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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

AUG 29 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 OF KIBLER DEVELOPMENT CORPORATION AND MARION  
RIDGE LANDFILL, INC. TO WILLIAMSON COUNTY'S STATE'S ATTORNEY  
CHARLES GARNATI'S MOTION FOR RECONSIDERATION**

NOW COME Respondents, KIBLER DEVELOPMENT CORPORATION and MARION RIDGE LANDFILL, INC., through their undersigned attorney, and for their response to the "Williamson County State's Attorney, Charles Garnati's Motion for Reconsideration," and the memorandum and other materials accompanying and supporting that motion, state as follows:

1. By Opinion and Order of the Board dated July 10, 2008, this Board dismissed the permit appeal brought by People of Williamson County *ex rel* State's Attorney Charles Garnati, and the Williamson County Board, seeking review of a permit **granted** by Respondent Illinois Environmental Protection Agency ("Agency"), concerning a non-hazardous waste landfill permit issued in favor of Respondents Kibler Development Corporation and Marion Ridge Landfill, Inc.
2. This Board's July 10, 2008 Opinion and Order of the Board dismissed the permit proceedings on the grounds that the statute, 415 ILCS 5/40(a)(1), makes no provision for any appeal of such a permit granted by the Agency, but only allows appeals from permit denials or from conditions unilaterally imposed by the Agency in granting a permit. Simply put, this Board specifically ruled that no statutory authority supported the unprecedented and meritless petition filed by the Petitioners in this case. "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." (Opinion, at 13).

3. Petitioner purports to have filed a motion for reconsideration electronically on August 14, 2008. (The Williamson County Board did not join in the motion).

4. Notably, the certificate of service is signed by one “Joan Lane,” not identified as an attorney, but the signature is not notarized; moreover, it fails to comply with the provisions of verification by certification allowed by Section 1-109 of the Code of Civil Procedure, 735 ILCS 5/1-109. In addition, the Petitioner purports to have filed the document by electronic means, yet there is no indication in the record that leave to do so has been granted by this Board’s clerk, nor by the hearing officer in this case. For these reasons, the documents should be stricken. See 35 Ill. Admin. Code 101.302(d); 35 Ill. Admin. Code Part 101, App. E Illustration B.

5. The motion for reconsideration correctly acknowledges that in order to seek reconsideration, the Petitioner must identify newly discovered evidence, changes in the law, or errors in application of existing law. Petitioner claims to rely upon only the third basis—that is, purported errors in application of existing law—and so Petitioner has waived any claim that newly discovered evidence or changes in the law warrant reconsideration. (See Motion for Reconsideration, paragraph 1).

6. Fully one half of the motion (pages 3-4), and of the memorandum supporting the motion (memorandum, pages 5-7), as well as all documents submitted in support, constitute “new evidence” which Petitioner attempts to argue to support this Board’s reconsideration of its July 11 ruling. However, Petitioners do not assert that any of this supposed evidence is “newly discovered,” and review of the materials reveals that virtually all of it, even if in any way relevant to any issues pending before this Board, could have and should have been submitted in Petitioners’ response to the motions to dismiss that were dealt with by this Board’s July 11 ruling. Petitioner does not even attempt to explain why this information, if relevant to its petition, was not submitted sooner. Accordingly, the second halves of Petitioners’ motion and memorandum, and all documents submitted by Petitioner in support of the motion, should be stricken and completely disregarded by this Board.

7. Petitioner also purports to argue that this Board misapplied the law. However, even

though this Board's ruling centered upon the statutory restrictions for appealing the type of permit involved in this case, Petitioner is completely silent about the statute or its effect on the attempted permit appeal. Indeed, Petitioner does not even cite 415 ILCS 5/40 in the entire motion for reconsideration, or supporting memorandum!

8. At best, Petitioner's argument is no more than a re-hash of arguments Petitioner previously advanced. No new cases are cited in Petitioner's motion for reconsideration, and Petitioner's arguments repeat the arguments previously made. This Board has already considered and rejected these arguments, and Petitioner's motion is no more than a waste of time.

9. Petitioner fails to explain why this Board's July 11 Opinion and Order was an incorrect application of clear statutory requirements. Petitioner's motion for reconsideration is as frivolous as the purported permit appeal itself, and it should be denied; to any extent this Board does reconsider its opinion, the July 11 opinion must be reaffirmed, as a proper application of clear statutory law.

WHEREFORE Respondents, KIBLER DEVELOPMENT CORP. and MARION RIDGE LANDFILL, INC., request that this Board deny the motion for reconsideration filed by Petitioner Charles Garnati, State's Attorney of Williamson County, or in the alternative if this Board determines a basis exists to reconsider, that this Board reaffirm its July 11 Opinion and Order in this case, and deny to Petitioner any further relief, but instead grant to Respondents all relief available from this Board including the imposition of sanctions.

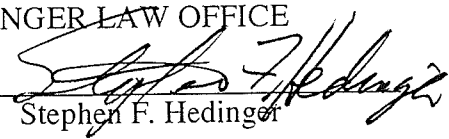
Respectfully submitted,

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

By their attorney,

HEDINGER LAW OFFICE

By

  
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**NOTICE OF FILING AND PROOF OF SERVICE**

The undersigned certifies that an original and nine copies of the foregoing Response to Motion for Reconsideration 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 (via FedEx)  
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

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1021 N. Grand Ave. East  
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Springfield, IL 62794-9276

Carol Webb, Hearing Officer  
Illinois Environmental Protection Agency  
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P.O. Box 19276  
Springfield, IL 62794-9276

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 ~~28th~~ day of August, 2008.

  
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