

ILLINOIS POLLUTION CONTROL BOARD
April 16, 2009

WASTE MANAGEMENT OF ILLINOIS,)
INC., and KENDALL LAND AND CATTLE,)
LLC,)
)
Petitioners,)
)
v.) PCB 09-43
) (Pollution Control Facility
COUNTY BOARD OF KENDALL COUNTY,) Siting Appeal
)
Respondent.)

ORDER OF THE BOARD (by A.S. Moore):

On February 9, 2009, the Village of Minooka (Minooka) filed a motion for leave to file an *amicus* brief. On February 13, 2009, Kankakee Regional Landfill, LLC (KRL) filed a motion for leave to file *amicus* brief. On February 20, 2009, petitioners Waste Management of Illinois, Inc. and Kendall Land and Cattle, LLC (collectively, petitioners) filed their objection to the motion for leave to file *amicus* brief by Minooka. On February 24, 2009, petitioners filed their objection to the motion for leave to file *amicus* brief by KRL.

The Board today addresses two filings: a combined response by the County Board of Kendall County (County Board) to petitioners' objections to the motions for leave to file an *amicus* brief (Combined Resp.); and Minooka's response to petitioners' objection to the motion for leave to file an *amicus* brief (Minooka Resp).

COUNTY BOARD'S COMBINED RESPONSE

The County Board notes that, on February 6, 2009, Minooka filed a motion for leave to file an *amicus* brief and that, on February 20, 2009, petitioners filed their objection to that motion. Combined Resp. at 1. The County Board further notes that, on February 12, 2009, KRL filed a motion for leave to file an *amicus* brief and that, on February 24, 2009, petitioners filed their objection to that motion. *Id.* On March 6, 2009, the County Board filed its combined response to petitioners' objections.

The Board's procedural rules provide in pertinent part that "[t]he moving person will not have the right to reply, except as permitted by the Board or the hearing officer to prevent material prejudice. A motion for leave to file a reply must be filed with the Board within 14 days after service of the response." 35 Ill. Adm. Code 101.500(e).

Construing the combined response as the County Board's reply to petitioner's objections, the Board notes that the combined response was not filed by either Minooka or KRL as the

moving person and was not accompanied by a motion for leave to file a reply. Accordingly, the Board declines to consider the combined response as a reply.

Construing the combined response as the County Board's response to motions by Minooka and KRL, the Board notes that it was not filed within the 14-day response deadline. *See* 35 Ill. Adm. Code 101.500(d). Accordingly, the Board also declines to consider the combined response as a response to the original motions by Minooka and KRL. In this regard, however, the Board notes that, in an order dated March 5, 2009, it granted Minooka's and KRL's motions for leave to file an *amicus* brief.

MINOOKA'S RESPONSE

Minooka notes that, on February 9, 2009, the Board received Minooka's motion for leave to file an *amicus* brief. Minooka Resp. at 1. Minooka acknowledges petitioners' objection to that motion filed on February 20, 2009. *Id.* at 2. Responding to that objection on March 9, 2009, Minooka claims that, until petitioners respond to the County Board's demand for a bill of particulars, it is "premature" to respond to petitioner's objection. *Id.* Minooka requests leave to file a reply to petitioners' objection within seven days after receiving a response to the demand for a bill of particulars. *Id.* at 3. Alternatively, Minooka effectively renews its request that the board grant its motion for leave to file an *amicus* brief. *See id.* at 3-4.

The Board notes that, in an order dated March 5, 2009, it granted the Minooka's motion for leave to file an *amicus* brief. Accordingly, the Board denies Minooka's request for leave to file a reply as moot.

CONCLUSION

The Board first declines to consider the County Board's combined response as either a response to the original motions for leave to file an *amicus* brief or as a reply to petitioner's objections to those motions. Second, the Board denies Minooka's motion for leave to file a reply as moot, as the Board has granted Minooka's motion for leave to file an *amicus* brief.

The Board today reserves ruling on the March 4, 2009, motion by Grundy County to intervene in this proceeding. The Board today also reserves ruling on the County Board's April 10, 2009, motion to dismiss portions of the petitioners' amended petition for review.

Also, the Board notes that, in an order dated April 15, 2009, the hearing officer granted the County Board's April 7, 2009, motion to withdraw its demand for a bill of particulars, which the County Board filed on March 4, 2009.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 2, 2009, by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board