

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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JUL 14 2008
STATE OF 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.)

Case No. PCB 2008-93
Permit Appeal-Land

RESPONSE TO PETITIONERS' REQUEST FOR PRODUCTION

NOW COME Respondents, KIBLER DEVELOPMENT CORPORATION and MARION RIDGE LANDFILL, INC., through their undersigned attorney, and for their response to the "Request For Production" purportedly served upon these Respondents by Petitioners on or about June 25, 2008, state as follows:

1. **General Objection to all discovery requests.** In this case, Petitioners purport to have brought a third-party permit appeal from the grant of a permit by Respondent Illinois Environmental Protection Agency ("IEPA") in favor of these Respondents. No statutory authority exists for this action, and these Petitioners lack standing to bring such a matter before the Illinois Pollution Control Board, and so all discovery is improper, as are all pleadings.

2. **General Objection to all discovery requests.** This Board has unambiguously ruled that discovery is inappropriate in permit appeals matters, and is unavailable to permit appeal petitioners and respondents alike. DesPlaines River Watershed Alliance v. IEPA, PCB 04-88 (Nov. 17, 2005). Despite this unambiguous ruling, and with no good faith argument for the extension, modification, or reversal of the existing law, Petitioners requested this Board's approval to set a discovery schedule, and subsequently served the purported discovery requests upon Respondents. *The only issue in any permit appeal must concern whether the IEPA's decision, based solely upon the materials in front of the IEPA, was consistent with the Illinois Environmental Protection Act and the Board regulations, and therefore the only documentation relevant to this or any other purported*

permit appeal action is, and would be, the documentation in front of and available to the IEPA at the time a decision is made. The IEPA is under regulatory obligation (and in this specific case, hearing officer order), to provide its “administrative record,” which consists of all documents before it relevant to its decision making, and therefore there is no basis for, or authority for, the discovery Petitioners attempt to engage in. Indeed, the attempt appears no more than harassment, inasmuch as Petitioners lack any authority to bring this action in the first place, and even if some authority exists for the action, the documentation is irrelevant to any issue involved in the action.

3. **General Objection to the request for production.** In addition to the above, these Respondents note that the “Request For Production” purportedly served by Petitioners are procedurally improper, and fail to provide information necessary for Respondents to answer completely. Among other things, the caption fails to identify any case number associated with the request for production, and the requests are not directed to any particular party or parties. Although the “Request For Production” were sent to counsel, Petitioners failed to identify which of the Respondents counsel’s clients the requests are directed to. In addition, the requests request information which is not reasonably related to any issue in this proceeding, nor is it likely to result in the development of relevant information; the request for production are vague, ambiguous and uncertain; and the requests have been interposed solely for an improper purpose, which is to harass and burden these Respondents.

Response to Request No. 1. See general objections (paragraphs 1, 2 and 3); without waiving said objections, and only as an accommodation to Petitioners, responsive documents consist of the “Interrogatories” purportedly served by Petitioners in this case, and DesPlaines River Watershed Alliance v. IEPA, PCB 04-88 (Nov. 17, 2005) both of which are already in your possession or available to you.

Response to Request No. 2. See general objections (paragraphs 1, 2 and 3); only those documents included in the administrative record are or will be relevant to this matter, and Petitioners have (or will have) copies of all such documents; hence this request is unduly burdensome and interposed solely to harass these Respondents.

Response to Request No. 3. See general objections (paragraphs 1, 2 and 3); only those documents included in the administrative record are or will be relevant to this matter, and Petitioners have (or will have) copies of all such documents; hence this request is unduly burdensome and interposed solely to harass these Respondents.

Response to Request No. 4. See general objections (paragraphs 1, 2 and 3); only those documents included in the administrative record are or will be relevant to this matter, and Petitioners have (or will have) copies of all such documents; hence this request is unduly burdensome and interposed solely to harass these Respondents.

Response to Request No. 5 See general objections (paragraphs 1, 2 and 3); only those documents included in the administrative record are or will be relevant to this matter, and Petitioners have (or will have) copies of all such documents; hence this request is unduly burdensome and interposed solely to harass these Respondents.

Response to Request No. 6 See general objections (paragraphs 1, 2 and 3); only those documents included in the administrative record are or will be relevant to this matter, and Petitioners have (or will have) copies of all such documents; hence this request is unduly burdensome and interposed solely to harass these Respondents.

Response to Request No. 7 See general objections (paragraphs 1, 2 and 3); only those documents included in the administrative record are or will be relevant to this matter, and Petitioners have (or will have) copies of all such documents; hence this request is unduly burdensome and interposed solely to harass these Respondents. See also Answer to Interrogatory No.3.

Response to Request No. 8 See general objections (paragraphs 1, 2 and 3); only those documents included in the administrative record are or will be relevant to this matter, and Petitioners have (or will have) copies of all such documents; hence this request is unduly burdensome and interposed solely to harass these Respondents. See also Answer to Interrogatory No. 3.

Response to Request No. 9 See general objections (paragraphs 1, 2 and 3); only those

documents included in the administrative record are or will be relevant to this matter, and Petitioners have (or will have) copies of all such documents; hence this request is unduly burdensome and interposed solely to harass these Respondents.

Response to Request No. 10 See general objections (paragraphs 1, 2 and 3); only those documents included in the administrative record are or will be relevant to this matter, and Petitioners have (or will have) copies of all such documents; hence this request is unduly burdensome and interposed solely to harass these Respondents.

Response to Request No. 11 See general objections (paragraphs 1, 2 and 3); only those documents included in the administrative record are or will be relevant to this matter, and Petitioners have (or will have) copies of all such documents; hence this request is unduly burdensome and interposed solely to harass these Respondents.

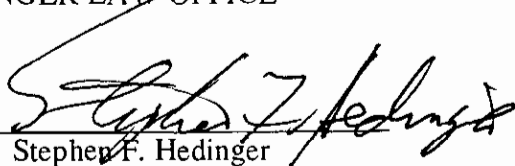
Respectfully submitted,

Kibler Development Corporation & Marion Ridge
Landfill, Inc., Respondents,

By their attorney,

HEDINGER LAW OFFICE

By


Stephen F. Hedinger

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NOTICE OF FILING AND PROOF OF SERVICE

The undersigned certifies that an original and nine copies of the foregoing Answer to Petitioners' Request For Production and of this Notice of Filing and Proof of Service, were served upon the Clerk of the Illinois Pollution Control Board, and one copy to each of the following parties of record and hearing officer in this cause by enclosing same in an envelope addressed to:

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

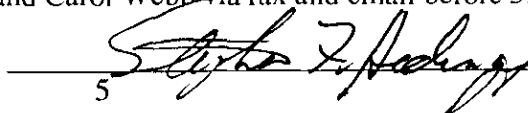
Michael J. Ruffley
Assistant State's Attorney
200 Jefferson
Williamson County Courthouse
Marion, IL 62959

Melanie Jarvis
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 N. Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276

Carol Webb, Hearing Officer
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
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Jennifer Sackett Pohlenz
Querrey & Harrow
75 West Jackson Boulevard
Suite 1600
Chicago, IL 60604-2827

with postage fully prepaid, and by depositing said envelopes in a U.S. Post Office Mail Box in Springfield, Illinois before 5:30 p.m. on the 9th day of July, 2008. Copies were also sent to Melanie Jarvis, Jennifer Sackett Pohlenz and Carol Webb via fax and email before 5:00 p.m. the same date.


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Stephen F. Hedinger

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RESPONSE TO PETITIONERS' INTERROGATORIES

NOW COME Respondents, KIBLER DEVELOPMENT CORPORATION and MARION RIDGE LANDFILL, INC., through their undersigned attorney, and for their response to the "Interrogatories" purportedly served upon these Respondents by Petitioners on or about June 25, 2008, state as follows:

1. **General Objection to all discovery requests.** In this case, Petitioners purport to have brought a third-party permit appeal from the grant of a permit by Respondent Illinois Environmental Protection Agency ("IEPA") in favor of these Respondents. No statutory authority exists for this action, and these Petitioners lack standing to bring such a matter before the Illinois Pollution Control Board, and so all discovery is improper, as are all pleadings.

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permit appeal action is, and would be, the documentation in front of and available to the IEPA at the time a decision is made. The IEPA is under regulatory obligation (and in this specific case, hearing officer order), to provide its “administrative record,” which consists of all documents before it relevant to its decision making, and therefore there is no basis for, or authority for, the discovery Petitioners attempt to engage in. Indeed, the attempt appears no more than harrassment, inasmuch as Petitioners lack any authority to bring this action in the first place, and even if some authority exists for the action, the documentation is irrelevant to any issue involved in the action.

3. **General Objection to these interrogatories.** In addition to the above, these Respondents note that the “Interrogatories” purportedly served by Petitioners are procedurally improper, and fail to provide information necessary for Respondents to answer completely. Among other things, the caption fails to identify any case number associated with the interrogatories, and the interrogatories are not directed to any particular party or parties. Although the “Interrogatories” were sent to counsel, Petitioners failed to identify which of the Respondents counsel’s clients the interrogatories are directed to. In addition, the interrogatories request information which is not reasonably related to any issue in this proceeding, nor is it likely to result in the development of relevant information; the interrogatories are vague, ambiguous and uncertain; and the interrogatories have been interposed solely for an improper purpose, which is to harass and burden these Respondents.

Interrogatory No. 1. Counsel for these Respondents has drafted this response. Also see general objections (paragraphs 1, 2 and 3) set forth above.

Interrogatory No. 2. See answer to Interrogatory No. 1.

Interrogatory No. 3. These Respondents have no idea what this case is about, because there is no statutory authority for any such action. In the event the Board determines that there is any basis for this action, and in the event that Petitioners identify issues that are within the Board’s jurisdiction and authority to consider, and in the event there is a ruling that Petitioners are permitted to engage in discovery in an action such as this, Respondents will at that time develop a list of witnesses to address the issues raised.

Interrogatory No. 4. See general objections (paragraphs 1, 2 and 3), above. All information relevant to this issue, if any, is or will be available in the administrative record to be submitted by the IEPA.

Interrogatory No. 5. See answer to Interrogatory No. 4, above.

Interrogatory No. 6. See answer to Interrogatory No. 4, above.

Interrogatory No. 7. See answer to Interrogatory No. 4, above.

Interrogatory No. 8 See answer to Interrogatory No. 4, above.

Interrogatory No. 9 See answer to Interrogatory No. 4, above.

Interrogatory No. 10 See answer to Interrogatory No. 4, above. Also, objection on the basis that settlement discussions are privileged.

Interrogatory No. 11 See answer to Interrogatory No. 4, above. See also answer to Interrogatory No. 10, above.

Interrogatory No. 12 See answer to Interrogatory No. 4, above.

Interrogatory No. 13 See answer to Interrogatory No. 4, above.

Interrogatory No. 14 See answer to Interrogatory No. 4, above.

Interrogatory No. 15 See answer to Interrogatory No. 4, above.

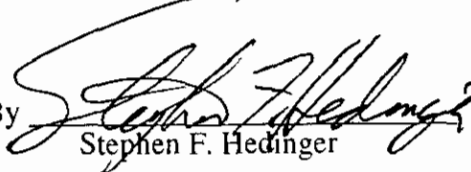
Interrogatory No. 16 See answer to Interrogatory No. 4, above.

Respectfully submitted,

Kibler Development Corporation & Marion Ridge
Landfill, Inc., Respondents,

By their attorney,

HEDINGER LAW OFFICE

By 
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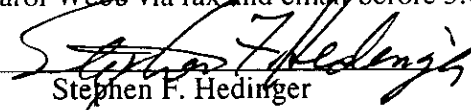
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Jennifer Sackett Pohlenz
Querrey & Harrow
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with postage fully prepaid, and by depositing said envelopes in a U.S. Post Office Mail Box in Springfield, Illinois before 5:30 p.m. on the 9th day of July, 2008. Copies were also sent to Melanie Jarvis, Jennifer Sackett Pohlenz and Carol Webb via fax and email before 5:00 p.m. the same date.


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