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NOV 14 2003

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

v.

SAINT-GOBAIN CONTAINERS, INC., a Delaware corporation,

Respondent.

PCB NO. 03-22
(Enforcement)

NOTICE OF FILING

To: N. LaDonna Driver
David M. Walter
Hodge Dwyer Zeman
3150 Roland Avenue
P.O. Box 5776
Springfield, IL 62705-5776

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a RESPONSE IN OPPOSITION TO RESPONDENT'S MOTION FOR PROTECTIVE ORDER and MOTION TO COMPEL, copies of which are attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: 
DELBERT D. HASCHEMEYER
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: November 10, 2003

CERTIFICATE OF SERVICE

I hereby certify that I did on November 10, 2003, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box, a true and correct copy of the attached NOTICE OF FILING, RESPONSE IN OPPOSITION TO RESPONDENT'S MOTION FOR PROTECTIVE ORDER and MOTION TO COMPEL


To: N. LaDonna Driver
David M. Walter
Hodge Dwyer Zeman
3150 Roland Avenue
P.O. Box 5776
Springfield, IL 62705-5776

and the original and ten copies was sent by First Class Mail with postage thereon fully prepaid

To: Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
Suite 11-500
100 West Randolph
Chicago, IL 60601

A copy was also sent by First Class Mail with postage thereon fully prepaid

To: Carol Sudman
Hearing Officer
Illinois Pollution Control Board
600 South Second Street
Springfield, IL 62704


Delbert D. Haschemeyer
Assistant Attorney General

This filing is submitted on recycled paper.

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Respondent.)

PCB NO. 03-22
(Enforcement)

**RESPONSE IN OPPOSITION TO RESPONDENT'S
MOTION FOR PROTECTIVE ORDER**

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and respectfully requests that Respondent's Motion for Protective Order filed herein be denied, and in support thereof states:

INTRODUCTION

On or about October 29, 2003, Respondent, Saint-Gobain Containers, Inc., filed a Motion for Protective Order seeking a protective order for certain documents Respondent has assembled for production, in response to a supplemental request to produce, served on Respondent by the Complainant on or about September 15, 2003. Although Respondent has not made the documents available for copying, Respondent has made the documents available for inspection, as long as the specific content of the documents was not copied or otherwise removed. Counsel for the Complainant has reviewed the documents and found the financial documents consist of two pages with information on one side. One of the documents appears to be an unaudited tabulation of balance sheets for several years and the other, income statements for several years. Both documents are unaudited. The rest of the documents consist of four boxes of glass furnace operating records for Respondent's Lincoln facility. There is also a CD which reportedly contains the glass furnace operating information in graph form.

I.

Respondent has not met its burden of establishing a need for a protective order.

Respondent is presenting its Motion for Protective Order pursuant to Sections 101.502(a) and 101.616(d) of the Illinois Pollution Control Board's ("Board") procedural rules (35 Ill. Adm. Code 101.502(a) and 101.616(d)).

Section 101.502(a) of the Board's procedural rules generally provides that the hearing officer has the authority "to rule on all motions which are not dispositive of the proceedings." Since Respondent's Motion for Protection Order is not a dispositive motion, Section 101.502(a) authorizes the hearing officer herein to rule on the motion.

Section 101.616(d) of the Board's procedural rules provides:

(d) The hearing officer may, on his or her own motion or on the motion of any party or witness, issue protective orders that deny, limit, condition or regulate discovery to prevent unreasonable expense, or harassment, to expedite resolution of the proceeding, or to protect non-disclosable materials from disclosure consistent with Sections 7 and 7.1 of the Act and 35 Ill. Adm. Code 130.

Illinois Supreme Court Rule 201(c)(1) provides:

(c) Prevention of Abuse.

(1) *Protective Orders.* The court may at any time on its own initiative, or on motion of any party or witness, make a protective order as justice requires, denying, limiting, conditioning, or regulating discovery to prevent unreasonable annoyance, expense, embarrassment, disadvantage or oppression.

A review of Section 101.616(d) and Supreme Court Rule 201(c) clearly shows that Section 101.616(d) of the Board's procedural rules is patterned after Supreme Court Rule 201(c). Further, it is clear that Supreme Court Rule 201(c) forms the basis for the Board's Rule 101.616(d). Thus, the court's observation in *May Centers v. S. G. Adams Printing and Stationery Co.* (App. 5th Dist. 1987) 106 Ill. Dec. 891.153, Ill. App. 3d 1018, 506 N.E.2d 691, (*appeal denied*) 113 Ill. Dec. 1018, 116 Ill. 2d 561, 515 N.E.2d 111, (*certiorari dismissed*) 108 S.Ct. 1127, 488 U.S. 944, 99 L.Ed. 2d

405 “. . . by its own terms Rule 201(c) requires the party seeking a protective order to show good cause . . . “

is applicable to motions for protective orders under Section 101.616(d) of the Board's procedural rules.

The only allegation in Respondent's Motion for Protective Order describing the material Respondent seeks a protective order for is contained in paragraph 3 of the motion which provides:

3. These documents include confidential financial reports and confidential glass manufacturing operation logs, the disclosure of which to certain persons or entities outside such litigation would harm Stain-Gobain's business.

In support of its motion for a protective order, Respondent attaches the affidavit of Wray

C. Hiser which, in reference to the documents Respondent seeks a protective order for, states:

3. The documents that will be produced include documents that contain confidential data, such as confidential financial reports and confidential glass manufacturing facility operation logs, the disclosure of which to certain persons or entities outside such litigation would harm Saint-Gobain's business.

4. These confidential documents are protected from disclosure by Saint-Gobain by limiting access to such documents. These documents are considered confidential, and they are only made available to the limited number of Saint-Gobain's . . .

An examination of the information provided by Respondent establishes the information is woefully inadequate to establish a need for a protective order. The only factual information provided in support of Respondent's motion is that the documents include financial documents and glass manufacturing operation logs and that the documents are kept, to some extent, confidential by the company. There are conclusory statements, i.e., that disclosure would harm Respondent's business. There is no description of the financial documents or the type of information contained in the financial documents. Nor is there any information as to how or why disclosure might harm

Respondent's business. Clearly, Respondent's motion, on its face, fails to meet the burden entitling Respondent to a protective order.

II.

Any Protective Order issued must be consistent with the Illinois Environmental Protection Act and Board rules which establish the criteria for protecting trade secrets and a procedure for determining if, in fact, information is a trade secret.

Section 101.616(d), in substance being the same as Supreme Court Rule, goes on to state:

... or to protect non-disclosable materials from disclosure consistent with Sections 7 and 7.1 of the Act and 35 Ill. Adm. Code 130.

Section 7 of the Illinois Environmental Protection Act (415 ILCS 5/7) provides, in relevant part:

Sec. 7.

(a) All files, records, and data of the Agency, the Board, and the Department shall be open to reasonable public inspection and may be copied upon payment of reasonable fees to be established where appropriate by the Agency, the Board, or the Department, except for the following:

- (i) information which constitutes a trade secret;

* * *

- (iv) information concerning secret manufacturing processes or confidential data submitted by any person under this Act.

* * *

(c) 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.

* * *

(e) Notwithstanding any other provisions of this Title, or any other law to the contrary, any information accorded confidential treatment may be

disclosed or transmitted to other officers, employees or authorized representatives of this State or of the United States concerned with or for the purposes of carrying out this Act or federal environment statutes and regulations; provided, however, that such information shall be identified as confidential by the Agency, the Board, or the Department, as the case may be. Any confidential information disclosed or transmitted under this provision shall be used for the purposes stated herein.

* * *

(g) All files, records and data of the Agency, the Board and the Department shall be made available to the Department of Public Health pursuant to the Illinois Health and Hazardous Substances Registry Act. Expenses incurred in the copying and transmittal of files, records and data requested pursuant to this subsection (g) shall be the responsibility of the Department of Public Health.

Section 7.1 of the Illinois Environmental Protection Act (415 ILCS 5/7.1) provides, in relevant part:

(a) All articles representing a trade secret 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 considered confidential and shall not be disclosed, except that such articles may be disclosed confidentially to other officers or employees concerned with carrying out this Act or when relevant to any proceeding under this Act. In any such proceeding, the Agency, the Board, the Department or the court shall issue such orders as may be appropriate, including the impoundment of files or portions of files, to protect the confidentiality of trade secrets.

(b) The Board shall adopt regulations under Title VII of this Act which prescribe: (i) procedures for determining whether articles represent a trade secret; and (ii) procedures to protect the confidentiality of such articles. All such regulations shall be considered substantive regulations for purposes of Section 28 of this Act.

35 Ill. Adm. Code 130, *et seq.* of the Board's rules provides the procedure for identification and protection of trade secrets and other non-disclosable information.

Section 130.100 of the Board's rules addressing trade secrets and other non-disclosable information provides, in relevant part, as follows:

Sec. 130.100. Purpose and Applicability

(a) Section 7(a) of the Act provides that all files, records, and data of the Illinois Environmental Protection Agency, the Board, and DNR shall be open for reasonable public inspection except for information which constitutes a trade secret; information privileged against introduction in judicial proceedings; internal communications of the several agencies; and information concerning secret manufacturing processes or confidential data submitted by any person under the Act. [415 ILCS 5/7(a)].

(b) This Part establishes procedures to identify and protect trade secrets and other non-disclosable information.

Section 130.200 of the Board's rules provides the procedure for initiating a claim that an article represents a trade secret and provides, in relevant part, as follows:

Section 130.200. Initiation of a Claim that an Article Represents a Trade Secret

(a) The owner of an article may claim that the article represents a trade secret only by submitting to the State agency the claim letter required by subsection (b)(1) of this Section at the time the owner submits the article to the State agency without simultaneously submitting the claim letter required by subsection (b)(1) of this Section, the article will be considered a matter of general public knowledge and cannot be protected as a trade secret.

(b) The owner of an article seeking trade secret protection must submit the following information to the State agency at the time the owner submits the article to the State agency:

- (1) A claim letter that clearly states the name of the article, briefly describes the article, and states that the article is claimed to represent a trade secret, as defined in 35 Ill. Adm. Code 101.Subpart B and the Act, and
- (2) A copy of the article marked as provided in Section 130.302 of this Part.

(c) The owner of an article seeking trade secret protection must submit to the State agency a statement of justification for the claim meeting the requirements of Section 130.203 of this Subpart. the owner of the article may submit the statement of justification at the time the owner submits the article, or at a later time, but in no event later than the time limit established pursuant to Section 130.202 of this Subpart.

Section 130.201 of the Board's rules referenced in Rule 130.200 establishes the information necessary to claim a trade secret and protect other non-disclosable material:

Section 130.203 Contents of Statement of Justification

A statement of justification must contain the following:

- (a) A detailed description of the procedures used by the owner to safeguard the article from becoming available to persons other than those selected by the owner to have access thereto for limited purposes;
- (b) A detailed statement identifying the persons or class of persons to whom the article has been disclosed;
- (c) A certification that the owner has no knowledge that the article has ever been published or disseminated or has otherwise become a matter of general public knowledge;
- (d) A detailed discussion of why the owner believes the article to be of competitive value; and
- (e) Any other information that will support the claim.

A review of the foregoing statutory and regulatory provisions referred to in Section 101.616(d) clearly establishes the existence of a comprehensive program for the identification and protection of certain identified materials. Those provisions also clearly establish that, except for certain information identified in Section 7 of the Act, it is policy of the State of Illinois that information be available to the public.

Section 101.616(d) of the Board's procedural rules requires that any protective order entered must be consistent with Sections 7 and 7.1 of the Act and 35 Ill. Adm. Code 130. Thus, it is clear a protective order issued pursuant to Section 101.616(d):

- a. cannot restrict access by the public to documents which must be made available to the public pursuant to Section 7 of the Act, i.e., emission data.
- b. should not be issued unless the Respondent has met the same burden of justification required by the Board's rules, i.e., 35 Ill. Adm. Code 130.201 and 130.203.

- c. should not be issued unless Respondent can show a need that the protective order will provide a degree of protection over and above that provided under Sections 7 and 7.1 of the Act and 35 Ill. Adm. Code 130.

A.

THE GLASS FURNACE OPERATING RECORDS ARE NOT ENTITLED TO PROTECTION AS TRADE SECRETS, CONFIDENTIAL RECORDS OR ANY OTHER CATEGORY OF INFORMATION BECAUSE:

1. The Glass Furnace operating records constitute emission data.
2. The Glass Furnace operating records are required to be generated and made available for unconditional inspection and copying pursuant to Respondent's operating permit.

As noted earlier, Section 130.110 of the Board's rules addressing trade secrets and non-disclosable information provides, in relevant part:

(a) All emission data reported to or otherwise obtained by the Illinois Environmental Protection Agency, the Board, or DNR in connection with any examination, inspection or proceeding under the 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 [415 ILCS 5/7(c)].

* * *

(c) In addition to subsection (b) of this Section, information necessary to determine or calculate emission data, including rate of operation, rate of production, rate of raw material usage, or material balance, will be deemed to represent emission data for the purposes of this Section if the information is contained in a permit to ensure that the permit is practically enforceable.

The relevant conditions in Respondent's operating permit provides:

- 1a. Glass production shall not exceed 425 tons/day.

* * *

- bi. Emissions of particulate matter, sulfur dioxide, and nitrogen oxides shall not exceed 12.38, 39.0, and 134.6 lb/hour, respectively, and shall not exceed 54.2, 156.6, and 539.0 tons/year respectively. These annual limits are based on a maximum annual glass production of 142,350 tons/year. Compliance with annual limits shall be determined from a running total of 365 days of data.

- ii. Compliance with the annual emission limitations shall be determined by calculating emissions based on a linear relationship between pound of pollutant emitted per ton of glass produced as established by performance testing.

* * *

- 2ai. The concentration of particulate matter, sulfur dioxide and nitrogen oxides in the effluent stream of the furnace shall be measured by an approved independent testing service as provided below. These tests shall be conducted, documented, and reported in accordance with applicable USEPA Reference Test Methods in 40 CRF Part 60.
- ii. Testing shall also be performed within 1 year of a written request for testing from the Agency, based on a significant change in batch composition or other significant change in the manner of furnace operation.
- iii. In addition to other relevant operating parameters, the glass production rate, type and firing rate of fuel, level of electric boost, temperature, and excess oxygen level of the furnace gas, shall be recorded during testing.

* * *

- 3a. The Permittee shall maintain records of the following items, and such other items as may reasonably be appropriate to allow the Agency to review compliance with the requirements in Condition 1.
 - i. Glass production, ton/day and ton/month
 - ii. Batch formulation, including % cullet
 - iii. Furnace operating conditions, i.e., heat and energy inputs
 - iv. Natural gas consumption, e.g., SCF or therm/month
 - v. Fuel oil consumption, e.g., gallon or Btu/month
 - vi. Electricity consumption, e.g., KW-hour/month
 - vii. Excess oxygen level in the furnace, as measured for routine production purposes.
- b. These records shall be retained for two years and shall be available for inspection and copying by the Agency.

Based on Plaintiff's counsel's review of the four boxes of documents containing Respondent's Glass Furnace operating information, the information contained in the documents is, in substance, the information Respondent's operating permit Condition 2ai and 3a requires Respondent to record and maintain. Further, it is clear that at least some, if not all, of the

information in the four boxes Respondent seeks a protective order for constitutes emission data as that term is defined by 35 Ill. Adm. Code 130.110. Consequently, that information must be available for public inspection pursuant to the provisions of the Clean Air Act, the Illinois Environmental Protection Act and the Board's rules, thus, cannot be made subject to a protective order.

Section 3(b) of Respondent's operating permit requires Respondent to maintain and make available for copying records which set forth the information contained in the four boxes of documents for which Respondent seeks a protective order. The Agency's right to copy those documents is unconditional, that is to say, the Agency's right to copies is certainly not conditional on the Agency agreeing to a protective order. While it is presumably true the Respondent could assert a trade secret claim, the burden would be on the Respondent pursuant to the Board's rules to establish that the information was entitled to protection as a trade secret. This the Respondent has not done.

B.

RESPONDENT HAS NOT MET THE BURDEN OF JUSTIFICATION REQUIRED BY BOARD RULES ENTITLING RESPONDENT TO CONFIDENTIAL TREATMENT OF THE DOCUMENTS.

Section 130.203 of Part 130, Identification and Protection of Trade Secrets and other Non-Disclosable Information, as noted earlier, specifies the information that must be provided in order to have information treated as trade secrets or other non-disclosable material. The information that must be provided includes:

- a. A detailed description of the procedures used to safeguard the information.

Respondent has not provided any description of the procedure, let alone a detailed description of the procedure used to safeguard the material.

- b. A detailed statement identifying the persons or class of persons to whom the information or documents has been disclosed.

Respondent has not identified the persons or class of persons who have access or who possess the documents.

- c. A certification that the owner has no knowledge the article has ever been published or disseminated.

Respondent has provided no such certification.

- d. A detailed discussion of why the owner believes the article to be of competitive value.

Respondent has not provided any discussion, let alone a detailed discussion, of why the documents might be of competitive value.

- e. Any other information to support the claim for confidential treatment.

Respondent has not submitted any other information why the documents would be accorded confidential treatment.

Thus, it is clear Respondent has not met the burden necessary to have the subject documents, both the furnace and financial records, protected under Section 7 and 7.1 of the Act. Consequently, the protection of a protective order under Section 101.616(d) of the Board's Procedural Rules would be entirely inconsistent with the Environmental Protection Act.

C.

RESPONDENT HAS NOT ESTABLISHED A NEED FOR A PROTECTIVE ORDER OVER AND ABOVE THE PROTECTION AFFORDED BY SECTION 7 AND 7.1 OF THE ACT, AND THE BOARD'S RULES GOVERNING TRADE SECRETS AND OTHER NON-DISCLOSABLE MATERIAL.

As noted earlier, the burden is on the Respondent to establish a need for a protective order. Further, as noted earlier, the Act establishes a comprehensive system for the identification and protection of certain information, and further provides that certain information may not be kept confidential. Consequently, in order to establish a need, Respondent must show a need for some

degree of protection not already available. One cannot establish a need for something one already has. This, Respondent has not done.

THE ILLINOIS FREEDOM OF INFORMATION ACT

In addition to the provisions of the Illinois Environmental Protection Act requiring that information be available to the public, the Complainant is also subject to the Illinois Freedom of Information Act ("FOIA") 5 ILCS 140/1 *et seq.*

Section 140/1 describes the philosophy of the State with regard to the production of documents for public inspection, as follows:

1. Pursuant to the fundamental philosophy of the American constitutional form of government, it is declared to be the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees consistent with the terms of this Act. Such access is necessary to enable the people to fulfill their duties of discussing public issues fully and freely, making informed political judgments and monitoring government to ensure that it is being conducted in the public interest.

Section 7 of FOIA sets forth the exemptions to the requirements to disclose information to the public. The only exemptions which might be applicable to the material Respondent seeks a protective order for are those set forth in Section 1(a) and (g), which provides:

§7. Exemptions

(1) The following shall be exempt from inspection and copying:

(a) Information specifically prohibited from disclosure by federal or State law or rules and regulations adopted under federal or State law.

* * *

(g) Trade secrets and commercial or financial information obtained from a person or business where the trade secrets or information are proprietary, privileged or confidential, or where disclosure of the trade secrets or information may cause competitive harm, including all information

determined to be confidential under Section 4002 of the Technology Advancement and Development Act. Nothing contained in this paragraph (g) shall be construed to prevent a person or business from consenting to disclosure.

In *Carbondale Convention Center v. City of Carbondale*, (App. 5th Dist. 1993) 185 Ill. Dec. 405, 245 Ill. App. 3d 614, N.E.2d 539, the trial court entered an order of dismissal which contained a gag order, that is, a court order prohibiting the parties from disclosing the terms of the agreement which resolved their dispute. A reporter for the local newspaper requested a copy of the order resolving the conflict between the parties. The City of Carbondale refused to produce the order citing the court's gag order, claiming the same to be exempt under Section 7(1)(a) of FOIA.

The Court in addressing the claimed exemption under Section 1(a), states:

There is a presumption that public records be open and accessible, subject only to exemptions that are to be narrowly construed. (Citation omitted.) Although section 7 of the Act provides an extensive list of exemptions to disclosure, the burden of proof is on the governmental agency to establish that the documents in question are exempt from disclosure. (Citation omitted.) To meet this burden and to assist the court in making its determination, the agency must provide a *detailed* justification for its claim of exemption, addressing the requested documents specifically and in a manner allowing for adequate adversary testing." (Citation omitted.) Defendant denied the interveners' request just after the trial court entered the gag order, citing section 7(1)(a) as an applicable exemption to the Act. That section provides:

(1) The following shall be exempt from inspection and copying:

(a) Information specifically prohibited from disclosure by Federal or State law or rules and regulations adopted pursuant thereto. Ill. Rev. Stat. 1989, ch. 116, par. 207(1)(1).

Defendant asserts that the trial court's dismissal order strictly prohibits defendant from disclosing the terms or conditions of the settlement agreement, and that such an order constitutes State law. Assuming for purposes of this argument and without so holding that such an order is a "State law," we find this position incompatible with the intent of the Act. In the case at bar, defendant requested the court to impose the gag order. Therefore, the "State law" defendant asserts as exempting disclosure of the

agreement exists, in part, as a result of defendant's efforts to prevent disclosure of the agreement. since such an action contradicts the purpose and intent of the Act under which the exemptions are intended as shields rather than swords, we hold section 7(1)(a) does not apply as a possible exemption in this case.

It is apparent from the foregoing discussion that an agreed protective order would not justify the Agency from declining to provide documents for public inspection under FOIA because of the exemption contained in condition 1(a) of Section 7 of FOIA, 5 ILCS 140/7(a). Further, it is clear that if the Agency were to decline to produce information because such information constitutes a trade secret under Section 7(g), it must have a detailed explanation of why the material constitutes a trade secret. The detailed justification is the kind of information required by the Board rules to justify the protection of information as trade secrets. Thus, it is clear that the burden of proof imposed by Section 101.616(d) of the Board's procedural rules, Section 7 and 7.1 of the Illinois Environmental Protection Act, the Board rules governing the identification and protection of trade secrets and other non-disclosable information (35 Ill. Adm. Code Part 130), and the Illinois Freedom of Information Act is the same. Respondent must provide a detailed justification for the protective order it seeks. Further, it is clear that Respondent has not provided that justification. To provide such as justification, Respondent must prove the four boxes of Glass Furnace operating information do not constitute emission data as defined by the Board rules and must further prove that such information is trade secret information or otherwise entitled to protection. Based on the information to date, it appears unlikely the Respondent will be able to do so. With regard to the claimed financial information, the Respondent must provide a detailed justification for the information to be treated as a trade secret under the Illinois Environmental Protection Act and FOIA and, in order to be entitled to a protective order, must show that such an order is necessary to provide protection that is not provided for trade secrets and other non-disclosable information under the Illinois Environmental Protection Act. This the Respondent has not done.

IN CONCLUSION

In conclusion, Respondent's Motion for a Protective Order should be denied for the following reasons:

1. Respondent fails to meet its burden to show that there is a need for any protective order.
2. Respondent fails to establish that the information Respondent seeks a protective order could not be protected as a trade secret or other non-disclosable material under Section 7 and 7.1 of the A or the Board's rules for identification and protection of trade secrets and other non-disclosable information (35 Ill. Adm. Code, Part 130).
3. Respondent has failed to show that notwithstanding a protective order, Complainant would be required to make the information available anyway, pursuant to the provisions of the Freedom of Information Act (415 ILCS 140/1 *et seq.*).
4. Based on information available to Complainant, it appears that almost all of the material Respondent seeks a protective order for constitutes emission data and could not be the subject of a protective order consistent with Section 7 and 7.1 of the Act and the Board's rules effective thereunder.

WHEREFORE, for the foregoing reasons, Complaint respectfully requests the hearing officer deny Respondent's Motion for a Protective Order.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN,
Attorney General
of the State of Illinois,

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY:



DELBERT D. HASCHEMEYER
Assistant Attorney General
Environmental Bureau

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Dated: 11/10/03

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MOTION TO COMPEL

Now comes the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by Lisa Madigan, Attorney General of the State of Illinois, and respectfully requests the Hearing Officer enter an order ordering Respondent to produce and copy the documents requested in Complainant's Supplemental Request for documents, and in support thereof, states:

1. That on or about September 15, 2003, Complainant served on Respondent Complainant's First Set of Supplemental Interrogatories and Supplemental Request for Production.
2. On or about October 13, 2003, Respondent served its response to Complainant's Supplemental Request for Production and Complainant's First Set of Supplemental Interrogatories.
3. In its response to Complainant's Request for Production, Respondent, after objecting, responds as follows:
 - a. Request to Produce No. 2 requests income tax returns for the entity identified in Supplemental Interrogatory No. 2. In response to Interrogatory No. 2, Respondent identifies Saint-Gobain Corporation and Certain Teed Corporation, both of which are headquartered in Valley Forge, Pennsylvania, as the entities filing income tax returns reflecting the income of Respondent.

Respondent, in response to Request No. 2, states it does not have copies of the income tax returns in its possession.

- b. Request to Produce No. 3 requests annual reports prepared by the entities identified in the Supplemental Interrogatories Nos. 2, 4 and

5 which reflect, relate to, or report on the operations of Saint-Gobain Containers, Inc., or Ball Foster Glass Container Co., L.L.C., for the years 1994 through the present.

Respondent, in response to Request No. 3, states it has none it its possession or control.

c. Request to Produce No. 4 requests Respondent to produce copies of all audited and/or unaudited financial reports prepared by or on behalf of Saint-Gobain Containers, Inc., Ball-Foster Glass Container Co., L.L.C. for Saint-Gobain Corporation, Compagnie de Saint-Gobain or any other parent or subsidiary corporation for this calendar year through the present.

Respondent responds to Request No. 4 stating unaudited financial reports for Ball-Foster Glass Container, L.L.C., which later became Saint-Gobain Containers, L.L.C., which later became Saint-Gobain Containers, Inc., for review and inclusion in the financial reports for Saint-Gobain Corporation will be provided upon entry of a protective order.

d. Request to Produce No. 5 requests copies of all 10(k) reports filed with SEC by Saint Gobain Corporation, Compagnie de Saint Gobain and any parent or subsidiary corporations of Saint-Gobain Containers, Inc., and Ball-Foster Glass Container Co., L.L.C. for the calendar years 1994 through the present.

Respondent responds that it has none in its possession.

e. Request to Product No. 6 requests the production of numerous documents related to the operation of Respondent's glass melting furnace.

Respondent responded to Request No. 6 by saying available furnace records which date back to 1997 will be provided upon the entry of a protective order.

4. With regard to the documents identified in response to Request to Produce No. 4 and 6, Respondent has indicated it will produce those documents for inspection and copying upon the entry of a protective order. Respondent has indicated there are approximately four boxes of documents.

5. The undersigned Assistant Attorney General has briefly reviewed the material Respondent has indicated it will provide upon entry of a protective order and, although not allowed

to copy or make notes regarding the substance of the contents, did observe two sheets of papers purporting to be the financial documents and four boxes of documents which appear to be glass furnace operating records.

6. Complainant has filed herein a Response to Respondent's Motion for Protective Order setting forth the reasons Respondent is not entitled to a protective order which response is incorporated herein by reference.

7. A review of Respondent's response to Complainant's Request to Produce Nos. 2, 3, 4, and 5 appear incredible. Respondent is essentially asking Complainant to accept as credible that it operates and has operated a multi-million dollar company over the past five years without copies of income tax returns filed reflecting its operation, without annual reports which reflect or relate to its operation, without copies of audited or financial reports prepared by or on behalf of Respondent or any parent or subsidiary committee, or any 10(k) reports for Respondent, its subsidiary or parent corporation. In short, it appears Respondent is asking us to believe that Respondent has been operating its multi-million dollar operation over the past few years without generating and maintaining hardly any financial reports. This, Complainant does not find as credible.

WHEREFORE, Complainant respectfully requests the Hearing Officer issue an order ordering Respondent to produce and copy the records being held in their counsel's office and further that they produce all of the financial documents requested.

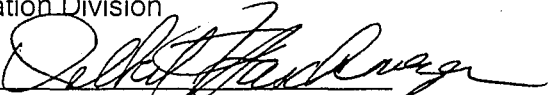
Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,

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Attorney General
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Dated: 11/10/03