

ILLINOIS POLLUTION CONTROL BOARD
September 1, 1994

LAND AND LAKES COMPANY, JMC)	
OPERATIONS, INC., and NBD TRUST)	
COMPANY OF ILLINOIS AS TRUSTEE)	
UNDER TRUST NO. 2624EG,)	
)	
Petitioners,)	
)	
v.)	PCB 94-195
)	(Landfill Siting Review)
VILLAGE OF ROMEOVILLE,)	
)	
Respondent, and)	
)	
COUNTY OF WILL,)	
)	
Intervenor.)	

ORDER OF THE BOARD (by J. Theodore Meyer):

This matter is before the Board on two motions for leave to intervene and a motion for leave to file the record *instanter*. First, on August 8, 1994, Will County, by James W. Glasgow, State's Attorney of Will County, filed a motion for leave to intervene in support of the Village of Romeoville's denial of siting approval. Will County states that it has appeared and been a party to the siting proceedings held by Romeoville; that it has an interest in protecting the health and environment within which the People of Will County live and work, so that Will County is concerned that new facilities be necessary to accommodate the waste disposal needs of the People of Will County; that the bulk of the land surrounding the proposed facility is within unincorporated Will County and subject to the police power jurisdiction of Will County; and that the representation of the interest of the People of Will County and Will County itself by Romeoville may be inadequate. Will County also points out that the Board allowed the State's Attorney of Will County to intervene in a previous landfill siting review, and that the Board's decision was upheld by the appellate court in Land and Lakes Company v. Illinois Pollution Control Board (3d Dist. 1993), 245 Ill.App.3d 631, 616 N.E.2d 349, 186 Ill.Dec. 396.

On August 15, 1994, petitioners Land and Lakes Company, JMC Operations, Inc., and NBD Trust Company of Illinois, as Trustee under Trust No. 2624EG (collectively, Land and Lakes), filed a response in opposition to Will County's motion to intervene. Land and Lakes notes that the appellate court upheld the State's Attorney's intervention because the State's Attorney represents the public interest, analogous to the Attorney General, and holds analogous intervention rights. However, Land and Lakes contends

that in this case, the State's Attorney has not sought intervention on behalf of the People, but on behalf of the municipal corporation of Will County. Land and Lakes argues that Will County is a potential competitor, and that nothing in the appellate court's decision supports intervention by a municipal corporation challenging a potential competitor to that municipal corporation's proposed landfill. Additionally, Land and Lakes maintains that Will County's alleged interest in the need criterion is unsupported.

After considering the arguments of both Will County and Land and Lakes, the Board grants Will County's motion for leave to intervene. We have twice allowed Will County to intervene in earlier, related siting appeals (PCB 91-7 and PCB 92-25), and our decision to allow intervention was upheld by the appellate court. As the court noted, that intervention is based on the state's attorney's analogous rights and duties to the Attorney General, so that a state's attorney may intervene to represent the public interest. (Land and Lakes, 186 Ill.Dec. at 401-402; see also Pioneer Processing, Inc. v. Environmental Protection Agency (1984), 102 Ill.2d 119, 464 N.E.2d 238, 79 Ill.Dec. 640.) We are not persuaded by Land and Lakes' claim that the State's Attorney has sought intervention on behalf of the county as a municipal corporation, and not on behalf of the People of the county. Will County is hereby allowed as an intervenor, and the caption is modified.

Second, on August 23, 1994, the Forest Preserve District of Will County (District) filed a motion for leave to intervene in this proceeding. The District states that it has opposed the request for siting approval; that it is an entity separate and distinct from Will County; that it has a statutory obligation to protect and preserve the flora, fauna, and scenic beauties within the district, so that it is more than a mere adjacent landowner; and that the District will be affected by and bound by the outcome of this case. In the alternative, if intervention is denied, the District asks that it be allowed to file an *amicus curiae* brief. On August 29, 1994, Land and Lakes filed a response in opposition to the District's request to intervene, noting, *inter alia*, that the Board previously denied the District's request to intervene in PCB 91-7.

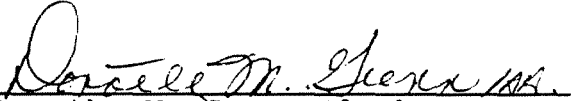
It is well established that third-party objectors are precluded from intervention in an appeal from a denial of siting approval. (Waste Management of Illinois, Inc. v. Pollution Control Board (2d Dist. 1987), 160 Ill.App.3d 434, 513 N.E.2d 592, 112 Ill.Dec. 178; McHenry County Landfill, inc. v. Environmental Protection Agency (2d Dist. 1987), 154 Ill.App.3d 89, 506 N.E.2d 372, 106 Ill.Dec. 665.) The District is a third-party objector, and does not have the special intervention rights of a state's attorney acting on behalf of the People of a county. Therefore, the District's motion for leave to intervene is

denied. The District is, however, granted the right to file an *amicus curiae* brief.

Finally, on August 30, 1994, Romeoville filed a motion for leave to file its record *instanter*. That motion is granted. The Board defers action on Land and Lakes' August 30, 1994 motion for clarification and/or reconsideration of the Board's August 11, 1994 order.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 1st day of September, 1994, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board