

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

TO: Mr. John Therriault Mr. Bradley P. Halloran
Clerk of the Board Hearing Officer
Illinois Pollution Control Board Illinois Pollution Control Board
James R. Thomson Center James R. Thomson Center
100 W. Randolph Street 100 W. Randolph Street
Suite 11-500 Suite 11-500
Chicago, Illinois 60601-3218 Chicago, Illinois 60601-3218

Michelle Ryan
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62974-9276

PLEASE TAKE NOTICE that on this 24th day of February 2015, I have filed with the Office of the Clerk of the Illinois Pollution Control Board the following document entitled **APEX Material Technologies, LLC's Reply to the Post-Hearing Brief of the Illinois Environmental Protection Agency** which is attached and herewith served upon you.

Respectfully Submitted,

Apex Material Technologies, LLC

By: /s/ Joseph L. Pellis II
Joseph L. Pellis II

Dated: February 24, 2015

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CERTIFICATE OF SERVICE

I, Michael J. Tenuto, the undersigned, an attorney, certify that I have served the attached
APEX Material Technologies, LLC's Reply to the Post-Hearing Brief of the Illinois

Environmental Protection Agency, upon:

Mr. John Therriault
Clerk of the Board
Illinois Pollution Control Board
James R. Thomson Center
100 W. Randolph Street
Suite 11-500
Chicago, Illinois 60601-3218

via Electronic Filing and via FedEx Express on February 24, 2015; and upon:

Mr. Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thomson Center
100 W. Randolph Street
Suite 11-500
Chicago, Illinois 60601-3218

via FedEx Express on February 24, 2015; and upon:

Michelle Ryan
Division of Legal Counsel
Illinois Environmental Protection Agency
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via FedEx Express on February 24, 2015.

/s/ Michael J. Tenuto
Michael J. Tenuto

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APEX MATERIAL TECHNOLOGIES, LLC’S REPLY TO THE POST-HEARING BRIEF OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

Petitioner, APEX Material Technologies, LLC (“APEX”), by and through its attorneys, Pellis Law Group, LLP, provides this Reply to the Post-Hearing Brief of the Illinois Environmental Protection Agency (“IEPA” or the “Agency”). In reply, and in further support of its Petition for a finding of inapplicability, or, in the alternative, for an adjusted standard from portions of 35 Ill. Adm. Code Parts 807.104 and 810.103, APEX states as follows:

I. COPPER AMMONIUM CHLORIDE IS NOT A WASTE

In its Post-Hearing Brief, IEPA continues to cling to the false premise that the Copper Ammonium Chloride (“CAC”) APEX plans to purchase from printed circuit board manufacturers (the “Customers”) is a “waste” as that term has been interpreted by both the Illinois Supreme Court and this Board for the last 35 years. This false premise pervades IEPA’s entire objection to APEX’s plan, and ultimately should be the basis for the Board to reject its arguments.

IEPA continues to ignore the clear precedent established by the Illinois Supreme Court in *Alternate Fuels, Inc. v. Director of the Illinois Environmental Protection Agency*, 830 N.E.2d 444, 455-56 (2004) (“AFI”), which concluded that materials that are returned to the economic mainstream (just like the CAC) are not “discarded materials,” and thus cannot be considered

“waste.” AFI, 830 N.E.2d at 456. IEPA also continues to ignore this Board’s decision in *Southern California Chemical Co., Inc. v. Illinois EPA*, PCB No. 84-51 (September 20, 1984) that dealt with the exact same CAC material that APEX plans to purchase from its Customers, and concluded that the CAC was not a waste. Based upon clear Illinois precedent¹ and the facts of this matter, APEX has demonstrated beyond any doubt that the CAC is not a waste, and therefore cannot be regulated as one.

II. THE APEX PLAN IS FULLY PROTECTIVE OF HUMAN HEALTH AND THE ENVIRONMENT

The ultimate goal of both the IEPA and this Board is the protection of human health and the environment. IEPA seems to have forgotten this fact, and instead is making false assumptions and specious arguments for what appears to be no good reason. If there is any “fiction” involved as IEPA claims (IEPA Brief at 5), it is not coming from APEX. From the beginning, APEX has acted as a responsible corporate citizen and has tried to work with IEPA to come up with a reasonable approach to achieve the ultimate goal. Despite our repeated attempts however, IEPA has not expressed a willingness to engage in any meaningful discussion. APEX has clearly demonstrated that its plan to purchase CAC, which is currently being handled, stored, and transported across Illinois roads and highways as a product, would in no way endanger human health or the environment. IEPA is correct in its statement that the generators of the CAC material (APEX’s Customers) “must make a hazardous waste determination” (IEPA Post-Hearing Brief at 3), which they are currently doing in accordance with Illinois regulations. As

¹ See also, *Petition of Jo'Lyn Corporation and Falcon Waste and Recycling Inc. for an Adjusted Standard from 35 Ill. Adm. Code 807.103 and 35 Ill. Adm. Code 810.103 or, in the Alternative, a Finding of Inapplicability*, AS 04-2; *Petition of Westwood Lands, Inc. for an Adjusted Standard from Portions of 35 Ill. Adm. Code 807.104 and 35 Ill. Adm. Code 810.103 or, in the Alternative, a Finding of Inapplicability*, AS 09-3; *Safety-Kleen Corp. v. Environmental Protection Agency*, PCB 80-12, order at 2 (Feb. 7, 1980), affirmed by *Environmental Protection Agency v. Pollution Control Board*, 427 N.E.2d 1053 (Ill. App. Ct. 1981) (no opinion); and *R.R. Donnelley & Sons Co. v. Illinois Environmental Protection Agency*, PCB 88-79, slip op. (Feb. 23, 1989) (“*R.R. Donnelley*”). As demonstrated in its prior submissions, all of these prior Board decisions support APEX’s petition.

such, the CAC material is not currently being regulated in the state of Illinois as a “waste” of any kind, and all Customers are, to the best of APEX’s knowledge, operating completely within the law.

Regarding IEPA’s comment about “an oblique reference to other companies,” (IEPA Post-Hearing Brief at 5) we are not quite sure what they mean. APEX included letters from 10 Customers in its Post-Hearing Brief and had one of its Customers, Mr. Rajani Patel from Delta Precision, voluntarily testify at our Hearing on January 7, 2015 that his company ships CAC via bills of lading (IPCB Hearing Transcript at 67:17-19). While it had every opportunity to raise issues at that time, IEPA had no questions for Mr. Patel. In addition, and contrary to IEPA’s claim, APEX has in fact demonstrated that it does have all appropriate safeguards in place in order to properly handle the CAC from the time it arrives at its facility. IEPA has not raised one single factual issue regarding APEX’s process or procedures that would allow them to say with any degree of certainty that APEX “does not have appropriate procedures” (IEPA Post-Hearing Brief at 5). Indeed, as was clarified at the Hearing, any CAC that did not meet the APEX specifications would be rejected, and the delivering Customer would then be responsible for transporting and manifesting (IPCB Hearing Transcript at 25:9-22).

Lastly, regarding the regulatory limits set forth in 35 Ill. Adm. Code Part 721.124, IEPA again ignores *the purpose* of those provisions. The toxicity concentrations are set with the presumption that such “waste” will ultimately be disposed of either via landfill or some other method of disposal. If a material, such as CAC, is not being disposed of or discarded, then these toxicity regulations simply *do not apply*. In addition, the undisputed fact is that APEX will not dispose or discard any of the chemical components of the CAC in any way. What IEPA fails to acknowledge is that all of the TCLP metals will be extracted out during the APEX process, and

only inert wastewater brine will be discharged pursuant to a valid and existing permit from the City of Joliet. Accordingly, any slight variances in the toxicity levels within the CAC will be completely mitigated during the APEX process, so as to ultimately remove any potential threat to human health and the environment.

III. Conclusion

In its Petition, and throughout the course of these proceedings, APEX has repeatedly demonstrated that the CAC is not a “waste” that is subject to regulation and, therefore, the APEX facility is not a “pollution control facility” that requires a permit to process the CAC material. In addition, APEX has also demonstrated that its plan is completely protective of human health and the environment, and that it is more than willing to accept reasonable controls and conditions from the Board in order to confirm sufficient protections are achieved.

Petitioner APEX Material Technologies, LLC respectfully requests that the Board find that CAC is not a regulated “waste” and that 35 Ill. Adm. Code Parts 807 and 810 are inapplicable to Petitioner’s Will County facility. In the alternative, Petitioner respectfully asks that the Board grant the proposed adjusted standard from portions of Parts 807 and 810 or for other relief as deemed appropriate by the Board.

Respectfully submitted,

APEX MATERIAL TECHNOLOGIES, LLC

Dated: February 24, 2015

By: /s/ Joseph L. Pellis II

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