

ILLINOIS POLLUTION CONTROL BOARD

October 5, 2000

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 99-27
)	(Enforcement – Land, RCRA, Water)
JAMES and CAROL GILMER,)	
)	
Respondents.)	

ORDER OF THE BOARD (by G.T. Girard):

On September 18, 2000, respondents filed a motion for stay of the Board's August 24, 2000, opinion and order. On September 27, 2000, complainant filed a response indicating that complainant does not object to a stay. Also on September 27, 2000, the Board received a notice of filing a petition for review in the Appellate Court of Illinois, Fourth District.

Respondents seek a stay arguing that they have filed an appeal and they do not have the means to pay the civil penalty assessed against them. Respondents maintain they have viable issues to raise on appeal and it would be fair and just for the Board to stay its ruling with respect to the civil penalty.

Section 101.303 of the Board's procedural rules provides that the "procedure for stay of any Board order during appeal shall be as provided in Rule 335 of the Rules of the Supreme Court of Illinois." 35 Ill. Adm. Code 101.303. Illinois Supreme Court Rule 335(g) provides that the "application 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).

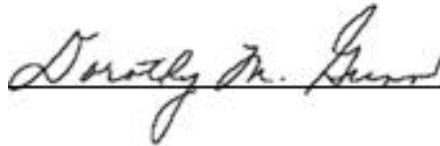
The Board has been reluctant to stay its orders when a stay may result in harm to the public or the environment. See, e.g., Panhandle Eastern Pipe Line Company v. Illinois Environmental Protection Agency (July 8, 1999), PCB 98-102; Illinois Environmental Protection Agency v. Piolet Bros. Trading, Inc. (February 4, 1982), PCB 80-185, slip op. at 1, *aff'd sub nom. Piolet Bros. Trading, Inc. v. Pollution Control Board*, 110 Ill. App. 3d 752, 442 N.E.2d 1374 (5th Dist. 1982); Illinois Environmental Protection Agency v. Incinerator, Inc. (October 14, 1971), PCB 71-69, slip op. at 1, 3, *aff'd sub nom. Incinerator, Inc. v. Pollution Control Board*, 15 Ill. App. 3d 514, 305 N.E.2d 35 (1st Dist. 1973), *aff'd*, 59 Ill. 2d 290, 319 N.E.2d 794 (1974). Further, the Board has also denied stays when the case has been filed with the appellate court. See, e.g., People v. Watts (August 24, 1995), PCB 94-127.

Therefore, based on the Board's past practice, the Board will deny the motion to stay.

The Board notes that respondents may seek a stay from the appellate court under Illinois Supreme Court Rule 335(g).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 5th day of October 2000 by a vote of 7-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board