

ILLINOIS POLLUTION CONTROL BOARD
March 18, 1999

LAND AND LAKES COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 99-69
)	(Pollution Control Facility
RANDOLPH COUNTY BOARD of)	Siting Appeal)
COMMISSIONERS,)	
)	
Respondent.)	

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

On February 24, 1999, a motion to intervene in this pollution control facility siting appeal was filed on behalf of Kenneth Heine and Dora Spinney. On March 8, 1999, a response in opposition to the motion to intervene was filed by respondent. For the reasons discussed below the motion is denied.

Section 40.1 of the Environmental Protection Act (415 ILCS 5/40.1 (1996)) (Act) allows only the applicant to appeal a decision denying siting of a pollution control facility. A third-party may appeal a decision granting siting to a facility under subsection (b) of Section 40.1 of the Act. The courts have interpreted this statute to preclude a third party from seeking review of a decision denying siting for a facility. See, e.g., Waste Management of Illinois Inc. v. IPCB, 160 Ill. App. 3d 434; 513 N.E. 2d 592 (2d Dist. 1987) and cases cited therein. Similarly, the Board has previously found that allowing a third-party to intervene would be granting party status to someone who does not have party status under Section 40.1 of the Act. 415 ILCS 5/40.1; and see Land and Lakes Company v. Village of Romeoville (September 1, 1994), PCB 94-195.

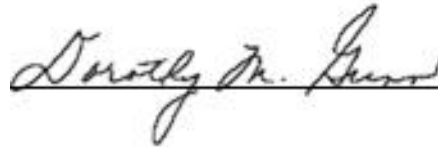
The Board has allowed intervention by a state's attorney. However, that intervention was allowed based on the state's attorney's analogous rights and duties to the Attorney General, so that a state's attorney may intervene to represent the public interest. Land and Lakes Company v. Village of Romeoville (September 1, 1994), PCB 94-195; Land and Lakes Company v. Illinois Pollution Control Board, 245 Ill. App. 3d 631, 616 N.E.2d 349 (3d Dist. 1993).

In prior cases, the Board has denied intervention where the applicant is seeking review of a decision denying siting. However, the Board has allowed movants to participate as an *amicus curiae*. See, Material Recovery Corporation v. Village of Lake in the Hills (March 11, 1993), PCB 93-11; Clean Quality Resources Inc. v. Marion County Board (February 28, 1991), PCB 90-216; Laidlaw Waste Systems v. McHenry County Board (June 16, 1988) PCB 88-27; and Waste Hauling, Inc. v. Macon County Board (January 23, 1992), PCB 91-233.

The Board therefore, denies the motion to intervene but the movants may participate as *amici curiae*.

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 18th day of March 1999 by a vote of 6-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board