

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD **RECEIVED**
CLERK'S OFFICE

KIBLER DEVELOPMENT CORPORATION and)
MARION RIDGE LANDFILL, INC.,)
)
Petitioners,)
)
v.)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)
)
Respondent.)

APR 17 2006
STATE OF ILLINOIS
Pollution Control Board

Case No.2005-035
Permit Appeal

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 filed by CITY OF MARION, CITY OF HERRIN, and the WILLIAMSON COUNTY AIRPORT AUTHORITY (hereinafter collectively "Proposed Intervenors"), state as follows:

1. This case is a permit appeal brought before this Board pursuant to Section 40(a)(1) of the Environmental Protection Act, 415 ILCS 5/40(a)(1). In this case, Petitioners, having been granted a development permit by the Respondent ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (hereinafter "IEPA") to develop a sanitary landfill at Petitioners' site in Williamson County, have appealed certain conditions imposed by the IEPA in that development permit.
2. It well settled that third-party appeals do not lie from the IEPA's grant or denial of permits pursuant to Section 39 of the Environmental Protection Act, 415 ILCS 5/39. See Landfill, Inc. v. Illinois Pollution Control Board, 74 Ill. 2d 541, 387 N.E.2d 258 (1978).

3. The Proposed Intervenor's motion for leave to intervene in this case constitutes no more than an improper attempt for third parties to prosecute an appeal of an IEPA landfill permit decision. The Proposed Intervenor professes an intent to support the position of the IEPA, yet their pleading also suggests that they intend to seek further and additional relief beyond the mere affirmance of the IEPA's permit decision. In either event, the Proposed Intervenor would have no statutory standing or right to participate in this permit appeal, and this Board does not have the authority to grant the Proposed Intervenor the relief they seek.
4. The only exception to the prohibition on third party participation in appeals of IEPA permit decisions is that the Attorney General, as a constitutional officer of the State of Illinois empowered to protect the State's environment, has been allowed to intervene in such cases by the Illinois Supreme Court. See Pioneer Processing, Inc. v. IEPA, 102 Ill. 2d 119, 464 N.E.2d 238 (1984). The Pioneer Processing result was expanded to also include the State's Attorney of a county, who also is a constitutional officer empowered, both constitutionally and under the Environmental Protection Act, to protect the State's environment. See Land and Lakes Co. v. Pollution Control Board, 245 Ill. App. 3d 631, 616 N.E.2d 349 (3 Dist. 1993).
5. The Proposed Intervenor attempts to analogize their status as municipalities and a municipal corporation with the status of a county's State's Attorney. No such analogy exists. There is no position of chief legal officer for municipalities and municipal corporations. Municipalities and municipal corporations are purely creations of statute, and not of the Illinois Constitution. Neither the municipalities

nor the municipal corporation is charged, either in the constitution or the Environmental Protection Act, with the duty and obligation to protect the State's environment. Virtually none of the factors previously looked to as authorizing intervention by the Attorney General or State's Attorney apply to these Proposed Intervenors.

6. These Proposed Intervenors have only local and parochial interests in this permit appeal proceeding, and do not have any generalized interests of the sort that supported intervention of the Attorney General or a County's State's Attorney. There is neither constitutional nor statutory support for their motion. The motion to intervene, in fact, has virtually no support.
7. To the extent this Board is authorized, this Board should sanction the Proposed Intervenors' counsel for bringing this frivolous motion. Represented by experienced counsel, there is no excuse for the Proposed Intervenors to have brought this motion other than as a means to harass and annoy Petitioners, and to cause them the expense and inconvenience of submitting this response. To the extent this Board is unable to sanction the Proposed Intervenors in any other way, it should deny them even the right to participate in the extremely limited role of *amicus curiae*.

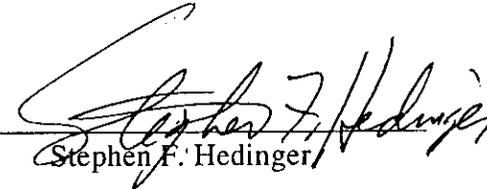
WHEREFORE, Petitioners, KIBLER DEVELOPMENT CORPORATION and MARION RIDGE LANDFILL, INC., request that this Board deny the Motion for Leave to Intervene filed by the City of Marion, the City of Herrin and the Williamson County Airport Authority, and grant to Petitioners all such other and further relief 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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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

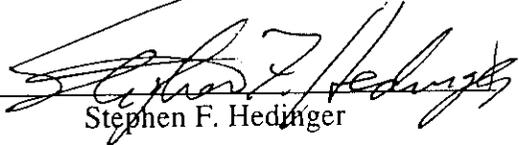
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with postage fully prepaid, and by depositing said envelope in a U.S. Post Office Mail Box in Springfield, Illinois before 5:30 p.m. on the ~~13th~~ day of April, 2006.


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