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SPRINGFIELD

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FILE NO. S-1381

**ENVIRONMENTAL PROTECTION:
Legality of Disclosure of Trade
Secrets by Illinois EPA to
Attorney General's Employees**

**Mr. Michael Mauzy
Acting Director
Illinois Environmental Protection Agency
2200 Churchill Road
Springfield, Illinois 62706**

Dear Mr. Mauzy:

You recently asked my opinion concerning the disclosure of company trade secrets by the Illinois Environmental Protection Agency (EPA) to employees of the Attorney General who need such information to carry out their duties. This inquiry is prompted by subparagraphs 7(b)(ii) and 7.1(a) of the Environmental Protection Act (Ill. Rev. Stat. 1977, ch. 111 1/2, pars. 1007, 1007.1) which provide as follows:

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"§7(b)(ii) * * * [U]pon a showing satisfactory to the Agency, the [Pollution Control] Board or the [Illinois] Institute [of Environmental Quality], as the case may be, by any person that such information, or any part thereof (other than effluent data) would, if made public, divulge methods or processes entitled to protection as trade secrets of such person, the Agency, the Board, or the Institute, as the case may be, shall treat such information as confidential. However, any such 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 purpose of carrying out this Act or the Federal Water Pollution Control Act Amendments of 1972 (P. L. 92-500), or where relevant in any proceedings under such Acts. (Emphasis added.)

* * *

§7.1 (a) All articles representing a trade secret reported to or otherwise obtained by the Agency, the Board or the Institute 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 Institute 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. (Emphasis added.)

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The effect of these subparagraphs is that all information concerning methods or processes entitled to protection as trade secrets and articles representing trade secrets are to be kept

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confidential and not disclosed whether obtained by the Agency, the Board or the Institute except to "other officers or employees concerned with carrying out this Act or when relevant to any proceeding under this Act". Nothing in these provisions states or implies that "other officers or employees" means only officers or employees of the Agency, Board of Institute. The meaning of the plain words used and consequently the intention of the legislature is stated concisely in the qualifying clause. Disclosure may be made to those officers and employees "concerned with carrying out this Act."

Sections 42, 43 and 44 of the Environmental Protection Act (Ill. Rev. Stat. 1977, ch. 111 1/2, pars. 1042 to 1044) authorize the Attorney General to bring actions for injunctions or criminal penalties for violation of the Act. Under sections 42 and 43, the Attorney General is specifically authorized, in addition to representing the Agency, to institute a civil action for an injunction to restrain violations of the Act on his own motion. Under section 44 he may institute criminal proceedings. The Attorney General is therefore certainly an officer concerned with enforcement of the Act. It is a matter of common knowledge that enforcement of the Act involves extended and meticulous examination of the facts. Such examination cannot be deferred

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until a proceeding is actually filed before the Pollution Control Board or in court. Examination of the facts must be made well in advance of giving any advice or instituting any legal proceedings. Therefore in acting for the Agency or under his own authority, the Attorney General and his employees must have all the relevant facts available to them. Failure to transmit technical or other information claimed as a trade secret could cripple efforts of the Attorney General's office to carry out the responsibilities set forth in the Act. It is, therefore, my opinion that the Environmental Protection Act allows disclosure of such trade secrets in confidence to the Attorney General and appropriate employees in his office.

Very truly yours,



A T T O R N E Y G E N E R A L