

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

Petitioners,)

v.)

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,,)

Respondents.)

PCB No. PCB 05-35

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, Chares 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

4. In 2004, IEPA issued a development permit, with conditions, in response to Kibler's request for authorization to develop a MSWLF facility that was substantially different from the facility for which Kibler obtained local siting approval in 1995. Kibler appealed the permit, challenging the conditions imposed by IEPA.

5. Although 35 Ill.Adm.Code 105.116 and 35 ILCS 105.212 both require that the Agency file a complete copy of the Record in a permit appeal, in the instant appeal, the Agency never filed the Record.

6. Although 35 Ill.Adm.Code 101.616 provides for discovery in a permit appeal, in the instant appeal, no discovery has ever been conducted.

7. 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, which has been pending for four (4) years, none of the enumerated circumstances apply, yet no hearing has ever been conducted.

8. Over the last four (4) years, without ever having filed the Record, conducted discovery, or held a hearing in this matter, and without any public input or scrutiny whatsoever, the pending appeal has been used as a smokescreen, allowing Kibler and IEPA to engage in back-room negotiations to change the permit conditions appealed by Kibler, and to change the size, location, and nature of the proposed MSWLF facility.

9. 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 improperly changing the development permit, and indeed, the overall plan for the proposed Marion Ridge Landfill.

10. 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, Kibler filed a motion to voluntarily dismiss the action.

11. 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.

12. 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).

13. Perhaps more importantly, the Board's decision effectively authorized IEPA to issue a development permit for a facility that is substantially different from the project 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).

14. Finally, the Board's decision allows IEPA to, in the midst of an appeal challenging a permit, alter that permit, thereby circumventing the Board's authority to review a challenged decision in a pending case, in contravention to the Board's holding in *Rochelle Waste Disposal v. City of Rochelle*, PCB 07-113 at 7 (April 3, 2007) (holding that once an appeal is filed, attempts by the decision-maker to make changes to the conditions imposed in the appealed decision are irrelevant).

15. 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;
3. Ordering that the IEPA file the complete record in this matter; and
4. 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

Michael John Ruffley
Assistant State's Attorney
Williamson County Courthouse
200 Jefferson
Marion, IL 62959
(618) 997-5449

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:

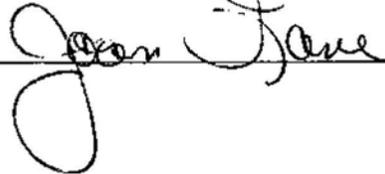
Mr. John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
100 W. Randolph, Suite 11-500
Chicago, IL 60601
therriaj@ipcb.state.il.us
(via electronic filing)

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

Melanie A. Jarvis, Assistant Counsel
Douglas Scott, Director
IEPA
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Francis X. Lyons
Bell, Boyd & Lloyd
Three First National Plaza
70 West Madison St., Suite 3300
Chicago, IL 60602-4207

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.



PCB No. 05-035
Michael John Ruffley
Assistant State's Attorney
200 West Jefferson
Marion, IL 62703