

ILLINOIS POLLUTION CONTROL BOARD
March 4, 2004

ANTHONY and KAREN ROTI, PAUL)
ROSENSTROCK, and LESLIE WEBER,)
)
Complainants,)
)
v.) PCB 99-19
) (Citizens Enforcement – Noise)
LTD COMMODITIES,)
)
Respondent.)

ORDER OF THE BOARD (by N.J. Melas):

On February 24, 2004, LTD filed a motion to stay pending appeal. To date, the complainants have not responded to the motion to stay. For the reasons below, the Board grants the motion to stay.

The response time to the motion for stay has not yet lapsed and the Board has not yet received any response. The Board will not grant any motion before the expiration of the 14-day response period unless undue delay or material prejudice would result. *See* 35 Ill. Adm. Code 101.500(d). In light of the deadlines the final order imposes in this matter for compliance and the payment of penalty, the Board finds that material prejudice will result from waiting for the expiration of the 14-day response period before addressing LTD's motion to stay.

Pursuant to Section 101.906 of the Board's procedural rules, the procedure for the stay of any final Board order during appeal will be as provided by Rule 335 of the Rules of the Supreme Court of Illinois 35 Ill. Adm. Code 101.906(c). 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.

In its motion for stay, LTD asserts that it is appealing the Board's decision to the Second District Appellate Court. LTD contends a stay is necessary because Cycle Logistics, the operator of a yard tractor at the LTD facility, will not disconnect the backup beeper on its yard tractor due to worker safety concerns. LTD requests the Board to stay the February 15, 2001, July 24, 2003, and February 5, 2004 decisions pending appellate review of these decisions.

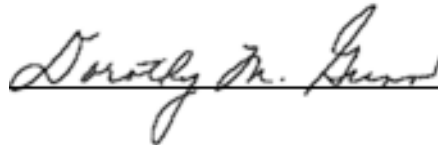
The Board has discretion whether to grant or deny a motion for stay of a final Board order. *See People v. ESG Watts, Inc.*, PCB 96-107 (Mar. 19, 1998); *Village of Matteson v. World Music Theatre, et al.*, PCB 90-146 (Mar. 25, 1993). The Board notes that the February 4, 2004 order granting LTD's motion for modification provides an exception for operators of yard tractors such as Cycle Logistics from the backup beeper requirement. Specifically, the supplemental opinion and order states: "the Board modifies the July 24, 2003 order to allow over-the-road trucks and tractors not owned or operated by LTD to continue to use backup warning devices at LTD's

facility.” Roti v. LTD Commodities, PCB 99-19, slip op. at 7 (Feb. 5, 2004). The Board also ordered that on tractors owned or operated by LTD, replacement of any backup beeper must be done in accordance with state and federal law. *Id.* at 8.

Here, in order to avoid any potential worker safety concerns at the LTD facility, the Board finds that a stay of the Board’s February 5, 2004 order is appropriate. The Board’s February 5, 2004 order incorporates by reference the Board’s February 15, 2001 interim opinion and order as well as restates the Board’s July 24, 2003 order, as amended. Accordingly, the Board grants LTD’s motion to stay the February 5, 2004 order.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 4, 2004, by a vote of 5-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board