ILLINOIS POLLUTION CONTROL BOARD September 16, 2004

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PC
)	(E
JOHN PRIOR d/b/a PRIOR OIL COMPANY)	,
and JAMES MEZO d/b/a MEZO OIL)	
COMPANY,)	
)	
Respondents.)	

PCB 02-177 (Enforcement – Land, Water)

ORDER OF THE BOARD (by A.S. Moore):

On August 20, 2004, respondent John Prior d/b/a Prior Oil Company (Prior) filed a motion to stay the Board's final order pending direct review in the Fifth District Appellate Court. In the Board's final order, issued July 8, 2004, the Board found that Prior violated the Environmental Protection Act (415 ILCS 5 (2002)) and Board regulations. The Board also ordered Prior to pay a civil penalty of \$300,000 and to pay the attorney fees of complainant, the Office of the Attorney General for the People of the State of Illinois (People), in the amount of \$6,600.

In the motion for stay, Prior asserts that a stay of the Board's final order is needed to prevent irreparable harm to Prior and to protect Prior's certain and clearly ascertainable right to appeal the Board's final decision. Motion at 2. The motion provides that Prior will be filing a petition for review with the Fifth District Appellate Court to preserve Prior's right to appeal in this case. *Id.* at 1. The Board takes notice that Prior has since filed a petition for review with the court. *See* 35 Ill. Adm. Code 101.630 (matters of which the Board may take official notice).

Prior notes in the motion for stay that the Board's final order "only required Prior to pay a substantial civil penalty and the attorney fees of the People . . . and did not contain a requirement to cease and desist from any actions or perform any actions other than the payment of the civil penalty and attorney fees." Motion at 2. According to Prior, the "People . . . and the environment will not be harmed if a stay is granted." *Id.* The People filed a response to the motion for stay on September 13, 2004. In the response, the People state that they do not object to the stay, noting that the motion "seeks merely to stay the payment of civil penalties and attorney's fees pending appeal." Response at 1. Prior's co-respondent, James Mezo d/b/a Mezo Oil Company (Mezo), has not responded to Prior's motion for stay. Mezo therefore waives any objection to the Board granting Prior's motion. *See* 35 Ill. Adm. Code 101.500(d).

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 (Ill. S. Ct. Rule 335)." 35 Ill. Adm. Code 101.906(c). In turn, 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 stay is "vested in the sound discretion of the Board." *See* <u>People v. State Oil Co.</u>, PCB 97-103 (May 15, 2003) (granting motion for stay after petition for review filed with Appellate Court), *aff'd sub nom* <u>State Oil Co. v. PCB</u>, 2004 III. App. Lexis 968 (2d 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.*, <u>Panhandle Eastern Pipe Line</u> <u>Co. v. IEPA</u>, PCB 98-102 (July 8, 1999) (denying motion for stay where movant sought to delay meeting requirements designed to prevent significant deterioration in air quality), *aff'd sub nom* <u>Panhandle Eastern Pipe Line Co. v. PCB and IEPA</u>, 314 III. App. 3d 296, 734 N.E.2d 18 (4th Dist. 2000). The Board has granted stays of its orders with respect to the payment of penalties. *See*, *e.g.*, <u>IEPA v. Pielet Bros. Trading, Inc.</u>, PCB 80-185 (Feb. 4, 1982) (granting motion for stay of order's provision requiring penalty payment, but denying motion for stay of order's <u>provision requiring penalty</u> payment, but denying motion for stay of order's provision requiring penalty payment, but denying motion for stay of order's provision requiring penalty payment, but denying motion for stay of order's provision requiring penalty payment, but denying motion for stay of order's provision requiring penalty payment, but denying motion for stay of order's provision requiring penalty payment, but denying motion for stay of order's provision requiring penalty payment, but denying motion for stay of order's provision requiring penalty payment, but denying motion for stay of order's provision requiring penalty payment, but denying motion for stay of order's provision requiring penalty payment, but denying motion for stay of order's provision requiring penalty payment, but denying motion for stay of order's provision requiring penalty payment penalty payment. Pielet Bros. <u>Trading, Inc. v. PCB</u>, 110 III. App. 3d 752, 442 N.E.2d 1374 (5th Dist. 1982)

IT IS SO ORDERED.

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

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Dorothy M. Gunn, Clerk Illinois Pollution Control Board