

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

WASTE MANAGEMENT OF ILLINOIS, INC.,)	
and KENDALL LAND and CATTLE, L.L.C.)	
)	
Petitioners,)	No. PCB 09-43
)	
vs.)	(Pollution Control Facility
)	Siting Appeal)
)	
COUNTY BOARD OF KENDALL COUNTY,)	
ILLINOIS,)	
)	
Respondent.)	

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on March 19, 2009, we filed with the Illinois Pollution Control Board, via electronic filing, **PETITIONERS' OBJECTION TO GRUNDY COUNTY'S MOTION TO INTERVENE** in the above entitled matter, which is attached hereto and herewith served upon you.

WASTE MANAGEMENT OF ILLINOIS, INC.
and KENDALL LAND and CATTLE, L.L.C.

By: s/Lauren Blair
One of Their Attorneys

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**PETITIONERS' OBJECTION TO GRUNDY COUNTY'S
MOTION TO INTERVENE**

Petitioners, WASTE MANAGEMENT OF ILLINOIS, INC. ("WMII"), and KENDALL LAND and CATTLE, L.L.C. ("KLC") (collectively "Petitioners"), by and through their attorneys, PEDERSEN & HOUP, P.C., object to Grundy County's Motion to Intervene. In support thereof, Petitioners state as follows:

INTRODUCTION

1. On December 24, 2008, Petitioners filed with the Illinois Pollution Control Board ("Board") their 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 Kendall County's ("County Board") November 20, 2008 decision denying Petitioners' request for site location approval for the proposed Willow Run Recycling and Disposal Facility ("Willow Run"). The denial was based on the County Board's finding that statutory criteria (ii) and (iii) were not met. The Petition for Review challenges the denial on the grounds that the decision was fundamentally unfair and against the manifest weight of the evidence.

3. On or about March 4, 2009, Grundy County filed a Motion to Intervene in this appeal. Grundy County participated in the local siting hearing as an objector to Willow Run. The purported basis for Grundy County's Motion to Intervene is that it has interests that are separate and distinct from those of Kendall County. Specifically, Grundy County argues that issues relating to the integrity of the area aquifer and to the air traffic safety at and near the Morris Community Airport, are purportedly unique to the public health, safety and welfare of Grundy County residents.

4. For the reasons discussed below, the Motion to Intervene should be denied.

ARGUMENT

I. *Fox Moraine* is Limited to the Intervention of a State's Attorney for the County in Which the Proposed Site is Located.

5. Third party objectors are generally precluded from intervening in the appeal of a denial of local siting approval of a pollution control facility because permitting third party objectors to intervene in such an appeal would run counter to the provisions of the Act that allow only the applicant to appeal the denial of local siting approval. *See* 415 ILCS 5/40.1(a).

6. Grundy County argues it is entitled to intervene in reliance upon *Fox Moraine, LLC v. United City of Yorkville, City Council*, No. PCB 07-146 (Aug. 23, 2007), which stands for the proposition that a State's Attorney acts with the duty and authority to represent the interests of the people of the state to ensure a healthful environment, and therefore, may properly intervene to represent the public's interest. The Board's decision in *Fox Moraine*, however, was based on facts not present here.

7. In *Fox Moraine*, the intervenor, Kendall County, was the State's Attorney for the county in which the proposed site was located. Indeed, Kendall County's motion to intervene

expressly cited that it was being brought pursuant to Section 107.202(b) of the Board's Rules, which provides:

Where the interests of the public would be served, the Board or hearing officer may allow intervention by the Attorney General or the State's Attorney of the county in which the facility will be located.

35 Ill. Adm. Code § 107.202(b) (emphasis added). Thus, the Board's ruling in *Fox Moraine*, permitting the State's Attorney of the county in which the facility was located, was consistent with Section 107.202(b) of the Rules. The Board did not state or imply that it intended its ruling to allow intervention of a State's Attorney from another county.¹

8. Here, Willow Run is located in Kendall County, not Grundy County. Thus, by seeking to intervene in this appeal, Grundy County is asking the Board broaden the scope of its ruling in *Fox Moraine* and expand the plain language of Section 107.202(b), which limits intervention by the State's Attorney to when it is the State's Attorney of the county in which the proposed facility is located. Grundy County has not presented any support for such an expansion of the law and the Rules. Therefore, the Board should decline to do so.

II. Grundy County Has Not Satisfied the Standard for Intervention Under §101.402(b) of the Rules.

9. Under the Board's General Rules, the decision to grant or deny intervention is at the discretion of the Board. 35 Ill. Adm. Code. §101.402(a); *see also People of the State of Illinois v. Alloy Engineering & Casting Co.*, No. PCB 01-155, slip op. at 5 (September 6, 2001); *Prairie Rivers Network v. Illinois Environmental Protection Agency*, No. PCB 01-112, slip op. at

¹ It should also be noted that the petitioner in *Fox Moraine* did not file any response to Kendall County's motion to intervene, and thus the Board deemed the petitioner to have waived any objection to granting the motion. *Fox Moraine*, slip op. at 1.

3 (April 19, 2001).

10. In order to intervene, the movant must show either: "1) The person has a conditional statutory right to intervene in the proceeding; 2) The person may be materially prejudiced absent intervention; or 3) The person is so situated that the person may be adversely affected by a final Board order." 35 Ill. Adm. Code §101.402(b). Subsection (b) of 101.402 further provides that "In determining whether to grant a motion to intervene, the Board will consider the timeliness of the motion and whether intervention will unduly delay or materially prejudice the proceeding or otherwise interfere with an orderly or efficient proceeding." 35 Ill. Adm. Code §101.402(b).

11. According to its motion, the issues which Grundy County seeks to raise, if allowed to intervene in this appeal, relate to the public health, safety and welfare, specifically, Willow Run's impact on water supply and on air traffic safety at Morris Community Airport. Grundy County has failed to show that its intervention into this appeal is warranted.

12. Grundy County has not provided anything more than simple and conclusory statements to support its position that its citizens will be uniquely or adversely affected by a grant of siting approval for Willow Run. The Board has held that simplistic statements of adverse effects unsupported by facts will not make a case for intervention. *Stuart v. Fisher*, No. PCB 02-162, slip op. at 1-2 (January 23, 2003); *2222 Elston LLC v. Purex Industries, Inc.*, No. PCB 03-55, slip op. at 2-4 (January 23, 2003).

13. Grundy County also has not established how or why the County Board is incapable of making arguments to address the issues of the impact of Willow Run on water supply and air traffic safety, and other arguments relating to the public health, safety and welfare. In any event, 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.*, slip op. at p. 5-6.

14. Even though Grundy County has failed to meet the standard for intervention, it is not without recourse. It may seek to file an *amicus curiae* brief pursuant to Section 101.110(c) of the Rules. *See* 35 Ill. Adm. Code 101.110(c); *see also* *Stuart*, slip op. at 2; *Prairie Rivers Network*, slip op. at 3-4.

WHEREFORE, WASTE MANAGEMENT OF ILLINOIS, INC., and KENDALL LAND and CATTLE, L.L.C respectfully request that the Board deny Grundy County's Motion to Intervene, and grant such other and further relief as the Board deems appropriate.

Respectfully Submitted,

WASTE MANAGEMENT OF ILLINOIS, INC.,
and KENDALL LAND and CATTLE, L.L.C

By: /s/ Lauren Blair
One of Their Attorneys

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CERTIFICATE OF SERVICE

I, Lauren Blair, an attorney, on oath certify that I caused to be served the foregoing, **PETITIONERS' OBJECTION TO GRUNDY COUNTY'S MOTION TO INTERVENE**, to be served upon the following parties listed below electronically on this 19th day of March 2009.

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