

ILLINOIS POLLUTION CONTROL BOARD
April 6, 2000

LAND AND LAKES COMPANY,)
)
 Petitioner,)
)
 v.) PCB 99-69
) (Pollution Control Facility Siting Appeal)
 RANDOLPH COUNTY BOARD OF)
 COMMISSIONERS,)
)
 Respondent.)

ORDER OF THE BOARD (by G.T. Girard):

On November 23, 1998, Land and Lakes Company (Land and Lakes) filed an appeal pursuant to Section 40.1 of the Environmental Protection Act (Act) (415 ILCS 5/40.1) of an October 19, 1998 decision by the Randolph County Board of Commissioners (Randolph County) denying siting of a pollution control facility. Randolph County denied the siting based on Land and Lakes failing to meet two of the nine criteria listed in Section 39.2 of the Act (415 ILCS 5/39.2). In this appeal Land and Lakes asserts that the proceedings before Randolph County were fundamentally unfair and that the decision by Randolph County was against the manifest weight of the evidence.

On January 18, 2000, Land and Lakes filed a motion for summary judgment on the issue of whether the proceedings before Randolph County were fundamentally unfair. On January 19, 2000, Randolph County filed a motion for partial summary judgment and a memorandum in support arguing that the proceedings were fundamentally fair. On February 1, 2000, Land and Lakes filed a response to the Randolph County motion. On February 2, 2000, Randolph County filed a response to the Land and Lakes motion. On February 22, 2000, Land and Lakes filed a motion for leave to file a limited reply *instanter*. The motion to file a limited reply *instanter* is granted.

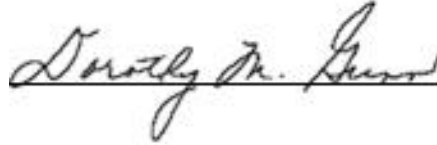
Both parties argue that summary judgment is appropriate on the issue of whether the proceedings before Randolph County were fundamentally fair. The parties maintain that there is no genuine issue of fact and thus summary judgment may be granted. Land and Lakes argues that the facts clearly demonstrate that the proceedings were fundamentally unfair and that Land and Lakes should be granted siting by operation of law. Randolph County contends that the facts clearly demonstrate that the proceedings were fundamentally fair and that this matter should proceed to hearing on the remaining issues.

The Board denies the motions for summary judgment and directs that this matter proceed to hearing on the issues of fundamental fairness and the challenged criteria.

IT IS SO ORDERED.

Board Member M. McFawn dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 6th day of April 2000 by a vote of 6-1.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board