

ILLINOIS POLLUTION CONTROL BOARD

July 22, 2004

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

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

On June 22, 2004, Michael Watson (Watson) filed a motion to intervene in the proceeding. On July 1, 2004, Merlin Karlock (Karlock) also filed a motion to intervene. On July 1, 2004, and July 9, 2004, Waste Management of Illinois, Inc. filed responses to the motions. On July 7, 2004, County Board of Kankakee County (Kankakee County) filed a response to Watson's motion. On July 12, 2004, Watson filed a motion to strike portions of Kankakee County's response. On July 15, 2004, Kankakee County filed a response to Karlock's motion and Karlock filed a "reply" to Watson's motion. For the reasons expressed below, the Board denies both motions to intervene. The Board also denies Watson's motion to strike.

The Board and the courts have addressed the issue of third-party appeals and third-party intervention in proceedings where the applicant is appealing the denial of siting. 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

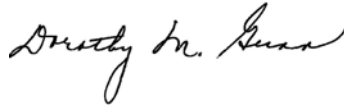
have party status under Section 40.1 of the Act.” Land and Lakes Co. v. Randolph County Board, PCB 99-69 (Mar. 18, 1999).

The parties have 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 motions to intervene are denied. Watson and Karlock 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. Watson and Karlock 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.

Chairman J.P. Novak abstained.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 22, 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