

ILLINOIS POLLUTION CONTROL BOARD
April 25, 1991

MONSANTO COMPANY,)
)
 Petitioner,)
)
 v.) PCB 91-57
) (Permit Appeal)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by B. Forcade):

On April 16, 1991, the Illinois Environmental Protection Agency ("Agency") filed the Administrative Record of this Permit Appeal. The record states that Exhibits #1, #2, and #13 contain trade secret material. The Board continues to maintain these materials in the Clerk's confidential files.

The Board notes that the Agency record filing does not comport with Board regulations. Board procedural rules at 35 Ill. Adm. Code 120.315 provide:

Section 120.315 Transmission of Article
Between Agencies

Prior to transmitting any article which is claimed or determined to represent a trade secret to another agency, the agency shall insure that the article is properly marked pursuant to Sections 120.305 and 120.310 and is clearly distinguished and segregated from other transmitted materials.

The documents in the exhibits were not segregated. The Agency did not file nine copies of Exhibits #1, #2, and #13 with the trade secret material deleted. Additionally, the procedural rules, at 35 Ill. Adm. Code 120.325, provide for public inspection of certain material pertaining to trade secret determinations:

Section 120.325 Public Access to
Information Related to
Article

- a) A copy of the claim letter submitted pursuant to Section 120.201(a)(1) shall be open to public inspection

- b) Where an article was determined to represent a trade secret prior to the effective date of this Part and no claim letter exists, the agency shall prepare a statement which shall be open to public inspection which names and briefly describes the article.
- c) Where a page, part or portion of an article is claimed or determined to represent a trade secret, a copy of the article shall be open to public inspection, with the part or portion deleted which is claimed or determined to represent a trade secret or which would lead to disclosure of the trade secret.

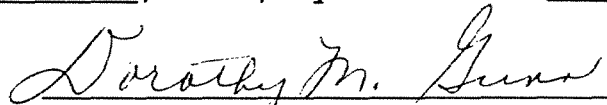
The Board requests comment by the parties, not later than May 16, 1991, on whether the Board needs additional information (such as the claim letters and/or expurgated versions of the documents) in order to satisfy the confidentiality requirements during this appeal, consistent with the above public access requirements. The Board will maintain all of these Exhibits confidential until further Board Order.

The Board notes that on April 17, 1991, the Agency filed a motion to dismiss, and on April 25, 1991, Monsanto filed a letter stating its intention to reply to the motion by the deadline for reply. The Board does not rule on the dismissal motion today.

IT IS SO ORDERED.

J. Theodore Meyer abstained.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 25th day of April, 1991, by a vote of 6-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board