

ILLINOIS POLLUTION CONTROL BOARD

March 16, 2006

MAGIE BROS./PENRECO,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 06-142
	)	(NPDES Permit Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by G.T. Girard):

On February 23, 2006, the Board received a one-paragraph letter from Magie Bros./Penreco (Magie Bros.) signed by Steven Drescher, a quality assurance chemist. The letter referenced NPDES Permit No. IL 0036013 and 35 Ill. Adm. Code 302.211. The letter states that:

Magie Bros. would like to apply for a variance in discharge water temperature. Magie Bros. would like to report discharge water temperature as a report only quantity and not be confined to maximum limits listed for each month.

On February 27, 2006, the Board received a copy of the permit, issued on January 31, 2006, along with a cover letter in which the Illinois Environmental Protection Agency (Agency) responded to comments about the permits and the temperature limits. On March 6, 2006, the Board received a \$75 filing fee.

As filed with the Board, the petition has several deficiencies that Magie Bros. must address before the Board can go any further with this proceeding. First, the Board's procedural rules explain that, under various Illinois laws "any person other than individuals must appear through an attorney-at-law licensed and registered to practice law." *See* 35 Ill. Adm. Code 101.400(a)(2). Magie Bros. appears to be a company. If so, an attorney must file documents with the Board, not Magie Bros. quality assurance chemist.

Second, this filing does not make clear exactly what sort of relief petitioner is requesting. This could be construed as a timely permit appeal, or, to the extent the filing refers to relief from the thermal limits of Section 302.211, the filing could also be looked at as a petition for a variance, adjusted standard, or site-specific rule. Since permit appeals must be filed within 35 days of permit issuance, the Board has docketed this matter as a permit appeal to best preserve petitioner's rights. But, from the nature of the Agency comments in the permit cover letter, it would appear that petitioner may need relief by way of variance, adjusted standard, or site-specific rule.

Third, the documents presently before the Board do not comply with the information requirements for any type of action. The information requirements for permit appeals, variances, adjusted standards, or site-specific rules are found in the Board's procedural rules. *See* 35 Ill. Adm. Code Parts 101, 102, 104, and 105.

Finally, the documents currently before the Board do not indicate that they were served on the Agency as required by Section 101.304 of the procedural rules.

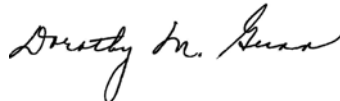
The Board directs Magie Bros. to file an amended petition remedying the noted deficiencies and accompanied by an attorney's appearance on or before April 10, 2006. The filing of an amended petition will restart the Board's decision timeclock (described below). If an amended petition is not filed, this petition will be subject to dismissal. *See* 35 Ill. Adm. Code 105.108. Dismissal of this docket due to failure to file an amended petition does not affect petitioner's ability to later request a variance, adjusted standard, or site-specific rule, but it will prevent any later appeal of this permit.

Because the Board is treating this case as a permit appeal, the Board will consider that there is a 120-day decision deadline (*see* 415 ILCS 5/40(a)(2) (2004)), which only the petitioner may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, the petitioner "shall be entitled to an Appellate Court order pursuant to subsection (d) of Section 41 of this Act 415 ILCS 5/41(d) (2004)." 415 ILCS 5/40(a)(3) (2004). Currently, the decision deadline is July 4, 2006 (the 120th day after March 6, 2006, the day the filing fee was paid). *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for June 15, 2006.

Magie Bros. is free to request additional time to comply with this order, but any request must be accompanied by petitioner's decision deadline waiver giving the Board a full 120 days after the filing of an amended petition to schedule and hold a hearing and reach a decision.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 16, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board