

ILLINOIS POLLUTION CONTROL BOARD
December 6, 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 November 16, 2007, the Friends of Greater Yorkville (FGY) filed a motion (Mot.) to intervene in this proceeding. On November 20, 2007, Fox Moraine, LLC (Fox Moraine) filed an objection (Obj.) to the motion to intervene. Also pending before the Board is a November 2, 2007 motion filed by the Village of Plainfield (Village) seeking leave to file an *amicus curiae* brief. The Board will first address the motion to intervene and then the motion for leave to file an *amicus curiae* brief.

MOTION TO INTERVENE

FGY argues that because Fox Moraine is alleging that actions taken by FGY during the siting process lead to a fundamentally unfair proceeding, FGY will be materially prejudiced if not allowed to intervene. Mot. at 3. FGY argues that if not allowed to intervene FGY would have to rely on the arguments of the “impartial government body” FGY petitioned for relief. *Id.*

Fox Moraine points out that the Board and the courts have consistently precluded third-party intervention in appeals of siting decisions. Obj. at 1. The only exception the Board and courts have allowed is for a State’s Attorney or the Attorney General to intervene. Fox Moraine argues that FGY may participate through public comments and the filing of an *amicus curiae* brief.

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. 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.

On August 23, 2007, the Board granted Kendall County's motion to intervene brought by the Kendall County State's Attorney. However, FGY has presented the Board with no new arguments that would convince the Board to alter the Board's long-standing practice to deny motions to intervene in siting denial appeals except as to a State's Attorney or the Attorney General. Therefore, the Board denies the motion to intervene. The Board will allow FGY to file an *amicus curiae* brief with the Board consistent with the briefing schedule established by the hearing officer.

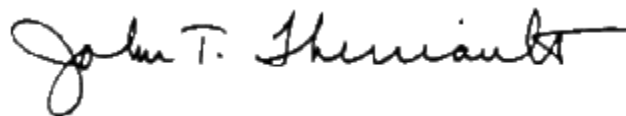
MOTION FOR LEAVE TO FILE AN AMICUS CURIAE BRIEF

The Village participated in the landfill siting proceeding before the City of Yorkville and provided expert testimony on the impact of truck traffic traveling through the downtown of the Village heading to the landfill.

Section 101.500(d) of the Board's procedural rules provides that "[w]ithin 14 days after service of a motion, a party may file a response to the motion. If no response is filed, the party will be deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board or the hearing officer in its disposition of the motion." 35 Ill. Adm. Code 101.500(d). The Board has not received a response to the motion; therefore, the Board deems the parties to have waived any objection to granting the motion. The Board grants the motion to file an *amicus curiae* brief with the Board consistent with the briefing schedule established by the hearing officer.

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 December 6, 2007, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board