

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PARTYLITE WORLDWIDE, INC.,	)	
	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB No. 08-32
	)	(Air-Permit Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY	)	
	)	
Respondent.	)	

**NOTICE OF FILING**

TO: Attached Service List

PLEASE TAKE NOTICE that on February 20, 2008, I filed with the Clerk of the Illinois Pollution Control Board, Respondent's Post-Hearing Brief and Certificate of Service, a copy of which is attached and served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: Gerald T. Karr  
 Gerald T. Karr  
 Senior Assistant Attorney General  
 Environmental Bureau  
 69 West Washington Street  
 Suite 1800  
 Chicago, Illinois 60602  
 (312) 814-3369

DATED: February 20, 2008

**THIS FILING IS SUBMITTED ON RECYCLED PAPER**

**SERVICE LIST**

Eric Boyd  
Meagan Newman  
Seyfarth Shaw  
131 South Dearborn Street  
Suite 2400  
Chicago, Illinois 60603-5803

Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center, Suite 11-500  
100 West Randolph Street  
Chicago, Illinois 60601

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**RESPONDENT ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S  
POST-HEARING BRIEF**

**Introduction**

The facts are not in dispute, Petitioner, Partylite Worldwide, Inc. ("Partylite"), on or about September 28, 2005, applied for a Federally Enforceable State Operating Permit ("FESOP"), utilizing a Clean Air Act Permit Program ("CAAPP") application for its candle making operation. (January 29, 2008, Hearing Transcript, p. 8 and Exhibit A to the transcript). On or about November 3, 2005, Respondent, Illinois Environmental Protection Agency ("Illinois EPA"), issued a CAAPP Application Completeness Determination. (January 29, 2008, Hearing Transcript, p. 8). Finally, at the time of the January 29, 2008 hearing, Illinois EPA had not acted on Partylite's permit application. (January 29, 2008, Hearing Transcript, p. 8).

**Applicable Statutes**

Illinois EPA's CAAPP became effective upon approval from the United States Environmental Protection Agency ("US EPA"). US EPA approved Illinois' CAAPP on December 4,

2001. (66 FR 62946). Illinois' CAAPP is contained in Section 39.5 of the Illinois Environmental Protection Act, ("the Act") 415 ILCS5/39.5 (2006). A source can seek an exclusion from CAAPP pursuant to paragraph 1.1 of Section 39.5 of the Act. 415 ILCS 5/39.5 (1.1) (2006). To take advantage of this exclusion a source had to seek a permit containing federally enforceable conditions within a State operating permit issued pursuant to Section 39(a) of the Act. 415 ILCS 5/39.5 (1.1) (a). This application had to be submitted no later than 9 months after the effective date of Illinois' CAAPP or by September 4, 2002. Thereafter, a source could still seek to be excluded from CAAPP and obtain a FESOP but the Act requires that this be done through the CAAPP application process. See Sections 39.5 (3) (c) and 39.5 (5) (u) of the Act. 415 ILCS 5/39.5 (3) (c) and (5) (u) (2006). Section 39.5 (3)(c) also includes a requirement that, "The public notice requirements of this Section applicable to CAAPP permits shall also apply to the initial issuance of permits under this paragraph." 415 ILCS 5/39.5 (3) (c) (2006). In other words, if a source sought exclusion from the CAAPP by obtaining a FESOP, a public hearing would still be required.

**Argument**

The CAAPP permit process is involved and very complicated. Petitioner had the opportunity to be excluded from this process by filing its permit application on or before September 4, 2002. Petitioner did not file its application until November 28, 2005. For this reason Petitioner's application must be processed and reviewed pursuant to the CAAPP process. See Section 39.5(3) of the Act. 415 ILCS 5/39.5 (3) (2006). Petitioner cannot now complain about a process that it must proceed under due to its own inaction. Part and parcel with this process is the public notice

requirements of the CAAPP. In particular Section 39.5(8) (a) provides in part:

- a. The Agency shall provide notice to the public, including an opportunity for public comment and a hearing, on each draft CAAPP permit for issuance, renewal or significant modification, subject to Sections 7(a) and 7.1 of this Act.

Petitioner seeks an order from this Board requiring the Illinois EPA to run roughshod over this process. Petitioner argues that this process can be accomplished in ninety days. However, to grant the relief that Petitioner seeks would be contrary to the stated purpose of the Act and the public policy of the State as embodied in the State Constitution.

This overview was set out by the Illinois Supreme Court in the case, *People of the State of Illinois v. NL Industries*, 152 Ill. 2d 82, 604 N.E. 2d 349, 178 Ill. Dec. 93 (Ill. Sup. 1992). The Supreme Court stated in part as follows:

The Illinois Constitution of 1970 provides that every citizen has a right to a healthful environment. (Ill. Const. 1970, art. XI, § 2.) Section 1 of article XI, in fact, declares it to be the public policy of the State to provide and maintain a healthful environment for the benefit of future generations. (Ill. Const. 1970, art. XI, § 1.) Prior to enactment of the Constitution of 1970, however, common law remedies were available to abate and enjoin public nuisances which caused pollution. At the same time, in 1970, the Illinois General Assembly enacted the Illinois Environmental Protection Act (Ill.Rev.Stat.1989, ch. 111 1/2, par. 1001 *et seq.*). Repealing several statutes, including the sanitary water board act (Ill.Rev.Stat.1969, ch. 19, § 145.1 *et seq.*) and the Illinois Air Pollution Control Act (Ill.Rev.Stat.1969, ch. 111 1/2, § 240.1 *et seq.*), the Act established a unified statewide program to restore, protect and enhance the quality of the environment in the State.

The purpose of this Act was set forth as follows:

"(b) It is the purpose of this Act, as more specifically described in later sections, to establish a unified, statewide program supplemented by private remedies, to restore, protect and enhance the quality of the environment, and **to assure that adverse effects upon the environment are fully considered and borne by those who cause them.**" Ill.Rev.Stat.1987, ch. 111 1/2, par. 1002(b).

(c) The terms and provisions of this Act shall be liberally construed so as to effectuate the purposes of this Act as set forth in subsection (b) of this Section, but to

the extent that this Act prescribes criminal penalties, it shall be construed in accordance with the "Criminal Code of 1961", as amended.

With regard to Air Pollution the General Assembly made the following declaration in Section 8 of the Act:

The General Assembly finds that pollution of the air of this State constitutes a menace to public health and welfare, creates public nuisances, adds to cleaning costs, accelerates the deterioration of materials, adversely affects agriculture, business, industry, recreation, climate, and visibility, depresses property values, and offends the senses.

It is the purpose of this Title to restore, maintain, and enhance the purity of the air of this State in order to protect health, welfare, property, and the quality of life and to assure that no air contaminants are discharged into the atmosphere without being given the degree of treatment or control necessary to prevent pollution.

415 ILCS 5/8 (2006).

One way in which the Illinois EPA achieves the stated declaration is through its various permit programs. The obligation of the Illinois EPA is to fulfill the mandate of the Illinois State Constitution and the Illinois General Assembly by fully and completely reviewing Partylite's permit application. This includes soliciting public comments and holding a public hearing to assure that no adverse effects are imposed upon the environment and more importantly upon the citizens of the State of Illinois through Partylite's operations. There would be absolutely no prejudice to Petitioner in allowing the Illinois EPA the opportunity to fully and completely fulfill this mandate from the General Assembly. In fact Petitioner has contradicted itself on the issue of prejudice. In its Motion for Expedited Review, Petitioner asserts that the Agency's failure to act has impacted Petitioner in its ability to conduct its business. (Partylite's Motion to Expedite Pg 2, Para. 4). But yet at the hearing Petitioner's own witness, Doctor Robert Harrington, answered in the affirmative, the question of whether operations have continued at the facility during the pendency of the permit application

(January 29, 2008 Board Hearing Transcript, Page 9).

Doctor Harrington further testified that outside engineers were utilized in the preparation of the permit application (January 29, 2008 Board Hearing Transcript, Page 9). No doubt this was done due to the complicated nature of a CAAP Application.

To force the Agency to act on this complicated application in the time frame suggested by the Petitioner would deprive the citizens of the State the opportunity to be heard. It would also be contrary to the Act and public policy of the State as embodied in its Constitution. A reasonable timeframe to allow the Illinois EPA to act upon Petitioner's application would be to allow the Illinois EPA to and until September 20, 2008 to complete the application process.

WHEREFORE, Respondent, Illinois Environmental Protection Agency, respectfully request the Illinois Pollution Control Board enter an order giving Respondent to and until September 20, 2008 to act on the application.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By:   
Gerald T. Karr  
Senior Assistant Attorney General  
Environmental Bureau  
69 West Washington Street  
Suite 1800  
Chicago, Illinois 60602  
(312) 814-3369

**CERTIFICATE OF SERVICE**

I, GERALD T. KARR, an Assistant Attorney General in this case, do certify that on this 20th day of February, 2008, I caused to be served by First Class Mail the foregoing Notice of Filing and Respondent's Post-Hearing Brief upon the individuals listed on the attached service list, by depositing the same in the U.S. Mail depository located at 100 West Randolph Street, Chicago, Illinois in an envelope with sufficient postage prepaid.

  
GERALD T. KARR