

II. Legal Standard

The Board's rules specifically provide for motions to stay during the pendency of an appeal of Board decisions, such as this one. 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. Piolet 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

River City is seeking review of the Opinion and Order granting the State's Motion for Summary Judgment and denying River City's Cross Motion for Summary Judgment. River City believes that the finding of violation was incorrect and incompatible with the

law, and that the fine imposed was excessive and inappropriate given their actions, attempts to remediate, and attempts to comply in good faith.

River City was the general contractor in this matter. River City did not transport or otherwise handle the alleged pollutant directly. To the extent that River City could control the material, they exercised that control via contractual requirements on their subcontractor. River City has no history of violations.

Immediately upon discovery of the alleged violation, River City insured that their subcontractor removed any and all material that was alleged to have created a violation. It was later discovered that River City's subcontractor in fact removed additional material from the site. All material was removed within 5 days of River City learning of the issue. Over the following months, River City made attempts to enter into a compliance commitment agreement with the State to no avail. Ultimately the State chose to file suit.

"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 were remedied before a complaint was filed. *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.”).

IV. Conclusion

River City requests a stay of the Opinion and Order entered on October 7, 2021, which provides that River City pay a fine in the amount of \$35,000. This delay will create no prejudice, as the alleged violation of the Act has been remedied since July 17, 2017. River City will continue to do everything within its power to ensure that no violations 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.

WHEREFORE, Respondent, River City Construction, LLC, respectfully requests that the Board grant a stay of enforcement of the Order and Opinion of October 7, 2021 against River City during the pendency of River City's appeal with the Third District, and granting any further relief which this Court deems just and proper.

RIVER CITY CONSTRUCTION, LLC,
Respondent

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PROOF OF SERVICE

The undersigned certifies that on November 17, 2021, all counsel of record were served with a copy of the foregoing document via electronic mail in accordance with Supreme Court Rule 11.

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