

**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.)	

NOTICE

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

Carol Webb, Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, IL 62794-9274

Stephen F. Hedinger
Hedinger Law Officer
2601 South Fifth Street
Springfield, IL 62703

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

Jennifer Sackett Pohlenz
Querrey & Harrow
75 West Jackson Boulevard
Suite 1600
Chicago, IL 60604-2827

PLEASE TAKE NOTICE that I have today filed with the office of the Clerk of the Pollution Control Board a **RESPONSE TO PETITIONERS' MOTION TO RECONSIDER**, copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent

Melanie A. Jarvis
Assistant Counsel, Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue, East P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)
Dated: August 25, 2008

Electronic Filing - Received, Clerk's Office, August 25, 2008

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on August 25, 2008, I served true and correct copies of an **RESPONSE TO PETITIONERS' MOTION TO RECONSIDER** 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:

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

Carol Webb, Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, IL 62794-9274

Stephen F. Hedinger
Hedinger Law Officer
2601 South Fifth Street
Springfield, IL 62703

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

Jennifer Sackett Pohlenz
Querrey & Harrow
75 West Jackson Boulevard
Suite 1600
Chicago, IL 60604-2827

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent

Melanie A. Jarvis
Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)

**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.)	

RESPONSE TO PETITIONERS' MOTION TO RECONSIDER

NOW COMES the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA"), by one of its attorneys, Melanie A. Jarvis, Assistant Counsel and Special Assistant Attorney General, appearing specially, and, pursuant to 35 Ill. Adm. Code 101.500 and 101.520, hereby responds to the Motion for Reconsideration ("Petitioners' motion" or "motion") filed by the Petitioners. In response to the Petitioners' motion, the Illinois EPA states as follows:

I. STANDARD OF REVIEW

In ruling on a motion for reconsideration, the Illinois Pollution Control Board ("Board") will consider factors including new evidence or a change in the law, to conclude the Board's decision was in error. 35 Ill. Adm. Code 101.902. In the case of Citizens Against Regional Landfill v. County Board of Whiteside, PCB 93-156 (March 11, 1993), the Board noted that "the intended purpose of a motion for reconsideration is to bring to the court's attention newly discovered evidence which was not available at the time of the hearing, changes in the law or errors in the court's previous application of the existing law." Korogluyan v. Chicago Title & Trust Co., 213 Ill. App. 3d 622, 627, 572 N.E.2d 1154, 1158 (1st Dist. 1992).

Electronic Filing - Received, Clerk's Office, August 25, 2008

Thus, in order to prevail on a motion to reconsider, the movant must demonstrate that one of the three criteria has been met to justify reconsideration of an order. Here, the movant fails to raise any meritorious argument that would warrant the Board's reconsideration of its July 10, 2008 final order ("Board's final order" or "final order").

II. THE PETITIONER RAISES NO NEW FACTS OR EVIDENCE

Several of the arguments posited by the Petitioner relate to its belief that the Board failed to properly consider information that was before the Board as of the date of the final order. The Board was completely briefed on the relevant issues of the case and the Petitioner does not present sufficient grounds for reconsidering the final order. The Petitioner is simply not happy with the conclusion that the Board reached following consideration of those issues.

The Petitioner is merely attempting to re-argue issues that were already raised and briefed prior to the Board reaching its decision on July 10, 2008. The Petitioner has not detailed any newly discovered evidence.

III. THE PETITIONER RAISES NO CHANGES IN LAW

The Petitioner's motion is not premised on any changes in applicable law since the date of the Board's decision.

IV. THE PETITIONER DOES NOT RAISE ANY SUCCESSFUL ARGUMENT THAT THE BOARD MISAPPLIED THE RELEVANT LAW

The Petitioner attempts to make arguments that the Board misapplied the relevant law. An examination of each such argument, however, makes clear that there is no justification for granting the Petitioner's motion.

There is no argument that suggests that the Board did not consider the cases listed in the Petitioners' Motion for Reconsideration. Petitioners cited those cases in their original appeal and had

Electronic Filing - Received, Clerk's Office, August 25, 2008

full opportunity to argue the rulings in prior motions. The Petitioners argue merely that the Board was mistaken in their interpretation of those cases.

But that argument does not raise any sufficient grounds for reconsideration of the Board's decision. The Board's decision took into account the very arguments raised in the Petitioner's motion to reconsider, since they were also raised in the Petitioners' pleadings prior to the issuance of the final order. In other words, there are no reasons given as to why the Board's decision should be reconsidered in the Petitioners' favor, other than the Board's interpretation did not agree with that of the Petitioners. The Board correctly determined that the Petitioners lacked standing to bring the appeal resulting in the Board lacking jurisdiction to hear the case. Specifically, the Board found that:

“[T]he State's Attorney has cited no persuasive authority to support his initiation of this petition for review of a non-hazardous waste landfill permit. For the Board to allow this action to proceed as a permit appeal would amount to an unlawful extension of appeal rights by the Board.

This holding is consistent with both the Landfill, Inc. and Pioneer Processing precedents. The Supreme Court's holding in Landfill, Inc. constrains the Board to hear appeals of the Agency's grant of non-hazardous waste landfill permits consistent with expressed legislative intent; the Supreme Court's holding in Pioneer Processing allowing appeal by the Attorney General of a Board ruling in a hazardous waste landfill appeal is consistent with the noted legislative intent favoring “greater public rights” to opponents of hazardous waste landfill permits. *See Pioneer Processing*, 464 N.E.2d at 248. The cases in which the Board has allowed State's Attorneys to intervene in siting appeals and permit appeals do not serve as a legitimate basis for the right to initiate an appeal of a non-hazardous waste landfill permit. Finding that the State's Attorney and the County

each lacks standing to bring this appeal, the Board grants respondents' motions to dismiss.

Again, in summary, the Board dismisses this action on the grounds that the petitioners lack standing to pursue the action under Section 40 of the Act, resulting in the Board's lack of jurisdiction to hear the appeal." Board's order p. 13.

The Board was correct in their decision, and the Petitioners arguments do not merit reconsideration.

V. FACTUAL ERRORS

The Petitioners in their attempt to have the Board reconsider this issue state several factual inaccuracies. Normally the Illinois EPA would not address such inaccuracies as they are irrelevant to the issue of whether the motion for reconsideration should be granted. However, these inaccuracies are egregious and therefore must be factually corrected. The Petitioners know that the permit they are attempting to appeal does not allow for a Municipal Solid Waste Landfill ("MSWLF") to be developed, but allows for a non-putrescible landfill to be developed at the site. They also know that the siting was not issued by default, but was issued by the Williamson County Board and was upheld after an appeal to the Board. See, PCB 1996-60. Therefore, the decision they are attempting to challenge does not allow for the construction of a MSWLF within two miles of a public airport as stated by the Petitioners on page 3 of their motion. The Illinois EPA's first duty is to protect the environment. The Petitioners' assertion that the Illinois EPA would forgo their duty in settling a case is disingenuous at best and only stated to inflame the passions of the Board and their constituency. How the Illinois EPA did not protect the environment by restricting the permit from a MSWLF to a non-putrescible landfill, the Petitioners have not explained.

VI. CONCLUSION

The Petitioner's arguments in its motion to reconsider are without merit and thus the motion should be denied. There are no arguments presented in the motion that meet the criteria that would warrant the Board's reconsideration of its final order.

WHEREFORE, for the reasons stated above, the Illinois EPA hereby respectfully requests that the Board deny the Petitioner's motion.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent

Melanie A. Jarvis
Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)
Dated: August 25, 2008

This filing submitted on recycled paper.