

In this case, the Board finds that neither of the 308(a) tests have been met, and so denies the motion.

The Defenders have failed to persuade the Board that the interpretation of Section 40.1 made by the Board in accordance with the Second District's decision in the McHenry County case involves a question as to which "there is substantial ground for difference of opinion". The statute by its terms does not permit cross-appeals. As WMI points out, it is well established that appeal rights are only those which are articulated in the statute. The Board may not extend or infer such rights. Given the availability of enforcement actions pursuant to Section 31, it has been further held that due process requirements are satisfied even if no right to appeal permit grants exists, a situation which is analogous to that presented here. Landfill Inc. v. PCB, 74 Ill.2d 541, 387 N.E.2d 258, 262-64 (1978); see also E & E Hauling, Inc. v. PCB, 107 Ill.2d 33, 481 N.E.2d 664,667 (1985) (citing Landfill, Inc.)

Since entry of the McHenry County decision in March, 1987, no other Court has addressed this issue, so that this matter does not present conflicting judicial interpretations in need of resolution.

The Defenders have similarly failed to persuade the Board that certification of its proposed questions will "materially advance the termination of the litigation". The Defenders assert that immediate resolution of its appeal status would promote

"more efficient and orderly administrative proceedings and by avoiding piecemeal litigation. An expedited appeal could be completed prior to the PCB's 120-day statutory deadline for reviewing the County Board's decision. If the Defenders succeed in that "immediate appeal," the PCB could rule at one time on all relevant issues (including criterion #1) and avoid a second proceeding to review criterion #1 alone that would be necessary if the Appellate Court were to hear the Defenders' appeal later and then reverse the PCB's Order dismissing the Defenders' cross-appeal."

Decision in this matter is due on June 23, 1988, roughly 60 days from today, and the hearing is scheduled for tomorrow, April 22. Certification of issues for interlocutory appeal would seriously prejudice the Board's ability to render a timely decision in this matter, as the Board's timeclock is not automatically tolled during the pendency of any appeal. Based on experience, the Board doubts the accuracy of the Defenders assertion that an interlocutory appeal can be heard within 60

days. The Board further doubts that WMI would be willing to waive the decision date to allow for an appeal which it opposes.

Additionally, the Board agrees with WMI's observation that review of the County's decision on criterion #1 will in no way advance the Board's deliberation on criterion 2 & 3.

Again, for all of the foregoing reasons, the Defenders' motion to certify is denied.

IT IS SO ORDERED.

B. Forcade concurred.

J. T. Meyer dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 21st day of April, 1988, by a vote of 6-1.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board