

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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MAY - 9 2006

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

STATE OF ILLINOIS
Pollution Control Board

Petitioners,)

v.)

Case No.2005-035

Permit Appeal

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)

Respondent.)

PETITIONERS' RESPONSE TO MOTION FOR LEAVE TO FILE RESPONSE IN SUPPORT OF MOTION TO INTERVENE INSTANTER

NOW COME Petitioners, KIBLER DEVELOPMENT CORPORATION and MARION RIDGE LANDFILL, INC., through their undersigned attorney, and in response to the "Motion for Leave to File Response in Support of Motion to Intervene Instanter," filed by proposed Intervenors, the City of Marion, the City of Herrin, and the Williamson County Airport Authority, state as follows:

1. The proposed Intervenors have filed a document entitled "Motion for Leave to File Response in Support of Motion to Intervene Instanter." Attached to that motion is a proposed "Response of the Cities of Marion and Herrin and the Williamson County Airport Authority in Support of Their Motion to Intervene."
2. The motion itself consists of a scant one paragraph argument, stating that the parties to this permit appeal (Petitioners, and the Illinois Environmental Protection Agency) "have filed memoranda opposing the motion to intervene," and stating that the proposed Intervenors "believe the attached response to the opponent's legal arguments will enable the Board to make a more informed decision."

3. The proposed Intervenor's motion cites virtually no authority in support of the relief sought. Despite the denomination of the proposed document as a "response," it is clearly a reply within the meaning of this Board's procedural rules. As such, the controlling procedural rule is 35 Ill. Adm. Code Section 101.501(e): "The moving person will not have the right to reply, except as permitted by the Board or the hearing officer to prevent material prejudice."
4. The proposed Intervenor can cite to no material prejudice that will be addressed by their proposed reply. At most, the proposed reply will assist this Board in making "a more informed decision." That clearly fails to address the standard provided by this Board's regulations, and for that reason alone the motion should be denied.
5. In addition, the proposed Intervenor's proposed reply fails to address the heart of the issue before this Board, and that is the statutory restriction upon allowing third parties to participate in permit appeal proceedings. Both Petitioners and the Illinois Environmental Protection Agency reminded this Board of that statutory restriction, which has only been circumvented by the constitutional officers addressed in the cases Pioneer Processing, Inc. v. Environmental Protection Agency, 102 Ill. 2d 119, 465 N.E.2d 238 (1984), and Land and Lakes Co. v. Pollution Control Board, 245 Ill. App. 3d 631, 616 N.E.2d 349 (3d Dist. 1993). The proposed Intervenor's proposed response fails to address the statutory restrictions, and instead argues vaguely that it would be a good idea for this Board to allow the intervention, without thought to statutory restrictions. Clearly it is the province of the General Assembly to determine conclusively what is and is

not a “good idea” in a statutory proceeding such as this, and the proposed Intervenor’s opinion on the matter, displayed in their proposed reply, is simply irrelevant to any issue before this Board.

6. In addition, the proposed reply for the first time requests yet more additional relief -- an unprecedented order of the Board to limit the authority of the Illinois Environmental Protection Agency’s plenary right to make permit decisions, including such decisions made with the consent of the permit applicant. The proposed Intervenor are not parties, and therefore have no standing to request any relief whatsoever. Moreover, the request, made in the proposed reply, is clearly improper, and should be denied and stricken for that reason as well. Finally, the request is contrary to statute, and asks this Board to take an action it has no power to take. This final request, like the rest of the motion and proposed reply, should be stricken and denied.
7. For the above reasons, Petitioners request that this Board deny the proposed Intervenor’s request to file the proposed reply, deny the proposed Intervenor the right to intervene, and deny the proposed Intervenor the right to appear as amicus curiae.

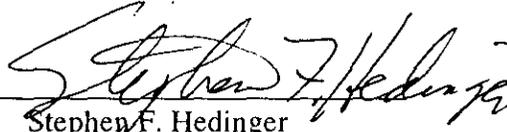
WHEREFORE, Petitioners, KIBLER DEVELOPMENT CORPORATION and MARION RIDGE LANDFILL, INC., request that this Board deny the “Motion for Leave to File Response in Support of Motion to Intervene Instantly,” and strike the attached proposed “Response of the Cities of Marion and Herrin and the Williamson County Airport Authority in Support of Their Motion to Intervene,” and grant to Petitioners all such other and further relief as this Board is statutorily 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

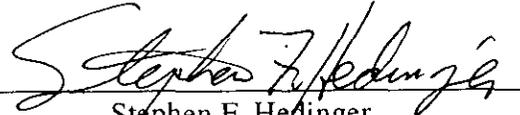
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with postage fully prepaid, and by depositing said envelope in a U.S. Post Office Mail Box in Springfield, Illinois before 5:30 p.m. on the 2nd day of May, 2006.


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