

**Electronic Filing - Received, Clerk's Office, July 7, 2008**

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF WILLIAMSON COUNTY *ex rel.*  
STATE'S ATTORNEY CHARLES GARNATI, and  
THE WILLIAMSON COUNTY BOARD,  
Petitioners,

v.

KIBLER DEVELOPMENT CORPORATION,  
MARION RIDGE LANDFILL, INC., and ILLINOIS  
ENVIRONMENTAL PROTECTION AGENCY,  
Respondents.

No. \_08-93

(Permit Appeal - Land)

**NOTICE OF FILING**

**TO:**

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**PLEASE TAKE NOTICE** that on July 7, 2008, I filed, electronically, with the Illinois Pollution Control Board, the following: Petitioners' Joint Response in Opposition to IEPA and Landfill's Motions to Stay and Extend Discovery, a copy of which are attached hereto and served upon you.

Jennifer J. Sackett Pohlenz  
*Querrey & Harrow, Ltd.*  
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PEOPLE OF WILLIAMSON COUNTY *ex rel.* STATE'S  
ATTORNEY CHARLES GARNATI, and THE  
WILLIAMSON COUNTY BOARD,

By:           /s/ Jennifer J. Sackett Pohlenz          

**CERTIFICATE OF SERVICE**

I, **Jennifer J. Sackett Pohlenz**, certify that served the foregoing Notice of Filing, along with copies of document(s) set forth in this Notice, on the above listed persons at the above listed e-mail addresses this 7<sup>th</sup> day of July 2008, *via* e- mail, and further will serve them *via* facsimile on July 8, 2008.

          /s/ Jennifer J. Sackett Pohlenz

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ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY,

Respondents.

No. 08-93

(Permit Appeal - Land)

**PETITIONERS' JOINT RESPONSE IN OPPOSITION TO IEPA AND LANDFILL'S  
RESPECTIVE MOTIONS TO STAY AND EXTEND DISCOVERY**

NOW COME Petitioners PEOPLE OF WILLIAMSON COUNTY *ex rel.* STATE'S ATTORNEY CHARLES GARNATI and the WILLIAMSON COUNTY BOARD, by and through their attorneys, and file this Joint Response in Opposition to the Illinois Environmental Protection Agency's ("Illinois EPA") Motion to Stay and Kibler Development Corp./Marion Ridge Landfill, Inc.'s (jointly referenced as "Landfill") Motion to Extend Discovery. In support thereof, Petitioners state as follows:

1. With complete knowledge that the Illinois Pollution Control Board (Board) would not make its decision on the Respondents' respective motions to dismiss this Petition until July 10, the Respondents *agreed* to an expedited discovery schedule. *See*, Hearing Officer Order dated 06/25/08. In fact, that agreed schedule was entered as a result of Petitioners' assertion of prejudice in the proceeding, as a result of Landfill's failure to waiver the statutory deadline and the extremely limited period of time to obtain discovery in this matter prior to the July 28<sup>th</sup> hearing that was likewise scheduled pursuant to the Hearing Officer's 06/25/08 Order.

2. Having agreed to that discovery schedule, Respondents both now seek to retract their agreement and obtain additional time to file the Administrative Record and response to

## **Electronic Filing - Received, Clerk's Office, July 7, 2008**

discovery. By their actions, both Illinois EPA and Landfill have prejudiced Petitioners already limited period to obtain evidence from them and prepare for the hearing and, in doing so, have rendered this proceeding fundamentally unfair. By their actions and failures to abide by the previously agreed schedule, Respondents have usurped the short statutorily allotted time, reducing the time allotted to discovery to a mere 17 days (assuming *in arguendo* that Respondents fully respond to discovery on July 11<sup>th</sup>, it is only 17 days until the July 28<sup>th</sup> hearing).

3. Respondents waived, or alternatively should be estopped from seeking more time for discovery, without otherwise extending the time for the statutory deadline, by their prior agreement to the expedited discovery schedule.

4. Additionally, the mainstay of Illinois EPA's argument that it cannot respond to discovery or file the Administrative Record without waiving its "limited appearance" in this case is incorrect and unsupported by the law. Since 2000, the rule requiring special appearances to be filed no longer exists. *KSAC Corp. v. Recycle Free, Inc.*, 364 Ill. App. 3d 593, 594 (Ill. App. Ct. 2d Dist. 2006), citing former Rule 2-301(a) of the Code of Civil Procedure. Thus, for approximately eight (8) years it has been well established that the special or limited appearance that Illinois EPA asserts prevents it from answering discovery in this case, in fact, is a nullity.

5. Additionally, Illinois EPA is simply wrong in its allegation that "Petitioner [sic] has not set forth to date any argument related to the need to proceed in an expedited manner" when, in fact, that was expressly and explicitly done by Petitioners at the initial Hearing Officer status conference which led to the entry of the 06/25/08 Hearing Officer Order and agreed discovery schedule. Moreover, at that time, Illinois EPA's counsel stated that it had "three feet" of paperwork on her floor that she was "fairly certain" she would be able to review in time to meet

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the statutory 30-day deadline for Illinois EPA to file its Administrative Record. In fact, the reason another status was scheduled for July 1<sup>st</sup> was to review the status of that filing, as Petitioners asserted prejudice without having that record timely filed.

6. Likewise, Landfill's claims of "surprise", "overlook[ing]" dates, and cursory and conclusory statements of "no threat of prejudice" must fall flat. Courts have previously held that injunctions, even if later overturned, stay a statutory tolling period. *See, Pioneer Processing Inc. v. EPA*, 102 Ill.2d 119, 464 N.E.2d 238 (S.Ct. 1984). Respondents failing and, in fact, refusing to respond to timely to discovery (particularly where the schedule was agreed), is analogous to an injunction imposed on the proceeding, where it effectively stays evidence gathering and impedes Petitioners abilities to present their case.

7. This is not simply about costs and fees that have been expended by Petitioners to date to simultaneously and diligently pursue this matter while responding to motions to dismiss and strike its Petition, this is also about Respondents impeding the time and limiting it well beyond the statutory construction for Petitioners to collect evidence and present their case. This results in a fundamentally unfair proceeding, particularly where Landfill, who is the sole party with the asserted authority to waive the statutory deadline, maintains a position of non-responsiveness while it lets the statutory clock tick away.

8. The Respondents actions unfairly prejudice Petitioners by, among other things, depriving Petitioners to access to the documentation and evidence necessary to pursue its claims; limiting Petitioners timeframe for identifying and reviewing such evidence which is in all likelihood several feet of documentation to 17 days, assuming *in arguendo* that full and complete responses are provided by Respondents on July 11<sup>th</sup>; limiting the time even further that Petitioners have to prepare with disclosed evidence for depositions in this case to 3 days

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(depositions were scheduled to begin per the 06/25/08 Order on July 14<sup>th</sup>); and, requiring Petitioners to incur the fees and costs associated with these actions

WHEREFORE, Petitioners, People of Williamson County *ex rel.* Charles Garnati and the Williamson County Board respectfully request the Board enter an order denying Petitioners Motions, requiring a waiver of the statutory deadline, and expediting discovery in this matter.

Dated: July 7, 2008

Respectfully submitted,

PEOPLE OF WILLIAMSON COUNTY *ex rel.*  
STATE'S ATTORNEY CHARLES GARNATI, and  
THE WILLIAMSON COUNTY BOARD,

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By:     /s/ Jennifer J. Sackett Pohlenz