

ILLINOIS POLLUTION CONTROL BOARD

September 2, 2004

KIBLER DEVELOPMENT CORPORATION )	
and MARION RIDGE LANDFILL, INC., )	
)	
Petitioners, )	
)	
v. )	PCB 05-35
)	(Permit Appeal - Land)
ILLINOIS ENVIRONMENTAL )	
PROTECTION AGENCY, )	
)	
Respondent. )	

ORDER OF THE BOARD (by J.P. Novak):

On August 25, 2004, Kibler Development Corporation and Marion Ridge Landfill, Inc. (the petitioners) timely filed a petition asking the Board to review a July 23, 2004 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.206(a). On August 26, 2004, the petitioners filed their "Exhibit A," which was inadvertently omitted from the petition. 35 Ill. Adm. Code 101.300(b)(2), 105.404. The Agency granted a development permit for the petitioners' proposed landfill facility in Williamson County, including the following challenged additions: (1) a paragraph that describes a federal restriction on landfill location and states the need for the petitioners to obtain an exemption from the federal restriction before construction begins; (2) a condition prohibiting construction of a liner within 500 feet of any inhabited structure and requiring a survey of the waste boundaries and adjacent properties before construction; and (3) a condition requiring submission of a map within 90 days that indicates facility boundaries, on-site buildings, and monitoring points.

The petitioners appeal on the grounds, among others, that (1) the Agency inclusion of the contested additions are arbitrary and capricious; (2) the Agency has no authority or jurisdiction over matters included in the airport paragraph; and (3) the disputed language is not necessary for compliance with the Environmental Protection Act or Board regulations (415 ILCS 5 (2002)). The petitioners' petition meets the content requirements of 35 Ill. Adm. Code 105.210. The Board accepts the petition for hearing.

But, the Board on its own motion strikes three paragraphs in the petition. Each purports to "reserve the right" to raise other issues relating to the Agency action at some future time. The time allowed to appeal the Agency issuance of the permit expires after 35 days. 415 ILCS 5/40 (a)(1); 35 Ill. Adm. Code 105.206(a) (2002). Thus, no "reservation" can extend the time for appeal beyond that allowed by law. The Board hereby strikes the following three paragraphs from the August 25, 2004 petition:

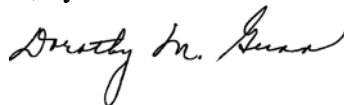
- 5.g. Petitioners reserve the right to raise such other and further bases for permit review and reversal as such bases become known or apparent.
- 7.c. Petitioners reserve the right to raise such other and further bases for permit review and reversal as such bases become known or apparent.
- 8. Petitioners reserve the right to amend this Petition to add other challenges to IEPA's imposed permit conditions, at any time prior to final ruling in this matter.

The petitioners have the burden of proof. 415 ILCS 5/40(a)(1) (2002); *see also* 35 Ill. Adm. Code 105.112(a). Hearings "will be based exclusively on the record before the Agency at the time the permit or decision was issued." 35 Ill. Adm. Code 105.214(a). Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2002)), which only the petitioners may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, the petitioners "may deem the permit issued." 415 ILCS 5/40(a)(2) (2002). Currently, the decision deadline is December 24, 2004 (the 120th day after August 26, 2004). *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for December 16, 2004.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by September 25, 2004, which is 30 days after the petitioners filed the petition. 35 Ill. Adm. Code 105.212(a). If the Agency wishes to seek additional time to file the record, it must file a request for extension before the date on which the record is due to be filed. 35 Ill. Adm. Code 105.116. The record must comply with the content requirements of 35 Ill. Adm. Code 105.212(b).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 2, 2004, by a vote of 5-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board