

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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JUL 09 2004

STATE OF ILLINOIS
Pollution Control Board

WASTE MANAGEMENT OF ILLINOIS, INC.,)
)
Petitioner,)
)
vs.)
)
COUNTY BOARD OF KANKAKEE COUNTY,)
ILLINOIS,)
)
Respondent.)

No. PCB 04-186

(Pollution Control Facility
Siting Appeal)

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on July 9, 2004, we filed with the Illinois Pollution Control Board, the attached **Waste Management of Illinois, Inc.'s Objection to Merlin Karlock's Petition for Leave to Intervene.**

WASTE MANAGEMENT OF ILLINOIS, INC.

By: 

One of Its Attorneys

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STATE OF ILLINOIS
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**WASTE MANAGEMENT OF ILLINOIS, INC.'S OBJECTION
TO MERLIN KARLOCK'S PETITION FOR LEAVE TO INTERVENE**

Waste Management of Illinois, Inc. ("WMII"), by and through its attorneys, Pedersen & Houpt, P.C. objects to Merlin Karlock's ("Karlock") Petition for Leave to Intervene. In support thereof, WMII states as follows:

1. On April 21, 2004, WMII filed with the Illinois Pollution Control Board ("Board") its 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. The Petition for Review contests and objects to the County Board of Kankakee County's ("County Board") decision denying WMII's request for site location approval of the expansion of the Kankakee Landfill on the grounds that (i) the siting process and procedures used in reaching the decision were fundamentally unfair; and (ii) the denial of site location approval, and the finding that certain statutory criteria were not met, were against the manifest weight of the evidence.

3. On June 30, 2004, Karlock filed a Petition for Leave to Intervene for the purpose of (i) defending the decision of the Kankakee County Board; (ii) filing a cross-petition claiming fundamental unfairness; and (iii) filing a cross-petition claiming that certain findings of the County were against the manifest weight of the evidence. (See Karlock Petition for Leave to Intervene, p. 6.)

4. For the reasons discussed below, Karlock's Petition for Leave to Intervene should be denied.

5. Permitting third party objectors to intervene in the appeal of a decision denying local siting approval would run counter to the provisions of the Act, as well as the Board's Procedural Rules ("Rules"), governing the appeal process. Section 40.1 of the Act and Section 107.200(a) of the Rules allow the applicant to appeal a decision denying local siting approval of a pollution control facility. See 415 ILCS 5/40.1(a) (2002); 35 Ill. Adm. Code 107.200 (2002). A third party may only appeal a decision *granting* local siting approval. See 415 ILCS 5/40.1(b); 35 Ill. Adm. Code 107.200(b).

6. Illinois courts have interpreted Section 40.1 of the Act to preclude third parties from seeking review of a decision denying siting for a facility. *Waste Management of Illinois, Inc. v. Illinois Pollution Control Board*, 160 Ill. App. 3d 434, 443-44, 513 N.E. 2d 592, 598 (2d Dist. 1987); *McHenry County Landfill, Inc. v. Environmental Protection Agency*, 154 Ill. App. 3d 89, 94-95, 506 N.E.2d 372, 376 (2d Dist. 1987). The Board, in turn, has held that allowing third parties to intervene in appeals would be, in effect, granting applicant status to someone who does

not fall within the parameters of Section 40.1(a). *Land & Lakes, Co. v. Randolph County Board of Commissioners*, No. PCB 99-69, slip op. at 1-2 (March 18, 1999); *Land and Lakes Company v. Village of Romeoville*, No. PCB 94-195, slip op. at 4-5 (September 1, 1994).

7. Karlock contends that he should be allowed to intervene because he is an adjacent property owner whose property rights will be directly and adversely impacted by the proceeding. (Karlock Petition for Leave to Intervene, p. 2.) His contention is meritless. Neither the Act nor the cases construing it allow an adjacent property owner to appeal from a denial of a local siting request. 415 ILCS 5/40.1; *Rochelle Waste Disposal v. City Council of the City of Rochelle, Illinois*, No. PCB 03-218, slip op. at 2 (July 10, 2003); *Waste Management of Illinois, Inc. v. County Board of Kane County, Illinois*, No. PCB 03-104, slip op. at 2 (February 20, 2003). Moreover, the motions to intervene denied in *Rochelle Waste Disposal* and *Kane County* were made by objectors who alleged a direct and adverse effect by a grant of siting approval, as Karlock has done here. Such allegations do not confer the right to appeal or intervene. See 415 ILCS 5/40.1; *Lowe Transfer, Inc. v. County Board of McHenry County, Illinois*, No. PCB 03-221, slip op. at 1 (July 10, 2003); *Rochelle Waste Disposal*, slip op. at 2; *Kane County*, slip op. at 2.

8. Karlock claims that not allowing adjoining landowners to participate as intervenors in an appeal of a local siting denial would lead to "absurd and unjust results." (Karlock Petition for Leave to Intervene, p. 2.) In fact, allowing such participation would introduce chaos and wastefulness into the appeal process. Adjoining landowners would complicate and lengthen the proceedings by seeking discovery and presenting argument on legal issues (e.g. fundamental fairness) that have no bearing or relevance to the County Board decision

being appealed. They would argue other matters not at issue, such as whether the County Board's determinations that certain criteria were met are themselves against the manifest weight of the evidence. Such contention would require the substantial expenditure of administrative and adjudicative time and resources by this Board and the parties to address matters not in dispute. This is the reason the legislature has provided and the Courts have held that third party appeals of local siting denials are not allowed. 415 ILCS 5/40.1; *Waste Management of Illinois, Inc.*, 513 N.E.2d at 598; *McHenry County Landfill, Inc.*, 506 N.E.2d at 376; *Lowe Transfer, Inc.*, slip op. at 1.

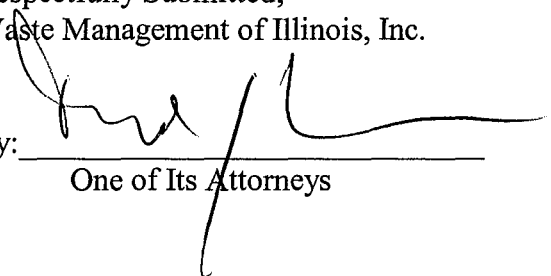
9. Finally, Karlock has failed to state sufficient grounds warranting intervention under Section 101.402 of the Board's Procedural Rules. Subsection (d) of Section 101.402, provides that, subject to Section 101.402(b), the Board may permit a person to intervene in an adjudicatory proceeding if the person: (1) has a conditional statutory right to intervene in the proceeding; (2) may be materially prejudiced absent intervention; or (3) is so situated that the person may be adversely affected by a final Board order. 35 Ill. Adm. Code 101.402(d). Karlock claims that he may be adversely affected by a final Board order. (*See Karlock Petition for Leave to Intervene*, p. 2.) However, Karlock has not provided anything more than a conclusory statement to support his position that he will be adversely affected by a grant of siting approval. The Board has held that simplistic statements of adverse effects and material prejudice unsupported by facts will not make a case for intervention. *Stuart v. Fisher*, No. PCB 02-162, slip op. at 1-2 (January 23, 2003); *2222 Elston LLC v. Purex Industries, Inc.*, No. PCB 03-55, slip op. at 2-4 (January 23, 2003).

10. Karlock also claims that intervention is needed so that he can argue points of law that the County Board may not raise. (*See Karlock Petition for Leave to Intervene*, pp. 3-4.)

However, the Board has held that it is insufficient to base intervention on the belief that the respondent will not adequately represent the concerns of third parties. *People of the State of Illinois v. Alloy Engineering & Casting Co.*, No. PCB 01-155, slip op. at 3 (September 6, 2001).

WHEREFORE, Waste Management of Illinois, Inc. respectfully requests that the Pollution Control Board enter an order denying Karlock's Petition for Leave to Intervene, and for such other and further relief as the Board deems appropriate.

Respectfully Submitted,
Waste Management of Illinois, Inc.

By: 
One of Its Attorneys

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PROOF OF SERVICE

Victoria L. Kennedy, a non-attorney, on oath states that she served the foregoing **Waste Management of Illinois, Inc.'s Objection to Merlin Karlock's Petition for Leave to Intervene** by enclosing same in an envelope addressed to the following parties as stated below, and by depositing same in the U.S. mail at 161 N. Clark St., Chicago, Illinois 60601, on or before 5:00 p.m. on this 9th day of July, 2004:

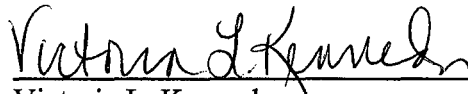
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