

**BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

KIBLER DEVELOPMENT CORPORATION,)	
and MARION RIDGE LANDFILL, INC.,)	
Petitioner,)	PCB 07-43
)	PCB 05-35
v.)	(Permit Appeal - Land)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

NOTICE

John Therriault, Acting Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

Carol Webb, Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P. O. Box 19274
Springfield, IL 62794-9274

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

Charles Garnati
State's Attorney
200 Jefferson, Williamson County Courthouse
Marion, IL 62959

Jennifer Sackett Pohlenz
Querrey & Harrow
75 West Jackson Boulevard
Suite 1600
Chicago, IL 60604-2827

PLEASE TAKE NOTICE that I have today filed with the office of the Clerk of the Pollution Control Board a **MOTION FOR LEAVE TO FILE RESPONSE** and a **RESPONSE TO PETITIONERS' MOTION TO RECONSIDER**, copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent

Melanie A. Jarvis
Assistant Counsel, Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue, East P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)
Dated: September 29, 2008

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on September 29, 2008, I served true and correct copies of a **MOTION FOR LEAVE TO FILE RESPONSE** and a **RESPONSE TO PETITIONERS' MOTION TO RECONSIDER** via the Board's COOL System and by placing true and correct copies thereof in properly sealed and addressed envelopes and by depositing said sealed envelopes in a U.S. Mail drop box located within Springfield, Illinois, with sufficient First Class postage affixed thereto, upon the following named persons:

John Therriault, Acting Clerk
Illinois Pollution Control Board
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100 West Randolph Street
Suite 11-500
Chicago, IL 60601

Carol Webb, Hearing Officer
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RESPONSE TO PETITIONERS' MOTION TO RECONSIDER

NOW COMES the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA"), by one of its attorneys, Melanie A. Jarvis, Assistant Counsel and Special Assistant Attorney General, and, pursuant to 35 Ill. Adm. Code 101.500 and 101.520, hereby responds to the Motion for Reconsideration ("Petitioners' motion" or "motion") filed by the Petitioners. In response to the Petitioners' motion, the Illinois EPA states as follows:

I. STANDARD OF REVIEW

In ruling on a motion for reconsideration, the Illinois Pollution Control Board ("Board") will consider factors including new evidence or a change in the law, to conclude the Board's decision was in error. 35 Ill. Adm. Code 101.902. In the case of Citizens Against Regional Landfill v. County Board of Whiteside, PCB 93-156 (March 11, 1993), the Board noted that "the intended purpose of a motion for reconsideration is to bring to the court's attention newly discovered evidence which was not available at the time of the hearing, changes in the law or errors in the court's previous application of the existing law." Korogluyan v. Chicago Title & Trust Co., 213 Ill. App. 3d 622, 627, 572 N.E.2d 1154, 1158 (1st Dist. 1992).

Thus, in order to prevail on a motion to reconsider, the movant must demonstrate that one of the three criteria has been met to justify reconsideration of an order. Here, the movant fails to raise any

meritorious argument that would warrant the Board's reconsideration of its August 7, 2008 final order ("Board's final order" or "final order").

II. THE PETITIONER RAISES NO NEW FACTS OR EVIDENCE

Several of the arguments posited by the Petitioner relate to its belief that the Board failed to properly consider information that was before the Board as of the date of the final order. The Board was completely briefed on the relevant issues of the case and the Petitioner does not present sufficient grounds for reconsidering the final order. The Petitioner is simply not happy with the conclusion that the Board reached following consideration of those issues.

The Petitioner is merely attempting to re-argue issues that were already raised and briefed prior to the Board reaching its decision on August 7, 2008. The Petitioner has not detailed any newly discovered evidence.

III. THE PETITIONER RAISES NO CHANGES IN LAW

The Petitioner's motion is not premised on any changes in applicable law since the date of the Board's decision.

IV. THE PETITIONER DOES NOT RAISE ANY SUCCESSFUL ARGUMENT THAT THE BOARD MISAPPLIED THE RELEVANT LAW

The Board denied the Intervenor's motion for intervention due to the fact that no controversy continued to exist in the case and that it was being dismissed by the Petitioner. The Intervenor's have not raised any arguments that support the position that a dispositive motion should not be heard prior to a motion for intervention. The Petitioner has long had control of the cases before the Board and could dismiss the case or waive deadlines at its own discretion. Here the Petitioner has moved to dismiss the case as is their prerogative. The case is finished and no controversy remains at that time. Simply stated, the motion to intervene was not timely filed and the Board correctly decided the dispositive motion first. Further, granting the intervention would

inhibit the timely disposition of the case in violation of the Board's rules. Further granting the intervention would not resolve any issues before the Board, first because no issues remain, and second because of the Petitioner's control over deadlines, hearings, and dismissals. The intervention would not and should not prevent the Petitioner from its right to dismiss the case, waive deadlines or push the case to hearing. The Board correctly decided the issue and did not misapply relevant law.

VI. CONCLUSION

The Petitioner's arguments in its motion to reconsider are without merit and thus the motion should be denied. There are no arguments presented in the motion that meet the criteria that would warrant the Board's reconsideration of its final order.

WHEREFORE, for the reasons stated above, the Illinois EPA hereby respectfully requests that the Board deny the Petitioner's motion.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent

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Assistant Counsel
Special Assistant Attorney General
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MOTION FOR LEAVE TO FILE RESPONSE

NOW COMES the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA"), by one of its attorneys, Melanie A. Jarvis, Assistant Counsel and Special Assistant Attorney General, and, pursuant to 35 Ill. Adm. Code 101.500, hereby files a Motion for Leave to File response and in support thereof, states as follows:

1. The undersigned's appointment as a Special Assistant Attorney General for these matters expired on June 30, 2008.
2. The Office of the Attorney General did not renew the appointment until today's date, September 29, 2008.
3. Therefore, the above named attorney could not file this document any sooner than today.
4. The Illinois EPA would be prejudiced if not allowed to file a response in this matter.

WHEREFORE, for the reasons stated above, the Illinois EPA hereby respectfully requests that the Board grant this motion for leave.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent

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