

ILLINOIS POLLUTION CONTROL BOARD
February 7, 1991

LAND AND LAKES COMPANY, JMC)	
OPERATIONS, INC. and NBD)	
TRUST COMPANY OF ILLINOIS,)	
AS TRUSTEE UNDER TRUST)	
NO. 2624EG,)	
)	
Petitioners,)	
)	
v.)	PCB 91-7
)	(Landfill Siting)
VILLAGE OF ROMEOVILLE,)	
)	
Respondent.)	

ORDER OF THE BOARD (by B. Forcade):

On January 16, 1991, Will County filed a petition for leave to intervene in support of the refusal by the Village Board of Romeoville, Will County, Illinois to grant siting approval to the above-captioned petitioners. In its Order of January 18, 1991 accepting the matter for hearing, the Board noted the January 16, 1991 filing in its Order of January 18, 1991 but did not rule on the motion, allowing time for a response to be filed. On January 8, 1991, Petitioners filed a response in opposition to Will County's Motion to intervene. On January 28, 1991, Respondent, the Village of Romeoville, filed its response to Will County's motion, stating that it "takes no position either for or against the Petitions for Leave to Intervene".

As the Board noted in its Order of January 24, 1991 denying the motion of various individuals to intervene in this matter, Section 40.1(a) of the Environmental Protection Act ("Act") does not provide for third party intervention where landfill siting has been denied. See Waste Management of Illinois, Inc. v. Pollution Control Board, 160 Ill. App. 3d 434, 513 N.E.2d 592, 598 (2d Dist. 1987); McHenry County Landfill, Inc. v. Environmental Protection Agency, 154 Ill. App. 3d 89, 506 N.E.2d 372, 376 (2d Dist. 1987). The Board, however, did grant amicus curiae status to the objectors. The issue before the Board is whether Will County has standing to join in this appeal or whether Will County should be held to be in the same position as the third party objectors.

In the petition for leave to intervene the state's attorney for Will County argues 1) that Will County participated at the hearing before the Village of Romeoville; 2) that Will County, "pursuant to explicit statutory authority, has adopted and has had in force at all relevant times, a solid waste management

plan, ...effective within the Village of Romeoville"; 3) that Will County has a delegation agreement with the Illinois Environmental Protection Agency for inspections and enforcement of the Act and Board regulations; 4) that Will County has an interest in the siting of such a facility within the County based on its interest in protecting the health and environment for the People of Will County; 5) that most of the land around the facility is in unincorporated Will County, subject to its police power; 6) that the Village of Romeoville has an annexation agreement, which provided for siting review and revenue considerations, and this agreement and the Village of Romeoville's findings may inadequately represent the interests of the People of Will County; and 7) that the People of Will County will be affected and bound by this Board's determination. It is this last consideration which most critically focuses this Board's attention on whether the State's Attorney should be permitted to intervene.

In The People of the State of Illinois v. PCB, 113 Ill. App. 3d 282, 446 N.E.2d 915 (3d Dist. 1983), the Attorney General was held to be without standing to appeal the Board's decision affirming the grant of a construction permit for a hazardous waste disposal site. Citing section 41 of the Environmental Protection Act, the Court stated that "(t)he Attorney General was not a party to the Board proceedings and, therefore, had no statutory right to obtain judicial review of the Board's decision." 446 N.E.2d at 922. However, on appeal, the Illinois Supreme Court upheld the Attorney General's right to intervene, finding that the Attorney General, as the state's chief legal officer, "has the duty and authority to represent the interests of the People of the State to insure a healthful environment." Pioneer Processing, Inc. v. EPA, 102 Ill.2d 119, 464 N.E.2d 238, 247 (1984).

The Judiciary is established by Article 6 of the Illinois Constitution. Article 6, para. 19, provides that a State Attorney shall be elected in each county. Article 5 establishes the Executive branch, and Article 5, para. 15, provides that "(t)he Attorney General shall be the legal officer of the State, and shall have the duties and powers that may be prescribed by law. The case law reveals that the State's Attorney's function is very closely aligned with that of the Attorney General.

In People ex rel. Kunstman v. Shinsaku Nagano, 389 Ill. 231, 59 N.E.2d 96 (1945), the Illinois Supreme Court concluded that the State's Attorney was a "constitutional officer" whose rights and duties were analogous to those of the Attorney General. Although the rights and duties are not identical, the state's attorney was responsible for representing the County or people in matters affected with a public interest. As a constitutional officer, the powers of the State's Attorney have been held to be executive powers. People v. Vaughn, 49 Ill. App. 3d 37, 363 N.E.2d 879 (1977).

The Attorney General's role in protecting the public interest clearly extends to environmental matters. Pioneer Processing, 102 Ill.2d 119. See also Scott v. Briceland, 65 Ill.2d 485, 359 N.E.2d 149 (1976). When the State's Attorney acts on behalf of the county, it is not as a county official but as an officer of the judicial branch of government of the State of Illinois. Stokes v. City of Chicago, 660 F. Supp. 1459 (N.D. Ill. 1987).

In The People of the State of Illinois v. Sharon L. Pine, et al., 129 Ill.2d 88, 542 N.E.2d 711 (July 19, 1989) the issue of whether the Secretary of State had standing to appeal a trial court order was resolved, in part, by the Illinois Supreme Court's reliance on its earlier decision in Pioneer Processing, 464 N.E.2d 238. We note there is no counterpart to the Secretary of State as a constitutional officer in the county setting.

The issue of standing before us involves the Secretary of State, a public official and member of the executive branch of the government, and not a private citizen.

...(I)n Pioneer Processing, Inc. v. Environmental Protection Agency (1984) 102 Ill.2d 119, 79 Ill. Dec. 640, 464 N.E.2d 238, we granted the Attorney General standing to appeal a decision of the Pollution Control Board, even though he had not participated in the administrative proceeding. The holding was based on the "strong public interest in a healthful environment" and the Attorney General's duty and authority, as the State's chief legal officer, to represent the people for the protection of that interest. (102 Ill.2d at 138-39, 79 Ill. Dec. 640, 464 N.E.2d 238.) Just as the Attorney General is involved in and responsible for a number of areas of public interest, the Secretary is intricately involved in the area of driving privileges and protecting the public from violations of the Illinois Vehicle Code.

People v. Pine, 542 N.E.2d at 713 (emphasis added).

Clearly, it is incumbent upon this Board to acknowledge that, in matters of standing, the Illinois Supreme Court has distinguished the role of a state official, representing the public interest, from that of a private citizen. The State's Attorney for Will County is representing a legitimate public interest, just as the Secretary of State or Attorney General has

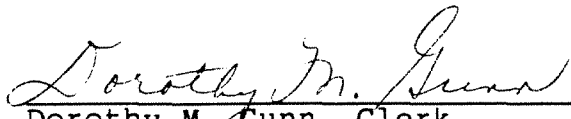
been found to represent. Additionally, the Board notes that in the Act itself the roles of the State's Attorney and the Attorney General are frequently interchangeable, particularly in matters of enforcement actions to protect the public welfare. See, e.g., Sections 42(e) and (f), 42(a), 44.1(f)(2) and (g). The issue of standing must be resolved accordingly.

In response to Will County's motion, Petitioners made virtually identical arguments to those made in its response to the motion of the third party objectors. Petitioners cited the Waste Management and McHenry County cases cited above and E & E Hauling, Inc. v. PCB, 107 Ill.2d 33, 41 (1985) for the proposition that the objectors may not join as parties. Petitioners, however, do not respond at all to the issue of the governmental interests of Will County in landfills located within its boundaries, and the particular interests of Will County in preserving the integrity of its solid waste management plan, which, in fact, must be reviewed by this Board. See Section 39.2(a)(8) of the Act.

The Board finds that the State's Attorney, acting on behalf of the People of Will County, has interests analogous to those asserted by the Attorney General for the State of Illinois, and that the interests of the People of Will County may be adversely affected by the Board's decision in this matter. The Board hereby grants the motion to intervene entered by the State's Attorney for Will County.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 7th, day of February, 1991, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board