ILLINOIS POLLUTION CONTROL BOARD December 16, 2004

PEOPLE OF THE STATE OF ILLINOIS,)	
Complainant,)	
Complainant,)	
v.)	PCB 02-115
)	(Enforcement – Air, Water)
BLUE RIDGE CONSTRUCTION)	
CORPORATION, an Illinois corporation,)	
)	
Respondent.)	

ORDER OF THE BOARD (by J.P. Novak):

On November 18, 2004, respondent Blue Ridge Construction Corporation (Blue Ridge), filed a Motion to Stay Enforcement of Monetary Penalty Pending Appeal (Mot.).

On August 7, 2003, in granting the People's Motion for Partial Summary Judgment, the Board found that Blue Ridge had violated Sections 9(a), 12(d), 21(a), (e), (p)(1), and (p)(2) of the Environmental Protection Act (Act); Section 201.141 of the Board's regulations; and 40 C.F.R. 61.145(a) and 40 C.F.R. 61.145(b)(1). In the Board's final order, issued October 7, 2004, the Board found that Blue Ridge had also violated 40 C.F.R. 145(c)(1), 40 C.F.R. 145(c)(6), 40 C.F.R. 145(c)(8), and 40 C.F.R. 61.150(a)(1). The Board's final order ordered Blue Ridge to pay a civil penalty of \$66,000 for all of these violations.

In its Motion to Stay, Blue Ridge states that it "has filed a Petition for Review in the Illinois Appellate Court, Third District, of that part of the Illinois Pollution Control Board's October 7, 2004 Order imposing the monetary penalty." Mot. at 1. Blue Ridge attached a copy of that petition to its motion. Mot. at 3; *see* Blue Ridge Construction Corp. v. People and PCB, No. 3-04-0874 (3rd Dist.) (filed Nov. 15, 2004).

Blue Ridge states in its motion that "[t]here are no issues of delay in compliance with environmental standards raised by this Motion." Mot. at 2. The Board notes that its final order did not require Blue Ridge to cease and desist from any actions or to perform any action other than payment of a civil penalty. People v. Blue Ridge Construction Corp., PCB 02-115, slip op. at 21 (Oct. 7, 2004). Blue Ridge argues that, consistent with its own precedent, the Board should stay payment of the monetary penalty until the appellate court has issued its mandate. Mot. at 1, citing Citizens for a Better Environment v. Stepan Chemical Co., PCB 74-210, 74-270, 74-317, slip op. at 1 (June 25, 1975) ("Payment of monetary penalty can be delayed without prejudice to the public and it has been our practice to allow such motions pending appeal.").

Under the Board's procedural rules, the People had 14 days after service of Blue Ridge's motion to file a response to it. *See* 35 Ill. Adm. Code 101.500(d). Since no response has been

filed within that time, the People are deemed to have waived any objection to the granting of the motion. *Id*.

The Board's procedural rules provide that the "procedure for stay of any final Board order during appeal will be as provided in Rule 335 of the Rules of the Supreme Court of Illinois (S. Ct. Rule 335)." 35 Ill. Adm. Code 101.906(c). Supreme Court Rule 335(g) states that "[a]pplication for a stay of a decision or order of an agency pending direct review in the Appellate Court shall ordinarily be made in the first instance to the agency." 172 Ill. 2d R. 335(g).

The decision to grant or deny a motion for a stay is "vested in the sound discretion of the Board." *See* People v. State Oil Co., PCB 97-103 (May 15, 2003) (granting motion for stay after petition for review filed), *aff'd. sub nom* State Oil Co. v. PCB, 2004 Ill. App. Lexis 968 (2nd Dist., Aug. 18, 2004). The Board has been reluctant to stay its orders when a stay may result in harm to the public or the environment. *See, e.g.*, Panhandle Eastern Pipeline Co. v. IEPA, PCB 98-102 (July 8, 1999), *aff'd. sub nom* Panhandle Eastern Pipeline Co. v. PCB and IEPA, 314 Ill. App. 3d 296, 734 N.E.2d 18 (4th Dist, 2000). The Board has granted stays of its orders with respect to payment of penalties. *See, e.g.*, IEPA v. Pielet Bros. Trading, Inc., PCB 80-185, *aff'd sub nom* Pielet Bros. Trading Co. v. PCB, 110 Ill. App. 3d 752, 442 N.E.2d 1374 (5th Dist, 1982). Consistent with this precedent and with Illinois Supreme Court Rule 335(g), the Board grants Blue Ridge's motion for stay.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 16, 2004, by a vote of 5-0.

Dorothy M. Gunn, Clerk

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Illinois Pollution Control Board