

ILLINOIS POLLUTION CONTROL BOARD
September 23, 2021

KOPPERS, INC.,)
)
 Petitioner,)
)
 v.) PCB 22-5
) (Permit Appeal - Air)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by C.M. Santos):

On September 14, 2021, Koppers Inc. (Koppers) timely filed a petition asking the Board to review an August 10, 2021 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(e). The Agency's determination concerns Koppers's wooden railroad crosstie and switch tie manufacturing plant at 1291 State Route 41 in Galesburg, Knox County. For the reasons below, the Board accepts Koppers' petition for hearing.

Under the Environmental Protection 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 D. In this case, Koppers applied for a permit to construct and a lifetime permit to operate two boilers at the plant. In its determination, the Agency issued a construction permit but denied the application for a lifetime operating permit. Koppers appeals on the grounds that the Agency's denial of the lifetime operating permit was arbitrary, capricious, and an abuse of its discretion. Koppers' petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. Koppers 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. 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 Koppers may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Koppers "may deem the permit issued." 415 ILCS 5/40(a)(2) (2020). Currently, the decision deadline is Wednesday, January 12, 2022, 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 Thursday, January 6, 2022.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by Thursday, October 14, 2021, which is 30 days after the Board received Koppers' 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).¹

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 23, 2021, by a vote of 4-0.



Don A. Brown, Clerk
Illinois Pollution Control Board

¹ 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.