

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

KIBLER DEVELOPMENT CORPORATION and
MARION RIDGE LANDFILL, INC.,

Petitioners,

v.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Respondent.

RECEIVED
CLERK'S OFFICE

AUG 25 2004

STATE OF ILLINOIS
Pollution Control Board

Case No. 05-135
Permit Appeal

PETITION FOR REVIEW OF PERMIT CONDITIONS

NOW COME Petitioners, KIBLER DEVELOPMENT CORPORATION and MARION RIDGE LANDFILL, INC., through their undersigned attorney, and file this Petition for Review of Permit Conditions pursuant to Section 40(a)(1) of the Illinois Environmental Protection Act, 415 ILCS 5/40(a)(1), and pursuant to 35 Ill. Adm. Code, Part 105, Subpart B, and seek the striking of conditions to a development permit imposed by the Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (hereinafter "IEPA"), in a permit dated July 23, 2004. In support of this petition, Petitioners state as follows:

1. Petitioner Kibler Development Corporation owns real property located in Williamson County, which has received local siting approval for a new landfill.
2. By application dated June 2, 2000, Petitioner Kibler Development Corporation as owner, and Petitioner Marion Ridge Landfill, Inc., as operator, requested that the IEPA grant a development permit for a new municipal solid waste and non-hazardous special waste landfill in accordance with the application and plans prepared by Rapps Engineering and Applied Science.
3. By letter dated July 23, 2004, the IEPA granted the request of Petitioners for a development permit, Log No. 2000-199-LF. A true and accurate copy of that permit approval letter is attached hereto, and incorporated herein, as Exhibit "A."
4. However, the IEPA included in the permit approval letter language regarding the construction of a municipal solid waste landfill in the vicinity of a public airport. This language is

included as the last paragraph on page 3 of the July 23, 2004 permit approval letter from IEPA, attached hereto as Exhibit A.

5. Petitioners hereby appeal from the decision of the IEPA the inclusion of this language regarding construction of a municipal solid waste landfill in the vicinity of a public airport. The disputed language should be removed for one or more of the following reasons:

- a. The IEPA's inclusion of the disputed language is arbitrary and unreasonable, and lacks any basis in law or fact;
- b. The IEPA has no authority or jurisdiction over the matters included in the disputed paragraph;
- c. The disputed language does not constitute a condition to the permit, or otherwise create any legal and enforceable rights or obligations, and is therefore a nullity;
- d. To the extent the disputed language does constitute a condition to the permit, it is not necessary for any reason to assure compliance with the Environmental Protection Act or any valid regulations of this Board's;
- e. The permit condition is overbroad, and requires compliance with its terms for aspects of the permitted facility that are not included within the scope and reach of the cited federal law and regulations;
- f. The cited federal law and regulations do not apply to some part or parts of, or the entirety of, Petitioners' facility;
- g. Petitioners reserve the right to raise such other and further bases for permit review and reversal as such bases become known and apparent.

6. In addition, the IEPA included in the approval letter a citation to 35 I11. Adm. Code 811.302(d), along with the assertion that "[n]o liner shall be constructed within 500 feet of any inhabited structure" without authorization, and required Petitioners to "conduct a survey of the waste boundaries and adjacent properties before starting construction of the liner." See paragraph V(9), on page 19. The IEPA also included as a condition that within ninety (90) days of the permit

Petitioners are to submit to IEPA a map showing facility boundaries, on-site buildings, and monitoring points. (See paragraph XI (1), on page 46).

7. Petitioners hereby appeal from the decision of the IEPA the inclusion of this language regarding a set-back requirement for the landfill from inhabited structures. The disputed language should be removed for one or more of the following reasons:

- a. The IEPA's inclusion of the disputed language is arbitrary and unreasonable, and lacks any basis in law or fact;
- b. IEPA's condition is not consistent with this Board's regulations.
- c. Petitioners reserve the right to raise such other and further bases for permit review and reversal as such bases become known and apparent.

8. Petitioners reserve the right to amend this Petition to add other challenges to IEPA's imposed permit conditions, at any time prior to final ruling in this matter.

WHEREFORE, Petitioners request that this Board set this appeal for a hearing regarding the IEPA's imposed conditions and, after the hearing, enter an order reversing the decision of the IEPA and striking the challenged language; Petitioners further request that this Board grant such other and further relief as this Board deems just and appropriate.

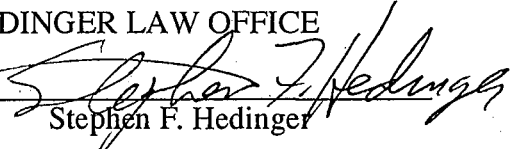
Respectfully submitted,

Kibler Development Corporation and
Marion Ridge Landfill, Inc.,
Petitioners,

By their attorney,

HEDINGER LAW OFFICE

By


Stephen F. Hedinger

Hedinger Law Office
2601 South Fifth St.
Springfield, IL 62703
(217) 523-2753 phone
(217) 523-4366 fax

RECEIVED
CLERK'S OFFICE

AUG 25 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD STATE OF ILLINOIS
Pollution Control Board

KIBLER DEVELOPMENT CORPORATION and
MARION RIDGE LANDFILL, INC.,

Petitioners,

v.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Respondent.

Case No. 05-35
Permit Appeal

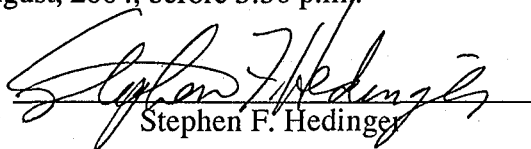
NOTICE OF FILING AND PROOF OF SERVICE

The undersigned certifies that an original and nine copies of Petitioners' Petition for Review of Permit Conditions was served upon the Clerk of the Illinois Pollution Control Board, and one copy was served upon the following party of record in this cause by enclosing same in envelopes addressed to:

Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Suite 11-500
Chicago, IL 60601

Division of Legal Counsel
Illinois Environmental Protection Agency
1021 N. Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276

with postage fully prepaid, and by depositing said envelopes in a U.S. Post Office Mail Box in Springfield, Illinois on the 20th day of August, 2004, before 5:30 p.m.


Stephen F. Hedinger

HEDINGER LAW OFFICE
2601 South Fifth Street
Springfield, IL 62703
(217) 523-2753 phone
(217) 523-4366 fax

This Pleading is being submitted on recycled paper