

ILLINOIS POLLUTION CONTROL BOARD

October 4, 1973

ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 73-330  
 )  
 OZITE CORPORATION, a Delaware )  
 corporation, )  
 )  
 Respondent. )

ORDER OF THE BOARD (by Mr. Henss)

Respondent has filed a second Motion to Dismiss Count 2 of the Complaint on the ground that: the Environmental Protection Act and Regulations adopted thereunder do not constitute a sufficient guide to the Environmental Protection Agency in the issuance or denial of permits relating to odor control; that the issuance of permit therefore is based upon arbitrary discretion of the Agency in violation of Ozite's right to due process; and in the absence of valid State regulation, the zoning ordinance of the Village of Libertyville preempts the permit requirements of the State Agency.

That Motion is denied.

The guides to Agency action are clear enough from the Statute and Board Regulations. Section 39 of the Act provides that when the Board has, by regulation, required a construction permit or operating permit it shall be the duty of the Agency to issue such permit upon proof by the applicant that the facility, equipment, vehicle, vessel or aircraft will not cause a violation of the Act or Regulations. Section 9(a), Section 3(d) and Section 3(b) of the Statute constitute a wholly reasonable standard by which the Agency can be guided in determining whether to issue or deny permits to install or operate equipment intended to control odors. Therefore, the second Motion to Dismiss Count 2 is denied.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted this 4<sup>th</sup> day of October, 1973 by a vote of 4 to 0.

Christan L. Moffett