

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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CLERK'S OFFICE

JUN 26 2008

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF WILLIAMSON COUNTY *ex rel.* )  
STATE'S ATTORNEY CHARLES GARNATI, )  
And THE WILLIAMSON COUNTY BOARD, )

Petitioners, )

v. )

KIBLER DEVELOPMENT CORPORATION, )  
MARION RIDGE LANDFILL, INC., and )  
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, )

Respondents. )

Case No. PCB 2008-93  
Permit Appeal-Land

**MOTION TO STRIKE AND DISMISS**

NOW COME Respondents, KIBLER DEVELOPMENT CORPORATION and MARION RIDGE LANDFILL, INC., and pursuant to 35 Ill. Adm. Code 105.108(d) and (e), hereby move to strike and dismiss the Petition for Review of Permit & Permit Conditions filed by the Petitioners, People of Williamson County *ex rel.* State's Attorney Charles Garnati, and the Williamson County Board, on the basis that these two purported Petitioners lack standing to bring the instant matter, and this Board lacks jurisdiction to hear a third-party appeal from the granting of a landfill permit. In support of this motion, these Respondents state as follows:

1. Section 40(a)(1) of the Environmental Protection Act, 415 ILCS 5/40(a)(1), provides by its express terms that only a permit applicant has standing to appeal permit decisions made by the Illinois Environmental Protection Agency ("Agency"); appeals are permitted from permit denials, and from the imposition of unwanted permit conditions, but there is no statutory right for anyone to file a petition for review of the Agency's granting of a permit. The Illinois Supreme Court has affirmed the plain language of the statute by ruling that third parties have no right to appeal Agency permit decisions. Landfill, Inc. v. Illinois Pollution Control Board, 74 Ill. 2d 541, 387 N.E.2d 258 (1978).

2. In Citizens Utility Company of Illinois v. Illinois Pollution Control Board, 265 Ill.

App. 3d 773, 782, 639 N.E.2d 1306, 1313 (3d Dist. 1994), the Illinois Appellate Court also ruled that the Illinois Pollution Control Board lacked jurisdiction over third party appeals of Agency decisions to issue certain permits. As that court ordered, “[t]he wisdom of limiting the rights of third parties in the permit issuing and review of agency process is an issue best directed to the legislature.”

3. Moreover, “[t]he PCB is powerless to expand its authority beyond that which the legislature has expressly granted to it.” McHenry County Landfill, Inc. v. Environmental Protection Agency, 154 Ill. App. 3d 89, 95, 506 N.E.2d 372, 376 (2d Dist. 1987).

4. Hence, no statutory authority exists for an appeal for the granting of a landfill permit by the two third-parties to the permit decision, People of Williamson County *ex rel* State’s Attorney Charles Garnati, or Williamson County Board, and this appeal should be dismissed for want of jurisdiction. See City of Waukegan v. Illinois EPA, PCB 02-173, 2002 Ill. ENV. LEXIS 274 (May 2, 2002). “If the Board were to become involved as the overseer of the Agency’s decision-making process through evaluation of challenges to permits, it would become the permit-granting authority, a function not delegated to the Board by the [Environmental Protection] Act.” Landfill, Inc., 74 Ill.2d at 557, 387 N.E.2d at 264.

5. Moreover, neither identified Petitioner has standing to bring this action, even if the Board has some type of authority to entertain appeals from the granting of landfill permits.

6. For one thing, nothing in Petitioners’ pleading states that either of these proposed Petitioners took any role in the proceeding before the Agency, and as a matter of factual accuracy, neither did participate even to the minimal extent of filing public comments. Even in those instances where the General Assembly has seen fit to allow third-party appeals from the grant of a permit, a mandatory prerequisite is meaningful participation in the permit proceedings by the proposed Petitioner; here such participation has not, and cannot, be alleged. see Lake County Contractor’s Assoc. v. Pollution Control Board, 54 Ill. 2d 16, 294 N.E.2d 259 (1973); see e.g., 35 Ill. Admin. Code 105.302(d) (CAAPP permits); 35 Ill. Admin. Code 705.212(a) (RCRA permits).

7. The petition in this case cites a line of decisions granting a limited right of

intervention to certain constitutional officers under certain circumstances. As a preliminary matter, Respondents would note that the Williamson County Board does not constitute any such constitutional officer (the Williamson County Board is a creature of statute, not of the constitution), and so the authorities cited by the petition simply do not apply, and the Williamson County Board should be dismissed from this action without further consideration. See Kibler Development Corp. v. Illinois EPA, PCB 05-35, 2006 Ill. ENV. LEXIS 274 (May 4, 2006).

8. Moreover, in this instance, the “People of Williamson County *ex rel* State’s Attorney Charles Garnati” likewise lacks standing to bring this action. Each of Petitioners’ authorities concerned intervention in proceedings lawfully brought by another party or other parties, or issues not relevant to this situation. Land and Lakes Co. v. Pollution Control Board, 245 Ill. App. 3d 361, 616 N.E.2d 349 (3d Dist. 1993), concerned a county’s intervention as respondent to support a denial of local siting approval by a municipality. Pioneer Processing Inc. v. Environmental Protection Agency, 102 Ill. 2d 119, 464 N.E.2d 238 (1984), concerned the rights of third parties to appeal from decisions of the Board concerning the permitting of a hazardous waste facility (from which third party participants are expressly allowed to appeal — see 415 ILCS 5/40(b), 40(c)); conversely, Petitioners here seek the unprecedented right to appeal to the Board.

9. The petition in this case appears to claim that if the landfill is built and operated according to the issued permit, then the landfill will be in violation of various provisions of the Environmental Protection Act, such as those relating to the effect of local siting approval. Under normal practice, the burden is upon a permit appeal petitioner to prove that the requested permit would not violate the Environmental Protection Act or Board regulations (see 415 ILCS 5/39(a)), so perhaps the inverse would be the logical burden for Petitioners’ fanciful proceeding.

10. However, if Petitioners truly believe the assertions made in their petition, then the obvious and logical relief, already available to them pursuant to the Environmental Protection Act, is to bring an enforcement action regarding the alleged improprieties. See City of Waukegan, PCB 02-173, 2002 Ill. ENV. LEXIS 273 at 1 (May 2, 2002). (Obviously these Respondents reserve all

rights under any applicable court rule or statute with respect to any allegations made without factual or legal justification).

11. For the foregoing reasons, this Board has no power or authority to entertain Petitioners' inventive but unprecedented proposed action, and Petitioners themselves lack any standing to pursue the proposed permit appeal. The case must be stricken.

WHEREFORE Respondents KIBLER DEVELOPMENT CORP. and MARION RIDGE LANDFILL, INC., request that this Board strike and dismiss the "Petition for Review of Permit & Permit Conditions" filed by Petitioners PEOPLE OF WILLIAMSON COUNTY *ex rel* STATE'S ATTORNEY CHARLES GARNATI and the WILLIAMSON COUNTY BOARD, and that this Board award to the Respondents all such other and further relief as is allowed by law.

Respectfully submitted,

Kibler Development Corporation & Marion Ridge  
Landfill, Inc., Respondents,

By their attorney,

HEDINGER LAW OFFICE

By

  
Stephen F. Hedinger

Hedinger Law Office  
2601 South Fifth Street  
Springfield, IL 62703  
Telephone: (217) 523-2753  
Fax: (217) 523-4366  
hedinger@hedingerlaw.com

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NOTICE OF FILING AND PROOF OF SERVICE

The undersigned certifies that an original and nine copies of the foregoing Motion to Strike and Dismiss and of this Notice of Filing and Proof of Service, were served upon the Clerk of the Illinois Pollution Control Board, and one copy to each of the following parties of record and hearing officer in this cause by enclosing same in an envelope addressed to:

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

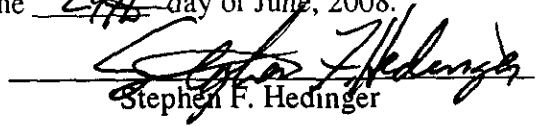
Michael J. Ruffley  
Assistant State's Attorney  
200 Jefferson  
Williamson County Courthouse  
Marion, IL 62959

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

Carol Webb, Hearing Officer  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

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

with postage fully prepaid, and by depositing said envelopes in a U.S. Post Office Mail Box in Springfield, Illinois before 5:30 p.m. on the 24~~th~~ day of June, 2008.

  
Stephen F. Hedinger

Hedinger Law Office  
2601 South Fifth Street  
Springfield, IL 62703  
Telephone: (217) 523-2753  
Fax: (217) 523-4366

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ENTRY OF APPEARANCE

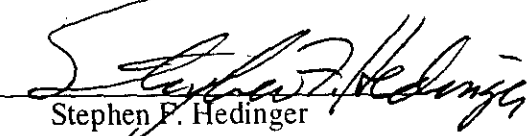
NOW COMES Stephen F. Hedinger, of the Hedinger Law Office, and hereby enters his appearance on behalf of Respondents, KIBLER DEVELOPMENT CORPORATION, and MARION RIDGE LANDFILL, INC., in the above-referenced case, and hereby requests that all subsequent pleadings, orders and other documents served in this case be served upon the undersigned on behalf of these two Respondents.

Respectfully submitted,

Kibler Development Corporation & Marion Ridge  
Landfill, Inc., Respondents,

By their attorney,

HEDINGER LAW OFFICE

By   
Stephen F. Hedinger

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The undersigned certifies that an original and nine copies of the foregoing Entry of Appearance and of this Notice of Filing and Proof of Service, were served upon the Clerk of the Illinois Pollution Control Board, and one copy to each of the following parties of record and hearing officer in this cause by enclosing same in an envelope addressed to:

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

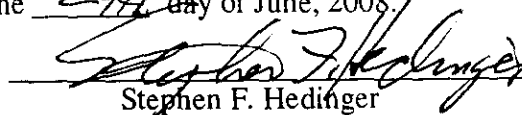
Michael J. Ruffley  
Assistant State's Attorney  
200 Jefferson  
Williamson County Courthouse  
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*This document prepared on recycled paper*