

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS)

Complainant,)

v.)

TOYAL AMERICA, INC., formerly known)
as ALCAN-TOYO AMERICA, INC., a)
foreign corporation,)

Respondent.)

PCB No. 00-211
(Enforcement)

RECEIVED
CLERK'S OFFICE

AUG 12 2010

STATE OF ILLINOIS
Pollution Control Board

NOTICE OF FILING

TO: Christopher Grant
Assistant Attorney General
Environmental Bureau
69 West Washington Street, 18th Floor
Chicago, IL 60602

Vanessa Veil
Assistant Attorney General
Environmental Bureau
69 West Washington Street, 18th Floor
Chicago, IL 60602

John Therriault, Clerk
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

PLEASE TAKE NOTICE that on **August 12, 2010**, we filed the attached
RESPONDENT'S MOTION TO STAY with the Clerk of the Illinois Pollution Control Board,
a copy of which is herewith served upon you.

Respectfully submitted,

TOYAL AMERICA, INC.

By:


One of its attorneys

Roy M. Harsch, Esq.
Yesenia Villaseñor-Rodriguez, Esq.
John A. Simon, Esq.
DRINKER BIDDLE & REATH LLP
191 N. Wacker Drive Suite 3700
Chicago, IL 60606-1698
Telephone: (312) 569-1444
Facsimile: (312) 569- 3444

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS
ex rel. LISA MADIGAN

Complainant,

v.

TOYAL AMERICA, INC. , formerly known
as ALCAN-TOYO AMERICA, INC., a
foreign corporation,

Respondent.

PCB 2000-211
(Enforcement)

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STATE OF ILLINOIS
Pollution Control Board

RESPONDENT'S MOTION TO STAY

NOW COMES Respondent, TOYAL AMERICA, INC. ("Toyal"), by and through its attorneys, Drinker Biddle & Reath LLP, and hereby requests that the Illinois Pollution Control Board ("Board") approve RESPONDENT'S MOTION TO STAY pursuant to 35 Ill. Adm. Code Section 101.906(c) of the Board's regulations. In support thereof, Respondent states as follows:

1. On May 31, 2000, Complainant filed its complaint in the above captioned matter. The parties proceeded to take this matter to hearing on December 10th and 11th, 2008.
2. The Board issued its final opinion and order on July 15, 2010 in which it assessed a civil penalty in the amount of \$716,440.00.
3. One of the Board members issued a dissenting opinion also dated July 15, 2010 in which it found that the penalty imposed by the majority of the Board members was excessive.
4. On August 6, 2010, Toyal filed an appeal of the Board's final order to the Illinois Appellate Court pursuant to 35 Ill. Adm. Code Section 101.906(a) and Section 41 of the Illinois Environmental Protection Act, 415 ILCS 5/41(2007). A copy of the Petition for Review to the Illinois Appellate Court – Third District is provided herein. (See Attachment A).

THIS FILING SUBMITTED ON RECYCLED PAPER

5. Toyal requests that the Board stay enforcement of payment of the monetary penalty component of its final order pending appeal pursuant to 35 Ill. Adm. Code Section 101.906(c).

6. Section 101.906(c) provides that the procedure for stay of any final Board order pending appeal will be as provided in Ill. S. Ct. Rule 335.

7. Ill. S. Ct. Rule 335(g) provides in pertinent part that an application for 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. Accordingly, Toyal files this request to stay enforcement of the penalty provision of the July 15, 2010 final order of the Board.

8. The Board often grants stays of its orders with respect to payment of penalties. See e.g., *IEPA v. Northern Illinois Service Co.*, PCB 05-40 (Apr. 19, 2007); *People of the State of Illinois v. Blue Ridge Construction Corp.*, PCB 02-115 (Dec. 16, 2004); *IEPA v. Piolet Bros. Trading, Inc.*, PCB 80-185, *aff'd sub nom Piolet Bros. Trading Co. v. PCB*, 110 Ill. App. 3d 752, 442 N.E. 2d 1374 (5th Dist. 1982).

9. Further, the Board has previously held that when granting a stay with respect to the payment of penalties 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.” *IEPA v. Northern Illinois Service Co.*, PCB 05-40, slip. op. at 3 (Apr. 19, 2007) citing *Citizens for a Better Environment v. Stepan Chemical Co.*, PCB 74-210, 74-270, 74-317, slip. op. at 1 (June 25, 1975).

10. This motion to stay does not raise any concern regarding potential harm to the public or the environment. See *People of the State of Illinois v. Community Landfill Company Inc. et. al.* PCB 03-91 (Nov. 5. 2009); *Panhandle Eastern Pipeline Co., v. IEPA*, PCB 98-102

(July 8, 1999). As this Board noted in its ruling in this matter, Toyal has been in compliance since 2003. *People v. Toyal*, PCB 00-211 slip. op. at 10 (July 15, 2010).

11. Further, while Toyal has appealed the cease and desist order component of this order, Toyal does not require that the cease and desist order be stayed pending appeal. Therefore, this motion solely requests staying enforcement of the monetary penalty pending appeal.

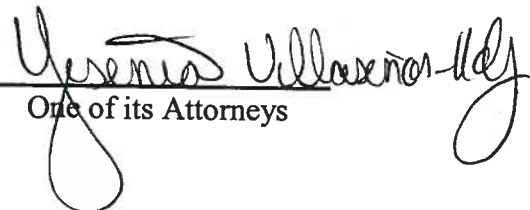
12. Respondent believes that it has good cause on the merits to file an appeal before the Illinois Appellate Court including in part, the points made by the dissenting opinion.

13. Based on the above, Toyal respectfully requests that Board approve this request to stay enforcement of the penalty pursuant to 35 Ill. Adm. Code Section 101.906(c) of the Board's regulations, Illinois Supreme Court Rule 335 (as incorporated into Section 101.906), and previous caselaw decided by the Board.

WHEREFORE, for all the foregoing reasons, Toyal respectfully requests that the Board grant Respondent's Motion to Stay enforcement of the penalty portion of its final order pending appeal.

Respectfully submitted,

TOYAL AMERICA, INC.

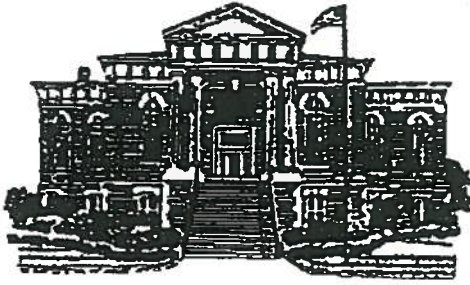
By: 
One of its Attorneys

Dated: August 12, 2010

Roy M. Harsch, Esq.
John A. Simon, Esq.
Yesenia Villaseñor-Rodriguez, Esq.
Drinker Biddle & Reath LLP
191 North Wacker Drive - Suite 3700
Chicago, Illinois 60606
(312) 569-1444
(312) 569-3444

ATTACHMENT A

STATE OF ILLINOIS
THIRD DISTRICT APPELLATE COURT



GIST FLESHMAN
Clerk of the Court
815-434-5050

1004 Columbus Street
Ottawa, Illinois 61350
TDD 815-434-5068

ACKNOWLEDGMENT

Date: August 11, 2010

Title: Toyal America v. PCB (People ex rel. Lisa Madigan)

Appellate Court No.: 3-10-0585

Petition for Review filed in Appellate Court: August 6, 2010

The Docketing Statement is required to be filed in the Appellate Court on or before **August 20, 2010**, pursuant to Supreme Court Rule(s). Your attention is called to the required notice to the Clerk of the Circuit Court to prepare the record and the written request to the Court Reporter(s) to prepare the Report(s) of Proceedings.

If the required filing fee of \$25.00 has not been previously forwarded to this Court, such fee must accompany the Docketing Statement when submitted. A receipt for such payment will be issued and returned. Said fee is not required in a criminal matter if the defendant has been found indigent or if the appeal is taken by the State.

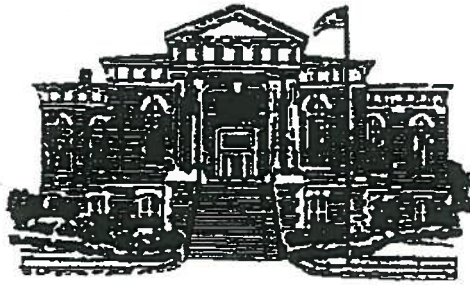
Your cooperation will be greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Gist Fleshman". The signature is written in dark ink and is positioned above the printed name and title.

Gist Fleshman, Clerk
Third District Appellate Court

STATE OF ILLINOIS
THIRD DISTRICT APPELLATE COURT



GIST FLESHMAN
Clerk of the Court
815-434-5050

1004 Columbus Street
Ottawa, Illinois 61350
TDD 815-434-5068

08/11/10

RE: General No. 3-10-0585
Toyal America, Inc. v. PCB (People ex rel. Lisa Madigan)

Pollution Control Board
CURRENT DOCKETING ORDER - DUE DATES

Petition for Review filed:	08/06/10
Record, including Report of Proceeding or Certificate in Lieu of Record, due to be filed (Supreme Court Rules 335, 324, 325):	09/10/10
Appellant's Brief, with Appendix, due to be filed (Supreme Court Rules 342, amended, effective 10-15-79, & 343)	10/15/10
Appellee's Brief due to be filed (Supreme Court Rule 343):	11/19/10
Appellant's Reply Brief due to be filed (Supreme Court Rule 343):	12/03/10

*--denotes filed

COUNSEL PLEASE NOTE

Briefs filed in the Third District Appellate Court shall contain Statements of Facts NOT EXCEEDING FIFTEEN PAGES in length.

Effective: December 15, 1987

No.

IN THE APPELLATE COURT OF ILLINOIS FOR THE THIRD DISTRICT

TOYAL AMERICA, INC. F/K/A ALCAN-)
TOYO AMERICA, INC.)
Petitioner,)

Y.

**Petition for Review of Order of the Illinois
Pollution Control Board PCB 2000-11**

ILLINOIS POLLUTION CONTROL BOARD
and PEOPLE OF THE STATE OF ILLINOIS
ex rel. LISA MADIGAN

Respondents.

FILED

AUG 06 2010

THIRD DISTRICT
APPELLATE COURT CLERK

NOTICE OF FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on August 6, 2010, we filed the attached **PETITION FOR REVIEW** with the Clerk of the Third District of the Illinois Appellate Court, 1004 Columbus Street, Ottawa, IL 61350, a copy of which is herewith served upon you.

Respectfully submitted,

TOYAL AMERICA, INC.

By:

One of its attorneys

John Simon, Esq. ARDC # 6190503
Roy M. Harsch, Esq. ARDC # 1141481
Yesenia Villasenor-Rodriguez, Esq. ARDC # 6288680
Drinker Biddle & Reath LLP
191 N. Wacker Drive Suite 3700
Chicago, Illinois 60606-1698
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Fax: (312) 569-3392
E-mail: john.simon@dbr.com

RECEIVED

AUG 09 2010

THIRD DISTRICT
APPELLATE COURT

No. _____

IN THE APPELLATE COURT OF ILLINOIS FOR THE THIRD DISTRICT

TOYAL AMERICA, INC. F/K/A ALCAN-
TOYO AMERICA, INC.
Petitioner,

v. .

**Petition for Review of Order of the Illinois
Pollution Control Board PCB 2000-11**

ILLINOIS POLLUTION CONTROL BOARD
and PEOPLE OF THE STATE OF ILLINOIS
 ex rel. **LISA MADIGAN, Attorney General State**
 of Illinois.

Respondents.

PETITION FOR REVIEW

NOTICE is hereby given that Toyal America, Inc. ("Toyal") petitions the court for review of the order of the Illinois Pollution Control Board's final order entered on July 15, 2010 in the above captioned matter pursuant to S. Ct. Rule 335. Toyal seeks review as to the penalty imposed by the Illinois Pollution Control Board and the cease and desist order.

Respectfully submitted,

Drinker Biddle & Reath LLP

By:

Attorney for Petitioner

Dated: August 6, 2010

John Simon, Esq. ARDC # 6190503
Roy M. Harsch, Esq. ARDC # 1141481
Yesenia Villasenor-Rodriguez, Esq. ARDC # 6288680
Drinker Biddle & Reath LLP
191 N. Wacker Drive Suite 3700
Chicago, Illinois 60606-1698
Telephone: (312) 569-1392
Fax: (312) 569-3392

CERTIFICATE OF SERVICE

I, John A. Simon, an attorney, certify that I have served the foregoing Petition for Review and Notice of Filing by certified mail, return receipt requested, upon the following this 6th day of August, 2010:

Christopher Grant
Assistant Attorney General
Environmental Bureau
69 West Washington Street, 18th Fl.
Chicago, IL 60602

John Therriault, Clerk
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

Vanessa A. Veil
Assistant Attorney General
Environmental Bureau
69 West Washington Street, 18th Fl.
Chicago, IL 60602

G. Tanner Girard, in his official
capacity as Chairman
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, IL 60601



John A. Simon

CH01/25578317.1

CERTIFICATE OF SERVICE

I, Yesenia Villasenor-Rodriguez, an attorney, certify that I have served the foregoing document upon the following by first class mail, postage prepaid, this 12th day of August, 2010.

Christopher Grant
Assistant Attorney General
Environmental Bureau
69 West Washington Street, 18th Floor
Chicago, IL 60602

Vanessa A. Veil
Assistant Attorney General
Environmental Bureau
69 West Washington Street, 18th Floor
Chicago, IL 60602

Illinois Pollution Control Board
Attn: Clerk
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

CH01/25578311.1

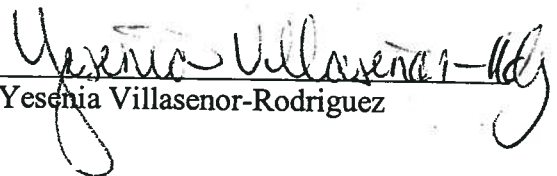
CERTIFICATE OF SERVICE

I, Yesenia Villasenor-Rodriguez, an attorney, certify that I have served the foregoing document upon the following by first class mail, postage prepaid, this 12th day of August, 2010.

Christopher Grant
Assistant Attorney General
Environmental Bureau
69 West Washington Street, 18th Floor
Chicago, IL 60602

Vanessa A. Veil
Assistant Attorney General
Environmental Bureau
69 West Washington Street, 18th Floor
Chicago, IL 60602

Illinois Pollution Control Board
Attn: Clerk
100 West Randolph Street
Suite 11-500
Chicago, IL 60601


Yesenia Villasenor-Rodriguez

CH01/25578311.1