

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on July 8, 2008, I served true and correct copies of an **REPLY TO PETITIONERS' JOINT RESPONSE IN OPPOSITION TO IEPA AND LANDFILL'S MOTIONS TO DISMISS** 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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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.)	

**REPLY TO PETITIONERS' JOINT RESPONSE IN OPPOSITION TO IEPA AND
LANDFILL'S MOTIONS TO DISMISS**

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 101.506, hereby respectfully replies to Petitioners' joint response to Respondent's Motions to Dismiss and in support of said motion, the Illinois EPA states as follows:

1. The Illinois EPA deems it necessary to reply to Petitioners' Joint Response in Opposition to IEPA and Landfill's Motions to Dismiss filed July 7, 2008.

2. Initially, it is important, if not dispositive, to note that Petitioners fail to address the jurisdictional and standing issues raised. Apparently, Petitioners deem it appropriate to review its authority to seek an appeal of the issuance of an Illinois EPA permit with rational that the Office of the Illinois Attorney General should be allowed in Circuit Court to seek a declaratory judgment action against a person to develop a site. These two issues are not similar. The later case deals with whether the People have standing to seek relief in circuit court based upon Administrative action, not whether the People have standing to participate in the decision making process and seek review of the Board during

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the administrative process. In this light, the Petitioners did not address the question of jurisdiction in their response. As stated in Illinois EPA's Motion to Dismiss, the Illinois Environmental Protection Act, 415 ILCS 5/1 et seq. (2006) ("Act") does not allow for the third party appeal of the type of permit issued in this case by the Illinois EPA. The Board, like the Illinois EPA is a creature of statute and cannot create jurisdiction where the Act does not provide it.

3. Moreover, the Petitioners appear to state that the Illinois EPA claimed that they could not appeal its permit decision because it was not a party to the process. Illinois EPA did not, within its motion, make that point, no matter how valid it is, and the Illinois EPA would reserve its right to present argument on this issue, should the Petitioner present further arguments relating to this point.

4. The Illinois EPA has always maintained through its filing of a limited appearance that it was only subjecting itself to the jurisdiction of the Board for the purposes of challenging said jurisdiction. Further, Illinois EPA should not be prejudiced by following the rules of the Board in the filing of its Motion to Dismiss. The Board in adopting said rules obviously did not feel that a Petitioner would be prejudiced by the filing of a motion to dismiss within the 30-day period. Petitioners' argument to the contrary is really the farce in this case.

CONCLUSION

For the reasons stated herein, the Illinois EPA respectfully requests that the Board grant the Illinois EPA's Motion to Dismiss based on the Board's lack of jurisdiction or in the alternative finding that Petitioners lack standing to bring this matter before the Board.

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Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Respondent

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This filing submitted on recycled paper.