

ILLINOIS POLLUTION CONTROL BOARD

February 20, 2003

WASTE MANAGEMENT OF ILLINOIS, INC.,)	
)	
)	
Complainant,)	
)	PCB 03-104
v.)	(Pollution Control Facility Siting
)	Appeal)
COUNTY BOARD OF KANE COUNTY, Illinois,)	
)	
)	
Respondent.)	

ORDER OF THE BOARD (by N.J. Melas):

This order rules upon three motions pending before the Board. The first is a respondent's motion for a two-day extension of time to file the record filed February 13, 2003. The second is a respondent's motion to expedite discovery also filed February 13, 2003. The third is the Village of South Elgin's (Elgin) motion to intervene in this matter filed February 14, 2003. Although the parties' time to respond to these motions has not yet run, the Board is ruling on these motions today to avoid undue delay and material prejudice in an area where precedent is well-settled. *See* 35 Ill. Adm. Code 101.500(d). For the reasons set forth below, the Board grants the respondent's motion for extension of time and denies Elgin's motion to intervene.

MOTION FOR EXTENSION OF TIME

The County Board of Kane County (Kane County Board) seeks an extension of two business days to file the record of appeal in this proceeding. On January 23, 2003, the Board ordered the Kane County Board to file the record within 21 days, or by February 13, 2003. The Kane County Board received the order on January 29, 2003, and requests until February 17, 2003 to complete the copying of the record. Waste Management of Illinois, Inc. (Waste Management) has no objection to extending the deadline. Because the Board Clerk's Office was closed on February 17, 2003, the Board grants the Kane County Board an extension of time of two business days, or until February 18, 2003, to file the record.¹ The record is due on or before February 18, 2003.

MOTION TO EXPEDITE DISCOVERY

The Kane County Board requests that the Board order Waste Management to answer the Kane County Board's interrogatories, served upon Waste Management on February 9, 2003, by February 24, 2003. Pursuant to Board procedural rules, Waste Management has 28 days after

¹ The Kane County Board timely filed the record of appeal with the Board on February 18, 2003.

service of the interrogatories, or until March 10, 2004, to answer or object to the interrogatories. 35 Ill. Adm. Code 101.620. The interrogatories seek more detail concerning the fundamental fairness issues being raised in this appeal. Because the discovery cut-off date in this proceeding is April 1, 2003, the Kane County Board moves the Board to expedite Waste Management's answers and objections by 14 days, so that it has time to make supplemental discovery requests if necessary.

Waste Management has no objection to this motion. In a February 19, 2003 conference call, counsel for Waste Management informed counsel for respondent and the Board's hearing officer that respondent had no objection to the motion. The Board grants the respondent's motion and orders Waste Management to expedite by 14 days its answers to the Kane County Board's February 9, 2003 set of interrogatories. Waste Management's answers are now due on or before February 24, 2003.

MOTION TO INTERVENE

On January 14, 2003, Waste Management filed this petition for review of the Kane County Board's decision to deny Waste Management's request for siting approval of a proposed waste transfer facility (Woodland Transfer Facility). The Kane County Board denied the request for siting approval on the following grounds: (i) the siting process and procedures the Kane County Board used in reaching the decision were fundamentally unfair; and (ii) Kane County's denial of siting approval, and the finding that certain statutory criteria were not met, were against the manifest weight of the evidence.

On January 16, 2003, Elgin filed a complaint against Waste Management asking the Board to enforce two special conditions of a landfill siting approval granted to Waste Management by the Kane County Board on September 13, 1988, and incorporated by reference into Waste Management's permit² for expansion of the Woodland site (Woodland III permit). *See Village of South Elgin v. Waste Management of Illinois, Inc.*, PCB 03-106. On the same day, Elgin filed a motion to consolidate the enforcement action with this matter. Subsequently, on February 14, 2003, Elgin filed a motion to intervene in this proceeding. For the following reasons, the Board denies Elgin's motion to intervene.

It is well established that third-party objectors are precluded from intervention in an appeal from a denial of siting approval. Land and Lakes Co., et al. v. Village of Romeoville, PCB 94-195, slip op. at 4 (Sept. 1, 1994); *citing* Waste Management of Illinois, Inc. v. PCB, 160 Ill. App. 3d 434, 513 N.E.2d 592 (2nd Dist. 1987); McHenry County Landfill, Inc. v. IEPA, 154 Ill. App. 3d 89, 506 N.E.2d 372 (2nd Dist. 1987). The only time a third party may intervene is when the third party is a state's attorney intervening to represent the public interest. Land and Lakes, slip op. at 3. Elgin is a third-party objector without the special intervention rights of a state's attorney representing the public interest. Accordingly, Elgin's motion to intervene is denied.

² Issued to Waste Management by the Illinois Environmental Protection Agency.

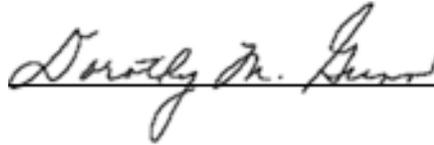
Elgin may nonetheless contribute oral or written statements at hearing in this matter in accordance with Section 101.628 of the Board's procedural rules. 35 Ill. Adm. Code 101.628(a), (b). Elgin may also participate through public comments or *amicus curiae* briefs pursuant to Section 101.110(c), and in accordance with Section 101.628(c). 35 Ill. Adm. Code 101.110(c); 35 Ill. Adm. Code 101.628(c). Finally, Elgin may raise the above-mentioned issues in its citizens' enforcement action against Waste Management, Elgin v. Waste Management, PCB 03-106.

CONCLUSION

The Board grants the Kane County Board's motion for extension of time to file the record, grants the Kane County Board's motion to expedite discovery, and denies Elgin's motion to intervene in this matter.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 20, 2003, by a vote of 7-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board