

ILLINOIS POLLUTION CONTROL BOARD
July 10, 2003

LOWE TRANSFER, INC. and MARSHALL)	
LOWE,)	
)	
Petitioners,)	
)	
v.)	PCB 03-221
)	(Pollution Control Facility
COUNTY BOARD OF MCHENRY)	Siting Appeal)
COUNTY, ILLINOIS,)	
)	
Respondent.)	

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

On June 5, 2003, Lowe Transfer, Inc. and Marshall Lowe (petitioners) timely filed a petition asking the Board to review the May 6, 2003 decision of County Board of McHenry County, Illinois (McHenry County). See 415 ILCS 5/40.1(a) (2002); 35 Ill. Adm. Code 107.204. McHenry County denied the petitioner's request for application to site a pollution control facility located on U.S. Route 14 in McHenry County. On June 19, 2003, Village of Cary (Cary) filed a motion to intervene in the siting appeal (Mot.). On July 7, 2003, petitioners filed a response to the motion (Resp.). For the reasons discussed below the Board denies the motion to intervene but will allow Cary to file an *amicus curiae* brief.

Cary argues that pursuant to the Board's rules at 35 Ill. Adm. Code 101.402, the Board may allow intervention in an adjudicatory proceeding before the Board and a siting appeal is an adjudicatory proceeding. Mot. at 3-4. Cary puts forth five reasons why intervention should be allowed. First, Cary asserts that the site of the proposed waste transfer station at issue is located so as to have a significant impact on Cary. Mot. at 1. Second, Cary participated extensively in the proceeding below. Mot. at 2. Third, Cary asserts that a decision by the Board overturning McHenry County's decision would infringe on Cary's rights under Section 22.14 of the Environmental Protection Act (Act) (415 ILCS 5/22.14 (2002)). Fourth, Cary argues that participation by Cary is necessary to insure that McHenry County's decision is "vigorously defended" on appeal. Mot. at 7. And last, Cary maintains that participation by Cary is necessary to preserve Cary's right to appeal any grant of the siting application. *Id.*

In response to the motion to intervene, petitioners cite to Act, the Board's procedural rules, and case law. First, petitioners cite Section 40.1 of the Act arguing that Section 40.1 of the Act allows only a siting applicant to appeal the denial of siting approval. Resp. at 2, citing 415 ILCS 5/40.1 (2002). Section 40.1 of the Act then allows other persons to appeal the decision to grant siting approval, according to petitioners. *Id.* Second, the petitioners cite to 35 Ill. Adm. Code 107.202 of the Board's procedural rules. Petitioners maintain that the Board's procedural rules mirror the Act and allow only for an applicant to appeal a decision denying siting approval and for others to appeal only a grant of siting. *Id.* Third, petitioners cite extensive case law in

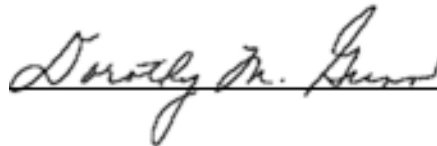
which the Board and courts have consistently denied intervention status to third parties in appeals of siting approval denials. Resp. at 2-3, citing McHenry County Landfill, Inc. v. IEPA, 154 Ill. App. 3d 89, 506 N.E.2d 372 (2nd Dist. 1987); Waste Management of Illinois, Inc. v. IPCB, 160 Ill. App. 3d 434 513 N.E.2d 592 (2nd Dist. 1987); Laidlaw Waste Systems v. McHenry County Board, PCB 88-27 (Mar. 10, 1987); City of Rockford v. Winnebago Count Board, PCB 87-92 (Nov. 19, 1987); Clean Quality Resources, Inc. v. Marion County Board, PCB 90-216 (Feb. 28, 1991).

As petitioners point out, it is well established that third-party objectors are precluded from intervention in an appeal from a denial of siting approval. See 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). A third party may intervene only when the third party is a state's attorney or the Attorney General's Office intervening to represent the public interest. See, e.g., Land and Lakes, slip op. at 3.

Cary is a third-party objector without the special intervention rights of a state's attorney or the Attorney General's Office representing the public interest. Accordingly, the petition to intervene is denied. Cary may, however, contribute oral or written statements at hearing in this matter in accordance with Sections 101.628 and 107.404 of the Board's procedural rules, but may not examine or cross-examine witnesses. 35 Ill. Adm. Code 101.628(a), (b); 35 Ill. Adm. Code 107.404. Cary may also participate through public comments or *amicus curiae* briefs pursuant to Section 101.110(c), and in accordance with Section 101.628(c). 35 Ill. Adm. Code 101.110(c); 35 Ill. Adm. Code 101.628(c).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on, by a vote of 7-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board