

ILLINOIS POLLUTION CONTROL BOARD
March 10, 1988

LIDLAW WASTE SYSTEMS, INC.,)
)
 Petitioner,)
)
 v.) PCB 88-27
)
 THE MCHENRY COUNTY BOARD,)
)
 Respondent.)
)

ORDER OF THE BOARD (by J. Marlin):

This matter comes before the Board on a Petition to Intervene or File an Amicus Curiae Brief (Petition) jointly filed by the Village of Algonquin (Algonquin) and the Village of Lake in the Hills (LITH) on February 24, 1988. Algonquin and LITH will be referred to collectively as "the Villages." Laidlaw Waste Systems, Inc. (Laidlaw) filed a Response on March 7, 1988.

The Villages assert that they actively participated in the site location suitability hearings before the McHenry County Board (County Board) and that they filed jurisdictional objections with the County Board. First, according to the Villages, a portion of the site proposed by Laidlaw is within the corporate boundaries of LITH. Also, the petition states that as a part of its application, Laidlaw has proposed to move LITH's municipal well. The petition contends that no permission for this has been sought or received from LITH.

The other jurisdiction objections concern service of notice. However, Algonquin and LITH do not detail in their petition how the notice was defective.

Finally, the Village claims that if the Board approves of Laidlaw's application for site location suitability, it will be adversely affected because the proposed landfill is located on top of the aquifer supplying water to the residents of the Villages. Also, the Villages claim that their municipal water wells which pump water from that aquifer are located 200 feet from the proposed site.

The Villages argue that even though McHenry County Landfill, Inc. v. Illinois Environmental Protection Agency, 154 Ill.App.3d, 506 N.E.2d 372 (1987) has precluded cross appeals on "substantive issues", third party intervention should be allowed to contest "jurisdictional issues." In its response, Laidlaw states that the Board should permit the Villages to intervene consistent with Illinois law.

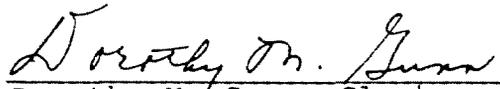
In McHenry County Landfill, Inc. v. Illinois Pollution Control Board, 154 Ill. App. 3d 89, 506 N.E. 2d 372 (2nd Dist. 1987), the Appellate Court ruled that Section 40.1 of the Act does not allow for cross-appeals by objectors in the case of a denial of site location suitability approval. In Waste Management of Illinois, Inc. v. Lake County Board, PCB 87-75, (July 16, 1987), the Board, basing its decision on McHenry County Landfill, rejected an attempt to intervene in a SB-172 appeal of a denial of site location suitability approval. However, in A.R.F. Landfill, Inc. v. Lake County, PCB 87-51 (August 20, 1987), the Board allowed the submission of an amicus curiae brief by an interested person. Similarly, the Board denied intervention to a citizen's group and treated the group's brief as an amicus curiae in City of Rockford v. Winnebago County Board, PCB 87-92 (November 19, 1987). The Board also allowed the filing of amicus curiae briefs in Waste Management of Illinois, Inc. v. Lake County Board, PCB 87-75 (December 17, 1987).

The Board does not agree with the Villages that McHenry County Landfill only applies to an appeal of substantive issues and not to an appeal based on jurisdiction issues. Since the instant case concerns an appeal of a denial of site location suitability, the Board will not allow the Village to intervene. However, they may voice their concerns to the Board by way of an amicus curiae brief. The timing of the brief's submission shall be determined by the Hearing Officer when the briefing schedule is set.

At hearing, the parties to this proceeding should address the jurisdiction issue. Additional maps may be submitted if the maps already in the record are inadequate. All briefs, including the Village's amicus curiae briefs, shall address the jurisdiction issues with citations to the record. Maps may be utilized with the briefs in order to graphically argue the respective positions.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 10~~4~~ day of March, 1988, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board