

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 9, 2010

Tom Reuter
FOIA Officer (Acting)
Illinois EPA
1021 N. Grand Ave. East
P.O. Box 19276
Springfield, Illinois 62794-9276

RE: FOIA Pre-Authorization Request - 2010 PAC-8734

Dear Mr. Reuter:

We have reviewed the Illinois EPA's pre-authorization request and associated documents that your office submitted on July 28, 2010. Jennifer Raber, on behalf of the U.S. Army Corps of Engineers, submitted a Freedom of Information Act ("FOIA") request to the EPA seeking documents concerning Wasteland III, Wasteland Landfill, and Wasteland, Inc. sites. The EPA asserts that the documents are exempt from disclosure pursuant to Section 7(1)(f) of FOIA. 5 ILCS 140/7(1)(f).

We approve the use of Section 7(1)(f) to withhold the requested documents.

Section 7(1)(f) exempts from inspection and copying "preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body." 5 ILCS 140 7(1)(f).

Here, the withheld documents fit within the confines of section 7(1)(f). The first document is a memorandum discussing environmental conditions at a damaged site and potential enforcement remedies available to the EPA. The memorandum expresses opinions concerning the poor operation of the site by the owner and operator. The second document is a memo concerning a request for an affidavit attesting to the fact that a particular facility has not been issued permits. The document is in draft form, and expresses opinions. The third, fifth, and sixth documents are records prepared by a contractor for the USEPA, and they express recommendations and opinions on establishing priority for further site assessments for environmentally damaged sites.

The fourth document also is from a contractor for the USEPA in which opinions have been expressed with respect to inspections and possible enforcement issues regarding an environmentally damaged site. The seventh and eighth documents are memoranda from a contractor for the USEPA in which recommendations and opinions have been expressed with respect to site evaluations and possible further action. The ninth and fifteenth documents are inspection reports created by the USEPA in which opinions and recommendations regarding further assessment of an environmentally damaged site have been expressed. These documents formulate policies regarding the need for further site assessments, investigations, and possible enforcement actions.

The eleventh and sixteenth documents are score sheets establishing priority for further site assessments at environmentally damaged sites. These documents contain opinions as to whether further site assessment is necessary, or whether no further action should be taken. The thirteenth and fourteenth documents are drafts of evaluations conducted by the Illinois Department of Public Health. These documents express opinions regarding whether there is a threat to human health present at an environmentally damaged site.

The tenth and twelfth documents are memoranda from an EPA project manager expressing his opinions on why an investigation at an environmentally damaged site should continue. The seventeenth document contains handwritten notes and comments pertaining to legal issues regarding ownership responsibilities at a particular site. The notes express opinions about how best to proceed with EPA strategy. Finally, the eighteenth document expresses opinions as to whether a particular site would qualify for a permit. The document recommends a particular strategy in determining whether the site should qualify for a permit.

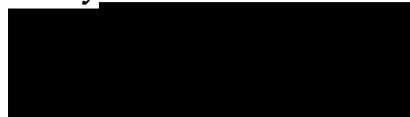
All of the withheld documents are in draft form, and none have been publicly identified or cited by the head of the EPA. Accordingly, the withheld information falls within the confines of Section 7(1)(f) and, therefore, is exempt from disclosure.

If you have any questions concerns, please contact me at (312) 814-5044. This correspondence shall serve to close this matter.

Sincerely,

Cara Smith
Public Access Counselor

By:



Sunil Bhawe
Assistant Attorney General

cc: Jennifer Raber
U.S. Army Corps of Engineers
111 N. Canal St., Suite 600
Chicago, Illinois 60606