

ILLINOIS POLLUTION CONTROL BOARD  
August 19, 2004

WASTE MANAGEMENT OF ILLINOIS, INC.,	)	
	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 04-186
	)	(Pollution Control Facility
COUNTY BOARD OF KANKAKEE COUNTY,	)	Siting Appeal)
	)	
	)	
Respondent.	)	

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

On July 23, 2004, Keith Runyon (Runyon) filed a motion to intervene in the proceeding. On July 29, 2004, Waste Management of Illinois, Inc. filed a response to the motion. The Board denies the motion to intervene. As indicated in the Board's July 22, 2004 order in this matter, both the courts and the Board have consistently held that a third party cannot appeal or intervene in such a proceeding. *See* Lowe Transfer, Inc. v. County Board of McHenry County, PCB 03-221 (July 10, 2003); 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.

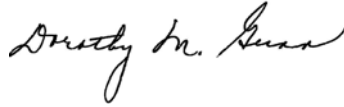
The plain language of Section 40.1(a) of the Act provides that if the county board denies siting "the applicant may" appeal the decision. 415 ILCS 5/40.1(a) (2002). The Board has also adopted procedural rules that reiterate that the applicant is the only party that may appeal a denial of siting approval. *See* 35 Ill. Adm. Code 107.200(a). As stated by the court, the Board "is powerless to expand its authority beyond that which the legislature has expressly granted" to the Board. McHenry Landfill 154 Ill. App. 3d 89, 506 N.E.2d 372, 376. The Board has also stated "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." Land and Lakes Co. v. Randolph County Board, PCB 99-69 (Mar. 18, 1999).

Runyon has presented the Board with no new arguments which convince the Board to alter the long-standing precedent that a third party may not intervene in a siting denial appeal. Accordingly, the motion to intervene is denied. Runyon 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. Runyon 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 August 19, 2004, by a vote of 4-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board