

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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JUN 30 2003

STATE OF ILLINOIS
Pollution Control Board

ROCHELLE WASTE DISPOSAL, L.L.C.)

Petitioner,)

vs.)

CITY COUNCIL OF THE CITY OF)
ROCHELLE, ILLINOIS,)

Respondent.)

No. PCB 03- 218


(Pollution Control Facility
Siting Appeal)

NOTICE OF FILING

TO: Counsel or Parties on attached Certificate of Service.

YOU ARE HEREBY NOTIFIED, that on June 26, 2003, we filed an original and nine copies of the accompanying Petitioner's Objection to Petition to Intervene with the Illinois Pollution Control Board, a copy of which is herewith served on you.

ROCHELLE WASTE DISPOSAL, L.L.C.

By: 
Michael F. O'Brien

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ATTORNEY'S CERTIFICATE OF SERVICE

The undersigned, being first duly sworn on oath, depose and say that I am an attorney and served the foregoing instrument upon the within named:

Rochelle City Council
Office of the City Clerk
c/o Bruce McKinney, City Clerk
Rochelle City Hall
Sixth Street & Fifth Avenue
Rochelle, IL 61068-0601

Charles Helsten, Esq.
Hinshaw & Culbertson
100 Park Avenue
Rockford, IL 61101

Dennis Hewitt, Esq.
Rochelle City Attorney
Hewitt Law Offices
1124 Lincoln Highway
P.O. Box 605
Rochelle, IL 61068

George Mueller, Esq.
501 State Street
Ottawa, IL 61350

by sealing a true and correct copy of the same in an envelope, addressed as shown above, with sufficient United States postage and by depositing said envelope, so sealed and stamped, in the United States Mail at Rockford, Illinois, at or about the hour of 5 o'clock p.m., on the 26th day of June, 2003.



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ROCHELLE, ILLINOIS,)	
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Respondent.)	

PETITIONER'S OBJECTION TO PETITION TO INTERVENE

The Petitioner, Rochelle Waste Disposal, L.L.C. ("RWD"), objects to the Petition to Intervene filed by the Concerned Citizens of Ogle County ("CCOC"), and in support thereof states the following:

1. As set forth in Riverdale Recycling, Inc. v. Illinois Environmental Protection Agency, PCB 00-228, 2000 WL 1160737 (August 10, 2000), "[i]t is well settled that third parties cannot intervene in cases where the local governments *denied* siting approval, pursuant to Section 39.2 of the Act. 415 ILCS 5/39-2 (1998); Land and Lakes Company v. Village of Romeoville (September 1, 1994), PCB 94-195; see also, Waste Management of Illinois, Inc. v. PCB, 160 Ill.App.3d 434, 513 N.E.2d 592 (2d Dist. 1987)" (emphasis added).

2. The CCOC relies on Section 101.402 of the Board's General Rules, which are "generally applicable to proceedings before the" Board, but the more specific provisions of Part 107 apply to "adjudicatory proceedings before the Board concerning

petitions to review a pollution control siting decision made by local government pursuant to Sections 39.2 and 40.1 of the Act.” 35 Ill. Adm. Code 107.100(a).

3. Section 107.202(b) of the Board’s Rules specifically sets forth the only intervention permitted in such siting review proceedings:

Where the interest of the public would be served, the Board or hearing officer may allow intervention by the Attorney General or the State’s Attorney of the county in which the facility will be located. 35 Ill. Adm. Code 107.202(b).

4. The rules “generally applicable” to adjudicatory proceedings before the Board “should be read in conjunction with the procedural rules for the Board’s specific processes,” such as the procedure set forth in Part 107, which specifically governs proceedings to review local siting decisions, and the only intervention permitted by Part 107 is intervention by the Attorney General or the State’s Attorney. See Saline County Landfill, Inc. v. Illinois Environmental Protection Agency, PCB 02-108, 4 (April 18, 2002) (permitting intervention by State’s Attorney under new rules).

5. Both the General Rules (Section 101.100(a)) as well as the rules specifically applicable to the Board’s review of local siting decisions (Section 107.100(b)) provide that in the event of such a conflict between the General Rules and the more specific rules set forth in subsequent Parts, “the more specific requirement applies.” 35 Ill. Adm. Code 101.100(a). Compare 35 Ill. Adm. Code 107.100(b).

6. Although objectors who participated in the local siting hearing are entitled to file a petition to review the *granting* of siting approval under Section 40.1(b) of the Act, the Act does not provide for a third-party appeal where the local siting authority has *denied* siting approval. See Waste Management of Illinois, Inc. v. Illinois Pollution

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Control Board, 160 Ill.App.3d 434, 443, 513 N.E.2d 592, 598, 112 Ill.Dec. 178, 184 (2d Dist. 1987) (“following a county board denial of a site approval request, section 40.1 of the Act precludes objectors from becoming parties to a PCB review hearing”).

7. With respect to intervention in such proceedings, “the Illinois Supreme Court has distinguished the role of a state official, representing the public interest [such as the county State Attorney] from that of a private citizen.” Land and Lakes Co. v. Village of Romeoville, PCB 91-7, 1991 WL 46281 (February 7, 1991).

8. The CCOC’s suggestion that the Rochelle City Council will not “vigorously, and without reservation” defend its denial of siting approval (Petition to Intervene 2) is contrary to the presumption that a governmental body already adequately represents the interest of a proposed intervenor who seeks to defend the actions of such a governmental body. See, e.g., American National Bank and Trust Company of Chicago v. City of Chicago, 865 F.2d 144, 148 (7th Cir. 1989).

9. “[W]hen a governmental entity is involved, ‘interested parties legitimately may assume that their elected officials will adequately represent their interest as members of the general public.’” People ex rel. Birkett v. City of Chicago, 329 Ill.App.3d 477, 490, 769 N.E.2d 84, 96, 263 Ill.Dec. 882, 894 (2d Dist. 2002), aff’d as to denial of intervention but rev’d in part, 202 Ill.2d 36, 779 N.E.2d 875, 269 Ill.Dec. 21 (2002).


10. The City of Rochelle's ownership of the existing landfill and its obligations to RWD under the host agreement are no basis for suggesting that the City Council has a disqualifying bias or that it will not defend this appeal. See, e.g., E & E Hauling, Inc. v. Pollution Control Board, 107 Ill.2d 33, 481 N.E.2d 664, 89 Ill.Dec. 821 (1985).

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11. The CCOC's intervention is neither necessary nor appropriate under the Act. See Clean Quality Resources, Inc. v. Marion County Board, PCB 90-216, 1991 WL 121360 (February 28, 1991) (denying objectors' intervention in petition to review denial of site location approval); McHenry County Landfill, Inc. v. Illinois Environmental Protection Agency, 154 Ill.App.3d 89, 94-95, 506 N.E.2d 372, 376, 106 Ill.Dec. 665, 669 (2d Dist. 1987) ("The Act thus does not provide for a third-party appeal where the PCB has refused site approval," and "[t]he PCB is powerless to expand its authority beyond that which the legislature has expressly granted to it").

WHEREFORE, the Petitioner, Rochelle Waste Disposal, L.L.C., objects to the Petition to Intervene filed by the Concerned Citizens of Ogle County and requests that the Petition be denied.

ROCHELLE WASTE DISPOSAL, L.L.C.

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