

ILLINOIS POLLUTION CONTROL BOARD
December 17, 2009

PEOPLE OF THE STATE OF ILLINOIS,)
)
)
Complainant,)
)
v.) PCB 97-193
) (Enforcement - Land)
COMMUNITY LANDFILL COMPANY,) (consolidated)
INC,)
)
Respondent.)

PEOPLE OF THE STATE OF ILLINOIS,)
)
)
Complainant,)
)
v.) PCB 04-207
) (Enforcement – Land)
EDWARD PRUIM and ROBERT PRUIM,)
)
)
Respondents.)

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

On December 9, 2009, Community Landfill Company, Inc. and Edward Pruum and Robert Pruum (collectively respondents) filed a motion asking the Board to stay the August 20, 2009 order requiring the respondents to pay a civil penalty by January 5, 2010 (Mot.). The Board's August 20, 2009 opinion and order found that respondents had violated several sections of the Environmental Protection Act (415 ILCS 5/1 *et. seq.* (2008)) as well as the Board's landfill regulations and permit conditions and directed the respondents to pay a civil penalty of \$250,000. On December 3, 2009, the Board extended until January 5, 2010 the date by which the penalty must be paid. The People responded to the motion on December 10, 2009, asking the Board to deny the stay (Resp.). On December 15, 2009, the Board received notice that respondents have appealed the Board's decision to the Appellate Court.

Respondents argue that the Board's procedural rules provide that stays pending appeal are governed by Illinois Supreme Court Rule 335. *See* 35 Ill. Adm. Code 101.906(c); Mot. at 1. Rule 335(g) states that a stay pending appeal shall ordinarily be sought in the first instance from the administrative agency. *Id.* Respondents further argue that the Illinois Supreme Court has addressed factors that should be considered in ruling on a motion for stay pending appeal. Mot. at 2, citing Stacke v. Bates, 138 Ill.2d 295, 304-05, 562 N.E.2d 192, 196 (1990). One

consideration is “whether a stay is necessary to secure the fruits of the appeal in the event that the movant is successful.” *Id.*, citing, Stacke, 138 Ill.2d at 305, 562 N.E.2d at 196. Other equitable factors should be balanced, and include whether the *status quo* should be preserved, the respective rights of the litigants, and whether hardship on other parties would be imposed. *Id.*, Stacke, 138 Ill.2d at 305-06, 309, 562 N.E.2d at 196, 198. Another consideration is whether there is a “substantial case on the merits” (not likelihood of success on the merits), “but this should not be the sole factor.” *Id.*, citing, Stacke, 138 Ill.2d at 309, 562 N.E.2d at 198. Respondents maintain that here, all factors favor a stay and a stay “is necessary to secure the fruits of the appeal in the event that the movant is successful.” Mot. at 3.

The People argue that an appeal bond must be provided in the amount of the civil penalty under Supreme Court Rule 305(a) and the respondents have not provided any bond or surety. Resp. at 2. The People maintain that if the Board denies the stay, the respondents’ right to appeal is not affected but merely allows the State to execute the underlying judgment if the State chooses. *Id.* The People assert that the respondents can “forestall such execution” by securing a bond or other acceptable surety. *Id.* The People further assert that the State should not be prevented from enforcing the Board’s final order “without a guarantee that the Respondents’ assets will not be dissipated or diverted during the pendency of an appeal.” *Id.* Finally, the People argue that the respondents may request a stay from the Appellate Court if the Board denies the request.

The Board has recently denied a request to stay a Board order in another case in which Community Landfill, Inc. was a respondent. *See*, People v. Community Landfill, Inc. and City of Morris, PCB 03-191 (Nov. 5, 2009). In that case, the Board stated:

The Board denies in their entirety both respondents’ motions for stay of the Board’s June 18, 2009 order. Although the Appellate Court acquired jurisdiction of this case once a notice of appeal was filed with the court, the Board retains jurisdiction to determine “matters collateral or incidental to the judgment. . . . A stay of judgment is a matter that is collateral to the judgment because it neither affects nor alters the issues on appeal.” Sears Holdings Corp. v. Maria Pappas, 391 Ill. App. 3d 147, 158-59, 908 N. E. 2d 556, 566-567 (1st Dist. 2009) (citations omitted). The Board declines to stay any part of its order as to either respondent for all of the reasons urged by the People. The Board acknowledges that the remedies the Board has imposed will be costly for each respondent. But, allowing maintenance of the *status quo* at the Morris Community Landfill could ultimately prove even more costly to the Landfill’s neighbors as well as to the People of the State of Illinois.

The Board finds that respondents do not have “a substantial case on the merits” within the meaning of Stacke, *supra*. The Board agrees with the People that, if ever a case needed to have any stay conditioned on provision of adequate surety for ultimate performance, this is that case. If respondents continue to believe stays are warranted, respondents should apply for them to the Appellate Court.

In this case the Board also finds that respondents do not have “a substantial case on the merits” within the meaning of Stacke (138 Ill.2d at 309, 562 N.E.2d at 198) nor have respondents

shown that “the balance of the equitable factors weighs in favor of granting the stay”. *Id.* The Board therefore denies the request for stay. The respondents may of course apply to the Appellate Court for a stay if respondents believe a stay is warranted.

IT IS SO ORDERED.

Board Member C. K. Zalewski abstains.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on December 17, 2009, by a vote of 4-0.

A handwritten signature in black ink, reading "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board