

BEFORE THE POLLUTION CONTROL BOARD OF THE STATE OF ILLINOIS

KIBLER DEVELOPMENT CORPORATION and  
MARION RIDGE LANDFILL, INC.,

Petitioners,

v.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Respondent.

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CLERK'S OFFICE

AUG 08 2008

STATE OF ILLINOIS  
Pollution Control Board

Case No.2005-035  
Permit Appeal

**NOTICE OF FILING AND PROOF OF SERVICE**

The undersigned certifies that an original and nine copies of the foregoing Petitioners' Response to Motion to Intervene 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:

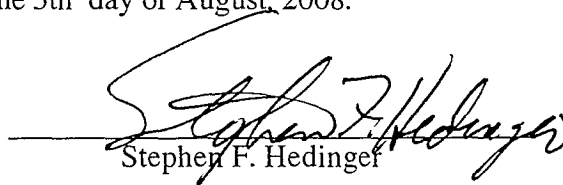
Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph St., Suite 11-500  
Chicago, IL 60601

Charles Garnati, State's Attorney  
200 West Jefferson County Courthouse  
Marion, IL 62959-3061

Carol Webb  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East, P.O. Box 19274  
Springfield, IL 62796-9274

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

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 5th day of August, 2008.

  
Stephen F. Hedinger

Hedinger Law Office  
2601 South Fifth Street  
Springfield, IL 62703  
Telephone: (217) 523-2753  
Fax: (217) 523-4366  
[hedinger@hedingerlaw.com](mailto:hedinger@hedingerlaw.com)

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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MARION RIDGE LANDFILL, INC.,

Petitioners,

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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

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STATE OF ILLINOIS  
Pollution Control Board

Case No.2007-043  
Permit Appeal

**PETITIONERS' RESPONSE TO MOTION TO INTERVENE**

NOW COME Petitioners, KIBLER DEVELOPMENT CORPORATION and MARION RIDGE LANDFILL, INC., through their undersigned attorney, and for their response to the "Motion To Intervene," purportedly delivered to this Board by Williamson County State's Attorney Charles Garnati, *ex rel.* People of Williamson County, on July 21, 2008, suggest that this Board order denial of the motion to intervene for the following reasons:

1. The pleading has never properly been filed with this Board. As far as Petitioners can tell, the only copy of the document ever submitted to the Board's Clerk's Office was by electronic submittal. However, pursuant to Board procedural rule 101.302(d), 35 Ill. Adm. Code Sec. 101.302(d), "(f)iling by electronic transmission or facsimile will only be allowed with the prior approval of the Clerk of the Board or hearing officer assigned to the proceeding." Nothing in the record here indicates that the proposed intervenor ever obtained the Clerk's or the Hearing Officer's prior approval to submit any such document to this Board.

2. In addition, the Notice of Filing of the document is unsigned, contrary to this Board's requirement. See 35 Ill. Adm. Code Part 101, App. D.

3. In addition, the "Certificate of Service" is signed in an illegible scrawl that does not appear to be the same signature as the attorney who has entered his appearance in this case, Charles Garnati. Compare Appearance, which includes Mr. Garnati's signature, which is clearly different from that on the Certificate of Service. Pursuant to this Board's regulations, a Certificate of Service can only be signed by an attorney; a non-attorney must use a form providing authentication of the

person's signature. See 35 Ill. Adm. Code Part 101, App. E Illustration B; compare id., Illustration A.

4. Substantively, the Motion to Intervene is also deficient. See 35 Ill. Adm. Code 101.402 (setting forth requirements for a petition for leave to intervene). The only argument in favor of intervention made by this motion is that the Williamson County State's Attorney has standing under certain case authorities to intervene in certain types of proceedings. Regardless of whether that authority may be applicable in this case, the Motion to Intervene fails to set forth in what way the intervenor meets the standards set forth in Section 101.402(c) or (d). Specifically, the motion fails to identify any "unconditional statutory right to intervene," nor does the motion demonstrate that pursuant to this proceeding it will become necessary for the Board to impose a condition on the proposed intervenor, and so no showing pursuant to Section 101.402(c) has been made. Similarly, the motion fails to identify any conditional statutory right to this intervention (which is different from standing), nor does the motion identify any manner in which the proposed intervenor will be materially prejudiced absent the proposed intervention, nor does it argue that the intervenor will be so situated as to be adversely affected in the absence of the intervention; hence the motion fails also to provide information set forth in Section 101.402(d).

5. Petitioners would also note that the specific regulations pertaining to permit appeals, as well as statutory provisions related thereto, do not allow for any such intervention, and these Petitioners would argue that the Board has no statutory authority to allow such intervention in this proceeding. See 415 ILCS 5/40(a); 35 Ill. Adm. Code Part 105, Subpart B.

6. Petitioners would also point out that this petition is so deficient that it fails even to identify on whose side the proposed intervenor seeks to appear. The motion fails to state whether the proposed intervenor agrees with Petitioners' petition, or conversely wishes to defend the Respondent's permit determination that is under review; obviously a motion lacking such basic information can not be seriously considered.

7. Finally, Petitioners would also note that the motion is untimely. Prior to the filing of

the motion, Petitioners informed this Board of a settled resolution of all issues remaining in this permit appeal to the satisfaction of Petitioners and Respondent. Accordingly, there is no controversy with which this proposed intervenor can participate, and the motion should be denied, and the permit appeal should be dismissed pursuant to the parties' request. Nothing in the Motion to Intervene suggests otherwise; in fact, the motion itself promises that the proposed intervention will not interfere with the advancement of the proceeding, and hence its appropriate that the matter be dismissed at this time.

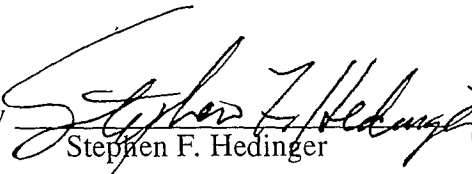
WHEREFORE Petitioners, KIBLER DEVELOPMENT CORPORATION and MARION RIDGE LANDFILL, INC., request that this Board deny the Motion to Intervene, and enter all such other and further relief in favor of Petitioners as this Board is authorized to award.

Respectfully submitted,

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

By their attorney,

HEDINGER LAW OFFICE

By   
Stephen F. Hedinger

Hedinger Law Office  
2601 South Fifth Street  
Springfield, IL 62703  
Telephone: (217) 523-2753  
Fax: (217) 523-4366  
hedinger@hedingerlaw.com