

6332-001

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OCT 06 2003

STATE OF ILLINOIS  
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD

JO'LYN CORP., )

Petitioner, )

vs. )

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )

Respondent. )

PCB 04-49  
(Permit Appeal--Land)

**NOTICE OF FILING**

To: Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

PLEASE TAKE NOTICE that on this 6<sup>th</sup> day of October 2003, there was filed with the Illinois Pollution Control Board, **Petitioner's Appearance and Permit Appeal**, which are attached and herewith served upon you.

JO'LYN CORP.

By:

  
Elizabeth S. Harvey  
One of Its Attorneys

Michael J. Maher  
Elizabeth S. Harvey  
SWANSON, MARTIN & BELL  
One IBM Plaza, Suite 3300  
330 North Wabash Avenue  
Chicago, Illinois 60611  
Telephone: (312) 321-9100  
Firm I.D. No. 29558

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CERTIFICATE OF SERVICE

I, the undersigned non-attorney, state that I served a copy of Petitioner's Appeal and Permit Appeal to the IEPA Division of Legal Counsel via U.S. Mail at One E. Wacker Drive Chicago, IL 60611 on or before 5:00 p.m. on October 6, 2003. STATE OF ILLINOIS Pollution Control Board

  
\_\_\_\_\_  
Jeanette M. Podlin

[x] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

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*Pollution Control Board*

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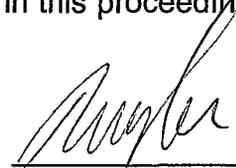
Respondent. )

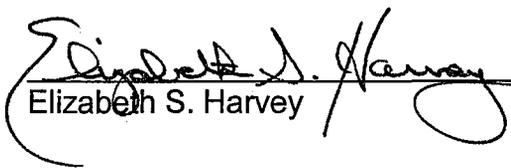
PCB 04-49  
(Permit Appeal--Land)

**APPEARANCES**

We hereby file our appearances in this proceeding, on behalf of petitioner

JO'LYN CORP.

  
\_\_\_\_\_  
Michael J. Maher

  
\_\_\_\_\_  
Elizabeth S. Harvey

Michael J. Maher  
Elizabeth S. Harvey  
Swanson, Martin & Bell  
One IBM Plaza, Suite 3300  
330 N. Wabash Avenue  
Chicago, IL 60611  
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 Respondent. )

STATE OF ILLINOIS  
Pollution Control Board

PCB 04- 49  
(Permit Appeal--Land)

**PERMIT APPEAL**

Petitioner, JO'LYN CORP. ("Jo'Lyn"), by its attorneys Swanson, Martin & Bell, hereby appeals from respondent the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY's ("Agency") September 9, 2003, decision denying Jo'Lyn's request land permit. This appeal is filed pursuant to Section 40 of the Environmental Protection Act ("Act") (415 ILCS 5/40) and Subpart B of Part 105 of the Board's procedural rules (35 Ill.Adm.Code 105.Subpart B).

1. Jo'Lyn is a proper petitioner pursuant to Sections 105.202(a) and 105.204(a) of the Board's procedural rules. 35 Ill.Adm.Code 105.202(a), 105.204(a).

2. The petition is timely, as the Agency issued its decision denying the requested permit on September 9, 2003. The Agency's decision is attached as Exhibit A.

3. Jo'Lyn's process uses granulated bituminous shingle material ("GBSM"), which is created during the manufacture of shingles. The GBSM consists of cut-out tabs, overruns, and damaged shingles. Jo'Lyn purchases the GBSM from shingle manufacturers, and then grinds the material. The ground material, known as "Eclipse

Dust Control,” is then sold to customers for paving and dust control uses, including parking lots, driveways, animal feed areas, bike paths, and walking paths. Eclipse Dust Control has a number of benefits, including noise control and the elimination of dust, requires no seal coating, and is long-lasting.

4. Jo'Lyn spoke with the Agency a number of times regarding whether it needed a land permit for its operations, and engaged in correspondence and meetings with the Agency on that issue. Despite a 1993 Agency “solid waste determination” finding that GBSM is not a solid waste when used for pavement surfaces, the Agency directed Jo'Lyn to apply for a land permit.

5. Jo'Lyn's permit application was received by the Agency on August 14, 2003. On September 9, 2003, the Agency issued its decision denying the application. (See Exhibit A.) The first reason given for denial of the application is a failure to contain documentation of local siting approval. The Agency has apparently determined that Jo'Lyn's facility is a waste storage site and/or a waste treatment facility.

6. However, the GBSM used by Jo'Lyn is not a “waste.” In fact, the Agency has previously determined that GBSM is not a “waste.” Because GBSM is not a “waste,” Jo'Lyn's facility is not a waste storage site or a waste treatment facility. No local siting approval is necessary.

7. Likewise, since GBSM is not a “waste,” no permit is needed. Jo'Lyn asks the Board to determine that GBSM is not a “waste,” and to determine that no permit is needed for Jo'Lyn's operation.

8. The other two reasons given by the Agency for denial of the permit are technical reasons related to the forms on which the application was submitted, and

informational requirements. Both of those denial reasons are based on Part 807 of the Board's regulations. 35 Ill. Adm. Code Part 807. However, Part 807 applies only to solid waste facilities. Since GBSM is not a "waste," Part 807 is inapplicable.

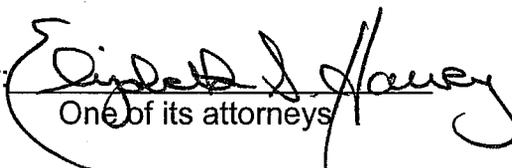
9. Jo'Lyn's process of converting GBSM into "Eclipse Dust Control" is an environmentally friendly process, which provides a better dust control and paving process than other alternatives. Jo'Lyn's process neither uses any "waste," nor creates any "waste."

10. Thus, Jo'Lyn seeks the following from the Board: a) a finding that GBSM is not a "waste"; b) a finding that Jo'Lyn does not need a Part 807 permit; and c) such other relief as the Board deems appropriate.

WHEREFORE, Jo'Lyn asks the Board: to find that GBSM is not a "waste"; to find that Jo'Lyn does not need a Part 807 permit; to find that the reasons given for the Agency's denial of the permit application were erroneous; and to order such other relief as the Board deems appropriate.

Respectfully submitted,

JO'LYN CORP.

By:   
One of its attorneys

Michael J. Maher  
Elizabeth S. Harvey  
Swanson, Martin & Bell  
One IBM Plaza, Suite 3300  
330 North Wabash Avenue  
Chicago, IL 60611  
312/321-9100  
Firm I.D. No. 29558



# ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276, 217-782-3397  
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601, 312-814-6026

ROD R. BLAGOJEVICH, GOVERNOR

RENEE CIPRIANO, DIRECTOR

217/524-3300

September 9, 2003

CERTIFIED MAIL  
7002 2030 0001 1879 6132

Jo'Lyn Corp.  
Kathy Powles  
P.O. Box 638  
Harvard Illinois 60033

Re: 1118095005 -- McHenry County  
Ben's Roofing, Inc.  
(Kathy Powles)  
Log No. 2003-308  
Permit File

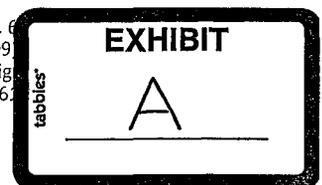
Dear Ms. Powles:

This will acknowledge receipt of your Application for a Permit to store and recycle granulated bituminous shingle material (GBSM), dated August 12, 2003, which was received by the Illinois Environmental Protection Agency ("Illinois EPA") on August 14, 2003.

Your application is denied.

You have failed to provide proof that granting this permit would not result in violations of the Illinois Environmental Protection Act (Act). Pursuant to 35 Ill. Adm. Code 807.207, upon application for permit, the permittee must demonstrate compliance with all applicable provisions of 35 Ill. Adm. Code, Part 807. Section 39(a) of the Act (415 ILCS 5/1 et seq.) requires the Illinois EPA to provide the applicant with specific reasons for the denial of permit. The following reasons are given:

1. The application does not contain documentation of local siting approval and a completed application Form LPC-PA8. Pursuant to Section 3.330 of the Illinois Environmental Protection Act (Act), a waste storage site and waste treatment facility constitute a "Pollution Control Facility". Section 39.2 of the Act requires the county board of the county or the governing body of the municipality to approve or disapprove the request for local siting approval for each pollution control facility, which is subject to such review. Pursuant to 35 Ill. Adm. Code 807.205, Form LPC-PA8 must be completed and documentation of local siting submitted with your application for permit. In accordance with Section 39(c) of the Environmental Protection Act, the Illinois EPA may not grant a permit for the development or construction of a new pollution control facility unless the applicant submits proof to the Agency that the location of the facility has been approved



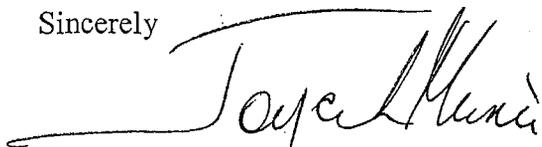
by the County Board of the county if in an unincorporated area, or the governing body of the municipality when in an incorporated area, in which the facility is to be located.

2. The application is not submitted on original forms as required by 35 Ill. Adm. Code 807.205(c). The following completed forms and required additional information are required: LPC-PA1, LPC-PA3, LPC-PA4, LPC-PA8 and LPC-PA16.
3. A technical review was not completed on your application. However, the following items were discovered to be missing from the application. Each item is required in accordance with 35 Ill. Adm. Code 807.207 and identified on Form LPC-PA3.
  - a. The application did not include a site name.
  - b. The application did not include the required applicant information.
  - c. The application did not include location information.
  - d. The application did not include facility information.
  - e. The application did not include the information required for waste management units located outdoors.
  - f. The application did not include an inspection plan.
  - g. The application did not include an operating record.
  - h. The application did not include a closure plan.

Within 35 days after notification of the final permit decision the applicant may petition for a hearing before the Illinois Pollution Control Board to contest the decision of the Illinois EPA, however, the 35-day period for petitioning for a hearing may be extended for a period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Illinois EPA within the 35-day initial appeal period.

Should you wish to reapply or have any questions regarding this application, please contact Mary Riegle at 217/524-3329.

Sincerely



Joyce L. Munie, P/E.  
Manager, Permit Section  
Bureau of Land

JLM:MR\mls\031161.doc