

**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.

ORIGINAL

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STATE OF ILLINOIS  
Pollution Control Board  
Case No. 2007-035  
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:

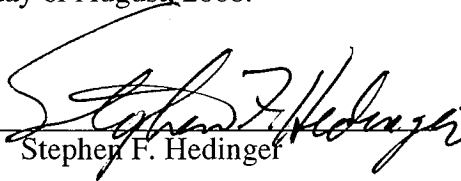
Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph St., Suite 11-500  
Chicago, IL 60601

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

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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.

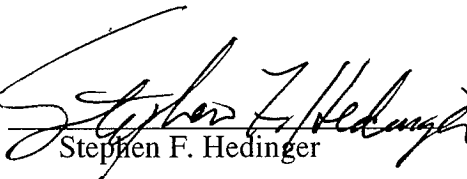
WHEREFORE Petitioners, KIBLER DEVELOPMENT CORPORATION and MARION RIDGE LANDFILL, INC., request that this Board deny the Motion to Intervene, and enter all such other and further relief in favor of Petitioners as this Board is authorized to award.

Respectfully submitted,

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

By their attorney,

HEDINGER LAW OFFICE

By   
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