

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

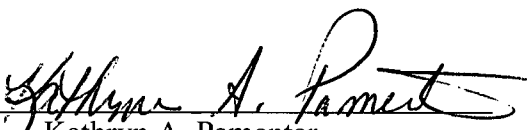
ARNOLD MAGNETIC TECHNOLOGIES,)	
)	
Petitioner,)	
)	
v.)	PCB No. 2016-097
)	(Water Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE OF ELECTRONIC FILING

To:	Thor W. Ketzback	Bradley P. Halloran
	Erin L. Brooks	Hearing Officer
	Bryan Cave LLP	Illinois Pollution Control Board
	161 N. Clark St., Suite 4300	James R. Thompson Center, Suite 11-500
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PLEASE TAKE NOTICE that on the 27th day of July, 2016, the attached Respondent's Motion To Strike Exhibits D Through I, and All Corresponding Statements and Arguments, of Petitioner's Petition for Review of Wastewater Permit No. 2011-EO-1001-2 was filed with the Illinois Pollution Control Board, a true and correct copy of which is attached hereto and is hereby served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: 
 Kathryn A. Pamerter
 Assistant Attorney General
 Environmental Bureau
 69 W. Washington St., 18th Floor
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DATE: July 27, 2016

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Petitioner,)	
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v.)	PCB No. 2016-097
)	(Water Permit Appeal)
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RESPONDENT'S MOTION TO STRIKE EXHIBITS D THROUGH I, AND ALL CORRESPONDING STATEMENTS AND ARGUMENTS, OF PETITIONER'S PETITION FOR REVIEW OF WASTEWATER PERMIT NO. 2011-EO-1001-2¹

Respondent, the Illinois Environmental Protection Agency (the "Illinois EPA"), pursuant to 35 Ill. Adm. Code 101.100, 101.500 and 101.506, hereby moves this Board to strike Exhibits D through I, and all corresponding statements and arguments, of Arnold Magnetic Technologies' ("Petitioner") Petition for Review of Wastewater Permit No. 2011-EO-1001-2 (the "Petition") and for related relief. In support thereof, Respondent states as follows:

I. BACKGROUND.

On November 18, 2015, Petitioner submitted to the Illinois EPA its application for renewal of Water Pollution Control Permit 2011-EO-1001-2 concerning Petitioner's wastewater treatment and recycle system located at 300 North West Street, Marengo, Illinois (the "Renewal Application"). On February 19, 2016, the Illinois EPA denied the Renewal Application. On March 17, 2016, a Joint Request for Extension of Time Period to Appeal Permit No. 2011-EQ-1001 was filed with the Board. On April 7, 2016, the Board entered an Order, extending the time period for Petitioner to file an appeal until June 27, 2016. On June 27, 2016, Petitioner filed the

¹ On July 20, 2016, Petitioner filed its Motion to Stay Proceedings in this Permit Appeal. To date, no decision has been made on such motion. Pursuant to 35 Ill. Adm. Code 101.506, Respondent's Motion to Strike is due on July 27, 2016, 30 days after the date that the Petitioner filed its Petition. In filing this Motion to Strike, Respondent does not thereby object to Petitioner's Motion to Stay Proceedings.

Petition.

II. ARGUMENT.

In the Petition, Petitioner includes several exhibits, with corresponding statements and arguments, that only existed after February 19, 2016 and thus were not available to the Illinois EPA in making its decision to deny the Renewal Application:

- Exhibit D – Letter from Petitioner to Illinois EPA dated May 3, 2016.
- Exhibit E – Letter from Illinois EPA to Petitioner dated June 3, 2016.
- Exhibit F – Comprehensive Site Investigation and Remediation Objectives Report dated March 31, 2016.
- Exhibit G – AECOM Technical Memo dated March 17, 2016.
- Exhibit H – AECOM Technical Memo dated April 25, 2016.
- Exhibit I – Sampling results submitted to Illinois EPA on June 1, 2016.
- All corresponding sections of the Petition that discuss the foregoing exhibits:
 - Last sentence of Background section on pages 2-3 (“[g]roundwater quality from the deep well is likely geochemically different from shallow site groundwater, and there is little likelihood that the shallow aquifer is in hydraulic communication with the deep aquifer, due to a regionally extensive aquitard (Maquoketa Shale Group) separating the two groundwater systems”) and corresponding footnote 1 concerning a Consent Order entered on June 1, 2016.
 - Second full paragraph in Background section on page 3 that continues on page 4.
 - Section B on pages 8-11.
 - Section C on pages 11-15.
 - Corresponding sentences in the Conclusion (“Arnold Magnetic Technologies has demonstrated that its water treatment system for which a renewed wastewater permit is sought is not a contributing source of groundwater contamination above groundwater quality standards, and it has established the Constituents of Concern at the Site are attributable to other sources, and the percolation field has not

exacerbated the migration of contamination from or at the Site”).

The Board’s review of the Illinois EPA’s denial of the Renewal Application is limited to information submitted to the Agency during the statutory review period. *West Suburban Recycling and Energy Center, L.P. v. Illinois Environmental Protection Agency*, PCB No. 95-119 and 19-125, 1996 WL 633368, *3 (Oct. 17, 1996) (citing *Alton Packaging Corp. v. Illinois Pollution Control Board*, 516 N.E.2d 275, 280 (5th Dist. 1987)). In its Order accepting the Petition for review dated July 7, 2016, the Board stated, “though the Board hearing affords a permit applicant the opportunity to challenge the Agency’s reasons for denying or conditionally granting the permit, information developed after the Agency’s decision typically is not admitted at hearing or considered by the Board.” (July 7, 2016 Order at p. 1 (citing *Alton Packaging Corp. v. Illinois Pollution Control Board*, 516 N.E.2d 275, 280 (5th Dist. 1987), *Community Landfill Co. & City of Morris v. Illinois Environmental Protection Agency*, PCB 01-170 (Dec. 6, 2001), *aff’d sub nom. Community Landfill Co. & City of Morris v. Illinois Pollution Control Board and Illinois Environmental Protection Agency*, 772 N.E.2d 231 (3d Dist. 2002))). Because Petitioner did not submit the foregoing exhibits to the Illinois EPA during the statutory review period, such exhibits, and the corresponding statements and arguments, should be stricken.

WHEREFORE, Respondent, Illinois Environmental Protection Agency, requests that the Board:

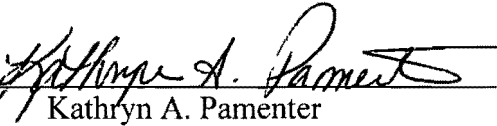
1. Grant Respondent’s Motion to Strike to avoid material prejudice;²
2. Strike Exhibits D through I, and all corresponding statements and arguments, from the Petition;
3. Preclude any discovery or hearing testimony on Exhibits D through I, and all

² Contemporaneously herewith, Petitioner filed the Record on Appeal based on the February 19, 2016 denial of the Renewal Application. To the extent that the Board denies this Motion, Petitioner reserves the right to supplement the Record consistent with the Board’s decision.

corresponding statements and arguments; and

4. Grant such other relief as this Board deems proper.

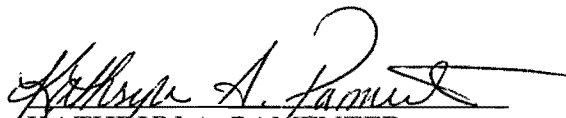
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AGENCY

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CERTIFICATE OF SERVICE

I, KATHRYN A. PAMENTER, an Assistant Attorney General, do certify that I caused to be served this 27th day of July, 2016, the attached Notice of Electronic Filing and Respondent's Motion To Strike Exhibits D Through I, and All Corresponding Statements and Arguments, of Petitioner's Petition for Review of Wastewater Permit No. 2011-EO-1001-2 upon Thor W. Ketzback, Erin L. Brooks and Bradley Halloran *via email*.



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