

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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AUG 30 2010
STATE OF 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)

NOTICE OF FILING

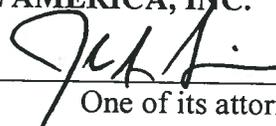
TO: Christopher Grant
Assistant Attorney General
Environmental Bureau
69 West Washington Street, 18th Floor
Chicago, IL 60602

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

PLEASE TAKE NOTICE that on August 30, 2010, we filed the attached TOYAL'S REPLY IN SUPPORT OF ITS MOTION TO STAY with the Clerk of the Illinois Pollution Control Board, 100 West Randolph Street, Suite 11-500, Chicago, IL 60601, a copy of which is herewith served upon you.

Respectfully submitted,

TOYAL AMERICA, INC.

By: 
One of its attorneys

Roy M. Harsch, Esq.
Yesenia Villasenor-Rodriguez, Esq.
John A. Simon, Esq.
DRINKER BIDDLE & REATH LLP
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS)
ex rel. LISA MADIGAN)
)
Complainant,)
)
v.) PCB 2000-211
) (Enforcement)
)
TOYAL AMERICA, INC. , formerly known)
as ALCAN-TOYO AMERICA, INC., a)
foreign corporation,)
)
Respondent.)

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STATE OF ILLINOIS
Pollution Control Board

TOYAL'S REPLY IN SUPPORT OF ITS MOTION TO STAY

Respondent, TOYAL AMERICA, INC. ("Toyal"), by and through its attorneys, Drinker Biddle & Reath LLP, replies in support of its August 12, 2010 Motion to Stay enforcement of the civil penalty portion of the Board's final order in this matter dated July 15, 2010, as follows:

1. On August 23, 2010, Complainant filed its Response in opposition to Toyal's Motion to Stay. Respondent cites no Illinois Pollution Control Board ("Board") rule requiring the posting of financial security pending appeal, and Respondent is aware of no such rule.
2. In its Response, Complainant raises no concerns and makes no argument with respect to any risk of ongoing or future pollution. Where no concerns are raised as to ongoing or future pollution, the Board has granted similar requests to stay orders with respect to payment of penalties without posting an appeal bond. 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).
3. Complainant has failed to provide any evidence or even suggest a reason which would lead the Board to conclude that Toyal's assets would be dissipated or diverted during the

appeal. Nevertheless, the only argument raised by Complainant is that 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.

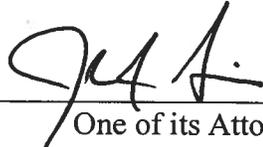
4. Toyal contends that Complainant's uncertainty over unspecified future developments that may impact Toyal's economic position do not warrant a denial of the stay pending appeal requested by Toyal.

5. Toyal respectfully requests that Board approve its 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 30, 2010

Roy M. Harsch, Esq.
John A. Simon, Esq.
Yesenia Villasenor-Rodriguez, Esq.
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CERTIFICATE OF SERVICE

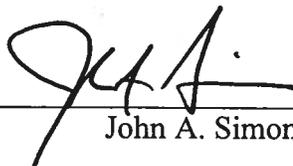
I, John A. Simon, an attorney, certify that I have served the foregoing document upon the following by first class mail, postage prepaid, this 30th day of August, 2010:

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

and by Hand Delivery to:

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



John A. Simon

CH01/25592191.1