

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
PETITION OF APEX MATERIAL	)	
TECHNOLOGIES, LLC FOR AN	)	
ADJUSTED STANDARD FROM	)	AS 2015-002
PORTIONS OF 35 ILL. ADM. CODE	)	(Adjusted Standard – Land)
807.104 AND 810.103, OR, IN THE	)	
ALTERNATIVE A FINDING OF	)	
INAPPLICABILITY.	)	

**NOTICE OF FILING**

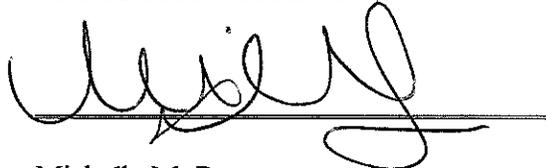
To: Joseph L. Pellis II  
Pellis Law Group, LLP  
901 Warrenville Road, Suite 205  
Lisle, Illinois 60532

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

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the POST-HEARING BRIEF OF THE ILLINOIS EPA, a copy of which is served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY.



Michelle M. Ryan  
Assistant Counsel

Illinois Environmental Protection Agency  
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Springfield, Illinois 62794-9276  
(217) 782-5544

Dated: February 17, 2015

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**POST-HEARING BRIEF OF THE ILLINOIS EPA**

Now comes the Illinois Environmental Protection Agency (“Illinois EPA”) by its attorney, Michelle M. Ryan, and presents its Post-Hearing Brief. As described in more detail in the Recommendation filed in this case on October 9, 2014, and for the reasons that follow, Illinois EPA confirms the recommendation that the adjusted standard petition and alternative relief requested be denied.

**I. BACKGROUND**

APEX Material Technologies, LLC (“APEX”) seeks to treat spent etchant from metal circuit boards. APEX would receive the spent etchant from the generators, store it for up to a week, and process it to create regenerated ammonia etching fluid, copper salts, and wastewater brine. The first two streams would be resold as products, while the third and largest portion would be discharged to the sewer.

APEX’s petition seeks an adjusted standard from a subset of the definitions in 35 Ill. Adm. Code 807.104 and 810.103 for the spent etchant it would be receiving. In the alternative, APEX

seeks a determination from the Pollution Control Board (“Board”) that the spent etchant is not a “waste” as used in its process. The alternative request for relief must logically be addressed first.

## II. THE SPENT ETCHANT IS A RCRA HAZARDOUS WASTE

In its initial recommendation, Illinois EPA noted that the regulations which apply to this process depend on whether the material is hazardous or non-hazardous. Since then, the testimony at hearing and the additional information submitted in APEX’s Post-Hearing Brief filed on February 2, 2015, confirms that at least some, if not all, of the spent etchant is indeed a hazardous waste under the Resource Conservation and Recovery Act (“RCRA”).

APEX has no intention of limiting its acceptance of the spent etchant to non-hazardous wastestreams. Rather, it attempts to deflect attention from the fact that the waste is characteristically hazardous for several constituents. The regulatory level for Chromium [D007] is 5.0 mg/L (35 Ill. Adm. Code 721.124(b)). Two samples from three different potential customers exceeded this level, but APEX contends that because the chromium is a trivalent, not hexavalent form, this regulatory limit should simply be disregarded. Transcript at 16. APEX characterizes this distinction between forms of chromium as “very important,” but for purposes of RCRA it is completely irrelevant. Even when reminded that the Toxicity Characteristic Leaching Procedure (“TCLP”) requires analysis for *total* chromium, APEX admits that *it will not* ensure that the TCLP for total chromium is not exceeded. Transcript at 27. In addition, APEX intends to accept spent etchant containing Arsenic [D004] at up to twice the regulatory level, Cadmium [D006] at up to five times the regulatory level, and Lead [D008] at ten times the regulatory level. APEX’s Post-Hearing Brief, p. 4. Indeed, Arsenic appears to have exceeded the regulatory level

of 5.0 mg/L in three of the ten samples, which is new information that was not brought up until after the hearing. APEX's Post-Hearing Brief, Exhibit A. And even though the testimony at hearing claimed that lead would no longer be found in the spent etchant (Transcript at 57), one sample found 2.5 mg/L. *Id.*

The definition of solid waste in 35 Ill. Adm. Code 721.101 applies to wastes that are also hazardous for purposes of the regulations implementing subtitle C of RCRA. The spent etchant is a solid waste pursuant to 35 Ill. Adm. Code 721.102(a)(1) if it is "discarded." A material is "discarded" if it is "recycled." 35 Ill. Adm. Code 721.102(a)(2)(B). A material is "recycled" if it is "reclaimed." 35 Ill. Adm. Code 721.101(c)(7). A material is "reclaimed" if it is processed to recover a useable product or if it is regenerated. The spent etchant process meets both of these definitions of "reclaimed," because the etchant is regenerated and contaminants including the copper (made into a distinct product that was not part of the original clean etchant) and brine (discharged to the sewer) are removed. The spent etchant is a RCRA solid waste.

APEX is using its own knowledge of potential customers' processes to determine the constituents it will analyze (Transcript pp. 42-44). According to 35 Ill. Adm. Code 722.111, it is the generator of a solid waste that must make a hazardous waste determination. Although APEX claims "it is not possible to measure the periodic table," the RCRA regulations only require testing for a defined list of contaminants, which are applicable to all RCRA solid wastes from any generator. APEX has given no explanation why it cannot meet these requirements that all other companies meet.

Nevertheless, APEX claims its testing protocols will ensure that the spent etchant "does not contain excessive levels of any hazardous constituents." Transcript, p. 17. Just as a woman

cannot be a little bit pregnant, a spent material cannot be a little bit hazardous waste. Any one of the toxicity characteristic constituents above its respective regulatory level renders the spent etchant hazardous and regulated accordingly. Whether the toxic contaminants are “naturally occurring” is not the issue (*see* APEX’s Post-Hearing Brief, p. 2). APEX’s claim that the material is not “disposed” (*see* APEX’s Post-Hearing Brief, p. 3) is not only irrelevant, but also untrue, in that more than half of the incoming material is flushed down the sewer as wastewater. The spent etchant is a RCRA-regulated hazardous waste. As such, it would be inconsistent with federal law to hold that it is not a “waste” in Illinois, as requested by the Petitioner.

**III. THE REQUESTED ADJUSTED STANDARD IS NEITHER APPROPRIATE  
NOR SUPPORTED BY EVIDENCE**

APEX is seeking an adjusted standard from portions of 35 Ill. Adm. Code 807.104 and 810.103. As noted in the Recommendation, these sections solely comprise definitions, which can neither be “violated” nor “complied with.” Moreover, because the spent etchant is regulated as a hazardous waste under RCRA, relief from these sections does not address APEX’s process, nor would it provide any actual relief to APEX or its potential customers. Therefore, the entire request should be considered moot.

The Illinois EPA previously expressed concerns about the testing of incoming spent etchant. APEX’s modification to Condition 5 of the Board’s suggestions does not address these concerns (*see* APEX’s Post-Hearing Brief, p. 4). Illinois EPA believes that the Board’s suggestion on Condition 5 intended to require testing of any incoming loads of spent etchant upon receipt, which should be a minimum requirement.

APEX attempts to discount the regulatory requirement to manifest the hazardous spent etchant by an oblique reference to other companies (*see* APEX's Post-Hearing Brief, p. 5). The processes of these companies were not presented in this case, so it is unclear whether they may meet an exemption from the regulations, or may be operating illegally, or some other scenario. In any case, the practices of those companies do not relate to the issue currently before the Board. In addition, APEX does not have appropriate procedures for the management and reporting of unmanifested shipments of hazardous waste as described in 35 Ill. Adm. Code 725.Subpart E. Indeed, their response to the issue appears to be merely denial. (*See, e.g.*, Transcript pp. 25-6).

APEX is not situated substantially or significantly differently than any other facility seeking to treat waste materials in Illinois. It is not requesting the correct relief and it has not supported its claim to any relief.

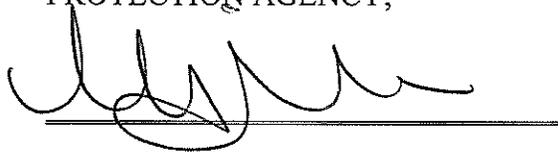
#### IV. CONCLUSION

APEX intends to take hazardous waste, treat it as non-hazardous, and seeks the Illinois Pollution Control Board's blessing on this fiction. This narrative is inconsistent with federal law and cannot be sustained.

WHEREFORE the Illinois EPA recommends that the adjusted standard petition and alternative relief requested be DENIED.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

A handwritten signature in black ink, appearing to read 'Michelle M. Ryan', is written over a horizontal line.

Michelle M. Ryan  
Assistant Counsel

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Dated: February 17, 2015

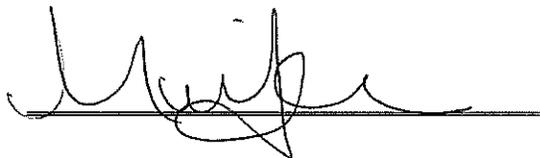
**PROOF OF SERVICE**

I hereby certify that I did on the 17<sup>th</sup> day of February, 2015, send by U.S. Mail with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instrument(s) entitled POST-HEARING BRIEF OF THE ILLINOIS EPA

To: Joseph L. Pellis II	Bradley Halloran
Pellis Law Group, LLP	Hearing Officer
901 Warrenville Road, Suite 205	Illinois Pollution Control Board
Lisle, Illinois 60532	James R. Thompson Center
	100 W. Randolph
	Suite 11-500
	Chicago, Illinois 60601

and the original of the same foregoing instrument via electronic filing on the same date

To: John Therriault, Clerk  
Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601



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