

ILLINOIS POLLUTION CONTROL BOARD
April 25, 1991

IN THE MATTER OF:)
)
PETITION OF PEORIA DISPOSAL) AS 91-3
COMPANY FOR ADJUSTED STANDARD) (Adjusted Standard)
FROM 35 ILL. ADM. CODE 721)
SUBPART D.)

ORDER OF THE BOARD (by B. Forcade):

On April 9, 1991, Peoria Disposal Company filed a document purporting to contain confidential or trade secret information. The Board will temporarily provide full confidential protection to the document. However, the filing does not comport with Board procedural rules. Protection from public disclosure can be afforded to two categories of information: non-disclosable information, and trade secrets. Board regulations at 35 Ill. Adm. Code 101.160 to 101.161 provide for protection of non-disclosable information and 35 Ill. Adm. Code Part 120 provides for protection of trade secret information. The process and procedures are very similar for both types of information and will be discussed interchangeably in this Order since the Board is not certain which process the Petitioner wishes to invoke.

To invoke such protections the petitioner must comply with two initial filing requirements. First, the Petitioner must submit one copy which contains the protected information and multiple copies of the same document with the protected information expunged. The full copy will be placed in the Clerk's security files, the expunged copies will be placed in the Board's public files. This process is described at 35 Ill. Adm. Code 120.305:

Section 120.305 Owner's Responsibility to
Mark Article

- a) Where an entire article is claimed to represent a trade secret, the owner shall mark the article with the words "TRADE SECRET" in red ink on the face or front of the article.
- b) Where less than an entire article is claimed to represent a trade secret, the owner shall:
 - 1) Mark the article with the words "TRADE SECRET" in red ink on the face or front of the

- 1) Mark the article with the words "TRADE SECRET" in red ink on the face or front of the article;
- 2) Indicate on the face or front of the article which page, part or portion of the article is claimed to represent a trade secret;
- 3) Mark every page, part or portion of the article which is claimed to represent a trade secret with the words "TRADE SECRET;" and
- 4) Furnish the agency with a second copy of the article which is marked pursuant to paragraphs (1) and (2) of this subsection and from which the page, part or portion of the article which is claimed to represent a trade secret is deleted.

The second part of the process involves submitting a document which justifies the claim of protection being asserted by the Petitioner. This document will be subject to public review. Generally, the process is described at 35 Ill. Adm. Code 101.161(b), as follows:

- b) Material will be stamped "Not Subject to Disclosure" only upon written application at the time the material is filed. Procedures governing the identification and protection of trade secrets are found in 35 Ill. Adm. Code 120. An application for non-disclosure other than pertaining to trade secrets shall contain the following:
 - 1) Identification of the precise material, or parts of material, for which non-disclosure is sought;
 - 2) Indication of the particular non-disclosure category into

which the material falls; and

- 3) A concise statement of the reasons for requesting non-disclosure. The application shall be verified by affidavit and contain such information as will inform the Board of the nature of material for which non-disclosure is sought, the reasons why non-disclosure is necessary, and the number and title of all persons familiar with such information, and how long the material has been limited from disclosure.

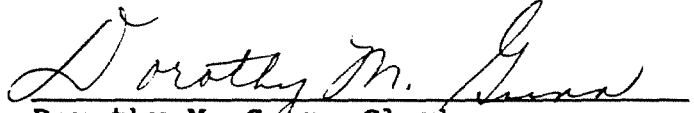
The Application for non-disclosure pursuant to Section 101.161 [or for trade secrets, the claim letter pursuant to Section 120.201(a)(1)] must be open to public inspection. See Section 120.325. Absent a waiver by the claimant, filing the application for non-disclosure or claim letter invokes a process of determination to adjudicate the claim. For trade secrets the time limit of this determination process is 10 days, unless extended. See Section 120.225.

The Board encourages the Petitioner to seek conditional protection for the documents submitted. Under this procedure the Petitioner must specifically waive a final decision on the protection status of the material. The Board will protect the document until a final decision in the proceeding is rendered and then return the protected material to the Petitioner. The process is described at 35 Ill. Adm. Code 101.161(c) "...The Board may enter conditional non-disclosure orders allowing withdrawal by the applicant of the material covered by such order, at which time the Board's ruling on the application shall be based on the record excluding the material so withdrawn." Absent this waiver, the filing of a claim letter or justification will obligate the Board to expeditiously adjudicate the protection status of the claimed material.

Since the filing by Peoria Disposal Company did not comport with Board regulations (it did not contain a claim letter or any waiver of the obligation to make a trade secret determination), the Board will require filing of an amended petition for protection. Such filing must be made within 21 days of the date of this Order.

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 25th day of April, 1991, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board