

BEFORE THE 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)

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JUL 29 2004

STATE OF ILLINOIS  
Pollution Control Board

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on July 29, 2004, we filed with the Illinois Pollution Control Board, the attached **Waste Management of Illinois, Inc.'s Objection to Keith Runyon's Motion to Intervene.**

WASTE MANAGEMENT OF ILLINOIS, INC.

By: 

One of Its Attorneys

Donald J. Moran  
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161 North Clark Street, Suite 3100  
Chicago, Illinois 60601  
(312) 641-6888

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**WASTE MANAGEMENT OF ILLINOIS, INC.'S OBJECTION  
TO KEITH RUNYON'S MOTION TO INTERVENE**

Waste Management of Illinois, Inc. ("WMII"), by and through its attorneys, Pedersen & Houpt, P.C. objects to Keith Runyon's ("Runyon") Motion 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 statutory criteria one, three and six were not met, were against the manifest weight of the evidence.

3. On July 21, 2004, Runyon filed a Motion to Intervene seeking to defend the public's interest and argue WMII's alleged failure to comply with an element of the County's Solid Waste Management Plan. (See Runyon Motion to Intervene, ¶¶3, 9).

4. For the reasons discussed below, Runyon's Motion 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 p. 1-2 (March 18, 1999); *Land and Lakes Company v. Village of Romeoville*, No. PCB 94-195, slip op. at p. 4-5 (September 1, 1994).

7. Third party objectors are precluded from intervention in an appeal from a denial of a siting approval. *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). The only intervention allowed in the appeal of a siting denial is by a state's attorney or the Attorney General representing the public interest. *Rochelle Waste Disposal*, slip op. at 2.

8. Runyon claims that intervention is needed so that he can argue points of law that the County Board may not raise. (Runyon Motion to Intervene, ¶9). 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. *See Alloy Engineering & Casting Co.*, No. PCB 01-155, slip op. at p. 5-6 (September 6, 2001).

9. Runyan also seeks to argue criterion eight. (Runyan Motion to Intervene, ¶9). However, criterion eight is not an issue in this appeal and may not be argued by a party, much less a person seeking to intervene.

WHEREFORE, Waste Management of Illinois, Inc. respectfully requests that the Pollution Control Board enter an order denying Keith Runyon's Motion 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

Donald J. Moran  
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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 Keith Runyon's Motion 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 29th day of July, 2004:

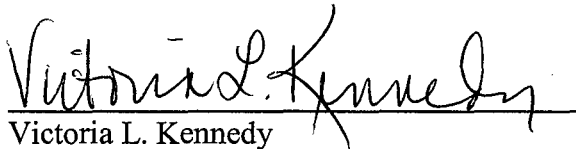
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Victoria L. Kennedy