BEFORE THE POLLUTION CONTROL BOARD OF THE STATE OF ILLINOIS

KIBLER DEVELOPMENT CORPORA' MARION RIDGE LANDFILL, INC., Petitioners,	TION and ORIGINAL	CLERK'S OFFICE AUG 0 8 2000
V. II I INOIS ENVIDONMENTAL DOCTE)) (CTION A CENCY	Case No. 2007 Control Board
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,) Respondent.)		a _Q

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.

Hedinger Law Office 2601 South Fifth Street Springfield, IL 62703 Telephone: (217) 523-2753

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

KIBLER DEVELOPMENT CORPORATION and MARION RIDGE LANDFILL, INC.,

Petitioners,

v.

Case No.2007-043

Permit Appeal

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Respondent.

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,

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