

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

y.

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

Respondent.

PCB No. 00-211

(Enforcement-Air)

NOTICE OF ELECTRONIC FILING

PLEASE TAKE NOTICE that on the 23^d day of August, 2010, Complainant filed its Response to Motion to Stay with the Illinois Pollution Control Board, by electronic filing. A true and correct copy of the document so filed is attached and herewith served upon you.

PEOPLE OF THE STATE OF
ILLINOIS, *by* LISA MADIGAN
Attorney General of
State of Illinois

By:

Christopher Grant
Assistant Attorney General
69 W. Washington Street, #1800
Chicago Illinois, 60602
(312)814-5388

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
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Complainant,)	
)	PCB No. 00-211
)	
v.)	(Enforcement)
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)	
TOYAL AMERICA, INC. formerly)	
known as ALCAN-TOYAL AMERICA, INC.,)	
a foreign corporation,)	
)	
Respondent.)	

RESPONSE TO MOTION TO STAY

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and responds to Respondent Toyal America, Inc.'s ("Toyal's") Motion to Stay Pending Appeal. For the reasons set forth herein, Complainant requests that the Board deny the Respondent's request for a stay of the Board's Final Order.

I. AN APPEAL BOND MUST BE PROVIDED IN THE AMOUNT OF THE CIVIL PENALTY ASSESSED BY THE BOARD

Under Supreme Court Rule 305(a), the Respondent is not entitled to a stay of the judgment, unless it provides "an appeal bond or other form of security." Sup. Ct. R. 305(a). A bond provides security to a judgment creditor that if the judgment is affirmed, it will be paid that which is owed. *Estate of Hoellen*, 367 Ill. App. 3d 240, 245 (1st Dist. 2006).

Toyal filed its Petition for Review with the Appellate Court, Third District, on August 19, 2010. The Clerk of the Appellate Court has advised the undersigned that the Court can, and

will, accept and hold appropriate securities pending appeal. However, as of the date of filing this Response, Toyal has not deposited a bond or other security with the Court. For this reason, the Board should deny Toyal's Motion to Stay.

II. TOYAL'S RIGHT TO APPEAL WILL NOT BE IMPAIRED BY A DENIAL OF ITS REQUEST FOR A STAY

If the Board denies the requested stay, Toyal is not prevented from continuing with its appeal, because the denial of a stay of judgment does not affect the *right* to appeal. *See, e.g. Jack Springs, Inc. v. Little*, 50 Ill.2d 351, 355 (1972). The absence of a stay merely allows the State to execute the underlying judgment, if it so chooses. Toyal may forestall execution simply by securing the judgment with a bond or other acceptable surety. However, the State should not be prevented from enforcing the Board's Final Order without a guarantee that Toyal's assets will not be dissipated or diverted during the pendency of an appeal.

Finally, if denied a stay by the Board, Toyal may request a stay from the Appellate Court. Toyal may decide to arrange for an appropriate security in support of such a Motion.

III. CONCLUSION

Because Toyal has failed to provide for a bond securing the award of civil penalties, Complainant respectfully requests that the Board deny Toyal's Motion to Stay.

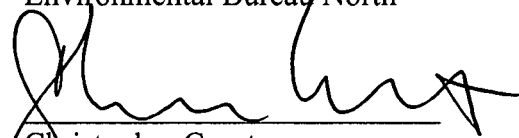
RESPECTFULLY SUBMITTED

People of the State of Illinois
by Lisa Madigan,
Attorney General of the State of Illinois

Matthew J. Dunn, Chief
Environmental Enforcement/Asbestos
Litigation Division

RoseMarie Cazeau, Chief
Environmental Bureau North

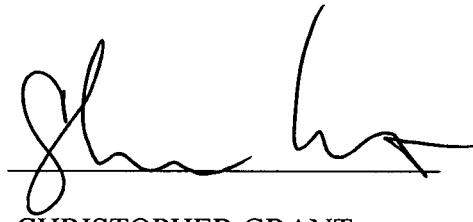
BY:

A handwritten signature in black ink, appearing to read "Christopher Grant", is written over a horizontal line.

Christopher Grant
Assistant Attorney General
69 W. Washington Street, #1800
Chicago, IL 60602
(312)814-5388

CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 23d day of August, 2010, the foregoing Response to Motion to Stay and Notice of Electronic Filing upon the persons listed below by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 W. Randolph, Chicago, Illinois.

A handwritten signature in black ink, appearing to read 'Christopher Grant', is written over a horizontal line.

CHRISTOPHER GRANT

Mr. Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
100 W. Randolph
Chicago, Illinois 60601 (By Hand Delivery)

Mr. Roy M. Harsch
Ms. Yesenia Villaseñor-Rodriguez
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