ILLINOIS POLLUTION CONTROL BOARD
March 7, 1996

WEST SUBURBAN RECYCLING AND ENERGY CENTER, L.P.,	)	
Petitioner,	)	
v.	)	PCB 95-119, 95-125
	)	(Permit Appeal - Land & Air)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	Consolidated
Respondent.	)	

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

On February 20, 1996 the Illinois Environmental Protection Agency (Agency) filed a "Motion for Reconsideration and Request that Board Issue a Certificate of Importance". The Agency requests that the Board reconsider its February 1, 1996 order denying the Agency's motion for summary judgment. In the event the Board affirms its February 1 order, the Agency requests a Certificate of Importance to immediately appeal a specific question of law to the appellate court. On February 23, 1996 West Suburban Recycling and Energy Center, L.P. (WSREC), filed an "Objection to the Agency's Motion for Reconsideration and Request for Certificate of Importance".[1]

MOTION FOR RECONSIDERATION

In ruling on a motion for reconsideration the Board is to consider, but is not limited to, error in the decision and facts in the record which may have been overlooked. (35 Ill. Adm. Code 101.246(d).) In Citizens Against Regional Landfill v. County of Board of Whiteside (March 11, 1993), PCB 93-156, we observed that "[t]he intended purpose of a motion for reconsideration is to bring to the court's attention newly discovered evidence which was not available at the time of hearing, changes in the law or errors in the court's previous application of the existing law. (Korogluyan v. Chicago Title & Trust Co. (1st Dist. 1992), 213 Ill.App.3d 622, 572 N.E.2d 1154, 1158.)"

[1] The Agency filed a "Motion for Leave to File Reply and Reply to West Suburban Recycling and Energy Center, L.P.'s Objection to the Agency's Motion For Reconsideration and Request for Certificate of Importance" on March 4, 1996. The Agency's motion for leave to reply was filed ten days after WSREC's response, beyond the usual seven-day response time, and is not allowable without permission by the Board. The motion is denied. (See 35 Ill. Adm. Code 101.241(c).)

The Agency requests that the Board reconsider its February 1, 1996 order denying the Agency's motion for summary judgment. The motion for reconsideration simply realleges the same arguments previously raised in the Agency's January 23, 1996 motion for summary judgment. We find the motion presents the Board with no new evidence, change in the law, or any other reason to conclude that the Board's original decision was in error.

The Board therefore denies the Agency's motion to reconsider its February 1, 1996 order denying the Agency's motion for summary judgment.

CERTIFICATE OF IMPORTANCE

The Agency requests that the Board issue a "Certificate of Importance" pursuant to Supreme Court Rule 308(a). As an initial matter, WSREC is incorrect in its argument that the Board lacks authority to grant the relief requested by the Agency. Although the Board does not use the title "Certificate of Importance", the Board can grant the same type of relief requested in the form of an interlocutory appeal order. The Board has previously granted interlocutory appeals pursuant to the Board's procedural rules at 35 Ill. Adm. Code 101.304, consistent with Rule 308 of the Illinois Supreme Court Rules. (See People v. Pollution Control Board, 129 Ill.App.3d 958, 473 N.E.2d 452 (1st Dist. 1984); Land and Lakes Co. v. Village of Romeoville (April 11, 1991), PCB 91-7).) Therefore, through its own procedural rules and judicial interpretation, the Board has the authority to issue the requested certificate for appeal.

Illinois appellate courts have routinely held that appeals under Rule 308 should only be available in exceptional cases where there are compelling reasons for rendering an early determination of a critical question of law and where a determination of the issue would materially advance the litigation. (Kincaid v. Smith, 252 Ill.App.3d 618 (1st Dist. 1993) ; Renshaw v. General Telephone Co., 112 Ill.App.3d 58, 445 N.E.2d 70 (1983); Voss v. Lincoln Mall Management Co., 166 Ill.App.3d 442, 519 N.E.2d 1056 (1988).) Illinois courts have repeatedly stated that Supreme Court Rule 308 should be strictly construed and sparingly exercised. (Kincaid v. Smith, 252 Ill.App.3d 618 (1st Dist. 1993); Schoonover v. American Family Insurance Co., 214 Ill.App.3d 33, 572 N.E.2d 1258 (1991).)

The Board believes that the decision we rendered on the Agency's motion for summary judgment was straightforward and unambiguous, and that there are no compelling reasons for early review of that decision by the appellate court.

The Board also finds nothing in the Agency's arguments that allow us to conclude that certifying the question at hand now would materially advance the termination of the litigation. We note that the Board's decision deadline in the permit appeals is May 16, 1996, slightly over two months from today. As the Board reasoned in Waste Management of Illinois v. McHenry County Board (April 21, 1988), PCB 88-39 the Board doubts that an interlocutory appeal can be heard within such a short time frame. Supreme Court Rule 308(e) states: "(t)he application for permission to appeal or the granting thereof shall not stay proceedings in the trial court unless the trial court or the Appellate Court or a judge thereof shall so order". The

Board will not and cannot stay this matter to allow the Agency to proceed with the requested interlocutory appeal. The Board must continue its hearing and decision process to avoid issuance of the permit by operation of law pursuant to section 40 of the Act.

Therefore the Board will not issue a certificate of importance or an order of interlocutory appeal.

Chairman Manning and Board Member McFawn concurred.

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 14 day of March, 1996, by a vote of 7-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board