

ILLINOIS POLLUTION CONTROL BOARD
August 18, 1988

ALTON PACKING CORPORATION)
)
 Petitioner,)
)
 v.) PCB 83-49
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by R. C. Flemal):

This matter comes before the Board upon an August 3, 1988 motion for stay pending appeal filed on behalf of Alton Packaging Corporation ("Alton"). The Illinois Environmental Protection Agency ("Agency") filed its response in opposition to Alton's motion on August 11, 1988. The Board previously denied Alton's request for variance in an Opinion and Order dated February 25, 1988. Alton subsequently filed a motion to reconsider which was denied by the Board on May 5, 1988. On June 8, 1988 Alton filed a petition for review of the Board's decision with the Illinois Appellate Court, Fifth District.

Alton asserts that it is entitled to an automatic stay during the pendency of its appeal of the Board's decision to the Appellate Court, pursuant to Section 38(b) of the Environmental Protection Act ("Act") and 35 Ill. Adm. Code 104.102. However, those provisions only apply during the pendency of the variance proceeding before the Board. Since the February 25, 1988 Opinion and Order constitutes final action of the Board, the automatic stay provision is no longer applicable.

Alton further argues that it is entitled to a discretionary stay under Supreme Court Rule 335(g). Alton states that a stay pending appeal is proper where there is a likelihood of prevailing on the merits and irreparable harm would result if a stay were not granted.

The Board finds that the arguments contained in Alton's motion are the same as those presented in its case in chief. Therefore, for the reasons stated in its February 25, 1988 Opinion and Order, the Board finds that Alton has not shown that it is entitled to a discretionary stay.

Accordingly, Alton's motion to stay pending appeal is hereby denied.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 18th day of August, 1988, by a vote of 6-0.

Dorothy M. Gunn M.M.
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board