

ILLINOIS POLLUTION CONTROL BOARD
January 24, 1985

TECUMSEH MANAGEMENT CO.,)	
)	
Petitioner,)	
)	
v.)	PCB 84-170
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY AND AMAX)	
COAL COMPANY, INC.,)	
)	
Respondent.)	

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

On December 20, 1984, the Board entered a temporary "conditional non-disclosure order" with regard to a document described as a "Pro Forma Balance Sheet." Finding that the Application for Non-Disclosure relating to this document failed to conform to 35 Ill. Adm. Code 101.107(c)(3) and failed to provide the Board with adequate information to make an informed decision on the question of confidentiality, the Board allowed the Agency and the Petitioner until January 7, 1985 to submit supporting material meeting the requirements of 35 Ill. Adm. Code 101.107(c)(3).

On January 4, 1985, Tecumseh Management Company (Tecumseh) filed a Motion in Support of Application for Non-Disclosure providing additional supporting information. Tecumseh states that "the information in the Pro Forma Balance Sheet is critical to the business operations and varying [sic] existence of Tecumseh Management Company in that disclosure of said information will destroy the ability of Tecumseh Management Company to negotiate with and secure contract buyers for the coal and related products produced by Tecumseh Management Company." Tecumseh further states that to its knowledge the only persons who are familiar with the information on the Pro Forma Balance Sheet are "the directors of Tecumseh Management Company, the CPA's and attorneys for Tecumseh Management Company, the President of the Harrisburg National Bank, Harrisburg, Illinois, and certain persons, agents, board members [sic] or employees of the Environmental Protection Agency of the State of Illinois." (See Motion in Support, p. 2.) Although Tecumseh does not state how long the information has been limited for disclosure, we note that the document in question is the work product of Tecumseh's attorneys and CPA's and is dated October 1, 1984. Therefore, we can infer that the information as compiled in this document has been in existence for no more than four months.

On the basis of the information provided in the Motion in Support of Application for Non-Disclosure, which shall be deemed an addendum to the Application for Non-Disclosure, the Board finds that the document entitled "Pro Forma Balance Sheet" represents data having competitive business value and, further, that disclosure of this data has been limited to persons designated by the owner of the data. We, therefore, find that this document represents confidential data within the meaning of Section 7 of the Environmental Protection Act (Ill. Rev. Stat. 1983, ch. 111½, par. 1007) and 35 Ill. Adm. Code 101.107.

The Clerk of the Board is hereby ordered to mark the face of the document entitled "Pro Forma Balance Sheet" with the words "Not Subject to Disclosure" and to protect this document from disclosure to persons other than officers, employees or authorized representatives of this State or of the United States concerned with or for the purpose of carrying out the Act or Federal environmental statutes or regulations.

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 24th day of January, 1985 by a vote of 5-0.

Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board