

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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FEB 20 2008

STATE OF ILLINOIS  
Pollution Control Board

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

**NOTICE OF FILING**

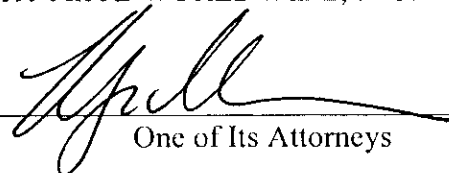
<p>TO: John T. Therriault Illinois Pollution Control Board James R. Thompson Center 100 W. Randolph Street, Suite 11-500 Chicago, Illinois 60601 <b>(Via Hand Delivery)</b></p>	<p>Maureen Wozniak Division of Legal Counsel Illinois Environmental Protection Agency 1021 North Grand Avenue East Post Office Box 19276 Springfield, Illinois 62794</p>
<p>Julie Armitage Division of Legal Counsel Illinois Environmental Protection Agency 1021 North Grand Avenue East Post Office Box 19276 Springfield, Illinois 62794</p>	<p>Gerald T. Karr Office of the Attorney General Environmental Bureau North 69 West Washington Street, Suite 1800 Chicago, Illinois 60602</p>

**PLEASE TAKE NOTICE** that on February 20, 2008, we filed with the Illinois Pollution Control Board an original and ten (10) copies of Post-Hearing Brief in the above-referenced matter on behalf of PartyLite Worldwide, Inc., a copy of which is hereby served upon you.

**DATED: February 20, 2008**

Respectfully submitted,

PARTYLITE WORLDWIDE, INC.

By  \_\_\_\_\_  
One of Its Attorneys

Eric E. Boyd  
Meagan Newman  
SEYFARTH SHAW LLP  
131 South Dearborn Street, Suite 2400  
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(312) 460-5000

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS  
Pollution Control Board

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

**POST-HEARING BRIEF**

NOW COMES, Petitioner PartyLite Worldwide, Inc. ("PartyLite"), by and through its attorneys, SEYFARTH SHAW LLP, and for its post-hearing brief states as follows:

**I. INTRODUCTION**

This matter arises from PartyLite's Petition for Hearing pursuant to Section 40.2(a) of the Illinois Environmental Protection Act, 415 ILCS 5/40.2(a) (the "Act") and Section 105.304 of the Illinois Administrative Code, 35 Ill. Adm. Code § 105.304. PartyLite seeks review of the Illinois Environmental Protection Agency's (the "Agency's") failure to act on PartyLite's CAAPP application. Moreover, PartyLite seeks an order from the Board requiring the Agency to issue PartyLite's requested permit within 90 days.

**II. FACTUAL AND PROCEDURAL BACKGROUND**

On November 2, 2007, PartyLite timely filed a Petition for Hearing, pursuant to Section 40.2(a) of the Illinois Environmental Protection Act (the "Act"), 415 ILCS 5/40.2(a), and Section 105.304 of the Illinois Administrative Code, 35 Ill. Adm. Code § 105.304, the Petition for Hearing sought review of the Illinois Environmental Protection Agency's (the "Agency's") failure to act on PartyLite's CAAPP application.

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On January 29, 2008, a hearing was held before Hearing Officer Bradley Halloran in this matter. At the hearing, PartyLite presented the testimony of Robert Harrington, Ph.D., the Director of Regulatory Safety and Analytical Sciences for PartyLite. [T. 6]<sup>1</sup> The Agency presented no witnesses. The following facts were elicited at the hearing:

- (1) On September 28, 2005, PartyLite submitted an application for an initial FESOP on a CAAPP application form to the Agency for its candlemaking facility located at 601 Kingsland Drive, Batavia, Illinois, pursuant to Section 504 of the Clean Air Act, 42 USC § 7661b(c), and Section 39.5 of the Act. [T. 6-8, Exhibit A].
- (2) On or about November 3, 2005, the Agency sent a notice to PartyLite informing PartyLite that its CAAPP application was complete pursuant to Section 39.5 of the Act. [T. 7, Exhibit A].
- (3) As of the date of the hearing, the Agency has failed to take any action on PartyLite's initial CAAPP application. [T. 10, Exhibit A].

Each of these pertinent facts was further stipulated to by the Agency: "On behalf of the Illinois Environmental Protection Agency, we stipulate to the fact that Party[L]ite did submit the CA[A]PP application on September 28, 2005. They received a Notice of Completeness on or about November 3, 2005, and as of the date of this hearing, there has been no determination made by the Illinois Environmental Protection Agency on that permit application." [T. 10].

The Agency presented no testimony or evidence that might explain its failure to take action with respect to PartyLite's CAAPP application. Moreover, the Agency presented no testimony or evidence that would justify a denial of PartyLite's requested permit.

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<sup>1</sup> Citations to the hearing transcript shall be designated by T. followed by page numbers.

### III. ARGUMENT AND REQUESTED RELIEF

Pursuant to 415 ILCS 5/39.5(5)(j), the Agency must act on initial CAAPP applications within two (2) years after the date of a completed application. The two (2) year time period for Agency action begins to run from the date that a complete application was submitted. Here, PartyLite submitted its completed CAAPP application on September 28, 2005. More than two years have elapsed since that time and the Agency has yet to make any determination with respect to PartyLite's application.

If the Agency fails to act within two (2) years, its failure to act is treated as a final permit action for purposes of judicial review pursuant to Sections 40.2 and 41 of the Act. 415 ILCS 5/39.5(5)(j). The applicant is then entitled to review of the Agency's "final" action pursuant to Section 40.2(a) of the Act and Section 105.304 of the Illinois Administrative Code, 35 Ill. Adm. Code § 105.304.

The Board has before it all of the facts and information necessary for it to reach a determination regarding the Agency's failure to meet the statutory requirements for action on PartyLite's initial CAAPP permit application. The Agency's delay has prejudiced PartyLite and any further delay will cause PartyLite additional prejudice. PartyLite, therefore, requests that the Board issue an Order requiring the Agency to issue PartyLite a FESOP permit, as requested in its application submitted on September 28, 2005, within 90 days.<sup>2</sup> This timeframe allows the Agency sufficient time to review PartyLite's CAAPP permit application and to comply with its public notice and comment obligations. See e.g. *Waste Management, Inc. v. Illinois*

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<sup>2</sup> Furthermore, the Agency has failed to file the record as required by the Board's procedural rules. Pursuant to Section 101.800 of the Illinois Administrative Code, 5 Ill. Adm. Code § 101.800, the Board may enter a judgment by default against the Agency for failure to comply with the Board's procedural rules.

*Environmental Protection Agency*, PCB Nos. 84-45; 84-61; 84-68 (Consolidated)(November 26, 1984)(ordering the Agency to issue an operating permit and supplemental wastestream authorization permits within 21 days of the Board's Order).

#### IV. CONCLUSION

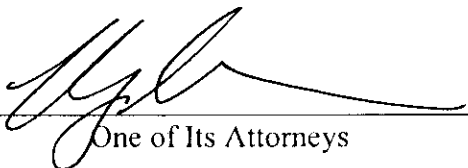
PartyLite submitted its completed initial CAAPP application on September 28, 2005. It has waited over two (2) years and four (4) months for the Agency to take action with respect to its application. The Illinois Environmental Protection Act and the Board's regulations make clear that the Agency must take action within two (2) years from the date of a completed application. PartyLite seeks only to have the Agency do what it is required by law to do. Therefore, PartyLite seeks an Order from the Board requiring that the Agency issue PartyLite's requested CAAPP permit within 90 days.

WHEREFORE, PartyLite respectfully requests that the Board order that the Illinois Environmental Protection Agency issue PartyLite's requested CAAPP permit within 90 days.

**DATED: February 20, 2008**

Respectfully submitted,

PARTYLITE WORLDWIDE, INC.

By  \_\_\_\_\_  
One of Its Attorneys

Eric E. Boyd  
Meagan Newman  
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(312) 460-5000

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**CERTIFICATE OF SERVICE**

I, Meagan Newman, hereby certify that I caused copies of the attached **POST-HEARING BRIEF** to be served on:


John T. Therriault  
Illinois Pollution Control Board  
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**(Via Hand Delivery)**

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Environmental Bureau North  
69 West Washington Street, Suite 1800  
Chicago, Illinois 60602

by United States Mail, first-class postage affixed thereto, at 131 S. Dearborn Street, Chicago, Illinois 60603, on February 20, 2008.



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