



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

**Lisa Madigan**  
ATTORNEY GENERAL

November 16, 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 7711

Dear Mr. Reuter:

We have received from the Illinois Environmental Protection Agency (IEPA) a written notice of its intention to assert the Section 7(1)(f) exemption in response to a Freedom of Information Act (FOIA) request submitted by [REDACTED] of the Wimbiscus Law Firm. [REDACTED] FOIA request sought copies of various categories of documents relating to the DePue/New Jersey Zinc/Mobil Chemical Corp facility in Lake Depue, including draft and final planning documents, investigation plans for the overall site, project management plans, field sampling plans, IEPA review comments on draft plans, reports and other docs from USEPA, IDNR, ISGS, Army Corp of Engineers. The IEPA claims that 35 responsive records are exempt under Section 7(1)(f) because they contain opinions or relate to the formulation of policies or actions by the IEPA.

Section 7(1)(f) of the Freedom of Information Act (5 ILCS 140/7(1)(f)) 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.

In *Harwood v. McDonough*, 344 Ill. App. 3d 242 (1<sup>st</sup> 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)).

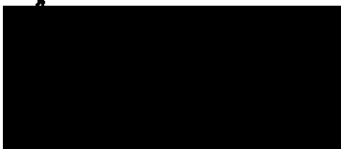
With respect to the IEPA's Section 7(1)(f) assertion, the 35 documents at issue appear to fall within the scope of the Section 7(1)(f) exemption. IEPA has explained that these documents consist of the preliminary and draft evaluations and recommendations of IEPA staff with regard to quantifying the environmental threats present at the site in question. These recommendations are considered in determining enforcement options, priorities and strategies with regard to polluting entities. Such records are clearly encompassed by the language of the Section 7(1)(f) exemption, because they constitute part of the IEPA's deliberative process in determining how to proceed with regard to enforcement of environmental regulations in relation to the site in question. Further, IEPA has indicated that the records have not been publicly cited and identified by the head of the public body. Accordingly, IEPA has met its burden of demonstrating that the records are 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.

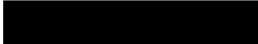
Sincerely,

Cara Smith  
Public Access Counselor

By

  
Matthew M. Sebek  
Assistant Public Access Counselor

cc:

  
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