

ILLINOIS POLLUTION CONTROL BOARD
April 2, 2015

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 12-51
)	(IEPA No. 87-12-AC)
NORTHERN ILLINOIS)	(Administrative Citation)
SERVICE COMPANY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by J.A. Burke):

On January 22, 2015, the Board issued an order finding that Northern Illinois Service Company (Northern) violated open dumping and used tire provisions of the Environmental Protection Act (Act) at Northern's facility located at 4781 Sandy Hollow Road, Rockford, Winnebago County. The Board assessed the statutory civil penalty of \$7,500 for the violations, plus hearing costs of \$1,249.30, for a total of \$8749.30. This matter is before the Board on Northern's motion asking the Board to stay its January 22, 2015 order pending Northern's appeal of the Board's decision to the Illinois Appellate Court. For the reasons stated below, the Board grants Northern's motion and orders that payment of the civil penalty and hearing costs be stayed during the appeal.

PROCEDURAL HISTORY

The Illinois Environmental Protection Agency (Agency) filed an administrative citation against Northern, and, in turn, Northern filed a petition to contest the citation. After the Board denied the Agency's motion for summary judgment, the Board held a hearing in this matter. On November 20, 2014, the Board issued an interim opinion and order finding that Northern violated Sections 21(p)(1), 21(p)(7), and 55(k)(1) of the Act (415 ILCS 5/21(p)(1), 21(p)(7), 55(k)(1) (2012)). On January 22, 2015, the Board issued a final order assessing the civil penalty and the hearing costs of the Board and the Agency.

On February 27, 2015, the Board received notice that Northern petitioned the Illinois Appellate Court for the Second District for review of the Board's decision. The Board also received Northern's motion to stay enforcement of the January 22, 2015 order (Mot.). Northern requests that payment of the civil penalty be stayed during appellate review. Mot. at 1. The Agency has not responded to Northern's motion. The failure by a party to respond to a motion waives any objection to the Board granting that motion. 35 Ill. Adm. Code 101.500(d).

DISCUSSION

Northern cites to Illinois Supreme Court Rule 335(g) (134 Ill. 2d R. 335(g)) and Section 101.906(c) of the Board's procedural rules (35 Ill. Adm. Code 101.906(c)) as support for its motion. Rule 335(g) provides 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." 134 Ill. 2d R. 335(g). Board decisions are such agency decisions afforded direct review in the Appellate Court. 415 ILCS 5/41(a) (2012). Accordingly, a stay of a Board decision pending Appellate Court review should be sought first from the Board. 134 Ill. 2d R. 335(g). Section 101.906(c) provides that stays pending appeal are governed by Rule 335. 35 Ill. Adm. Code 101.906(c).

The Board's decision to grant a motion for a stay pending appeal is discretionary. People v. State Oil Co., PCB 97-103, slip op. at 2 (May 15, 2003), *aff'd sub nom State Oil Co. v. PCB*, 352 Ill. App. 3d 813, 816 N.E.2d 845 (2nd Dist. 2004); *see also Stacke v. Bates*, 138 Ill. 2d 295, 302, 562 N.E.2d 192, 195 (1990) (whether to grant a stay pending appeal is a discretionary act). The purpose of such a stay is to preserve the status quo pending appeal. Stacke, 138 Ill. 2d at 302, 562 N.E.2d at 195. The Illinois Supreme Court has declined to adopt a specific set of factors for making a stay determination and rather has given wide latitude when exercising this discretion. *See Stacke*, 138 Ill. 2d at 304-05, 562 N.E.2d at 196.

One factor of particular importance to the Board is whether granting a stay during appeal will result in harm to public health or the environment. For example, in Phillips 66 Co. v. IEPA, PCB 12-101, slip op. at 7 (Aug. 8, 2013), the Board refused to stay a Board order imposing a permit condition regulating mercury in effluent from a facility. The Board explained that staying application of the permit condition would allow mercury discharges exceeding water quality standards. *Id.* Thus, "the status quo poses a threat to the environment and public health." *Id.*; *see also Panhandle Eastern Pipeline Co. v. IEPA*, PCB 98-102 (July 8, 1999) (Board refused to grant stay of order to satisfy prevention of significant deterioration requirements under the Clean Air Act), *aff'd sub nom Panhandle Eastern Pipeline Co. v. PCB and IEPA*, 314 Ill. App. 3d 296, 734 N.E.2d 18 (4th Dist. 2000).

The Board, however, has granted stays of its orders to pay penalties. *See, e.g., People v. Blue Ridge Construction Corp.*, PCB 02-115 (Dec. 16, 2004); People v. Prior, PCB 02-177 (Sept. 16, 2004); State Oil, PCB 97-103; IEPA v. Piolet Bros. Trading, Inc., PCB 80-185 (Feb. 4, 1982), *aff'd sub nom Piolet Bros. Trading Co. v. PCB*, 110 Ill. App. 3d 752, 442 N.E.2d 1374 (5th Dist. 1982). Dating back to 1975, the Board has reasoned that "[p]ayment of monetary penalty can be delayed without prejudice to the public and it has been our 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).

The Board previously granted a stay pending appeal in a prior proceeding involving an administrative citation issued to Northern. IEPA v. Northern Illinois Service Co., AC 05-40 (Apr. 19, 2007). In this prior proceeding, the Board found violations of two sections of the Act but Northern appealed the Board's decision on only one of the violations. Northern, AC 05-40, slip op. at 2 (Jan. 26, 2007), *aff'd sub nom Northern Illinois Service Co. v. IEPA and PCB*, 381

Ill. App. 3d 171, 885 N.E.2d 447 (2nd Dist. 2008). The Board stayed payment of the monetary penalty associated with the appealed violation, as well as the hearing costs of the Board and the Agency. Northern, AC 05-40, slip op. at 3 (Apr. 19, 2007). Northern's motion for stay in the prior proceeding is substantially similar to the motion filed in this matter. See Northern, AC 05-40 (motion filed Mar. 8, 2007).

Consistent with this precedent and Illinois Supreme Court Rule 335(g), the Board grants Northern's motion for stay.

CONCLUSION

The Board grants Northern's motion for stay. Accordingly, during the pendency of Northern's appeal of the Board's decision, Northern's obligation under the Board's January 22, 2015 order to pay the penalty and hearing costs totaling \$8749.30 is stayed.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 2, 2015, by a vote of 5-0.



John T. Therriault, Clerk
Illinois Pollution Control Board