BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

KIBLER DEVELOPMENT CORPORATION and MARION RIDGE LANDFILL, INC.,	)	
Petitioners,	)	
vs.	)	PCB 05-35
	)	(Permit appeal – Land)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
Respondent.	)	

NOTICE

Dorothy M. Gunn, 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 Office
2601 South Fifth Street
Springfield, IL 62703

Via Facsimile & Regular Mail

Melanie A. Jarvis
Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, IL 62794-9274-9276

Via Facsimile & Regular Mail

Francis X. Lyons
Bell, Boyd & Lloyd LLC
70 West Madison Street
Suite 3100
Chicago, IL 60602

Via Facsimile & Regular Mail

Please take notice that I have today filed with the office of the Clerk of the Pollution Control Board, the Cities of Marion and Herrin and the Williamson County Airport Authority's Motion for Leave to File Response in Support of Motion to Intervene Instanter, copies of which are herewith served upon you.

Dated: April 18, 2006

Respectfully submitted,

CITY OF MARION, CITY OF HERRIN, and
WILLIAMSON COUNTY AIRPORT AUTHORITY

BY: Edward R. Gower
HINSHAW & CULBERTSON, LLP
EDWARD R. GOWER, Special Counsel

CHARLES F. HELSTEN
EDWARD R. GOWER
HINSHAW & CULBERTSON, LLP
Attorneys at Law
400 S. 9th, Suite 200
Springfield, IL 62701
(217) 528-7375

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

KIBLER DEVELOPMENT CORPORATION and MARION RIDGE LANDFILL, INC.,	)	
Petitioners,	)	
vs.	)	PCB 05-35 (Permit appeal – Land)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
Respondent.	)	

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

The Cities of Marion and Herrin and the Williamson County Airport Authority move the Board for leave to file the attached response in support of their motion to intervene in this proceeding instanter. In support of this motion, Movants state that the Petitioners and the Illinois Environmental Protection Agency have filed memoranda opposing the motion to intervene, and that Movants believe the attached response to the opponent's legal arguments will enable the Board to make a more informed decision.

WHEREFORE, the Cities of Marion and Herrin and the Williamson County Airport Authority move the Board for entry of an order authorizing them to file instanter the attached Response of the Cities of Marion and Herrin and the Williamson County Airport Authority in Support of Their Motion to Intervene.

Dated: April 18, 2006

Respectfully submitted,

CITY OF MARION, CITY OF HERRIN, and
WILLIAMSON COUNTY AIRPORT AUTHORITY

BY: Edward R Gower

HINSHAW & CULBERTSON, LLP
EDWARD R. GOWER, Special Counsel

CHARLES F. HELSTEN
EDWARD R. GOWER
HINSHAW & CULBERTSON, LLP
Attorneys at Law
400 S. 9th, Suite 200
Springfield, IL 62701
(217) 528-7375

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

KIBLER DEVELOPMENT CORPORATION and MARION RIDGE LANDFILL, INC.,	)	
Petitioners,	)	
vs.	)	PCB 05-35
	)	(Permit appeal – Land)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
Respondent.	)	

RESPONSE OF THE CITIES OF MARION AND HERRIN AND THE WILLIAMSON COUNTY AIRPORT AUTHORITY IN SUPPORT OF THEIR MOTION TO INTERVENE

The purpose of the Illinois Environmental Protection Act, among others, is to "address the dangers posed to the public health and welfare by environmental damage." 415 ILCS 5/2(c). The Act is to "be liberally construed so as to effectuate the purposes" of the Act. *Id.* (c). Allowing the Movants to intervene in this proceeding will serve the purposes of the Act.

I. IMPORTANCE OF THIS PROCEEDING

This is a very important and somewhat unique proceeding involving significant environmental and public safety considerations. The Petitioners propose to build a municipal solid waste landfill approximately two miles from the end of the east-west runway of the Williamson County Regional Airport, and directly under the path followed by aircraft landing and taking off from that runway.

As discussed in the verified motion to intervene, landfills near airports pose public safety hazards because landfills attract large birds, and bird strikes by low flying aircraft are dangerous and all too common. For that reason, there is a federal law prohibiting the location of a new municipal solid waste landfill within six miles of commercial service airport like Williamson County unless exempted by the Federal Aviation Administration. 49 U.S.C. § 4718(d). It is this somewhat unusual intersection of environmental and public safety considerations that prompted the two neighboring municipalities and

airport authority to move to intervene in this proceeding to try and make sure, among others, that the condition requiring compliance with federal law remains in the Petitioner's permit.

Both the Petitioners and the Illinois Environmental Protection Agency have filed opposition papers to the motion to intervene, arguing in effect that only state officials who have responsibility for environmental enforcement can intervene to protect the public interest. If a plane leaving the Williamson County Regional Airport strikes a bird and crashes, the crash will likely occur in or very near to Marion or Herrin or on or near the Williamson County Regional Airport, and not in Springfield or Chicago.

It is a very peculiar argument to make that only lawyers in Springfield, who have statewide obligations, or who work for a county States Attorney's office, are qualified and entitled to represent the public interest, and that the elected officials who represent the citizens who will be most directly affected by the relevant public safety and environmental issues are not qualified to represent the public interest, nor is an airport authority that, of all the parties to this proceeding, is probably most knowledgeable about the public safety threat posed by bird strikes.

That cannot be the law, and the Movants do not believe it is. If, as IEPA suggests, the Board has previously adopted an approach precluding municipal intervention, then the Movants suggest that the Board needs to review the case law upon which that interpretation is based and reevaluate its position, at least with respect to the unique facts presented in this proceeding.

If the Board is authorized to permit intervention by public officials to represent the public interest, which as discussed below the courts have said is permissible, there are no public officials better situated to represent the public interest than the Movants in this case. The Movants mean no disrespect to the IEPA and its counsel, but it is the Movants' citizenry and airport users and passengers who will be most directly impacted if the worst case scenario occurs.

II. THE MOTION TO INTERVENE SHOULD BE GRANTED

In *Pioneer Processing, Inc. v. EPA*, 102 Ill. 2d 119, 464 N.E.2d 238, 246-47 (1984), the Illinois Supreme Court held that the Illinois Attorney General had standing to appeal from a decision of this Board on the grounds that "there is a strong public interest in a healthful environment", and that the

Attorney General has the duty and authority to represent the people's interests to insure a healthful environment. In *Land and Lakes Co. v. Illinois Pollution Control Board*, 245 Ill. App. 3d 631, 616 N.E.3d 349, 355 (3d Dist. 1993), the court held that "the Board has the authority to allow state officials who represent the public interest to intervene in appeal proceedings before the Board." In that case, the State's Attorney of Will County was permitted to intervene. The Movants here have requested authority on the same grounds. They are public entities created pursuant to the Illinois Constitution and state statutes, and are duly authorized to represent the public interest of their citizenry and constituents.

Both the Illinois Environmental Protection Agency and the petitioners who are the potential landfill developers ("Petitioners") have filed responses opposing the motion to intervene. The Petitioners assert that the *Pioneer Processing* holding was expanded in the *Land and Lakes* case to only "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." Petitioners' Response at 2. According to the Petitioners, the *Land and Lakes* case does not apply because: the Movants are not lawyers; "[m]unicipalities and municipal corporations are purely creatures of statute, and not the Illinois Constitution"; and "[n]either 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." The Petitioners also argue that the Movants only represent "local and parochial interests", and not the more generalized interests like the Attorney General or State's Attorney represents.

The Petitioners' arguments reflect a fundamental misunderstanding of the applicable law and are simply wrong. First, neither the *Pioneer Processing* case nor the *Land and Lakes* case stands for the proposition that one has to hold a law degree in order to be granted intervenor rights. Rather, those decisions permitted intervention by public officials based upon their office's authority to protect the public interest. See *Pioneer Processing*, 464 N.E.2d at 246-47; *Land and Lakes*, 616 N.E.2d at 355. Second, contrary to the Petitioners' understanding of the Illinois Constitution of 1970, there is a whole article of the Constitution, Article VII, that is devoted exclusively to municipalities and units of local

County, Illinois, PCB 03-221 (July 10, 2003). In that case, the Board simply stated that the municipality was "a third party objector without the special intervention rights of a state's or the Attorney General's office representing the public interest." That same rationale has been expressed by the Board in another previous case, *Land and Lakes Co. v. Village of Romeoville,* PCB 94-195 (Sept. 1, 1994). The Board's prior rulings are based on an interpretation of the *Land and Lakes* case.

While it is true that the *Land and Lakes* case did note that the Will County States' Attorney's rights and duties were analogous to the Illinois Attorney General's, the court's reasoning and decision do not support an interpretation that only the Attorney General or a county State's Attorney may intervene in permit appeals. The *Land and Lakes* court summarized the basis for its decision to uphold the intervention of Will County as follows:

> In appropriate circumstances, such as we find here, the Board has the authority to allow State officials who represent the public interest to intervene in appeal proceedings before the Board. We also find it was appropriate for the Board to allow Will County to intervene in this case since it was a party to the initial proceedings before the Village. Also, the state's attorney of Will County sought intervention because of it's "interest in protecting the health and environment within which the People of Will County must live and work." Finally, we conclude the Board's determination was distinguishable from our prior decision in *Peterlin.* There is no indication in *Peterlin* that LaSalle County argued before this court that it should have been allowed to intervene to represent the public interest based upon the supreme court's reasoning in *Pioneer Processing.*

616 N.E.2d at 355 (citation omitted)

The same public policy and public interest considerations that authorized intervention in the *Pioneer Processing* and *Land and Lakes* cases also support permitting the requested intervention here. Just as the Attorney General was authorized to protect the public interest of state citizens, and the Will County State's Attorney was authorized to protect the public interest of citizens in Will County, Marion and Herrin are constitutionally authorized to protect the public health and safety of their citizenry and the Airport Authority is statutorily authorized to protect the safety and public interest of its users and the traveling public. See Ill. Const. of 1970, Art. 7, §6(a); 70 ILCS 5/7. The public interest of the citizens of Marion and Herrin are no less deserving of protection than the public interest of the Will County citizens.

III. THE PARTIES SHOULD BE REQUIRED TO PROVIDE 30 DAYS NOTICE PRIOR TO ANY PROPOSED CHANGE IN THE PERMIT CONDITIONS

The Movants are concerned that the existing parties may agree to eliminate existing permit conditions that are designed to protect the public interest. If the Board denies the motion to intervene, and instead grants the Movants the right to participate as a*micie curiae*, the only way that decision would afford the Movants any meaningful voice would be if the parties were required to provide 30 days advance notice before any change could be made in the permit conditions; otherwise, the parties could present a settlement agreement and request dismissal of this proceeding on short notice and without comment on behalf of the affected public. Therefore, if the Board denies the motion to intervene, the Movants request that the parties be directed to provide 30 days advance notice to the Movants and to the public prior to any revisions of the existing permits and the conditions attached to the same.

IV. CONCLUSION

For all the reasons set forth above, the Cities of Marion and Herrin and the Williamson County Airport Authority request that they be granted leave to intervene in this proceeding. They further request that, should the Board deny their motion to intervene, the Board authorizes the Movants to participate as a*micie curiae* and direct the parties to provide 30 days advance notice to the Board, a*micie curiae* and the public prior to implementing any proposed change to the permit at issue or any of its conditions.

Dated: April 18, 2006

Respectfully submitted,

CITY OF MARION, CITY OF HERRIN, and
WILLIAMSON COUNTY AIRPORT AUTHORITY

BY: Edward R Gower
HINSHAW & CULBERTSON, LLP
EDWARD R. GOWER, Special Counsel

CHARLES F. HELSTEN
EDWARD R. GOWER
HINSHAW & CULBERTSON, LLP
Attorneys at Law
400 S. 9th, Suite 200
Springfield, IL 62701
(217) 528-7375