

Electronic Filing - Received, Clerk's Office, June 23, 2008

BEFORE THE POLLUTION CONTROL BOARD OF THE STATE OF ILLINOIS

PEOPLE OF WILLIAMSON COUNTY <i>ex rel.</i>)	
STATE'S ATTORNEY CHARLES GARNATI,)	
And THE WILLIAMSON COUNTY BOARD,)	
Petitioners,)	
v.)	PCB No. 08-93
KIBLER DEVELOPMENT CORPORATION,)	(Permit Appeal - Land)
MARION RIDGE LANDFILL, INC., and)	
ILLINOIS ENVIRONMENTAL PROTECTION)	
AGENCY,)	
Respondents.)	

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

Michael John Ruffley
Assistant State's Attorney
200 Jefferson, Williamson County Courthouse
Marion, IL 62959

PLEASE TAKE NOTICE that I have today filed with the office of the Clerk of the Pollution Control Board an **LIMITED APPEARANCE** and a **MOTION TO DISMISS**, 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: June 23, 2008

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CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on June 23, 2008, I served true and correct copies of an **LIMITED APPEARANCE** and **MOTION TO DISMISS** 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
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Chicago, IL 60601

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LIMITED APPEARANCE

The undersigned, as one of its attorneys, hereby enters her Limited Appearance on behalf of the Respondent, the Illinois Environmental Protection Agency.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent

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Assistant Counsel
Special Assistant Attorney General
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MOTION TO DISMISS

NOW COMES Respondent, the Illinois Environmental Protection Agency ("Illinois EPA"), by one of its attorneys, Melanie A. Jarvis, Assistant Counsel and Special Assistant Attorney General, who is appearing limitedly for the purpose of attacking the sufficiency of the Petition filed in this case, and who, pursuant to 35 Ill. Adm. Code 101.506, hereby respectfully moves the Illinois Pollution Control Board ("Board") to dismiss the above action and in support of said motion, the Illinois EPA states as follows:

1. Kibler Developmental Corporation was granted a developmental permit for a municipal solid waste and non-hazardous special waste landfill by the Illinois EPA on July 23, 2004. That permit was appealed by Kibler on August 25, 2004. (PCB 05-35) Thereafter, Kibler filed an application for permit modification on May 2, 2006. On October 16, 2006, the Illinois EPA denied this request. Kibler appealed this decision on November 20, 2006. (PCB 07-43) On March 10, 2008, Kibler filed a new permit application which was approvable and the Illinois EPA issued the modified permit on April 25, 2008. Petitioners did not participate in the permitting process.

2. The Petitioners filed their third party appeal of the April, 2008 permit on May 29, 2008.

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3. The Illinois Environmental Protection Act, 415 ILCS 5/1 et seq. (2006) (“Act”) does not allow for the third party appeal of the type of permit issued in this case by the Illinois EPA. Section 40(a)(1) of the Act states, "If the Agency refuses to grant or grants with conditions a permit under Section 39 of this Act, *the applicant may*. . .petition for a hearing before the Board to contest the decision of the Agency." (Emphasis Added.) Petitioners are not the applicant, nor do they claim to be such within their petition for review. Thus, the Illinois EPA offers that Petitioners lack standing to appeal the Illinois EPA decision in this matter. The rationale for requiring a nexus to the matter is simplistic. The applicant not only has a direct interest in the matter, but also has provided the information within the application for review by the Illinois EPA. The Illinois EPA must review the application, applicable law and regulations, and render a final determination on the permit. Basically the Petitioner is trying to use this forum to enjoin the applicant’s development of a facility that has been issued a permit. A third party permit appeal is not the correct mechanism for that type of relief.

4. Furthermore, the Illinois EPA notes that Petitioners have not presented the Board with any valid argument by which the Board can assess whether it has jurisdiction to hear this matter. Regarding jurisdiction, the Board has long recognized that it is not authorized to hear an appeal for this type of permit from a person other than the permit applicant. See e.g. City of Waukegan et al. v. Illinois EPA and North Shore Sanitary District, PCB 02-173 (May 2, 2002) (citing Landfill, Inc. v. PCB, 74 Ill. 2d 541, 387 N .E. 2d 258 (1978)). Further, as the Board previously noted in Kibler Development Corporation and Marion Ridge Landfill v. Illinois EPA, PCB 05-35, “the Supreme Court in Landfill, Inc. made clear in 1978 that the Board has no authority to, by rule, extend appeal rights beyond those granted in the Act under Section 40.” Landfill, Inc. v. Illinois Pollution Control Board, 387 N.E.2d 258. The Board went on to note that “there simply are

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no statutory rights to appeal landfill permits, other than those for hazardous waste disposal sites under Section 40(b).”

CONCLUSION

For the reasons stated herein, the Illinois EPA respectfully requests that the Board grant the Illinois EPA’s Motion to Dismiss based on the Board’s lack of jurisdiction or in the alternative finding that Petitioners lack standing to bring this matter before the Board.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Respondent

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