

ILLINOIS POLLUTION CONTROL BOARD

August 5, 1992

AMOCO CHEMICAL COMPANY, AMOCO)	
PETROLEUM ADDITIVES COMPANY)	
WOOD RIVER, ILLINOIS,)	
)	
Petitioner,)	
)	
v.)	PCB 92-78
)	(Variance)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by B. Forcade):

On July 31, 1992, Amoco filed an amended petition in this matter. The petition claims that some of the documents in the petition contain confidential or trade secret information. The Board will temporarily provide full confidential protection to the documents. However, the filing does not comport with Board procedural rules on the protection of documents. Protection from public disclosure can be afforded to two separate categories of information: non-disclosable information or trade secrets. Board regulations at 35 Ill. Adm. Code 101.161 exclusively provide for protection of non-disclosable information, while 35 Ill. Adm. Code Part 120 exclusively provides for protection of trade secret information. Types of non-disclosable information are specified in Section 101.161. Trade secret is defined by Section 120.103. From the petition it is not clear if Amoco is claiming protection of non-disclosable information or trade secrets.

It appears that petitioner has substantially complied with the rules for non-disclosable information. The Board confusion arises due to the reference to "trade secret". If petitioner claims protection as a "trade secret", as opposed to "non-disclosable information" it must comply with the procedures of Part 120.

Section 7 of the Environmental Protection Act applies to both applications for protection of trade secrets and non-disclosable information. Section 7 provides that certain types of information may not be kept confidential. Information must be disclosed if it is effluent data for NPDES permits, (Section 7(b)), emission data relating to the Federal Clean Air Act, (Section 7(c)) or the quantity or identity of a substance being placed in a landfill, hazardous waste treatment, storage or disposal facility (Section 7(d)). Amoco cannot claim as confidential information which is subject to disclosure under Section 7.

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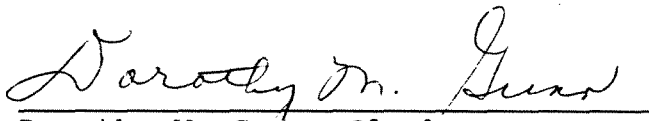
The Board simply cannot invoke the process to determine the protection status of the submitted information until Amoco has selected which process to pursue and provides the requisite showing. Only then can the Board's decision process begin. Prior to acting on Amoco's claim to protect the documents, it must be clarified whether protection of the documents is sought under Sections 101.160 and 101.161 (non-disclosable information) or Part 120 (trade secrets), and the appropriate procedure followed.

The Board notes that, if Amoco claims protection of the information as trade secret, Amoco has the option of filing a waiver of the 10 day decision deadline, in lieu of filing a statement of justification. (Section 120.201(a)(3).) Such a waiver would result in protection of the information as confidential, pending any request by the public or the board for a final determination as to trade secret status. (Section 120.210, 120.215, 120.320.)

Since the filing by Amoco did not comport with Board regulations, the Board will require filing of an amended petition for protection. This filing must clearly state whether protection of the documents is sought as a trade secret or as other non-disclosable information. Such filing must be made within 21 days of the date of this order, August 26, 1992.

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 5th day of August, 1992, by a vote of 4-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board