

ILLINOIS POLLUTION CONTROL BOARD  
September 8, 1988

SIMKINS INDUSTRIES, INC.,            )  
  )  
          Petitioner,                    )  
  )  
          v.                                )            PCB 87-181  
  )  
ILLINOIS ENVIRONMENTAL                )  
PROTECTION AGENCY,                    )  
  )  
          Respondent.                    )

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

This matter comes before the Board upon a Motion to Stay the Time for Filing a Certificate of Acceptance filed by Simkins Industries, Inc. ("Simkins") on August 18, 1988.

By Order of June 16, 1988 the Board granted Simkins a one-year variance from 35 Ill. Adm. Code 215.245. The grant of variance is conditioned to terminate on May 31, 1989, the date at which Simkins contended it would be in compliance with Section 215.245.

On July 21, 1988 Simkins moved the Board to modify its June 16, 1988 Order by adding four additional years to the May 31, 1989 compliance date. By Order of August 4, 1988 the Board denied Simkins' modification motion, noting inter alia that Simkins had previously presented no evidence which would allow the Board to weigh the merits of the longer-term variance. The Board additionally noted that if Simkins wished to provide the information necessary to support the longer-term variance, it need do so in a new proceeding such as to allow the Illinois Environmental Protection Agency ("Agency") and other participants opportunity to assess the new information through the procedures provided for in the standard comment, recommendation, and hearing process. To allow Simkins to pursue the longer-term variance, the Board redocketed Simkins' July 21, 1988 motion as a petition for variance in a new proceeding, PCB 88-121.

Additionally, in its August 4, 1988 Order the Board on its own motion extended by 45 days the time limit for Simkins' submission of a signed Certificate of Acceptance for the one-year variance. Simkins' instant motion is to further extend the time limit until a final decision is rendered in PCB 88-121.

During the pendency of the instant proceeding, Simkins was afforded an automatic stay of the effectiveness of Section 215.245 because it had timely filed its variance petition

pursuant to Section 38(b) of the Environmental Protection Act ("Act") (Ill. Rev. Stat. 1987, ch. 111<sup>1/2</sup>, par. 1038). In pertinent part, Section 38(b) reads:

If any person files a petition for variance from a rule or regulation within 20 days after the effective date of such rule or regulation, the operation of such rule or regulation shall be stayed as to such person pending the disposition of the petition.

Simkins avowed desire is to preserve the Section 38(b) stay for the additional time required for disposition of the PCB 88-121 proceeding. Furthermore, it is Simkins' apparent belief that the stay would remain in force as long as Simkins' filing of the Certificate of Acceptance is pending. The Board finds that this is an unsupported construction of Section 38(b).


The controlling language of Section 38(b) is that the stay shall be in effect "pending the disposition of the petition". The "disposition" referred to is clearly the final adjudicative action taken by the Board, or by a higher court if the matter is appealed. The Board, in fact, has taken final action on Simkins' petition with its grant of Simkins' requested variance.

As the Board noted in its June 16, 1988 Opinion, a variance is not binding until petitioner accepts the variance upon the terms imposed, an action which is accomplished by filing of the Certificate of Acceptance (Slip op. at 6). That Simkins may now wish to accept or not to accept the Board's final action by filing or not filing the Certificate of Acceptance is immaterial to the fact that the statutory "disposition" has taken place and that the automatic stay has thereby terminated.

The Board sees no merit in further extension of the filing date for the Certificate of Acceptance. The motion for stay of the filing deadline is therefore 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 8<sup>th</sup> day of September, 1988, by a vote of 7-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board