

In its Supporting Memorandum, ATD appears to make two arguments as to why the article ought not be disclosed. First, ATD states that the article does not relate to emissions from the operation for which the permit was issued. The article is part of a report on a test which took place in St. Louis in November 1981. Although it is not directly stated in the Memorandum, ATD apparently interprets Section 7(c) as requiring the disclosure of "emission" data only if it involves emissions from the permitted operation. The Board disagrees with this interpretation. The pertinent language in Section 7(c) states that "all emission data reported to or otherwise obtained by the Agency... 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" (emphasis added). The St. Louis test information was "reported to" the Agency as a part of the permit proceeding, i.e. in the Permit Application. Thus, under a plain reading of Section 7(c) any "emission data" contained in that information must be disclosed to the public.

The Board believes this disclosure falls within the intent, as well as the letter, of Section 7(c). We note that the Agency specifically requested that ATD submit "all available information on the operation and atmospheric emissions from the pilot process conducted in St. Louis." (See Agency Letter dated August 24, 1983 at p. 4 of the Permit Application.) Section 4 of the Permit Application, which contains the information in question, is a specific response to that request. Given the fact that this is a new process, information from similar projects, such as the St. Louis test, can be very important in estimating environmental impacts in Illinois. There is every reason to believe that this information was pertinent to the review and issuance of the permit involved, and, thus, that it is the type of "emission data" which Section 7(c) was intended to address.

ATD also argues that the St. Louis test cannot be segmented into disclosable and non-disclosable parts without destroying the trade secrets involved with the rest of the test. This argument is irrelevant, since Section 7(c) requires that emission data be available to the public whether or not it involves or implicates a trade secret. Additionally, the Board would like to make it clear that the segmentation of an article subject to a trade secret claim is necessary and appropriate in an instance such as this. The Part 120 procedures clearly envision the trade secret determination addressing the particular "page, part or portion of the article which represents a trade secret." (30 Ill. Adm. Code 120.230.) In the June 20, 1984 Opinion, the Board stated that it would not require the Agency to "white out" or "cut and paste" around trade secret material where the disclosable information involved appears elsewhere in the portions of the document not claimed as a trade secret. However, in this instance, the "emission data" does not appear elsewhere in the document.

(Indeed, this is the only item of "emission data" which the Board identified as not appearing elsewhere in the document.)

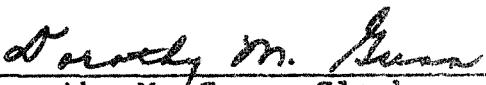
As indicated in the June 20, 1984 Opinion, the Board believes that the phrase in question is "emission data" within the meaning of Section 7(c), and within the meaning of the Clean Air Act Amendments of 1977, if, in fact, something is being emitted into the environment. Since ATD has not argued or demonstrated that the gas involved is not exiting from the system into the environment, the Board must presume that the data in question relates to an emission. As pointed out in the June 20, 1984 Opinion and Order (p. 5) the burden is on the respondents to demonstrate that the superseding statutory mandate for disclosure in Section 7(c) of the Act does not apply. (See 35 Ill. Adm. Code 120.102.) ATD and the Agency have failed to carry this burden.

ORDER

- 1) The Motion for Modification is denied.
- 2) The Agency and the Clerk of the Board are hereby ordered to continue to protect the articles described in the June 20, 1984 Order pursuant to the language of that Order, except that the 35 day time limit for appeal and notification shall run from the date of this Order as specified in Section 103.240 of the Board's Procedural Rules (35 Ill. Adm. Code 103.240).

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 19~~th~~ day of July, 1984 by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board