

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**


<b>PEOPLE OF THE STATE OF ILLINOIS,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>PCB 20-16</b>
	)	<b>(Enforcement – Land)</b>
	)	
<b>IRONHUSTLER EXCAVATING, INC., an</b>	)	
<b>Illinois corporation, RIVER CITY</b>	)	
<b>CONSTRUCTION, LLC, an Illinois limited</b>	)	
<b>liability company, and VENOVIH</b>	)	
<b>CONSTRUCTION CO., an Illinois corporation,</b>	)	
	)	
<b>Respondents.</b>	)	

**NOTICE OF FILING**

To: See attached Certificate of Service.

PLEASE TAKE NOTICE that on November 5, 2021, I filed with the Office of the Clerk of the Pollution Control Board this Notice of Filing and IronHustler’s Motion for Stay of Enforcement of Penalty, copies of which are hereby served upon you.

IRONHUSTLER EXCAVATING, INC.  
an Illinois corporation, Respondent

By:   
One of Its Attorneys

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**CERTIFICATE OF SERVICE**

I, the undersigned, certify that I have served on November 5, 2021, the attached Notice of

Filing upon the following persons by email:

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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	PCB 2020-16
v.	)	(Enforcement - Land)
	)	
IRONHUSTLER EXCAVATION, INC., an	)	
Illinois corporation, and RIVER CITY	)	
CONSTRUCTION, LLC, an Illinois limited	)	
liability company,	)	
	)	
Respondents.	)	

**MOTION FOR STAY OF ENFORCEMENT OF PENALTY**

Respondent IronHustler Excavation, Inc. (“IronHustler”), by its attorneys at Davis & Campbell L.L.C., requests that the Illinois Pollution Control Board (“Board”) stay enforcement of the penalty as applied to IronHustler in the Opinion and Order of the Board dated October 7, 2021, in light of the pending appeal with the Third District Appellate Court.

**I. BACKGROUND**

On October 7, 2021, the Board entered an Opinion and Order granting the People’s Motion for Summary Judgment against IronHustler and River City and denied IronHustler’s Cross-Motion for Summary Judgment. In the Opinion and Order, the Board subjected IronHustler to a penalty in the amount of \$80,000. IronHustler has filed a Petition for Review of the Opinion and Order with the Third District Court of Appeals.

**II. LEGAL STANDARD**

The Board’s procedural rules provide for motions to stay during appeal of a decision of the Board. 35 Ill. Adm. Code 101.514. 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 (Ill. S. Ct. Rule 335).” 35 Ill. Adm. Code 101.906(c). Illinois Supreme Court Rule 335(g) provides that an “[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.”

The decision to grant or deny a motion for stay is “vested in the sound discretion of the Board.” *See People v. State Oil Co.*, PCD 97-103 (May 15, 2003) (granting motion for stay after petition for review filed with Appellate Court), *aff’d sub nom State Oil Co. v. PCB*, 352 Ill.App.3d 813 (2d Dist. 2004). The Board has previously granted stays of orders with respect to payment of penalties. *IEPA v. Pielet Bros. Trading, Inc.*, PCB 80-185 (Feb. 4, 1982) (granting motion for stay of order’s provision requiring penalty payment). In granting such stays, the Board has explained that “[p]ayment of monetary penalty can be delayed without prejudice to the public and it has been [its] practice to allow such motions pending appeal.” *Citizens for a Better Environment v. Stepan Chemical Co.*, PCB 74-201, 74-270, 74-317, slip op. at 1 (June 26, 1975); *IEPA v. Northern Illinois Service Co.*, AC 05-40, slip op. at 2-3 (Apr. 19, 2007).

### III. ARGUMENT

IronHustler presently seeks review of the Opinion and Order granting the People’s Motion for Summary Judgment against IronHustler and River City and denying its Cross-Motion for Summary Judgment. The Petition for Review was filed on the basis that the penalty imposed was done so for wholly pat violations, particularly where IronHustler demonstrated the exercise of good faith, and that the penalty imposed was inappropriate given the factual circumstances of the matter at hand.

Immediately upon learning of the diversion of the materials to the Farm on July 13, 2017, IronHustler arranged for all materials located at the Mackinaw River site to be taken to the landfill. 29 loads of materials from the Mackinaw River site were taken, on behalf of IronHustler, from the Mackinaw River site to the landfill on July 17, 2017. After the removal of those materials, the

Mackinaw River site returned to compliance with the Illinois Environmental Protection Act. Over 17% of the semi-truck loads of materials observed at the Mackinaw River site by the IEPA and taken by IronHustler to the landfill would not have been deposited at the Mackinaw River site by IronHustler's employees or agents – there were at least five (5) semi-truck loads of materials at the Mackinaw River site that were not deposited by IronHustler's employees or agents.

It is well-settled that “the principal reason for authorizing the imposition of civil penalties was to provide a method to aid the enforcement of the Act and that the punitive considerations were secondary.” *S. Illinois Asphalt Co., Inc. v. Pollution Control Bd.*, 60 Ill. 2d 204, 207 (1975). For that reason, “the General Assembly did not intend that the . . . Board should impose a monetary fine in every case of a violation of the Act or regulations.” *Id.* at 208. Accordingly, “[t]he imposition of [a] penalty constitutes an arbitrary abuse of discretion” where the penalty “can only be viewed as punishment . . . and is not required as an aid in the enforcement of the Act.” *Id.* at 212.

Courts have consistently vacated or reversed penalties awarded by the Board where a party has exercised good faith. *See Park Crematory, Inc., v. Pollution Control Bd.*, 264 Ill. App. 3d 498, 505-06 (1st Dist. 1994); *see also CPC Intern., Inc., v. Illinois Pollution Control Bd.*, 24 Ill. App. 3d 203, 208 (3d Dist. 1974) (vacating a penalty where “[t]he violations were apparently not deliberate and CPC took quick steps to correct the problem”). Courts have also routinely vacated or reversed penalties where the violations ceased before a complaint was filed before the Board. *See S. Illinois Asphalt Co.*, 60 Ill. 2d at 210; *see also City of Moline v. Pollution Control Bd.*, 133 Ill. App. 3d 431, 433 (3d Dist. 1985). The Pollution Control Board itself has recognized that the imposition of penalties in the instance of good faith dealings can in fact hinder the fulfillment of the purpose of the Illinois Environmental Protection Act. *See Employees of Holmes Bros. v.*


*Merlan, Inc.*, 2 Ill.P.C.B.Op. 405, 409 (1971) (“In the opinion of the Board, Merlan has exercised good faith in trying to control its problems, and to penalize a company such as this would discourage all those who act in good faith to bring an end to their pollution control problems.”).

In filing its appeal with the Third District Appellate Court, IronHustler requests a stay of the portion of the Opinion and Order entered on October 7, 2021, which provides that IronHustler pay a fine in the amount of \$80,000. In this case, the payment of the penalty can be delayed without prejudice to the public – the alleged violation of the Act has been remedied since July 17, 2017, and IronHustler has taken further internal action to ensure that no additional violations will occur. Because of the pending appeal with the Third District, and because of the nature of the appeal at hand, the Board should adhere to and follow its previous decisions of granting stays of orders with respect to payment of penalties in the case of a pending appeal with the Illinois Appellate Court.

#### IV. CONCLUSION

WHEREFORE, for the reasons set forth herein, IronHustler respectfully requests that the Board grant a stay of the fine in the amount of \$80,000 against IronHustler made in its Opinion and Order dated October 7, 2021, during the pendency of IronHustler’s appeal with the Third District Appellate Court.

IRONHUSTLER EXACATING, INC.

By:   
One of its Attorneys

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**CERTIFICATE OF SERVICE**

I, the undersigned, certify that I have served on November 5, 2021, the attached Motion for Stay of Enforcement of Penalty upon the following persons by email:

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