

ILLINOIS POLLUTION CONTROL BOARD
February 17, 1994

MARATHON OIL COMPANY,)
)
 Petitioner,)
)
 v.) PCB 94-26
) (Permit Appeal)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by M. McFawn):

On January 14, 1994 Marathon Oil Company (Marathon) filed an application for designation of two documents as "not subject to disclosure" pursuant to Section 7 of the Environmental Protection Act (415 ILCS 5/7) (Act). The two documents at issue are the permit and permit application for Marathon's fluid catalytic cracking unit (FCCU). In its application, Marathon seeks to protect these documents when filed by the Agency as part of the Record in this case. Marathon does not directly request protection of the Permit and Permit Application attached as exhibits to its Permit Appeal, mistakenly believing that those documents were attached to its Variance Petition simultaneously filed and docketed as PCB 94-27.

Under Section 7 of the Act all files and records of the Board must generally be open to reasonable public inspection. Several exceptions are provided, including an exception for information which constitutes a trade secret, and an exception for information concerning secret manufacturing processes or confidential data. It is unclear which type of protection Marathon is seeking. However, it is not necessary for us to make this determination at this time, since there are other limitations which prevent us from granting the relief requested.

Under Section 7(c) of the Act, all air emission data reported to or obtained by the Board under the Environmental Protection Act must be available to the public to the extent required by the federal Clean Air Act (42 USC Section 7401 et seq.) (CAA). We therefore look to the CAA to determine what information must be available for public inspection.

Section 7661b(e) of the CAA provides that each permit and permit application must be available for public inspection. Section 7414(c) allows for the protection of information claimed to be a trade secret which is submitted with a permit application; however, it specifically exempts emission data from this protection. Emission data must therefore remain available for public inspection. Furthermore, Section 7661(e) also specifically provides that the contents of an emissions permit

shall not be entitled to protection under Section 7414(c). Permits must therefore remain available for public inspection as well.

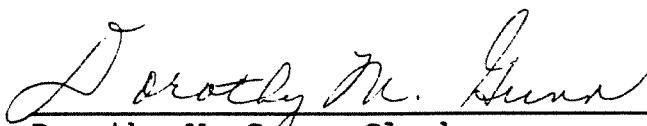
Applying these provisions to petitioner's application, it is clear that we cannot protect the permit from disclosure, since Section 7661b(e) of the CAA requires that it be available for public inspection. In any event, we find no information in the permit itself which would be entitled to protection from disclosure under Section 7 of the Environmental Protection Act, either as a trade secret, or as a secret mechanical process or confidential data. Petitioner's request for designation as not subject to disclosure is therefore denied as to the permit.

It is also clear that the entire Permit Application is not entitled to protection from disclosure, since the permit application contains emission data which must be available for public inspection. However, it is possible that portions of the application do contain information which is entitled to protection. We are therefore directing petitioner to file an application designating which portions are claimed to be confidential. When a properly marked copy of the application is submitted, it will be reviewed under Section 7 of the Environmental Protection Act for determination as to whether the designated materials are entitled to protection from disclosure. The materials for which protection is sought will be protected from disclosure while in the Board's possession until the Board makes its determination and the time for appeal has expired. (See 35 Ill. Adm. Code Section 101.161(c).)

We further direct the petitioner to clarify which protection is sought under Section 7 of the Act. Marathon should specify whether it is seeking trade secret status, or protection as a secret mechanical process or confidential data. (See 35 Ill. Adm. Code Section 101.161 and Part 120.)

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 17th day of February, 1994, by a vote of 6-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board