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STATE OF ILLINOIS
Pollution Control Board

Petitioner,

V.

Respondent.

PCB 04-186
(Pollution Control Facility
Siting Appeal)

Petitioner WASTE MANAGEMENT OF ILLINOIS, INC. ("WMII"), by its attorneys,

Pedersen & Houpt, moves to strike the Dual Motions of Keith L. Runyon and in support thereof, states as follows:

1. Keith L. Runyon is not a party to this appeal. On July 23, 2004, he requested that this Board grant him status as an intervenor. The Board denied his request in an order dated August 19, 2004. He was allowed, however, to submit oral or written statements at hearing, and file public comments or *amicus curiae* briefs. Waste Management of Illinois, Inc. v. County Board of Kankakee County, No. PCB 04-186, slip op. at 1-2 (August 19, 2004).

2. In an order entered July 22, 2004, this Board denied similar requests to intervene by Merlin Karlock and Michael Watson. Waste Management of Illinois, Inc. v. County Board of Kankakee County, No. PCB 04-186, slip op. at 2 (July 22, 2004). Karlock and Watson, but not Runyon, appealed the orders to the Third District Appellate Court. Karlock, et al. v. Waste Management of Illinois, Inc., et al., Nos. 3-04-00649 and 03-04-0655 (cons.) (3d Dist.) The appeals remain pending.

3. Runyon now seeks leave to intervene a second time. However, the Board's August 19 Order is res judicata as to Runyon and he may not bring his motion again. In addition, he has presented no law or facts sufficient to justify a change in the Board's previous orders, or to justify intervention. He merely repeats assertions made in his amicus brief regarding the fundamental fairness of the County Board's March 17, 2004 decision, and then offers unfounded or inaccurate claims about the County's "total" abandonment of the March 17 decision. None of these allegations are legally sufficient to establish a right to intervene.

4. Given the lack of any legal basis for his "Dual Motions", it appears that the purpose of this filing was to present matters outside the record for consideration by the Board, and then reargue his position based on these extra-record matters. This argument is improper and should be stricken.

5. Runyon asserts numerous matters that are inaccurate or false. They include the statements contained in paragraph 1) (sic), (a)-(f) and 2) of his filing. Rational (sic) and Motions, p. 1-3. The attempt to introduce these extra-record matters in a motion to intervene is certainly improper, and should be rejected. The fact that the assertions are untrue compound this prejudice, and compels that they be stricken.

6. The Runyon's Dual Motions are without any legal basis. The motion to intervene is barred by res judicata and the law of the case. Runyon is not a party in this appeal, and has no standing or authority to present a motion to bar the County's attorney from participating in this appeal. Finally, Runyon may not introduce extraneous matters into the record which are unfounded or untrue.

WHEREFORE, WMII requests that this Board deny and strike Runyon's Dual Motions and Rationale, and provide such other relief as the Board deems appropriate.

WASTE MANAGEMENT OF ILLINOIS, INC.

By: 

One of Its Attorneys

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