

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

WASTE MANAGEMENT OF ILLINOIS, INC.,)	
and KENDALL LAND and CATTLE, L.L.C.)	
)	
Petitioners,)	No. PCB 09-43
)	
vs.)	(Pollution Control Facility
)	Siting Appeal)
)	
COUNTY BOARD OF KENDALL COUNTY,)	
ILLINOIS,)	
)	
Respondent.)	

**PETITIONERS' MOTION TO STRIKE
APPEARANCE FILED BY VILLAGE OF MINOOKA**

NOW COME Petitioners, WASTE MANAGEMENT OF ILLINOIS, INC. ("WMII"), and KENDALL LAND and CATTLE, L.L.C. ("KLC"), by and through their attorneys, PEDERSEN & HOUP, P.C., and move to strike the Appearance filed by the Village of Minooka. In support thereof, WMII and KLC state as follows:

1. On December 24, 2008, WMII and KLC filed with the Illinois Pollution Control Board ("Board") their Petition for Hearing to Contest Site Location Denial ("Petition for Review") pursuant to Section 40.1(a) of the Illinois Environmental Protection Act ("Act").
2. On February 6, 2009, the Village of Minooka filed a Motion for Leave to File Amicus Brief and to add the Village of Minooka to the Service List ("Motion to File Amicus Brief").
3. In connection with the Motion to File Amicus Brief, the Village of Minooka

improperly filed an Appearance.¹

4. In accordance with Section 101.400 of the Board's Procedural Rules, an Appearance may only be filed by "A person who is a party in a Board adjudicatory proceeding." See 35 Ill. Adm. Code §101.400. "Party" is defined as "the person by or against whom a proceeding is brought." 35 Ill. Adm. Code §101.202.

5. The Village of Minooka may not file an Appearance because it is not a party to this appeal. The Village of Minooka is not the local siting authority that made the decision denying approval. Additionally, Section 40.1(a) of the Act only allows the applicant, not a third-party objector, to appeal a decision denying local siting approval of a new pollution control facility, see 415 ILCS 5/40.1(a). Thus, although the Village of Minooka was an objector who participated in the local siting process, it is not a "party" to this appeal before the Board. Therefore, it was improper for the Village of Minooka to file an Appearance in this matter, and the Appearance should be stricken.²

¹ In addition to being improper, the Appearance incorrectly states that it is "on behalf of the Movant for Intervention," even though the Village of Minooka did not move to intervene pursuant to Section 101.402 of the Board's Procedural Rules, but rather moved to file an *amicus curiae* brief pursuant to Section 101.110(c) of the Board's Rules. The Village of Minooka's Motion to File Amicus Brief did not even attempt to meet the standard for intervention set forth in Section 101.402. See 35 Ill. Adm. Code §101.402.

² Kankakee Regional Landfill also improperly filed an Appearance in this appeal. WMII and KLC filed a separate motion to strike said Appearance on similar grounds presented herein.

WHEREFORE, WASTE MANAGEMENT OF ILLINOIS, INC., and KENDALL LAND and CATTLE, L.L.C respectfully request that the Board strike the Appearance filed by the Village of Minooka, and grant such other and further relief as the Board deems appropriate.

Respectfully Submitted,

WASTE MANAGEMENT OF ILLINOIS, INC.,
and KENDALL LAND and CATTLE, L.L.C

By: 
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