

ILLINOIS POLLUTION CONTROL BOARD  
July 7, 2016

ARNOLD MAGNETIC TECHNOLOGIES, )  
)  
Petitioner, )  
)  
v. ) PCB 16-97  
) (Permit Appeal – Water)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
)  
Respondent. )

ORDER OF THE BOARD (by G.M. Keenan):

On February 19, 2016, the Illinois Environmental Protection Agency denied a permit to a wastewater treatment and recycling system owned by Arnold Magnetic Technologies. The system is located at 300 North West Street, Marengo, McHenry County. On April 7, 2016, the Board granted the parties' request to allow until June 27, 2016 for Arnold to file an appeal. On June 27, 2016 Arnold filed its appeal, petitioning the Board for review of the Agency's decision. *See* 415 ILCS 5/40(a)(1) (2014); 35 Ill. Adm. Code 101.300(b), 105.206, 105.208. The Board accepts the petition for review.

Granting and denying permits is one of the Agency's responsibilities in administering Illinois' regulatory programs to protect the environment under the Environmental Protection Act. 415 ILCS 5 (2014). If the Agency denies a permit or grants one with conditions, the permit applicant may appeal the Agency's decision to the Board. 415 ILCS 5/4, 5, 40(a)(1) (2014); 35 Ill. Adm. Code 105.Subpart D. In this case, Arnold sought to renew a wastewater permit for its McHenry County facility, and the Agency denied the request.

Arnold appeals on the grounds that: (1) treatment ponds at its facility will not cause a discharge of contaminants that may tend to cause water pollution, (2) the Agency has improperly required Arnold to prove that the ponds have not caused such contamination in the past, and (3) though contamination exists at the facility, it is not attributable to Arnold's water treatment system. Arnold's petition meets the Board's petition content requirements. *See* 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. Arnold has the burden of proof. 415 ILCS 5/40(a)(1) (2014); *see also* 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before the Agency at the time the Agency issued its permit decision. *See* 35 Ill. Adm. Code 105.214(a). Accordingly, 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. *See Alton Packaging Corp. v. PCB*, 162 Ill. App. 3d 731, 738, 516 N.E.2d 275, 280 (5th Dist. 1987); *Community Landfill Co. & City of Morris v. IEPA*, PCB 01-

170 (Dec. 6, 2001), *aff'd sub nom. Community Landfill Co. & City of Morris v. PCB & IEPA*, 331 Ill. App. 3d 1056, 772 N.E.2d 231 (3rd Dist. 2002).


Upon its own motion or the motion of any party, the Board or the hearing officer may order that the hearing be held by videoconference. In deciding whether to hold the hearing by videoconference, factors that the Board or the hearing officer will consider include cost-effectiveness, efficiency, facility accommodations, witness availability, public interest, the parties' preferences, and the proceeding's complexity and contentiousness. *See* 35 Ill. Adm. Code 101.600(b), 105.110.

Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2014)), which only Arnold may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Arnold "may deem the permit issued." 415 ILCS 5/40(a)(2) (2014). Currently, the decision deadline is October 25, 2016, which is the 120th day after the Board received the petition. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for October 20, 2016.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by July 29, 2016, which is 30 days after the Board received Arnold's petition. *See* 35 Ill. Adm. Code 105.116(a), 105.212(a). If the Agency wishes to seek additional time to file the record, it must file a request for extension before the date on which the record is due to be filed. *See* 35 Ill. Adm. Code 105.116(a). The record must comply with the Board's requirements for content, organization, and certification. *See* 35 Ill. Adm. Code 105.116(b), 105.212(b). In addition, the Agency must file the record electronically instead of in paper. Specifically, the record must be filed through the Clerk's Office On-Line (COOL) or on compact disk or other portable electronic data storage device and, to the extent technically feasible, in text-searchable Adobe PDF. *See* 35 Ill. Adm. Code 101.302(h)(2)(A), 105.116(a).<sup>1</sup>

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 7, 2016, a vote of 5-0.




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John T. Therriault, Clerk  
Illinois Pollution Control Board

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<sup>1</sup> Any questions about filing the record in an electronic format should be directed to the Clerk's Office at 312-814-3629.