

ILLINOIS POLLUTION CONTROL BOARD
November 7, 1985

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|------------------------|---|---------------|
| ALTON PACKAGING CORP., |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | PCB 83-49 and |
| |) | PCB 83-55 |
| ILLINOIS ENVIRONMENTAL |) | |
| PROTECTION AGENCY, |) | |
| |) | |
| Respondent. |) | |

ORDER OF THE BOARD (by J.D. Dumelle):

This matter comes before the Board upon an October 29, 1985 motion for stay filed on behalf of the Alton Packaging Corp. (Alton) to which the Illinois Environmental Protection Agency (Agency) responded in opposition on November 6, 1985. The Board dismissed this matter on August 1, 1985, and denied Alton's September 4, 1985 motion for reconsideration on September 20, 1985.

Alton alleges that it is entitled to an automatic stay pursuant to Section 38 of the Illinois Environmental Protection Act and 35 Ill. Adm. Code 104.102 since its variance request was filed within 20 days of the adoption of the underlying rule. However, those provisions only apply during the pendency of the variance proceeding before the Board. Since this action has been dismissed, there has been a final disposition of the petition and the automatic stay provision is no longer applicable.

Alton further argues that it is entitled to a discretionary stay. However, to be entitled to such a stay Alton must demonstrate, among other things, that it is likely to succeed on the merits. For the reasons stated in its August 1 and September 20, 1985, orders, the Board finds that this condition has not been met. Therefore, Alton is not entitled to a discretionary stay.

Accordingly, the motion for stay 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 7th day of November, 1985 by a vote of 7-0.

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