

ILLINOIS POLLUTION CONTROL BOARD
August 23, 2007

FOX MORaine, LLC,)	
)	
Petitioner,)	
)	
v.)	PCB 07-146
)	(Pollution Control Facility
UNITED CITY OF YORKVILLE, CITY)	Siting Appeal)
COUNCIL,)	
)	
Respondent,)	
)	
KENDALL COUNTY,)	
)	
Intervenor.)	

ORDER OF THE BOARD (by G.T. Girard):

On July 25, 2007, Kendall County filed a motion to intervene (Mot.) in this proceeding. The Board has not received any response to the motion. Therefore, pursuant to Section 101.500(d) (35 Ill. Adm. Code 101.500(d)), the Board deems the parties to have waived any objection to granting the motion.

Kendall County seeks leave to intervene in this proceeding through the State's Attorney for Kendall County. Kendall County argues that the representation of Yorkville may not be sufficient and the State's Attorney seeks to intervene "because of their interest in protecting the environment of the County and the health of persons who live and work in the County." Mot. at 2. Kendall County notes that numerous court and Board decisions affirm the right of Kendall County to intervene in this proceeding. *Id.*

The law is well established that third-party objectors are generally precluded from intervention in an appeal from a denial of siting approval. *See* Lowe Transfer, Inc. v. County Board of McHenry County, PCB 03-221 (July 10, 2003); Waste Management v. County Board of Kane County, PCB 03-104, slip op. at 3 (Feb. 20, 2003); 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). However, when the third party is a state's attorney or the Attorney General's Office intervening to represent the public interest, a third party may intervene. *See, e.g.,* Land and Lakes, PCB 94-195, slip op. at 3.

The courts have also 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. *See* Land and Lakes Co. v. IPCB, 245 Ill. App. 3d 631, 616 N.E.2d 349, 186 Ill. Dec. 396 (3d Dist. 1993); *see also* Pioneer Processing, Inc. v. IEPA, 102 Ill.2d 119, 464 N.E.2d

238, 79 Ill. Dec. 640 (1984). Therefore, the Board grants Kendall County's motion to intervene, subject to the provisions of 35 Ill. Adm. Code 101.402(e).

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 August 23, 2007, by a vote of 4-0.

A handwritten signature in black ink, reading "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