

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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SEP 25 2008

STATE OF ILLINOIS
Pollution Control Board

KIBLER DEVELOPMENT CORPORATION and
MARION RIDGE LANDFILL, INC.,

Petitioners,

v.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Respondent.

Case No. 05-035
Permit Appeal

PETITIONERS' RESPONSE TO MOTION FOR RECONSIDERATION

NOW COME Petitioners, KIBLER DEVELOPMENT CORPORATION and MARION RIDGE LANDFILL, INC., through their undersigned attorney, and for their response to the "Williamson County State's Attorney, Charles Garnati's Motion For Reconsideration, "and the memorandum accompanying that motion, state as follows:

1. Petitioners' permit appeal in this case was filed on August 24, 2004. On July 21, 2008, Petitioners filed a motion for voluntary dismissal, noting that the permit appeal issues had been resolved between them and Respondent Illinois Environmental Protection Agency ("IEPA"), and therefore no basis existed for the continuance or further prosecution of the permit appeal.
2. On that same day, July 21, 2008, a motion for leave to intervene was filed by Williamson County and the Williamson County State's Attorney. That motion consisted of a two page, five paragraph document arguing that the State's Attorney has standing to intervene in matters such as this, and that the intervention sought would not delay or prejudice the proceeding or interfere with its progress. The motion, however, failed to identify why the State's Attorney felt there was a basis for the intervention, or even to provide such basic information as whose side the intervention was sought to support.
3. In any event, this Board ruled by order dated August 7, 2008, that no basis existed

for the proposed intervention, since by the time it was filed no case or controversy existed to support the intervention. Accordingly, this Board dismissed the permit appeal per the parties' request, and denied as moot the motion for intervention.¹

4. The proposed intervenor's instant pleading now raises arguments not previously set forth in the motion to intervene, asserting various grounds now claimed to exist for the proposed intervention.

5. As the motion for reconsideration itself acknowledges, such a motion is supposed to identify newly discovered evidence, changes in the law, or errors of application of existing law; oddly, although the motion for reconsideration claims that it is premised upon errors by this Board in denying the original motion for intervention, the motion fails to identify any argument or legal principle or factual issue raised in the motion for intervention which this Board erroneously applied.

6. The fact is, this motion for reconsideration attempts to raise a host of new arguments and new reasons why the Board should allow intervention. It is not a motion for reconsideration at all, but instead might be a good first draft of an original petition for intervention. However, now it is too little and too late.

7. Petitioners request finality. It is clear that this proposed intervenor is intent upon harassing Petitioners and the IEPA, and has used the motion for reconsideration as a vehicle to make unfounded accusations and ridiculous slurs and slanders against Petitioners and the State

¹ This Board's order indicated that Petitioners had not filed a response to the motion for intervention, but the Board's docket records show that Petitioners' response was received by the Board on the very day of the Board's order denying the intervention. Petitioners would note that their response was timely. First, it is questionable as to whether the motion for intervention was ever actually filed with this Board; the only indication of filing indicates that it was transmitted electronically, but nothing in the record reveals that leave had ever been granted to the proposed intervenor to file any documents electronically. See 35 Ill. Admin. Code 101.302(d). Moreover, as the motion for intervention itself notes, it was served via mail on Petitioners and Petitioners' records reveal that the document was received on July 24. Service was therefore effectuated on the date of its delivery—See 35 Ill. Admin. Code 101.300(c). Pursuant to Procedural Rule 101.500(d), Petitioners were entitled to file a response within 14 days following service (35 Ill. Admin. Code 101.500(d)), and Petitioners filed their response on August 5, 2008, less than 14 days after receipt of the motion. (See 35 Ill. Admin. Code 101.300(d)(2) (the "mail box rule"), indicating that the response was filed the date it was placed in the mail). In any event, in light of this Board's ruling no reason existed for the Board to consider Petitioners' arguments opposed to the motion to the intervention.

agency given direct authority over this matter. This Board should deny outright this proposed reconsideration, and not even consider any of the arguments raised.

8. To any extent this Board deems the matters included in the motion for reconsideration worthy of consideration, Petitioners would point out the following:

- A. Contrary to the proposed intervenor's claim, 35 Ill. Admin. Code 105.214 and 35 Ill. Admin. Code 101.600 do not mandate any hearing in this case. The former procedural rule notes that hearings only need to be held upon properly filed petitions for review that are not frivolous, and that are raised by a Petitioner with standing; obviously where the Petitioners have withdrawn the request for a petition, there no longer is "an appropriately filed petition for review," and any hearing on it would be frivolous. The latter procedural rule simply addresses the conduct of the hearing, and does not purport to identify when hearings will be held under particular Board rules.
- B. The proposed intervenor complains of a need for some reason for public input and scrutiny, even though the parties are in agreement that the instant permit appeal no longer serves any purpose. It is clear that the proposed intervenor wishes to turn this permit appeal proceeding into a proceeding concerned with numerous other matters, none of which are relevant to the issues raised by the permit appeal.
- C. The instant case, PCB 05-35, concerned the specific proposed permit language which was addressed in and attached to the petition for review. The matters raised by the proposed intervenor concern other matters not raised in or addressed by the petition for review in PCB 05-35. As this Board states in almost every permit appeal it considers, the permit language at issue (whether denial, or challenged conditions) frames the issues on appeal. See e.g., Partylite Worldwide, Inc. v. Illinois EPA, PCB 08-32, 2008

III. ENV. LEXIS 70, at *9 (March 20, 2008). Accordingly, the new permit which a proposed intervenor apparently wishes to review has virtually no bearing upon the permit at issue in PCB 05-35. Moreover, Petitioners would point out that the proposed intervenor cites virtually no statutory authority for the review which it requests this Board to conduct. The proposed intervenor apparently wishes for this Board to act outside its statutory authority, which of course this Board is not at liberty to do.

D. Finally, the proposed intervenor also appears to desire the instant proceeding as a means of obtaining yet another review of the siting proceedings engaged in for this facility more than a decade ago. Obviously there is neither statutory nor regulatory authority for the review sought.

9. The original motion for intervention failed to identify any basis for intervention, and was not filed until after all issues in the permit appeal were resolved, and after the parties had agreed that no purpose would be served by this Board's consideration of the issues raised in the petition for review. Now the motion for reconsideration fails to identify in what way this Board misconstrued the earlier pleadings or the facts or law pertaining to those pleadings; moreover, on the face of the motion for reconsideration, it is clear that the proposed intervenor is attempting to obtain review over matters that are not reviewable in this situation by this Board. This Board should deny the request for reconsideration, and even if reconsideration is granted, this Board should reach the same conclusion as it did previously, and should dismiss the appeal and deny the motion for intervention.

WHEREFORE Petitioners, KIBLER DEVELOPMENT CORPORATION and MARION RIDGE LANDFILL, INC., request that this Board deny the Motion for Reconsideration, and grant to Petitioners all such other and further relief as this Board deems just and appropriate and available.

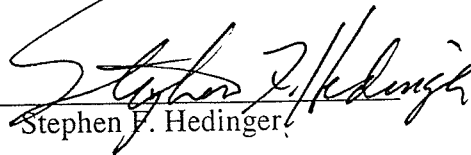
Respectfully submitted,

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

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 Petitioners' Response to Motion for Reconsideration 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:

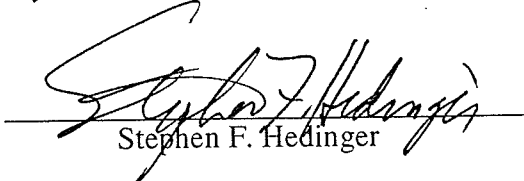
Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Suite 11-500
Chicago, IL 60601

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

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East, P.O. Box 19274
Springfield, IL 62796-9274

Melanie Jarvis
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 before 5:30 p.m. on the 23rd day of September, 2008.


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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