



**OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS**

Lisa Madigan
ATTORNEY GENERAL

September 21, 2010

Mr. Tom Reuter
Acting FOIA Coordinator
Illinois Environmental Protection Agency
Via electronic mail
Tom.Reuter@illinois.gov

RE: FOIA Pre-approval Request – 2010 PAC 9589

Dear Mr. Reuter:

We have received and reviewed the Illinois Environmental Protection Agency's (IEPA's) written request for approval of its intention to assert the Section 7(1)(f) exemption in response to a Freedom of Information Act (FOIA) request dated August 26, 2010 from [REDACTED] request sought: (1) Quarterly Groundwater monitoring data from 1993 through 2004 for Southern Illinois Power Cooperative's facility at 10825 Lake of Egypt Road in Marion, Illinois; and (2) a February 3, 2009 memorandum from Marcia Willhit, Chief of the IEPA's Bureau of Water to IEPA Director Douglas Scott re: Assessment of Ash Impoundments permitted within the State of Illinois. IEPA has indicated its intention to withhold the requested memorandum, pursuant to Section 7(1)(f).

Section 7(1)(f) of the Freedom of Information Act allows withholding of:

[p]reliminary drafts, notes, recommendations, memoranda or other documents in which opinions are expressed, or policies or actions 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).

In *Harwood v. McDonough*, 344 Ill. App. 3d 242 (1st Dist. 2003), the Illinois Appellate Court ruled that "as a matter of public policy, section 7(1)(f) exempts from disclosure predecisional materials used by a public body in its deliberative process." *Id.* at 247. In considering the matter,

the *Harwood* court adopted the defendant's argument that the word "preliminary" does not refer to the "posture of the particular document sought to be disclosed" but rather to "predecisional intra-agency communications." *Id.* at 247-248. The court noted that no previous Illinois cases interpreted the use of the word preliminary and, as such, stated that it was helpful to look to cases interpreting the parallel language of the Federal Freedom of Information Act. The court determined that the exemption is intended to protect "predecisional, deliberative communications that are part of an agency's decision-making process." *Id.* at 248 (quoting *Parmalee v. Camparone*, No. 93 C 7362, 1998 WL 704181 (N.D. Ill October 1, 1998)).

The record at issue appears to fall within the scope of the Section 7(1)(f) exemption. As IEPA has explained, this internal memorandum consists of preliminary evaluations and recommendations with regard to quantifying the environmental threats posed by ash impoundments. It is our understanding that IEPA staff considers these recommendations in determining enforcement options, priorities and strategies with regard to environmental hazards. As such, this record is encompassed by the language of the Section 7(1)(f) exemption, because it constitutes part of the IEPA's deliberative process in determining how to proceed with regard to enforcement of environmental regulations in relation to ash impoundments. Further, IEPA has indicated that this record has not been publicly cited and identified by the head of the public body. Accordingly, IEPA has met its burden of demonstrating that this record is exempt from disclosure under Section 7(1)(f).

If you have any questions, please feel free to contact me at (217) 782-9078. This letter shall serve to close this file.

Sincerely,

Cara Smith
Public Access Counselor

By: 

Matthew M. Sebek
Assistant Attorney General, Public Access Division

cc: 

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