

ILLINOIS POLLUTION CONTROL BOARD  
February 2, 2023

BUNGE NORTH AMERICA, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 23-89
	)	(Permit Appeal – Air)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by M. Gibson):

On January 25, 2023, Bunge North America, Inc. (Bunge) timely filed a petition asking the Board to review a December 21, 2022, permit determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2020); 35 Ill. Adm. Code 101.300(b), 105.206. The determination concerns Bunge’s planned improvements to its soybean processing facility located at 203 34th Street, Cairo, Alexander County. Additionally, on January 25, 2023, Bunge filed a motion to stay the effectiveness of the contested permit conditions. For the reasons below, the Board accepts the petition for review, but reserves ruling on the motion for stay.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2020)), the Agency is the permitting authority, responsible for administering Illinois’ regulatory programs to protect the environment. If the Agency denies a permit or grants one with conditions, the permit applicant may appeal the Agency’s decision to the Board. *See* 415 ILCS 5/4, 5, 40(a)(1) (2020); 35 Ill. Adm. Code 105.Subpart B. In this case, the Agency granted Bunge’s application for an air construction permit, subject to conditions, regarding Bunge’s Alexander County facility. Bunge appeals on the grounds that: 1) the classification of the grain cleaning units to meet NSPS Subpart DD testing requirements is improper; 2) the permit requirements for test plans go beyond the standards defined in the relevant Agency regulation; 3) the imposition of a month-to-month limit on fuel usage is unnecessary with no corresponding environmental or compliance benefit compared to a 12-month rolling average; and 4) the requirement to install a bag leakage detection system is arbitrary, unnecessary to protect human health or the environment, and beyond the Agency’s regulatory authority. Bunge’s petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. Bunge has the burden of proof. 415 ILCS 5/40(a)(1) (2020); *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) (2020)), which only Bunge may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Bunge may deem the requested permit issued. 415 ILCS 5/40(a)(2) (2020). Currently, the decision deadline is May 25, 2023, 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 May 18, 2023.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by February 24, 2023, which is 30 days after the Board received Bunge'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 101.1030(g), 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>

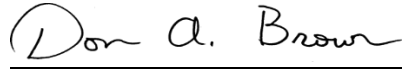
Accompanying Bunge's petition for review is a motion to stay the effectiveness of contested Conditions 4-1(d)(2), 5-1(a) through 5-1(c), 5-2(a)(5), and 6(a) through 6(e) of the permit. The Board reserves ruling on the motion for stay to allow the Agency's response time to run. *See* 35 Ill. Adm. Code 101.500(d).

IT IS SO ORDERED.

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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) 814-3620 or (312) 814-3461.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 2, by a vote of 4-0.

A handwritten signature in cursive script that reads "Don A. Brown". The signature is written in black ink and is positioned above a horizontal line.

Don A. Brown, Clerk  
Illinois Pollution Control Board