

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DELAWARE DEPARTMENT OF	§	
NATURAL RESOURCES AND	§	No. 459, 2018
ENVIRONMENTAL CONTROL,	§	
	§	Court Below: Superior Court
Appellee Below,	§	of the State of Delaware
Appellant,	§	
	§	C.A. No. N17A-03-006
v.	§	
	§	
FOOD & WATER WATCH,	§	
	§	
Appellant Below,	§	
Appellee.	§	

Submitted: September 25, 2018

Decided: December 11, 2018

Before **VALIHURA**, **VAUGHN**, and **SEITZ**, Justices.

ORDER

(1) Delaware Department of Natural Resources and Environmental Control (“DNREC”) filed this interlocutory appeal from the Superior Court’s August 24, 2018 memorandum opinion in an administrative appeal from an order of the Delaware Environmental Appeals Board (“the Board”).¹ The Board’s order of March 1, 2017, had dismissed an appeal filed by an environmental interest group, Food & Water Watch, for the group’s lack of standing to challenge a joint order issued by DNREC and the Delaware Department of Agriculture, approving a general

¹ 2018 WL 4062112 (Del. Super. Ct. Aug. 24, 2018).

permit program establishing standards for certain poultry feeding operations. In the August 24 memorandum opinion, the Superior Court reversed the Board's order dismissing Food & Water Watch's appeal and remanded the matter to the Board.²

(2) On September 7, 2018, DNREC filed its application for certification of an interlocutory appeal from the Superior Court's August 24, 2018 memorandum opinion reversing the Board's dismissal of Food & Water Watch's appeal. DNREC conceded that its application was untimely filed under Supreme Court Rule 42(c)(i). Food & Water Watch opposed the application.

(3) By order dated September 24, 2018, the Superior Court denied certification of the interlocutory appeal after finding, first, that DNREC had not demonstrated good cause to excuse the untimely filing of its application, and second, that even if the application had been timely filed, interlocutory review of the August 24 memorandum opinion was not warranted under the criteria in Rule 42(b).³ For the reasons stated in the Superior Court's order of September 24, 2018, the Court has determined, in its discretion, that DNREC's application for interlocutory review of the August 24, 2018 memorandum opinion does not meet the requirements of Rule 42.

² *Id.* at *7.

³ 2018 WL 4613594 (Del. Super. Ct. Sept. 24, 2018).

NOW, THEREFORE, IT IS HEREBY ORDERED that the interlocutory appeal is REFUSED.

BY THE COURT:

/s/ James T. Vaughn, Jr.
Justice