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CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on June 26, 2008, I served true and correct copies of a **MOTION TO STAY** via the Board's COOL System and by placing true and correct copies thereof in properly sealed and addressed envelopes and by depositing said sealed envelopes in a U.S. Mail drop box located within Springfield, Illinois, with sufficient First Class postage affixed thereto, upon the following named persons:

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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent

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**BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

PEOPLE OF WILLIAMSON COUNTY <i>ex rel.</i>)	
STATE'S ATTORNEY CHARLES GARNATI,)	
And THE WILLIAMSON COUNTY BOARD,)	
Petitioners,)	
v.)	PCB No. 08-93
KIBLER DEVELOPMENT CORPORATION,)	(Permit Appeal - Land)
MARION RIDGE LANDFILL, INC., and)	
ILLINOIS ENVIRONMENTAL PROTECTION)	
AGENCY,)	
Respondents.)	

MOTION TO STAY

NOW COMES Respondent, the Illinois Environmental Protection Agency ("Illinois EPA"), by one of its attorneys, Melanie A. Jarvis, Assistant Counsel and Special Assistant Attorney General, who is appearing limitedly for the purpose of attacking the sufficiency of the Petition filed in this case, and who, pursuant to 35 Ill. Adm. Code 101.500 and 101.514, hereby respectfully moves the Illinois Pollution Control Board ("Board") or in the alternative the Hearing Officer, to stay the above captioned proceedings or in the alternative to stay the Illinois EPA's response to discovery and the filing of the Administrative Record and in support of said motion, the Illinois EPA states as follows:

1. On June 23, 2008, the Illinois EPA filed a limited appearance, challenging both Petitioners' standing to appeal the issuance of an Illinois EPA permit granted to co-respondent, as well as noting that Petitioner failed to provide any justification or reasoning as to how the Board was to gain jurisdiction over the matter.

2. After the filing of a limited appearance, a person is confined to contesting only issues relating to jurisdiction or procedural matters such as standing. That persons' participation in other aspects of the trial would destroy the limitation of his appearance and may waive the jurisdictional objection. See, e.g., J.C. Penney Co. Inc. v. West (1983), 114 Ill.App.3d 644, 70 Ill. Dec. 314, 449

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N.E.2d 188. Falstad v. Falstad (1987) 152 Ill. App. 3d 648. A finding that jurisdiction exists is a necessity for a matter to be docketed and heard and such a challenge is appropriate at any time during the proceeding. Further, dealing with issues of jurisdiction directly following the filing of a matter fosters judicial and economic economy.

3. On June 26, 2008, the Petitioners filed requests for discovery.

4. The filing of answers to said discovery requests or the filing of the Administrative Record may waive the Illinois EPA's limited and special appearance for the purpose of challenging jurisdiction and standing.

5. Also, as noted above, the Illinois EPA will incur significant cost associated with engaging in litigation without the benefit of a ruling on its motion and will thus be prejudiced by proceeding with discovery and the filing of the Administrative Record at this time. The Petitioner has not offered any reasoning as to why discovery must be proceeded with prior to a ruling on the jurisdictional issues.

6. As stated above, Petitioner has not set forth to date any argument relating to the need to proceed in an expedited manner in the proceeding, and at very least should be required to provide the Illinois EPA, the Board and co-respondent with answers to both the pending jurisdictional and standing issues that were pending prior to the filing of Petitioners' discovery request. *See* Des Plaines River Watershed, et. al. v. IEPA and the Village of New Lenox, (PCB 04-88). Moreover, it has not been plead, nor demonstrated how Petitioner will be injured by a stay in this matter pending resolution and final decisions on the currently pending motion. Finally, co-respondent may have issues relating to both the jurisdictional, standing and other procedural matters that should be raised and heard prior to proceeding on the matter.

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CONCLUSION

For the reasons stated herein, the Illinois EPA respectfully requests that the Board grant the Illinois EPA's Motion to Stay Discovery and the Filing of the Administrative Record until such time as the Board rules on the Illinois EPA's Motion to Dismiss based on the Board's lack of jurisdiction and Petitioners lack standing to bring this matter before the Board.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Respondent

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This filing submitted on recycled paper.