

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

KIBLER DEVELOPMENT CORPORATION
and MARION RIDGE LANDFILL, INC.,,

Petitioners,

v.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,,

Respondents.

PCB No. PCB 07-43

NOTICE OF FILING

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on September 11, 2008, we electronically filed with the Clerk of the Illinois Pollution Control Board, Williamson County State's Attorney, Charles Garnati's Motion for Reconsideration, copies of which are attached hereto and hereby served upon you.

Dated: September 11, 2008

Respectfully submitted,

On behalf of Williamson County State's
Attorney, Charles Garnati

/s/ Michael John Ruffley
One of Its Attorneys

Michael John Ruffley
Assistant State's Attorney
200 West Jefferson
Marion, IL 62703

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

KIBLER DEVELOPMENT CORP. and MARION
RIDGE LANDFILL, INC.,

Petitioners,

v.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

PCB No. 07-043

**WILLIAMSON COUNTY STATE'S ATTORNEY, CHARLES GARNATI'S MOTION
FOR RECONSIDERATION**

NOW COMES WILLIAMSON COUNTY STATE'S ATTORNEY, CHARLES GARNATI *ex rel.*, People of Williamson County, pursuant to 35 Ill.Adm.Code 101.520, and moves this Honorable Board to reconsider its order of August 7, 2008, stating as follows:

1. A motion for reconsideration may be used to call the Board's attention to newly discovered evidence, changes in the law, or errors in application of the existing law. The *Citizens Against Regional Landfill v. County Board of Whiteside*, PCB 93-156 (Mar. 11, 1993) (citing *Koroghlyan v. Chicago Title & Trust Co.*, 213 Ill. App. 3d 622, 627, 572 N.E.2d 1154, 1158 (1st Dist. 1992)). Here, the Board is urged to reconsider its order based on an error in application of the existing law.

2. In its August 7, 2008 order, the Board dismissed this case in response to a Motion for Voluntary Dismissal by the Petitioner, and denied the Motion to Intervene filed by Williamson County State's Attorney, Charles Garnati ("State's Attorney") based upon the Board's conclusion that "there is no existing case or controversy between the original parties in which to allow the movant to intervene."

3. At issue in this litigation is a proposed landfill facility which received siting approval by default in 1995, but has yet to be developed.

4. In 2006, Kibler sought a permit modification that would change the construction and operation criteria set forth in the development permit issued by IEPA in 2004, including a request to change the type of waste to be accepted at the proposed landfill. IEPA denied Kibler's application for modification. The instant appeal represents Kibler's appeal of IEPA's 2006 decision to deny the request for modification.

5. Although 35 Ill.Adm.Code 105.214 and 35 Ill.Adm.Code 101.600 mandate that a hearing be held except under specifically enumerated circumstances, in the instant appeal, those enumerated circumstances do not exist yet no hearing has ever been conducted.

6. Without any public input or scrutiny whatsoever, this appeal, along with the appeal in PCB 05-035, which involves the same parties and the same proposed landfill, has been used as a smokescreen to allow Kibler and IEPA to engage in back-room negotiations to change the permit decision appealed by Kibler, and to change the size, location, and nature of the proposed MSWLF facility.

7. Upon hearing that the IEPA intended to accede to Kibler's demands, the State's Attorney of Williamson County, Charles Garnati ("State's Attorney") sought to intervene in order to protect the public health, safety and welfare, shed light on the process by which IEPA was changing the development permit for the proposed landfill, and indeed, authorizing changes to the overall plan for the proposed Marion Ridge Landfill.

8. Without the benefit of public scrutiny, and never having received public input, IEPA did, in fact, accede to Kibler's demands. Having attained its desired objective in this appeal, Kibler filed a motion to voluntarily dismiss the action.

9. On August 7, 2008, the Board granted Kibler's Motion to Voluntarily Dismiss, and declared the State's Attorney's motion to intervene and represent the interests of the people of

Williamson County to be moot.

10. However, by allowing Kibler to voluntarily dismiss this action in the wake of a re-writing of the permit appealed from, and a substantial revamping of the plans for the landfill behind closed doors, and by concurrently denying the State's Attorney's motion to intervene, the Board effectively authorized IEPA to issue a permit for a municipal solid waste landfill facility with no public input, in violation of 415 ILCS 5/39(p).

11. Perhaps more importantly, the Board's decision effectively authorized IEPA to issue a development permit for a facility that is different from the facility for which Kibler received siting approval in 1995, thereby authorizing development of a pollution control facility that never received local siting approval as required by 415 ILCS 5/39.2 and 415 ILCS 5/39(c).

12. For these reasons, and as more fully discussed in the accompanying memorandum of law filed herewith, the State's Attorney respectfully requests that the Board reconsider its order entered August 7, 2008 dismissing this appeal and denying the Motion to Intervene.

WHEREFORE, WILLIAMSON COUNTY STATE'S ATTORNEY, CHARLES GARNATI *ex rel*, People of Williamson County, for the reasons set forth herein and in the accompanying brief in support of this motion, respectfully requests, pursuant to 35 Ill. Adm. Code 101.520, that this Honorable Board reconsider its order of August 7, 2008, and enter an order:

1. Denying the motion for voluntary dismissal;
2. Granting the State's Attorney's motion to intervene; and
3. Directing the Hearing Officer to enter a discovery schedule and set the matter for hearing.

Dated: September 11, 2008 Respectfully submitted,

/s/
Michael John Ruffley

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AFFIDAVIT OF SERVICE

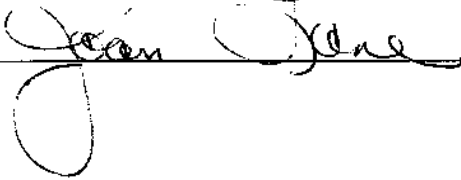
The undersigned, pursuant to the provisions of Section 1-109 of the Illinois Code of Civil Procedure, hereby under penalty of perjury under the laws of the United States of America, certifies that on September 11, 2008, she caused to be served a copy of the foregoing upon:

Mr. John T. Therriault, Assistant Clerk
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A copy of the same was enclosed in an envelope in the United States mail at Rockford, Illinois, proper postage prepaid, before the hour of 5:00 p.m., addressed as above.



A handwritten signature in black ink, appearing to read "Jean Gene", is written over a horizontal line. The signature is cursive and somewhat stylized.

PCB No. 07-043
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