

ILLINOIS POLLUTION CONTROL BOARD

November 7, 1996

RESIDENTS AGAINST A POLLUTED)	
ENVIRONMENT AND THE EDMUND B.)	
THORNTON FOUNDATION,)	
)	
Petitioner,)	PCB 96-243
)	(Pollution Control Facility Siting
)	Appeal)
v.)	
)	
COUNTY OF LASALLE AND LANDCOMP)	
CORPORATION.,)	
Respondent.		

ORDER OF THE BOARD (by M. McFawn):

This matter is before the Board on several filings. First, on October 8, 1996, respondent LandComp Corporation (LandComp) filed a motion for rule 308(a) certification and for a stay of the Board's September 19, 1996 order in this matter. Second, also on October 8, 1996, LandComp filed a motion requesting that the Board dismiss its appeal of the Board's September 19, 1996 decision. Third, on October 15, 1996, the National Solid Waste Management Association (SWMA) filed a motion for leave to file an amicus curiae brief in support of LandComp's motion for rule 308(a) certification and request for a stay, accompanied by its proposed brief. Fourth, on October 21, 1996, petitioners Residents Against a Polluted Environment and the Edmund B. Thornton Foundation (collectively, Residents) filed an objection to LandComp's request for rule 308 certification. Finally, LandComp filed a reply memorandum to the petitioners' objection to rule 308(a) certification, accompanied by a motion for leave to file.

Initially, we note that LandComp's motion to dismiss its appeal is moot, since the Third District Appellate Court granted LandComp's motion to dismiss its petition for review on October 18, 1996. We will therefore not further address this motion.

In its motion for rule 308 certification, LandComp asks that the Board issue an order in accordance with 35 Ill. Adm. Code 101.304 and Supreme Court Rule 308(a), certifying an appeal of the Board's September 19, 1996 order in this matter. Supreme Court Rule 308(a) provides:

When the trial court, in making an interlocutory order not otherwise appealable, finds that the order involves a question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, the court shall so state in writing, identifying the question of law involved. Such a statement may be made at the time of

the entry of the order or thereafter on the court's own motion or on motion of any party. The Appellate Court may thereupon in its discretion allow an appeal from the order.

The Board, in its procedural rules, specifically provides for certification of interlocutory appeals in accordance with Supreme Court Rule 308(a). (See 35 Ill. Adm. Code 101.304.) The Board's authority to certify interlocutory appeals is also supported by judicial interpretation. (See People v. Pollution Control Board, 129 Ill. App. 3d 958, 473 N.E.2d 452 (1st Dist. 1984) (decision on certified interlocutory appeal); and Getty Synthetic Fuel v. Pollution Control Board, 104 Ill. App. 3d 285, 60 432 N.E.2d 942 (1st Dist 1982) (finding Supreme Court rules 301 through 320 and 327 through 373 generally applicable to appeals from Board decisions.)

In support of the motion for certification, LandComp states that the Board's September 19, 1996 order departed from important precedent and raised questions of law as to which there are substantial grounds for differences of opinion.

The Illinois Supreme Court has indicated that Rule 308 appeals are to be allowed only in certain exceptional circumstances. (People v. Pollution Control Board, 473 N.E.2d at 456, citing People ex rel. Mosley v. Carey, 74 Ill.2d 527 (1979).) Thus, Rule 308 should be strictly construed and sparingly exercised. People v. Pollution Control Board, 473 N.E.2d at 456.

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 _____ day of _____, 1996, by a vote of _____.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board