

Electronic Filing - Received, Clerk's Office, July 8, 2008
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.)	

NOTICE

John Therriault, Acting Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, IL 60601

Carol Webb, Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, IL 62794-9274

Stephen F. Hedinger
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2601 South Fifth Street
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Michael John Ruffley
Assistant State's Attorney
200 Jefferson, Williamson County Courthouse
Marion, IL 62959

Jennifer Sackett Pohlenz
Querrey & Harrow
75 West Jackson Boulevard
Suite 1600
Chicago, IL 60604-2827

PLEASE TAKE NOTICE that I have today filed with the office of the Clerk of the Pollution Control Board a **REPLY TO PETITIONERS' JOINT RESPONSE IN OPPOSITION TO IEPA AND LANDFILL'S RESPECTIVE MOTIONS TO STAY AND EXTEND DISCOVERY**, copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent

Melanie A. Jarvis, Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544, 217/782-9143 (TDD)
Dated: July 8, 2008

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CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on July 8, 2008, I served true and correct copies of a **REPLY TO PETITIONERS' JOINT RESPONSE IN OPPOSITION TO IEPA AND LANDFILL'S RESPECTIVE MOTIONS TO STAY AND EXTEND DISCOVERY** 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:

John Therriault, Acting Clerk
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Chicago, IL 60601

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Board has consistently held that, in permit appeals, its review is limited to the record that was before IEPA at the time the permitting decision was made.” Prairie Rivers Network v. IEPA and Black Beauty Coal Company, PCB 01-112, slip op. at 10 (Aug. 9, 2001), citing Alton Packaging Corp. v. IPCB, 516 N.E.2d 275, 280 (5th Dist. 1987) (disallowing introduction of new evidence not presented to the Agency in the permit proceeding); Community Landfill Co. v. IEPA, PCB 01-48, 01-49 (Apr. 5, 2001); Panhandle Eastern Pipeline Co. v. IEPA, PCB 98-102 (Jan. 21, 1999); West Suburban Recycling and Energy Center, L.P. v. IEPA, PCB 95-125, 95-199 (Oct. 17, 1996). Furthermore, the Board’s decision “is not based on information developed by the permit applicant, or the Agency, after the Agency’s decision.” Community Landfill Co. and City of Morris v. IEPA, PCB 01-48. Consequently, “evidence that was not before the Agency at the time of its decision is not admitted at hearing or considered by the Board.” Community Landfill Co. and City of Morris v. IEPA, PCB 01-48, 01-49, slip op. at 3 (Apr. 5, 2001), citing Alton Packaging, 516 N.E.2d at 280; Panhandle Eastern Pipeline Co. v. IEPA, PCB 98-102 (Jan. 21, 1999); West Suburban Recycling and Energy Center, L.P. v. IEPA, PCB 95-125, 95-199 (Oct. 17, 1996).”

The Board went on to say that “[i]n a permit appeal such as this, respondents do not have the same opportunity to engage in discovery as they would in an enforcement case. Consequently, the Board directs the hearing officer to proceed to hearing on terms consistent with this order.”

Based on the foregoing, it is apparent that the Petitioners will not be prejudiced by a stay in discovery because it is clear from this ruling that the Petitioners are not even entitled to discovery in this case.

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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 or in the alternative rule that the Petitioners have no right to discovery in a third party permit appeal.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Respondent

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This filing submitted on recycled paper.