

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

JOHNS MANVILLE, a Delaware corporation,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. 14-3
	)	(Citizen Suit)
ILLINOIS DEPARTMENT OF	)	
TRANSPORTATION,	)	
	)	
Respondent.	)	

**NOTICE OF FILING AND SERVICE**

To: ALL PERSONS ON THE ATTACHED CERTIFICATE OF SERVICE

Please take note that today, September 21, 2023, I have filed with the Clerk of the Pollution Control Board Illinois Department of Transportation's Motion for Stay Pending appeal, and have served each person listed on the attached service list with a copy of the same.

Respectfully Submitted,

By: s/ Ellen F. O'Laughlin  
ELLEN F. O'LAUGHLIN  
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**CERTIFICATE OF SERVICE**

***Johns Manville v. Illinois Department of Transportation, PCB 14-3 (Citizens)***

I, ELLEN F. O'LAUGHLIN, do hereby certify that, today, September 21, 2023, caused to be served on the individuals listed below, by electronic mail, a true and correct copy of "Illinois Department of Transportation's Motion to Stay Pending Appeal" on each of the parties listed below:

Bradley Halloran  
Hearing Officer  
Illinois Pollution Control Board  
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Clerk of the Pollution Control Board  
Illinois Pollution Control Board  
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*s/ Ellen F. O'Laughlin*  
Ellen F. O'Laughlin



3. Section 101.906(c) of the Board's General Rules, 35 Ill. Adm. Code 101.906(c), provides that appeal of final Board Orders is governed by Supreme Court Rule 335. Supreme Court Rule 335(g) provides, in pertinent part, as follows:

\* \* \*

(g) Stay. Application 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....

4. While jurisdiction over this matter is currently in the Appellate Court, the Board retains jurisdiction to determine "matters collateral or incidental or collateral to the judgment", including the grant of a stay. *Phillips 66 Company v. Illinois EPA*, PCB 12-101 (August 8, 2013, slip op. at 12).

5. In considering a request for stay, the Board considers the factors noted by the Supreme Court in *Stacke v. Bates*, 138 Ill.2d 295 (1990). *Id.* and *People v. Toyal, Inc.*, PCB 00-211, (September 16, 2010, slip op. at 9). These factors include whether the stay is necessary to "secure the fruits of the appeal", hardship to the other party, and whether there is a "substantial case on the merits. *Phillips 66*, slip op at 12.

6. Respondent asserts a stay is necessary to preserve the fruits of the appeal and would work no hardship on Complainant. The Final Order only directs payment of money and contains no future compliance requirements. This matter has been pending with the Board for 10 years, and Complainant will suffer no prejudice from a short delay in payment, if the Final Order is affirmed by the Appellate Court. Further, consistent with Supreme Court Rule 335(i)(1) and Supreme Court Rule 305(i) the Board may issue a stay without a bond or other security posted by Respondent, a State Agency.

7. Respondent also asserts that it has a “substantial case on the merits” of its appeal, meeting another of the factors enumerated in *Stacke*, 138 Ill. 2d. at 306. The Board’s original finding of liability and its Final Order has been appealed by Complainant, and Respondent filed a notice of cross appeal. Respondent’s appeal involves meritorious issues for appeal, including, among other things, the appropriate application of the State Lawsuit Immunity Act and the Court of Claims Act.

8.. Because payment as specified in the Final Order will have to be made using taxpayer funds, preserving the fruits of Respondent’s appeal, and therefore preserving State monies, fully justifies the grant of a Stay.

Wherefore, Respondent, ILLINOIS DEPARTMENT OF TRANSPORTATION, respectfully requests that the Board grant a discretionary stay of the date for payment in its August 3, 2023 Opinion and Order and grant such other relief as the Board may deem appropriate.

Respectfully Submitted,

ILLINOIS DEPARTMENT OF TRANSPORTATION

*/s/ Christopher J. Grant*

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