

ILLINOIS POLLUTION CONTROL BOARD
June 18, 2015

IN THE MATTER OF:)
)
PETITION OF APEX MATERIAL) AS 15-2
TECHNOLOGIES, LLC FOR AN) (Adjusted Standard - Land)
ADJUSTED STANDARD FROM PORTIONS)
OF 35 ILL. ADM. CODE 807.104 AND)
810.103, OR, IN THE ALTERNATIVE, A)
FINDING OF INAPPLICABILITY)

CONCURRING OPINION (by G.M. Keenan):

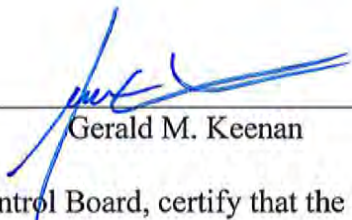
APEX Material Technologies, LLC seeks to expand its current business in Joliet, hire more workers, and provide a service for Illinois-based circuit board firms that is now performed by companies outside of Illinois. The record of this proceeding and the company's track record to date suggest that this would provide a useful service and that a number of firms were interested in being APEX's clients. APEX's industrial process would involve handling corrosive liquid substances that would, from time to time, contain hazardous materials that require careful professional handling to avoid damage to the environment. APEX provided adequate information about how the company could do that successfully, as it currently does in its existing business.

In order to enter this new business segment, APEX requested that the Board grant a finding of inapplicability of specified waste disposal regulations or, alternatively, an adjusted standard from portions of 35 Ill. Adm. Code 807.104 and 810.103.

The Board's opinion and order, in which I concur, finds that the Board cannot grant the relief that APEX has sought. In my view, this should not be seen as a rejection of APEX's business plans or its capability to engage in the business it seeks to enter. A careful reading of the Board's discussion confirms this view.

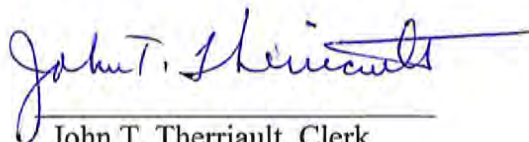
The Board is precluded from granting relief that a petitioner does not seek. As the Board notes, the Board's technical staff asked APEX at the hearing whether a non-solid waste determination under 35 Ill. Adm. Code 720.131 would provide the appropriate relief for APEX. The record reflects that APEX chose not to pursue this avenue. As the Board's opinion also notes, based upon information presented by APEX, regulators in Indiana, Virginia, and Colorado evaluated processes that appear to be similar to APEX's process and granted relief from the hazardous waste regulations, primarily upon a finding that the industrial process qualified for the use/re-use exemption. In fact, APEX indicated that the exempted Indiana company would likely be its primary competitor.

Given the requests made by APEX and the record developed in this case, the Board properly expresses no view on whether or not APEX's industrial process would qualify for such a determination. Nonetheless, it seems clear that the Board would give timely consideration to a properly pled and supported future request made on these grounds.



Gerald M. Keenan

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the above concurring opinion was submitted on June 18, 2015.



John T. Therriault, Clerk
Illinois Pollution Control
Board