw and Substitute within the 35 day period following the date of this Order. (Appendix G, like all other claimed material, will be protected from disclosure during this 35 day period.)

Appendix H

Appendix H which contains Classic's formulation testing program and results clearly does not contain "emission data," and, therefore, is not subject to Section 7(c).

II. Is the Article Involved a Trade Secret?

Having found that the "Material Processed" columns in Appendix D, all of Appendix H, and the claimed portion of Appendix F are not subject to Section 7(c), the next question is whether they contain trade secrets. Under the Act and Part 120, a trade secret must meet a two-pronged test. Basically, it must have been kept secret and it must have competitive value. In its statement of justification Classic states that it has long implemented a program to ensure limited disclosure of the material involved, including storing the material in locked file cabinets, securing its offices in the evening, and limiting admittance to the plant to approved individuals. Classic also states that complete raw material information is accessible only to its technical staff. It notes that management personnel, government regulators, consultants, and its attorneys also have knowledge of the "process information." Classic has included a certification that Classic has no knowledge that the articles involved have ever been published, disseminated, or otherwise become a matter of general public knowledge. (The certification is signed by Tony Sorrentino who the Board assumes is the owner of the

articles involved or the authorized representative of the owner.) On the basis of these statements, the Board finds that the articles involved meet the first "prong" of the two-pronged trade secret test.

With regard to the competitive value of the articles involved, Classic argues that the specialized "job shop" production done by Classic is highly competitive and that Classic has performed extensive research to develop new coatings, adhesives, processes and applications in order to gain a competitive edge by keeping its prices low. Classic argues that disclosure of these articles would result in pricing, product duplication, and market concentration by competitors to the detriment of Classic's competitive position. On the basis of these arguments, the Board concludes that the articles involved meet the competitive value "prong" of the trade secret test as well as the "secrecy" prong. Therefore, the Board finds that the "Material Processed" columns in Appendix D, Appendix H, and the claimed portion of Appendix F represent trade secrets within the meaning of the Act and Part 120.

ORDER

1. For the reasons stated above, the Board finds that the "Material Processed" columns in Appendix D, all portions of Appendix H, and paragraphs I.b and II.b of Appendix F represent trade secrets. The Board hereby orders the Clerk of the Board to continue to protect these articles as trade secrets pursuant to Subpart C of 35 Ill. Adm. Code 120, and to mark these items with the word "DETERMINED" pursuant to 35 Ill. Adm. Code 120.310

2. For the reasons stated above, the Board finds that all portions of Appendix D other than the "Material Processed" columns, as well as all portions of Appendix E and Appendix G are required to be available to the public by operation of Section 7(c) of the Act. The Board hereby orders the Clerk of the Board to continue to protect these articles as trade secrets pursuant to Subpart C of 35 Ill. Adm. code 120 for 35 days from the date of this Order. If within that 35 days the Board does not receive a Motion for Reconsideration or Modification of this Order or a notification of a petition for review of this Order with regard to these articles by a court with proper jurisdiction, the Clerk is ordered to make these articles available for public inspection and to notify the petitioner

If the Board receives a Motion for Reconsideration or Modification of this Order or a notification of a petition for review of this Order with regard to these articles by a court with proper jurisdiction, the Clerk is ordered to continue to protect these articles as trade secrets pursuant to Subpart C of 35 Ill. Adm. Code 120 until otherwise ordered by the Board.

IT IS SO ORDERED.

Board Member Theodore Meyer dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 7th day of February, 1985 by a vote of 4-1.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board