

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEORIA DISPOSAL COMPANY,)	
)	
Petitioner,)	
)	
v.)	(Pollution Control Facility Siting Appeal)
)	
PEORIA COUNTY BOARD,)	
)	
Respondent.)	

NOTICE OF FILING

PLEASE TAKE NOTICE THAT on the 8th day of September, 2006, George Mueller, one of the attorneys for Petitioner, Peoria Disposal Company, filed the original Motion for Partial Summary Judgment and Memorandum of Law In Support of Motion for Partial Summary Judgment, with the Clerk of the Illinois Pollution Control Board, via electronic filing as authorized by the Clerk of the Illinois Pollution Control Board.

Respectfully submitted,
PEORIA DISPOSAL COMPANY

BY: _____
GEORGE MUELLER,
One of its attorneys

sitingBEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEORIA DISPOSAL COMPANY,)	
)	
Petitioner,)	
)	PCB 06-184
v.)	
)	(Pollution Control Facility Siting Appeal)
PEORIA COUNTY BOARD,)	
)	
Respondent.)	

MOTION FOR PARTIAL SUMMARY JUDGMENT

NOW COMES Petitioner, Peoria Disposal Company, (hereinafter "PDC") by its attorneys, Brian J. Meginnes and George Mueller, and moves for partial Summary Judgment only as to its alternative claim that the Peoria County Board's Findings of Fact, with respect to substantive siting criterion v, were against the manifest weight of the evidence and, in support thereof, states that:

1. 415 ILCS 39.2(a)(v) requires that an applicant for local siting approval for a new regional pollution control facility prove that the plan of operation for the facility is designed to minimize the danger to the surrounding area from fire, spills or other operational accidents.

2. PDC presented extensive material in its written Application for Siting Approval, establishing its compliance with the aforesaid criterion. Additionally, PDC presented the testimony of its Vice-President of Development and Operations, Ron L.

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Edwards, on February 21, 2006, on this criterion. In addition to discussion and explanation of the actual operational plans to satisfy this criterion, Mr. Edwards indicated that PDC merely sought an expansion of its existing solid hazardous waste disposal facility for the purpose of continuing operations at existing levels for approximately an additional fifteen (15) years. He described that, during the previous operating history of the facility, there had been no significant fires, spills or other operational accidents. Mr. Edwards' testimony was neither impeached nor rebutted. No evidence was presented by any opposition witness with respect to this criterion.

3. Although no final written decision was made by the Peoria County Board within one hundred eighty (180) days from the date of the filing of PDC's Application for Siting Approval, PDC acknowledges, for purposes of this motion, that the Peoria County Board believes that it may have adopted certain findings of fact with regard to siting criterion v. In ¶10 of its Petition for Review before this Board, PDC has alleged that the purported finding of the Peoria County Board that PDC has only proven siting criterion v if certain special conditions were imposed was against the manifest weight of the evidence and was not supported by the evidence.

4. On April 6, 2006, the Peoria County Pollution Control Facility Siting Committee, which was in fact a committee of the whole of the Peoria County Board, conducted a meeting at which a motion was made to find that PDC had satisfied siting criterion v. Subsequently, an amendment was proposed to said motion to find that

siting criterion v was only satisfied upon the condition that PDC pay to Peoria County the sum of five dollars (\$5.00) per ton of waste received during the life of the proposed expansion to establish a so-called perpetual care fund. This amendment was never seconded, but PDC acknowledges, for purposes of this motion only, that the Peoria County Board may believe that it passed this motion as amended.

5. No minutes, resolutions, ordinances or other written evidence of what transpired at the aforesaid meeting of April 6, 2006, exists. However, a transcript of the oral proceedings at that meeting was created and, while the same was never made a part of the record available to the public in this matter, the same was posted in a timely fashion on the Peoria County Government internet website. Portions of said transcript, relating to the actions of the Peoria County Pollution Control Facility Siting Committee on criterion v on April 6, 2006, are attached hereto and made a part hereof as Exhibit "A".

6. On April 27, 2006, certain proposed findings of fact with regard to criterion v were filed in the Peoria County Clerk's office. These were presumably prepared by Peoria County staff members. While these proposed findings of fact do not conform to the actions of the Peoria County Pollution Control Facility Siting Committee of April 6, 2006, they purport to be findings approved by the committee on that date. These proposed findings do include a finding that PDC only satisfies criterion v on the

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condition that it pay to Peoria County the sum of five dollars (\$5.00) per ton of waste received during the expanded life of the facility.

7. On May 3, 2006, the Peoria County Board met and voted on some findings of fact for the PDC application. The original movant at that meeting stated, "I move to adopt the findings of fact as presented this evening..." Things then became complicated because the movant proposed additional oral amendments and because an Assistant State's Attorney incorrectly explained immediately before the vote began that "you're voting to support the finding of fact previously decided." Immediately after said explanation, the motion passed.

8. Contrary to the allegations of the movant regarding findings of fact as set forth hereinabove, no findings of fact were presented at the Peoria County Board meeting of May 3, 2006. Contrary to the advice of the Assistant State's Attorney to the Peoria County Board, the proposed findings of fact, file stamped April 27, 2006, were not what was "previously decided."

9. No minutes, resolutions or ordinances exist to provide a written record of what actually transpired at the Peoria County Board meeting of May 3, 2006. Accordingly, no final written decision of the Peoria County Board, with respect to its actions of May 3, 2006, exists. However, the Peoria County Board has indicated, in its amended index of the record it filed with the Pollution Control Board in this appeal, that the Court Reporter's Transcript of the oral proceedings on May 3, 2006, constitutes the

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“record and transcript of Peoria County Board’s decision and findings.” (C13710-C13748). While this entry on Peoria County’s Amended Index of the Record on Appeal filed with this Board is dated May 3, 2006, no transcript of the oral proceedings at the Peoria County Board meeting existed on that date. Moreover, this Transcript was never, prior to PDC’s Petition for Review, part of the record available to the public in this case. Said transcript filed by Peoria County is not file stamped as having been received by the Peoria County Clerk. However, said Transcript was posted on the Peoria County Government Internet Website on May 12, 2006, more than one hundred eighty (180) days after PDC filed its Siting Application.

10. The foregoing notwithstanding, PDC acknowledges, for purposes of this motion only, that the Peoria County Board believes it adopted the proposed findings file stamped April 27, 2006, at its meeting of May 3, 2006.

11. There is no material issue of fact with regard to whether or not PDC unconditionally satisfied criterion v with its Application and evidence and this Board should rule that, as a matter of law, a finding that criterion v is only satisfied on the condition that PDC pay to Peoria County five dollars (\$5.00) per ton of waste received during the life of the expansion is unlawful, invalid and unsupported by any evidence, whatsoever. Such finding is defective for one or more of the following reasons:

- A) PDC’s evidence that criterion v is unconditionally satisfied was neither rebutted nor impeached with no evidence on this criterion, other than

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PDC's evidence. In such situation, the County Board is not free to disregard the evidence. *Industrial Fuels and Resources v. PCB*, 227 Ill. App. 3rd 553, 592 N.E.2d 148 (1st Dist. 1991).

- B) No evidence exists in the record to support the need for or the appropriateness of a County charge to PDC of five dollars (\$5.00) per ton of waste received, either as to the amount of said charge, or the duration during which it must be paid. Such charge violates the principals announced in *County of Lake v. PCB*, 120 Ill. App. 3rd 89, (2nd Dist. 1983).
- C) A County Board has no authority to impose additional fees on an applicant for siting approval as a condition of said approval. *County of Lake v. PCB*, 120 Ill. App. 3rd 89, (2nd Dist. 1983).
- D) The charge of five dollars (\$5.00) per ton charge represents an improper attempt by the County Board to require a demonstration of financial responsibility by PDC.
- E) Affirming the condition imposed by the County Board allows a county to accomplish what the EPA cannot with respect to fees and financial assurances.

F) There is no logical relationship, whatsoever, between operational plans to limit spills, fires and other accidents and an additional fee to be paid by the facility operator to the County. Said fee was not intended to defray the cost of developing additional or better operational plans to minimize the potential of fires spills and other operational accidents. Instead the \$5 fee was intended to be invested by the County to pay for some future care at a time when the facility would no longer be operational.

12. The multiplicity and complexity of issues in this appeal makes the grant of partial Summary Judgment appropriate as a way of reducing the number of issues promoting judicial economy and expediting resolution of the remainder of the issues herein.

WHEREFORE, Petitioner, Peoria Disposal Company, prays that this Board issue a partial Summary Judgment as set forth in more detail hereinabove.

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BY: _____
GEORGE MUELLER,
One of its attorneys

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**MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR PARTIAL SUMMARY JUDGMENT**
(Criterion v)

NOW COMES Petitioner, Peoria Disposal Company, (hereinafter "PDC") by its attorneys, Brian J. Meginnes and George Mueller, and as and for its Memorandum of Law in support of its Motion for Partial Summary Judgment on siting criterion v, states as follows:

INTRODUCTION

"Criterion v" (415 ILCS 5/39.2(a)(v)) requires that an applicant for local siting approval for a new regional pollution control facility demonstrate that "the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents." The Peoria County Board (the "County") purportedly approved PDC's application for siting approval as to Criterion v, and imposed certain special conditions, including the following:

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Effective upon PDC's receipt of a permit from Illinois EPA to operate the proposed expanded landfill, PDC shall pay additional sums into a perpetual care fund, on at least a quarterly basis equal to \$5.00 per ton of the Expanded Volume of Waste deposited in the PDC Landfill, but if the volume of waste disposed of at the landfill facility in any calendar year is less than 150,000 tons, PDC shall pay into the fund a minimum of \$750,000 for 15 years. Said payments shall be calculated based upon the same information and figures used to calculate the Host Benefit Fee pursuant to Section 9 of the Host Community Agreement, and shall be subject to the same documentation and verification requirement of the Host Benefit Fee. Said Perpetual Care Fund shall be used exclusively for the care and maintenance of the entire PDC site after the period of post-closure care for the expanded landfill has been terminated by IEPA.

(the "Fee Condition"; C13743 (C13743 and C13744 are attached hereto, and incorporated herein by this reference, as Exhibit B)).¹

As a matter of law, the County lacks the power to impose a fee as a condition for siting approval. Similarly, the County cannot mandate a demonstration of financial responsibility as a condition for siting approval. Moreover, PDC's evidence that Criterion v is unconditionally satisfied was neither rebutted nor impeached with no

¹ Although no final written decision was made by the Peoria County Board within one hundred eighty (180) days from the date of the filing of PDC's Application for Siting Approval, as stated in the Motion for Summary Judgment on Criterion v, PDC acknowledges, for purposes of this Motion and Memorandum of Law, that the County believes that it may have adopted certain findings of fact with regard to Criterion v. In ¶10 of its Petition for Review before this Board, PDC has alleged that the purported finding of the Peoria County Board that PDC has only proven siting Criterion v if certain special conditions were imposed was against the manifest weight of the evidence and was not supported by the evidence. This Motion and Memorandum of Law assume, *arguendo*, that the County's incorrect belief that it imposed conditions on approval of Criterion v is accurate. Excerpts from the April 6, 2006 meeting of the Peoria County Pollution Control Facility Siting Committee are attached hereto as Exhibit A, and are incorporated herein by this reference.

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evidence offered as to this criterion, other than PDC's evidence. In such situation, the County Board is not free to disregard the evidence. Industrial Fuels and Resources v. PCB, 227 Ill. App. 3d 553, 592 N.E.2d 148 (1st Dist. 1991). Finally, there is no logical relationship, whatsoever, between operational plans to limit spills, fires and other accidents and an additional fee to be paid by the facility operator to the County.

For all the foregoing reasons, PDC respectfully requests that partial summary judgment be entered in its favor as to the special condition imposed on Criterion v.

STANDARDS OF REVIEW AND LAW

Where the County's decisions on PDC's application for siting approval were against the manifest weight of the evidence, the Board is required to reverse same:

In *Tate*, the standard of review in a regional pollution-control facility site-location-suitability case was stated:

"Waste Management of Illinois, Inc. v. Pollution Control Board (1987), 160 Ill.App.3d 434 [112 Ill.Dec. 178], 513 N.E.2d 592, decided that all of the statutory criteria must be satisfied in order for approval and that the proper standard of review for the County Board's decision is whether the decision is against the manifest weight of the evidence, with the manifest weight standard being applied to each and every criterion. See also *City of Rockford v. Pollution Control Board* (1984), 125 Ill.App.3d 384 [80 Ill.Dec. 650], 465 N.E.2d 996.

A decision is against the manifest weight of the evidence if the opposite result is clearly evident, plain, or indisputable from a review of the evidence. (*Harris v. Day* (1983), 115 Ill.App.3d 762 [71 Ill.Dec. 547], 451 N.E.2d 262.) * * * *Tate* [*v. Illinois Pollution Control Bd.*], 188 Ill.App.3d [994] at 1022, 136 Ill.Dec. [401] at 420, 544 N.E.2d [1176] at 1195 [(4 Dist. 1989), *appeal denied*, 129 Ill.2d 572, 550 N.E.2d 565, 140 Ill.Dec. 680 (1990)].

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Fairview Area Citizens Taskforce v. Illinois Pollution Control Bd., 198 Ill.App.3d 541, 550, 555 N.E.2d 1178, 1184, 144 Ill.Dec. 659, 665 (3 Dist. 1990), *appeal denied*, 133 Ill.2d 554, 561 N.E.2d 689, 149 Ill.Dec. 319 (1990); *see also* CDT Landfill Corporation v. City of Joliet, PCB No. 98-60, 1998 WL 112497, *4, 1998 Ill. ENV LEXIS 105, *9-10 (March 5, 1998).

Pursuant to the Illinois Administrative Code, in hearings before the Pollution Control Board, “[i]f the record, including pleadings, depositions and admissions on file, together with any affidavits, shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law, the Board will enter summary judgment.” 35 Ill. Adm. Code §101.516(b).

The multiplicity and complexity of issues in this appeal makes the grant of partial Summary Judgment appropriate as a way of reducing the number of issues promoting judicial economy and expediting resolution of the remainder of the issues herein.

ARGUMENT

A. A County Board has no authority to impose additional fees on an applicant for siting approval as a condition of said approval.

A County Board has no authority to impose additional fees on an applicant for siting approval as a condition of said approval:

Section 39.2 does not specifically grant the power to assess fees against an applicant. The County Board argues that such authority is implied by the authority to inspect. No finding was made that section 39.2 grants the County Board the authority to inspect in the instant case because B.F.I. agreed to inspections and the county health department has

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inspection authority already. Ill.Rev.Stat.1981, ch. 111 1/2, par. 20c13.

Regardless of a power to inspect, the imposition of a fee is not a reasonable and necessary condition in order to accomplish the purposes of section 39.2. (Ill.Rev.Stat., 1982 Supp., ch. 111 1/2, par. 1039.2(e).) Any relationship these have toward carrying out the purposes of this section are too remote to come under the provision for conditions. If the legislature intended such a power, it could have been more specific. To extend section 39.2 to allow Condition V would go beyond the confines of the statute.

Lake County v. Illinois Pollution Control Bd., 120 Ill.App.3d 89, 101 (2 Dist. 1983).

One of the most extreme illustrations of application of the foregoing rule is Concerned Boone Citizens, Inc. v. M.I.G. Investments, Inc., 144 Ill.App.3d 334, 494 N.E.2d 180, 98 Ill.Dec. 253 (2 Dist. 1986), *appeal allowed* (Oct 02, 1986), *appeal dismissed* (Nov 03, 1986). Therein, the Appellate Court found that a \$10,000.00 filing fee for a siting application imposed by a non-home rule unit was invalid: "section 39.2 does not give Boone County the authority to assess a filing fee." Id. at 342, 184, 257. After the Boone County case, the Legislature amended Section 39.2 to provide expressly for the imposition of a reasonable filing fee by non-home rule units.

Imposition of the Fee Condition usurps the authority of the Illinois Environmental Protection Agency (the "IEPA"). PDC in this case sought expansion of an existing, permitted facility. A condition of the existing permit is the establishment and maintenance of a \$5,000,000 fund to guarantee post-closure care for a period of 30 years. As above, the County found that PDC was not only in compliance with the

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IEPA's requirement regarding the post-closure fund, but had actually funded a trust in an amount higher than that required by the IEPA:

The testimony and documents submitted by Applicant [PDC] demonstrate it is fully in compliance with its regulatory requirements for financial assurance for closure and post-closure care, and in fact has more funding in its trust than is presently required by the IEPA * * *

(C13744).² Establishing the requirements for post closure care, its duration and the amount needed to fund the same is the exclusive responsibility of the IEPA. The imposition of a charge in any amount for the stated purpose of "perpetual care" is an improper attempt to modify the post closure care period established by the IEPA and to supplement the post closure care fund established by the IEPA.

It is clear that the County could not impose the Fee Condition on PDC under Criterion v, under any circumstances.

B. The Fee Condition is an improper attempt on the part of the County to require a demonstration of financial responsibility by PDC.

Even if the County had the power to impose a fee as a special condition for siting approval, the Fee Condition constitutes an impermissible attempt on the part of the County to require a demonstration of financial responsibility on the part of PDC.

Local siting authorities are not permitted to inquire into an applicant's financial status, or to require financial responsibility on the part of an applicant:

Section 39.2 does not specifically grant the County Board the authority to require financial responsibility. Nor does it specifically prohibit the County Board from doing so.

² See footnote 1, *supra*.

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However, other considerations indicate that the authority cannot be implied.

Financial responsibility is not part of the six criteria to be considered in granting approval. It is only indirectly related to (v) but not sufficiently to find that it is implied. Ill.Rev.Stat., 1982 Supp., ch. 111 1/2, par. 1039.2(a)(v).

The Agency is prohibited from requiring a bond or other security as a condition for a permit. (Ill.Rev.Stat., 1982 Supp., ch. 111 1/2, par. 1039(a).) This provision indicates the legislative intent that bonds or other financial security are not allowed. The legislature has specifically provided an exception for RCRA permits in section 39(d). (Ill.Rev.Stat., 1982 Supp., ch. 111 1/2, par. 1039(d).) Absent a clear intent to the contrary, no exception has been made for a county under section 39.2.

Lake County v. Illinois Pollution Control Bd., 120 Ill.App.3d 89, 102 (2 Dist. 1983). See also Residents Against a Polluted Environment and The Edmund B. Thornton Foundation v. County of LaSalle and Landcomp Corporation, PCB 97-139, 1997 WL 355836, *14 (June 19, 1997); T.O.T.A.L. and Concerned Adjoining Owners v. City of Salem, Roger Kinney, City Manager and Roger Freidricks, PCB 96-79 and PCB 96-82 (consolidated), 1996 WL 112144, *13 (March 7, 1996) (affirmed in Slip Op. No. 5-96-0244 (5 Dist., June 2, 1997)); see also Watts Trucking Service, Inc. V. City of Rock Island, PCB 83-167, 1984 WL 37609, *11 (March 8, 1984) (“the Second District Appellate Court has held that proof of the applicant's financial responsibility may not be considered in granting approval pursuant to Section 39.2”).

Clearly, it was the intention of the County to use the Fee Condition as a guarantee of financial responsibility on the part of PDC. The following discussion

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occurred on April 6, 2006, at the meeting of the Peoria County Pollution Control Facility Siting Committee, between County Board Member Michael Phelan and Assistant State's Attorney William ("Bill") Atkins:

MR. PHELAN: Bill, what protection do we have in the event of bankruptcy or sale of the company?

This bothers me, because I would like to remind everybody we are partners in a cemetery that had a Perpetual Care Fund as well.

MR. ATKINS: I believe that the way that we have set this up -- and Mr. Brown would actually be able to give you a better answer here because he's actually worked more with the proposal for the Perpetual Care Fund. As I said, Mr. Brown might be able to give you a better answer, but the way that we are setting this up is that the money will not be under the control of PDC.

In other words, the money will be there. So long as PDC is operating, they will be putting the money into the fund. It's not a situation where if they go bankrupt that fund disappears with their bankruptcy.

If you have a situation where whatever entity is holding onto the money goes bankrupt or is defunct and they have lost the money, such as the situation they had in Pekin with their landfill, you know, that is potentially a problem.

AUDIENCE MEMBER: We can't hear.

MR. ATKINS: So we can't -- I don't think that we can provide a situation where we are assured that there will be an entity able to hold the money unless we have the state or the county or some governmental entity that we are relatively sure will be here 50 years or 100 years from now. But with any private entity you always have the situation that they could disappear, regardless of who that entity is.

(Tr. pg. 42, line 12 – pg. 43, line 21; C13421, Exhibit A hereto).

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The IEPA imposes its own requirements on landfill operators, including post-closure funding (as described in Section (A), above) and maintenance of insurance, preempting the field as to the financial responsibility of an applicant. See Watts Trucking Service, Inc., *supra*. A local siting authority is not permitted to require assurances of financial responsibility from an applicant as a condition of approval of an application. Clearly, the Fee Condition is an impermissible attempt on the part of the County to require an assurance of financial responsibility from PDC as a condition of approval of the application for siting.

C. The County lacked the power to impose any special conditions whatsoever as to Criterion v, because there was no evidence presented that PDC did not satisfy Criterion v without imposition of any special conditions.

Even if (a) the County had the power to impose a fee as a special condition for siting approval, and (b) the Fee Condition did not constitute an impermissible demonstration of financial responsibility, the imposition of the Fee Condition would still be improper, as PDC satisfied the burden of proving that Criterion v was satisfied without imposition of any special conditions. PDC proved that the plan of operation for the facility is designed to minimize the danger to the surrounding area from fire, spills or other operational accidents. Summarizing the presentation of PDC's expert witnesses, the County found, in pertinent part, as follows:

Applicant presented expert reports and testimony concerning its plan of operations and its fire, spill and operational accident plans;

* * *

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The testimony and documents submitted by Applicant [PDC] demonstrate it is fully in compliance with its regulatory requirements for financial assurance for closure and post-closure care, and in fact has more funding in its trust than is presently required by the IEPA * * *

(C13744).³ No evidence was offered that PDC did not satisfy Criterion v without imposition of special conditions. In fact, the County found that "[t]here was no evidence presented which demonstrated Applicant's [PDC's] plans for fires, spills or accidents were insufficient...." (C13744; emphasis added).⁴ Therefore, the County lacked the power to impose any special conditions whatsoever as to Criterion v.

The County is required to accept uncontradicted and unrebutted expert testimony. For example, in the case of Industrial Fuels & Resources/Illinois, Inc. v. Illinois Pollution Control Bd., the Illinois Appellate Court overturned the decision of the Pollution Control Board upholding the denial of siting (on siting criterion ii) by a city, on the basis that the conclusions of the applicant's expert witnesses were never contradicted or rebutted. 227 Ill.App.3d 533, 546-47, 592 N.E.2d 148, 157, 169 Ill.Dec. 661, 670 (1 Dist. 1992). The Court held, in pertinent part, as follows:

While we do not wish to denigrate legitimate safety concerns of Harvey [the city] and its residents, we find virtually nothing in the record to substantiate the fear of significant risk to the populace. On the contrary, the undisputed fact is that all governmental minimum standards have been met and exceeded and that the facility will employ state-of-the art technology to ensure safe levels of emissions in the ordinary operation of the plant. Nothing indicates that Industrial's [the applicant's] controls and procedures, safety features, training

³ See footnote 1, *supra*.

⁴ See footnote 1, *supra*.

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of personnel, or security systems are substandard or create a significant safety hazard.

We conclude that Harvey failed to rebut or contradict Industrial's showing that the facility was designed in light of the public health, safety, and welfare. Therefore, the Board's affirmance of Harvey's finding on that criterion is against the manifest weight of the evidence.

Id. at 547, 157, 670.

Similarly, in CDT Landfill Corporation, this Board found that a city's decision contrary to an applicant's unrebutted expert testimony on siting criterion ii was against the manifest weight of the evidence:

In the instant case, the evidence before the City was clear and unrebutted. CDT presented testimony from four qualified expert witnesses. Expert testimony was given that the proposed expansion meets the requirements of criterion (ii). Expert testimony was provided that the proposed expansion complies with the requirements of the Act and associated regulations. In its brief, the City identified a number of alleged flaws with the evidence provided by CDT, but offered no expert opinion that any particular design feature or operating procedure might increase the risk of harm to the public.

The only testimony on record that might possibly pertain to criterion (ii) are the public comments concerning odor. As previously discussed, public comments are part of the record to be considered by the local governing body. The public comments concerning odor, however, state merely that odor is present in the area. No analysis of the odor source is presented. CDT presented testimony regarding the system set up to address odor complaints. C3372- C3381. In addition, the area in question is extremely industrial, and contains, inter alia, an animal rendering facility and a grease recycling company. Unrebutted expert testimony characterizes the area as one containing many companies performing activities capable of generating odor. CDT notes

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it has never received an administrative citation from state or local officials relating to odor from the existing facility. Pet. Br. at 21.

A review of the evidence for this criterion reveals that a result opposite to that of the City's is clearly evident. CDT did show that the proposed expansion is designed, located, and proposed to be operated so that the public health, safety and welfare will be protected. The public comments regarding odor and the alleged design flaws regarding CDT's proposed facility are not sufficient to warrant the City's decision. Therefore, the Board finds that the City's decision on criterion two is against the manifest weight of the evidence.

CDT Landfill Corporation, 1998 WL 112497, *12-13.

As above, PDC's expert evidence regarding the plan of operations for the facility was uncontradicted and unrebutted. The County affirmatively found that PDC "[t]here was no evidence presented which demonstrated Applicant's [PDC's] plans for fires, spills or accidents were insufficient...." (C13744).⁵ Therefore, the County lacked the ability to require special conditions above and beyond the requirements of Criterion v.

D. The Fee Condition bears no relation to Criterion v.

Even if (a) the County had the power to impose a fee as a special condition for siting approval, and (b) the Fee Condition did not constitute an impermissible demonstration of financial responsibility, and (c) there had been evidence presented that was contrary to PDC's evidence that Criterion v was satisfied without imposition of any special conditions, the Fee Condition would still be improper because it bears no relation whatsoever to Criterion v.

⁵ See footnote 1, *supra*.

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Criterion v merely requires that the plan of operations for a proposed facility be designed so as to minimize the danger to the surrounding area from fire, spills or other operational accidents. It has nothing to do with post-closure care of such facility. The "findings" of the County on which the Fee Condition is based are as follows:

The testimony and documents submitted both in support of and against the application suggest that long term care and maintenance of the facility is necessary to fully and adequately protect the public health, safety and welfare;

* * *

Applicant's plans do not adequately provide for the perpetual care of the facility after the termination of the post-closure care period * * *

(C13744).⁶ "Protection" of "the public health, safety and welfare" and "perpetual care of the facility" are not the point of Criterion v.

In the Industrial Fuels & Resources/Illinois, Inc. case, one Illinois Appellate Court summarized the purpose and requirements of Criterion v as follows:

The issue here, as in the second criterion, is one of safety, with the emphasis on planning to avoid or minimize the danger from catastrophic accidents. As in any industrial setting, there is a potential for harm, both to the environment and to the residents of the area. We doubt that the legislative intent behind Criterion 5 was to hold applicants to so high a standard as to guarantee an accident-proof facility, however. See *Wabash and Lawrence Counties Taxpayers and Water Drinkers Association v. Pollution Control Board* (1990), 198 Ill.App.3d 388, 394, 144 Ill.Dec. 562, 567, 555 N.E.2d 1081, 1086 ("The key, here, however is *minimize*. There is no requirement that the applicant guarantee no accidents will occur, for it is virtually impossible to eliminate all problems.")

⁶ See footnote 1, *supra*.

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227 Ill.App.3d at 547, 592 N.E.2d at 157-58, 169 Ill.Dec. at 670-71. In the case of County of Kankakee, et al. v. City of Kankakee County, Illinois, et al., an objector argued that the plan of operations proposed by the applicant was insufficient because the applicant had not discussed same with the relevant fire department. PCB 03-31, PCB 03-33, PCB 03-35, 2003 WL 137451, *27 (January 9, 2003). The Board rejected the objector's argument, stating as follows:

The plain language of the criterion simply requires a plan of operations. Town & Country [the applicant] has presented that plan. Furthermore, Town & Country would speak to the fire department upon approval of the application as required by condition in the siting approval. R. at 3279. The County [the objector] has presented no evidence that Town & Country's design and procedures are inadequate; therefore, the Board finds that that the City's determination that Town & Country satisfied criterion (v) of the Act is not against the manifest weight of the evidence.

Id. Clearly, general concerns about the public health, safety and welfare and post-closure care are not properly part of the analysis of Criterion v.

Moreover, the actual calculation of the Fee Condition was totally arbitrary and not based on the Record. The following discussion occurred on April 6, 2006, at the meeting of the Peoria County Pollution Control Facility Siting Committee, between County Board Member Robert Baietto and Board Member Tim Riggerbach, who proposed the Fee Condition, when Mr. Baietto requested clarification as to the means Mr. Riggerbach used in calculating the \$5.00 per ton (\$750,000 minimum per year) figure:

MR. BAIETTO: What did you use, Tim?

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MR. RIGGENBACH: As I was going over these numbers, it seemed to me that this whole thing is somewhat, obviously, an area of great unknown, an area that, God forbid, we ever need to get into this we don't want to have a situation where we are going to be shortchanged.

I guess I am just opening this up for negotiations so that we can make sure that the appropriate funds are available. That the perpetual care, I think, is the key to this. Even more so than that, after the 30 years are up, that we are going to be able to maintain the monitoring, that we are going to be able to catch anything before it would get to the point that it would be the disaster that we are all -- obviously, we have been told about in the past.

So I think this is more -- can you have too much insurance? I guess that is always the question.

(Tr. pg. 36, line 15 – pg. 37, line 10; C13419, Exhibit A hereto).

The Fee Condition was not intended to defray the cost of developing additional or better operational plans to minimize the potential of fires spills and other operational accidents. Instead the \$5.00 per ton (\$750,000 minimum per year) fee was intended to be invested by the County to pay for some future care at a time when the facility would no longer be operational. The Fee Condition does not, therefore, properly relate to Criterion v, and could not be imposed as a condition on the approval thereof.

CONCLUSION

The County had no power to impose a fee as a special condition for siting approval. The Fee Condition was an impermissible demonstration of financial responsibility. There was no evidence presented that was contrary to PDC's evidence that Criterion v was satisfied without imposition of any special conditions. The Fee

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Condition bears no relation to Criterion v. For all these reasons, the County's decision to impose the Fee Condition on approval of Criterion v of PDC's application for siting approval was against the manifest weight of the evidence before the County.

WHEREFORE, Petitioner, Peoria Disposal Company, prays that this Board issue a partial Summary Judgment as set forth hereinabove.

Respectfully submitted,
PEORIA DISPOSAL COMPANY

BY: _____
GEORGE MUELLER,
One of its attorneys

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1 APPLICATION FOR LOCAL SITING APPROVAL OF A
2 POLLUTION CONTROL FACILITY

3 PROPOSED FINDINGS OF FACT

4 DATE: April 6, 2006
5 TIME: 5:00 P.M. TO 7:45 P.M.
6 LOCATION: Itoo Society Hall
7 4909 West Farmington Road
8 Peoria, Illinois

9 PEORIA COUNTY BOARD

- 10 David T. Williams, Sr., Chairman
- 11 Pat Hidden
- 12 Merle Widmer
- 13 G. Allen Mayer
- 14 Jeff Joyce
- 15 Lynn Scott-Pearson
- 16 Bob Baietto
- 17 Tim Riggerbach
- 18 Phil Salzer
- 19 Mike Phelan
- 20 Brian Elsasser
- 21 Junior Watkins
- 22 Tom O'Neill
- 23 Carol Trumpe
- 24 Jim Thomas
- Sharon Kennedy
- Bill Prather

C 13410

Bill Atkins, Assistant State's Attorney
JoAnn Thomas, County Clerk

COUNTY STAFF:

- Chris Burger
- Karen Raithel
- Dave Brown
- Patrick Urich
- Matt Wahl
- Dave Ryan
- Don Cavi

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1 MR. WATKINS: Aye.
 2 COUNTY CLERK THOMAS: Widmer?
 3 MR. WIDMER: Aye.
 4 COUNTY CLERK THOMAS: Williams?
 5 CHAIRMAN WILLIAMS: Yes.
 6 COUNTY CLERK THOMAS: The vote is 17 ayes.
 7 CHAIRMAN WILLIAMS: Thank you.
 8 Criterion 5.
 9 COUNTY CLERK THOMAS: Criterion 5. The
 10 plan of operation for the facility is designed to
 11 minimize the danger to the surrounding areas from
 12 fire, spills and other operation accidents.
 13 CHAIRMAN WILLIAMS: Any discussion?
 14 MR. RIGGENBACH: I would like -- tell me
 15 the correct way to do this.
 16 I would like to amend one of the special
 17 conditions.
 18 CHAIRMAN WILLIAMS: Which one?
 19 MR. RIGGENBACH: Number three.
 20 And I would like to change the \$1.50 per ton
 21 surcharge to a \$5 surcharge, and have the minimum
 22 into the fund be raised from 225,000 to 750,000.
 23 MR. ATKINS: I think in order for your
 24 motion to be proper according to our procedure, you

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1 are essentially moving to accept the findings of
 2 fact on the approval with conditions and to amend
 3 the facts contained within the proposed approval
 4 with special conditions.
 5 MR. RIGGENBACH: Correct. Thank you.
 6 CHAIRMAN WILLIAMS: Allen?
 7 MR. MAYER: I had one suggestion for a
 8 change in the findings of fact, which is just on
 9 that same page that you were on here with Tim, the
 10 last finding, due to the types of wastes, to strike
 11 that and replace it with -- if you look on the pink
 12 sheet, the third one, just the facility is located
 13 close to and could present a danger for residents.
 14 MS. KENNEDY: I don't follow you here.
 15 MR. MAYER: Okay. In the yellow sheets,
 16 special conditions, look right above that. There
 17 is finding of facts established on that.
 18 MS. KENNEDY: Okay.
 19 MR. MAYER: The last one, due to the types
 20 of waste, there is little risk, to strike that and
 21 to replace it with -- it's slightly different but
 22 the same sentiment, different emphasis -- the third
 23 one on the pink sheet, the facility is located
 24 close to residential houses and a fire, spill or

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1 other operations accidents could present a danger
 2 for residents.
 3 And just in speaking in favor of that, I
 4 think with the emergency conditions that we did
 5 with the mock disaster drill and all of that, that
 6 that is consistent with all of that.
 7 CHAIRMAN WILLIAMS: Good point.
 8 Any other discussion on it?
 9 So the motion is to pass criterion 5 as
 10 amended.
 11 COUNTY CLERK THOMAS: Do you want me to
 12 read the special conditions?
 13 CHAIRMAN WILLIAMS: Yes.
 14 COUNTY CLERK THOMAS: Criterion 5 is
 15 amended by deleting the last statement under the
 16 criterion, due to the types of wastes proposed to
 17 be handled and disposed of at the facility, there
 18 is little risk of fires, spills or accidents
 19 impacting surrounding properties other than those
 20 inherent with more typical commercial or industrial
 21 facilities. That is replaced with the statement,
 22 the facility is located close to residential houses
 23 and a fire, spill or other operations accident
 24 could present a danger for residents.

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1 Then the following special conditions are
 2 added: Leachate will be automatically removed from
 3 all leachate manholes to maintain a minimal risk of
 4 leachate on the manhole liner. This is intended to
 5 minimize risk of leachate leakage through liner
 6 components.
 7 Two, the south storm water detention basin
 8 shall be tested on a schedule identical to the
 9 existing permit requirements for groundwater
 10 monitoring wells and for the following indicator
 11 constituents: Total dissolved solids, chloride,
 12 calcium, bromide, sulfate and sodium. Although
 13 stormwater typically has less string water quality
 14 parameters, the records shall be kept and analyzed
 15 to verify that trends do not increase to levels of
 16 concern that would indicate leachate has been
 17 accidentally released to stormwater as long as the
 18 active landfill operations occur. PDC shall notify
 19 the County of any statistically significant upward
 20 trend in stormwater concentration.
 21 Number three, effective upon PDC's receipt
 22 of a permit from Illinois EPA to operate the
 23 proposed expanded landfill, PDC shall pay
 24 additional sums into a Perpetual Care Fund on at

<p style="text-align: right;">34</p> <p>1 least a quarterly basis equal to \$5 per ton of the 2 expanded volume of waste deposited in the PDC 3 Landfill, but if the volume of waste disposed of at 4 the landfill facility in any calendar year is less 5 than 150,000 tons, PDC shall pay into the fund a 6 minimum of \$750,000 for 15 years. Said payments 7 shall be calculated based upon the same information 8 and figures used to calculate the Host Benefit Fee 9 pursuant to Section 9 of the Host Community 10 Agreement, and shall be subject to the same 11 documentation and verification requirement of the 12 Host Benefit Fee. Said Perpetual Care Fund shall 13 be used exclusively for the care and maintenance of 14 the entire PDC site after the period of 15 post-closure care for the expanded landfill has 16 been terminated by the IEPA.</p> <p>17 CHAIRMAN WILLIAMS: Any discussion? 18 Mr. Baietto?</p> <p>19 MR. BAIETTO: Staff, in relationship to 20 your recommendation of a \$1.50 and \$225,000, what 21 was that based on in relationship to what facts did 22 you have in making that assumption that if 23 something were to happen that that would be enough 24 money to cover it?</p>	<p style="text-align: right;">36</p> <p>1 up with a number that we felt was sufficient.</p> <p>2 CHAIRMAN WILLIAMS: Did that answer your 3 question, Bob?</p> <p>4 MR. BAIETTO: I take from your explanation 5 you feel a \$1.50 and 225 is adequate?</p> <p>6 MR. URICH: Well, I would -- that I would 7 say that is Staff's belief. I mean if the Board 8 has another, you know, feeling on that, I think 9 that that is entirely appropriate as well. I think 10 that this is an issue, I think, that sentiment has 11 been raised after our report came out about what is 12 the cost and how can you calculate the cost of what 13 might happen should the aquifer be impacted, and I 14 think that is a legitimate concern.</p> <p>15 MR. BAIETTO: What did you use, Tim?</p> <p>16 MR. RIGGENBACH: As I was going over these 17 numbers, it seemed to me that this whole thing is 18 somewhat, obviously, an area of great unknown, an 19 area that, God forbid, we ever need to get into 20 this we don't want to have a situation where we are 21 going to be shortchanged.</p> <p>22 I guess I am just opening this up for 23 negotiations so that we can make sure that the 24 appropriate funds are available. That the</p>
<p style="text-align: right;">35</p> <p>1 MR. URICH: Well, before I answer that 2 question, let me point out one item in the special 3 conditions.</p> <p>4 I think as the Clerk was reading it, the 5 fourth line in the second special condition, the 6 last word should be stringent. Just to reflect 7 that. You read it correctly. It was incorrectly 8 listed there. Should be stringent. That's 9 correct.</p> <p>10 Now, as to how we came to our determination 11 of a \$1.50, really I think that we were looking at 12 how we could generate what we believe to be 13 sufficient resources in that fund to protect that 14 site into perpetuity, looking at the investment 15 growth, looking at how that would grow over time.</p> <p>16 As I think we said in our staff report, we 17 took some conservative projections with that to try 18 to estimate those out, and some conservative 19 projections with regards to the inflation rate, we 20 used four and a half percent inflation. Looking at 21 that on average I think the last 90 years inflation 22 rate has been somewhere in the area of 4.3 percent. 23 So that has been what we based our criteria on in 24 looking at that in response, really, to try to come</p>	<p style="text-align: right;">37</p> <p>1 perpetual care, I think, is the key to this. Even 2 more so than that, after the 30 years are up, that 3 we are going to be able to maintain the monitoring, 4 that we are going to be able to catch anything 5 before it would get to the point that it would be 6 the disaster that we are all -- obviously, we have 7 been told about in the past.</p> <p>8 So I think this is more -- can you have too 9 much insurance? I guess that is always the 10 question.</p> <p>11 CHAIRMAN WILLIAMS: Brian?</p> <p>12 MR. ELSASSER: I just had a comment 13 regarding the \$5.00 a ton.</p> <p>14 I am not advocating it be any higher or 15 anything like that, but if the aquifer would become 16 contaminated, you couldn't put a quantitative cost 17 amount on it. So I am not saying we should raise 18 it to \$10 a ton to make sure that you could replace 19 the aquifer because you can't. It's the most 20 valuable natural resource we have there, and you 21 can't put a dollar amount on it. We would be into 22 the super fund area, you know, from the federal 23 government if that ever happened.</p> <p>24 So, you know, I just want to make sure that</p>

<p style="text-align: right;">38</p> <p>1 we don't feel like that everything is just going to 2 be okay for all of the future, you know, even if we 3 raise this to \$5.00 a ton. 4 CHAIRMAN WILLIAMS: Michael, did you have 5 a question? 6 MR. PHELAN: I am agreeable to the change, 7 but I do have a question for you, Patrick. 8 I really don't know how we can base this fee 9 without knowing what profits have been generated by 10 the Applicant in the past and what type of profits 11 they expect to generate in the future. 12 Do you have any idea what that is going to 13 be? 14 MR. URICH: The short answer would be no. 15 The more longer answer would be that, you 16 know, based on the numbers that I have read and I 17 think have been reported in the records so far, 18 that looking at the revenue stream of the company, 19 the annual revenue's somewhere in the area of 55 to 20 58 million dollars annually. At least in the 21 numbers that were reported in Waste Age Magazine 22 most recently. So from that perspective, in terms 23 of if you assume that this landfill has a waste 24 stream of up to 150,000 tons and you are looking at</p>	<p style="text-align: right;">40</p> <p>1 meeting before you leave, and you will also have 2 the ability to revisit this when you sit as the 3 County Board. 4 As you are well aware, tonight you are 5 sitting as the Site Hearing Committee. So what you 6 do tonight is not final. And so you will have a 7 second chance as you look into the special 8 conditions and you see that they actually are 9 contradictory and you shouldn't have the two, you 10 could decide which one to change at the County 11 Board meeting, which I believe is scheduled right 12 now for May 3rd. 13 MR. MAYER: Thank you. 14 CHAIRMAN WILLIAMS: Merle? 15 MR. WIDMER: I'll make a statement first. 16 I owned a business for 28 years. I was 17 never able to predict my profit for the coming 18 year. 19 The question, Mr. Urich, is how in the world 20 would you ask PDC to project what their profit is 21 when there are so many variables out there? 22 Everything from wages to new equipment, to disaster 23 of some type. Or how could you possibly know what 24 their earnings are going to be and base this on a</p>
<p style="text-align: right;">39</p> <p>1 \$80 roughly, I think is the number that's been laid 2 out there -- you know, I don't have a calculator to 3 run those numbers pretty quick, but that's a 4 sizable revenue stream. And you would be looking 5 at, you know, \$5.00 per ton, that's, you know, 6 about a little over five percent I think of the 7 revenue stream in terms of over the top of that. 8 CHAIRMAN WILLIAMS: Allen, did you have a 9 question? 10 MR. MAYER: I did. It's something of a 11 procedural one for Bill, because my concern with 12 the, with number three as being proposed by Tim is 13 it has a minimum level of waste per year. It's 14 sort of structured that way if it drops below this. 15 When we get to Criteria 1, as people who 16 have attended the meetings know, I have taken a 17 pretty strong interest in that, and if we have 18 conditions on that that might reduce the amount 19 below the volume accepted below this, this wouldn't 20 make sense. Would we be able to go back and amend 21 this so that we don't have conflicting special 22 conditions? 23 MR. ATKINS: You certainly will have the 24 ability to amend any of these conditions at this</p>	<p style="text-align: right;">41</p> <p>1 consistent earning for year after year? I don't 2 understand that at all. 3 MR. URICH: Well, we based it on the 4 Applicant's application, and in terms of -- and 5 their proposal of the 13 cent per ton Perpetual 6 Care Fund that they had proposed to establish, 7 which was proposed based on 150,000 tons of waste 8 coming into this landfill expansion. 9 So as we were plugging numbers into the 10 spread sheet and looking how that might shake out, 11 that's how we ultimately came to the \$1.50 figure. 12 I just did the quick calculations. This 13 would be, if it's -- if the tipping fee is \$80, 14 this is about a 6.25 percent fee over and above on 15 top of that to protect the site into perpetuity. 16 So it's six and a quarter percent. And then there 17 would be the \$1 for the host fee, should the 18 expansion go forward. 19 But I agree with you, I don't know how to 20 project what might happen into the future in a way 21 that would be like that. 22 We just simply used the same calculation of 23 the Applicant in terms of coming to the waste 24 stream numbers and based the revenue into the</p>

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1 Perpetual Care Fund, based upon the projected
2 amount of waste that might be coming in.
3 That's also the reason why we came up with
4 the second special condition about the minimum
5 floor, because there were concerns raised by the
6 opponents that should expansion of C-1 not occur,
7 that you should have a minimum level of
8 contribution into that Perpetual Care Fund. And
9 that's why we proposed that as a second special
10 condition.
11 CHAIRMAN WILLIAMS: Michael?
12 MR. PHELAN: Bill, what protection do we
13 have in the event of bankruptcy or sale of the
14 company?
15 This bothers me, because I would like to
16 remind everybody we are partners in a cemetery that
17 had a Perpetual Care Fund as well.
18 MR. ATKINS: I believe that the way that
19 we have set this up -- and Mr. Brown would actually
20 be able to give you a better answer here because
21 he's actually worked more with the proposal for the
22 Perpetual Care Fund. As I said, Mr. Brown might be
23 able to give you a better answer, but the way that
24 we are setting this up is that the money will not

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1 be under the control of PDC.
2 In other words, the money will be there. So
3 long as PDC is operating, they will be putting the
4 money into the fund. It's not a situation where if
5 they go bankrupt that fund disappears with their
6 bankruptcy.
7 If you have a situation where whatever
8 entity is holding onto the money goes bankrupt or
9 is defunct and they have lost the money, such as
10 the situation they had in Pekin with their
11 landfill, you know, that is potentially a problem.
12 AUDIENCE MEMBER: We can't hear.
13 MR. ATKINS: So we can't -- I don't think
14 that we can provide a situation where we are
15 assured that there will be an entity able to hold
16 the money unless we have the state or the county or
17 some governmental entity that we are relatively
18 sure will be here 50 years or 100 years from now.
19 But with any private entity you always have the
20 situation that they could disappear, regardless of
21 who that entity is.
22 MR. PHELAN: What about the sale of the
23 company?
24 MR. ATKINS: It should not affect this for

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1 the same reason the bankruptcy of the company
2 should not affect it.
3 CHAIRMAN WILLIAMS: Junior?
4 MR. WATKINS: Out of curiosity, has a
5 landfill company ever went bankrupt?
6 MR. URICH: I think as it was reported in
7 the paper this week that IEPA stated that there
8 were several landfills that had gone into
9 bankruptcy. And I think, you know, I'll pass the
10 mic over to Dave to talk about what might be going
11 on in Tazewell.
12 MR. BROWN: Well, that always is a
13 possibility with -- I don't know that it's unique
14 for landfill operators or anybody in the
15 environmental control field. So -- but in general,
16 the Host Agreement states that -- maybe this
17 addresses kind of both the concerns. It states,
18 one, that it's binding on PDC's successors and
19 assignees. So if they ever sell, okay, this, these
20 obligations that are imposed by the Host Agreement
21 would travel with the assets. Okay.
22 The other thing is the Host Agreement says
23 it runs with the land. Which means it's attached
24 to the real estate. So if they sell the real

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1 estate but PDC continues to exist as a corporate
2 entity, the obligations would also go with the
3 operations.
4 That addresses, I think, some of the
5 concerns as to how you get the funding in there.
6 Okay. Because the funding is -- as it's set up
7 right now on the special criteria or special
8 condition, is to be spread out during the period of
9 operation of the proposed expansion. Okay.
10 So what happens after that period of time,
11 once the money is in that escrow account, where PDC
12 goes and what happens is of less of a concern. At
13 least it would be to me, because once the money is
14 in the account, you know, in my mind the question
15 is, you know, what happens if they walk away from
16 the site while it's still operating?
17 CHAIRMAN WILLIAMS: Okay.
18 MR. BROWN: That's where Illinois EPA
19 oversight comes in. And if we have got the
20 Perpetual Care Fund, we have got some oversight as
21 well.
22 CHAIRMAN WILLIAMS: Does that answer your
23 question?
24 MR. WATKINS: Yes.

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1 CHAIRMAN WILLIAMS: Mr. Thomas?
 2 MR. THOMAS: In the listing here it talks
 3 about the facility. The expansion is only part of
 4 it.
 5 Does this facility include the barrel
 6 trench?
 7 MR. BROWN: As these criteria are laid out
 8 here, the way I believe Staff intended them to be,
 9 is when it says "facility," it's the proposed
 10 facility.
 11 MR. THOMAS: Just --
 12 MR. BROWN: That's right. So you know,
 13 there would not be any findings of fact as to
 14 operational accidents, fires or spills at any of
 15 the inactive portions of the larger site.
 16 But now that being said, the proposed
 17 amendment to the Host Agreement expanded the
 18 coverage of the Host Agreement to the entire PDC
 19 property out there, not just the proposed facility.
 20 MR. THOMAS: So the Perpetual Care Fund
 21 covers the barrel trench also?
 22 MR. BROWN: That's correct. That's the
 23 intent.
 24 CHAIRMAN WILLIAMS: Mr. Baietto?

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1 MR. BAIETTO: I know you probably have not
 2 had time to look at the Perpetual Care Fund and the
 3 operation of who is going to take over when PDC and
 4 EPA has released them in their 30 year obligation.
 5 They own the property. I am looking at the
 6 municipal dump which we own and we are the
 7 custodians. Hopefully by our third meeting you
 8 will have some idea how this is all going to come
 9 about. They own the property. Are they void of
 10 any responsibility of what is there? Are we going
 11 to take over as the custodians? And, you know, if
 12 you have got the information, fine, tonight, but if
 13 you don't, that needs to be cleared up.
 14 MR. BROWN: That is a good question.
 15 The regulatory obligations that are imposed
 16 upon PDC would continue on until the Illinois EPA
 17 terminates their post-closure care period.
 18 At that point in time their technical
 19 regulatory obligations would cease, but they would
 20 still continue to own the property.
 21 They would -- as long as they own the
 22 property, they have got some obligations to
 23 maintain it. And under the Perpetual Care Fund,
 24 that squarely places that obligation on them to not

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1 only keep people off of it but to do additional
 2 things.
 3 And they are laid out in the appendix to
 4 that Perpetual Care Fund Escrow Agreement.
 5 So I think I -- I hope that I answered your
 6 question.
 7 While they are in the post-closure care
 8 period, they are still subject to IEPA regulations
 9 and requirements. After that is over -- and it's
 10 not necessarily in 30 years. It can go on beyond
 11 that if IEPA sees anything at the site that gives
 12 them concern, such as continued leachate generation
 13 in any of the waste cells. If there is some sort
 14 of groundwater contamination that is going on, IEPA
 15 can extend that 30 year post-closure care period
 16 out longer than 30 years.
 17 But once the post-closure care period is
 18 terminated, they -- I mean, they would still be the
 19 property owners.
 20 CHAIRMAN WILLIAMS: Tim?
 21 MR. RIGGENBACH: I think this discussion
 22 highlights exactly my concerns and why I feel this
 23 is such a critical element of the conditions here,
 24 because Mr. Phelan made reference to the cemetery

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1 and the situation in Tazewell County. While those
 2 are distinct, and perhaps you could argue
 3 unrelated, that still is something that has
 4 happened.
 5 So I would direct Staff as this is put into
 6 place -- and I almost said fortunately I am not an
 7 attorney, excuse me, Allen -- I am not an attorney,
 8 so I would leave that to those that are to put that
 9 in an ironclad format that this fund would be
 10 secure for the citizens of Peoria County in
 11 perpetuity, because that is obviously the key for a
 12 lot of what we are going to be talking about later,
 13 I believe.
 14 And in reference to Mr. Elsasser's concern
 15 about the aquifer, I think that also gives credence
 16 to the fact, that the critical nature of this fund
 17 itself, because that would allow us to make sure
 18 that the maintenance and that the care is there
 19 beyond the 30 years and beyond 50 years. And we
 20 all have heard great things about the way PDC has
 21 operated this in the past and the character of the
 22 employees and the ownership, and if we could
 23 guarantee them being there in perpetuity, I think
 24 you would all -- it would be different. But we

<p style="text-align: right;">50</p> <p>1 don't know what will happen in 50 years, 100 years. 2 So that's why I think this is a critical component 3 of what we are discussing tonight. 4 CHAIRMAN WILLIAMS: Brian? 5 MR. ELSASSER: I wanted to ask Mr. Atkins 6 a question regarding when could or should we 7 consider, if we have a question regarding the 8 restrictions on transfer, which one of these 9 criteria? Or should I tell you why I am concerned 10 about it? 11 MR. ATKINS: Are you talking about 12 transfer of the ownership of PDC or transfer of 13 this facility or transfer of -- 14 MR. ELSASSER: Regarding page number 82 15 where it talks about restriction on transfer. 16 I'll tell you why I am concerned. 17 The second sentence there -- I mean the 18 first sentence basically says that the County Board 19 would vote, you know, if they are going to sell it 20 or change control and have a transfer of 21 controlling interest. The second sentence -- I 22 mean, you and Allen Mayer I am sure would do much 23 better than myself -- sounds like we have to have 24 all different kinds of reasons or have to come up</p>	<p style="text-align: right;">52</p> <p>1 Board feel is appropriate. I would encourage you 2 to do so. 3 That second sentence that is in there, I 4 inserted that. And the reason for that in -- the 5 reason I inserted that in there was it comes pretty 6 much word-for-word out of the statute on what the 7 County Board can consider as kind of the tenth 8 criteria, the operating history. 9 And my thought on that was that it doesn't 10 restrict the County Board, but my thought on that 11 sentence was that the reason I thought it was 12 important to have it in there was if I am the 13 County Board, I don't want somebody taking over 14 that has a bad operating history. Particularly 15 when we have, you know, heard so much testimony 16 about PDC's good operating history and compliance 17 record. 18 So the statute 39.2 has the 9 criteria, and 19 then after that it says, And the County Board may 20 consider the past operating record and history of 21 compliance. 22 So that is why I included that sentence in 23 there. 24 If we are making that call today, I want to</p>
<p style="text-align: right;">51</p> <p>1 with something to determine, you know, why they 2 can't sell it. 3 And I am not comfortable with that second 4 sentence, because if this would pass, I would -- I 5 hope PDC would be out there running it and not 6 Exxon Mobile. And that is my concern. 7 That second sentence I am not comfortable 8 with at all on page 82 of the Staff report. 9 MR. ATKINS: Are you saying that you want 10 to add that as a special condition, the limitation 11 on transfer as a special condition for this 12 particular criterion? 13 MR. ELSASSER: I am asking which criterion 14 should we consider that under? 15 MR. ATKINS: Well, I think I am going to 16 have to defer to either Patrick or Dave Brown 17 regarding that. They have much greater familiarity 18 with these documents than I do. 19 MR. BROWN: I'll try to answer. 20 The direct question -- and I am going to try 21 to also answer your comments on sentence number 22 two. I think you can address any of the provisions 23 or proposed amendments to the Host Agreement. You 24 can discuss them under any of the criteria you as a</p>	<p style="text-align: right;">53</p> <p>1 be able to make that call again later if they want 2 to transfer an interest in the property. 3 CHAIRMAN WILLIAMS: Does that answer your 4 question? 5 MR. ELSASSER: Yes, for now. 6 I am going to read it again and we could 7 always revisit on May 3rd. 8 CHAIRMAN WILLIAMS: Allen? 9 MR. MAYER: Couple of quick points. 10 One, since Brian raised that, I have 11 always -- in the first sentence it's a 12 reasonableness test. And I would feel a lot more 13 comfortable if it said arbitrary and capricious. I 14 mean, work on the language, but that standard. I 15 think that would match up with -- that's subject to 16 negotiation. It's a nitpick. 17 The other two quick points I wanted to make 18 is, one, if Patrick says, you know, if the 6.25 19 percent is roughly equivalent to the state sales 20 tax, so it seems, you know, not unreasonable an 21 amount. 22 And the second thing, since we talked about 23 the cemetery that I am fairly intimately familiar 24 with, part of the big problem there was the fact</p>

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1 that it escaped regulation for about 30 years. It
 2 got out from under the state and we no longer had
 3 oversight or control of those care funds, which is
 4 the big thing, which would be different in this
 5 case.
 6 CHAIRMAN WILLIAMS: Mr. Joyce?
 7 MR. JOYCE: I just have one question that
 8 Brian kind of brought to mind.
 9 Not wishing any ill will on the Coulter
 10 family, but if they were to sell or divest
 11 themselves of that, would this board have any
 12 control over the purchaser or the --
 13 MR. BROWN: I'll try to address that in
 14 two ways.
 15 One is the amendment to the Host Agreement
 16 that was included in the Staff report, paragraph --
 17 would include a new paragraph, 28 -- addresses if
 18 PDC wants to transfer the facility they would have
 19 to first come to the County Board and get approval
 20 of whoever they are going to be transferring it to.
 21 Okay.
 22 The other side of that is that if they do
 23 transfer it, these obligations go with the -- to
 24 the transferee.

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1 CHAIRMAN WILLIAMS: Pat, you made the
 2 motion to accept this as amended?
 3 MS. HIDDEN: Yes.
 4 MR. RIGGENBACH: Second.
 5 CHAIRMAN WILLIAMS: Tim, you were the
 6 second.
 7 Any other questions?
 8 MR. BAIETTO: My question is around my
 9 \$5.00 and the -- you have recommended \$1.50. And I
 10 am not comfortable. Maybe \$1.50 is not enough and
 11 maybe \$5.00 is too much, and maybe \$100 is not
 12 enough. But I don't have enough facts sitting in
 13 front of me, and I know this hasn't been presented
 14 to PDC, as Merle alluded to, in relationship to
 15 what is fair. Maybe it isn't fair, but I am
 16 uncomfortable with tonight, after we have had this
 17 for two weeks and have looked at it, and assuming
 18 you did your research and that cost would be
 19 adequate for maybe not a major catastrophe, but now
 20 we have attached on as to whether we want to pass
 21 this whole Criterion 5 based on that, and I am not
 22 comfortable with it.
 23 MR. WATKINS: My question was -- I think
 24 after I had asked you a question and when I got

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1 through you were talking to somebody else -- did I
 2 hear you say something about contaminated water?
 3 CHAIRMAN WILLIAMS: Mr. Brown?
 4 MR. BROWN: I think my comment was if
 5 there is in the future, then you know -- I'm not
 6 sure. I mean, we can have the court reporter read
 7 it back, but I am not sure exactly in which
 8 question and answer that was related to.
 9 MR. WATKINS: I thought you said something
 10 about contaminated water. That's why I was asking
 11 again so I could get a better clarification.
 12 MR. BROWN: I don't know if it's possible
 13 -- it will take her a little while to go back and
 14 find that conversation, but if you want her to go
 15 back, she can go back and read it back. Because I
 16 apologize, I don't recall exactly what question I
 17 would have said that in reference to.
 18 MR. WATKINS: If it's in there, could it
 19 be in for the next meeting?
 20 MR. BROWN: Sure.
 21 CHAIRMAN WILLIAMS: Mr. Thomas?
 22 MR. THOMAS: Just in support of Tim's idea
 23 here, let me just ask a question I asked several
 24 meetings ago. And one of the criteria for the

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1 Peoria County's Perpetual Care Fund is replacing
 2 the domestic water supply. And I asked at the
 3 time -- and I don't remember if I got a
 4 satisfactory answer -- how do you do that?
 5 That is a lot of bottled water.
 6 CHAIRMAN WILLIAMS: Who are you directing
 7 the question to?
 8 MR. THOMAS: To the Staff.
 9 CHAIRMAN WILLIAMS: Mr. Brown or whoever
 10 handles this area?
 11 MR. BROWN: Let me make sure I understand
 12 the question.
 13 The question was if there is groundwater
 14 contamination, what do you do?
 15 MR. THOMAS: Yes. How do you replace it?
 16 It's listed here under the time line, it
 17 says replacing domestic water supply as one of the
 18 things that the Perpetual Care Fund would be
 19 charged with.
 20 MR. BROWN: My experience is that most of
 21 the time that is to provide an alternative to a
 22 contaminated well.
 23 There are some private wells that are
 24 between the facility and the public drinking water

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<p style="text-align: right;">58</p> <p>1 wells that are, you know, quite a ways away from 2 the facility. So I have seen it at other sites, 3 not necessarily -- I am not saying there is 4 contamination here. But what I am saying is 5 assuming you have got a contaminated well, 6 typically you close that well and you -- whoever is 7 responsible for the contamination provides them an 8 alternative source of drinking water.</p> <p>9 MR. THOMAS: Again, because we are talking 10 about a couple of different things -- there is more 11 than just the expansion area that is out there. 12 And is this Perpetual Care Fund going to cover 13 contaminations that can be attributed to the other 14 parts? In fact, the other landfill part that isn't 15 even hazardous waste and, of course, the barrel 16 trench and the other places?</p> <p>17 MR. BROWN: Yes.</p> <p>18 MR. THOMAS: Thank you.</p> <p>19 CHAIRMAN WILLIAMS: Junior?</p> <p>20 MR. WATKINS: Since you are a lawyer, is 21 anybody here from the health department that maybe 22 they can enlighten us?</p> <p>23 MR. CAVI: As far as replacing the water 24 supply, is that what you are talking about?</p>	<p style="text-align: right;">60</p> <p>1 system, for which the government paid all of the 2 expansion. The homeowner did not have to pay.</p> <p>3 MR. WATKINS: State or Federal?</p> <p>4 MS. KENNEDY: State.</p> <p>5 CHAIRMAN WILLIAMS: Brian?</p> <p>6 MR. ELSASSER: Mr. Atkins, did you say we 7 could reconsider any of these findings in May? Is 8 that right?</p> <p>9 The reason I ask that is because I am just 10 uncomfortable voting on this \$5 a ton tonight. 11 Because like I said, this wouldn't replace the 12 domestic water supply if there was ever a major 13 breach. I don't like to vote when I feel 14 uncomfortable.</p> <p>15 MR. ATKINS: With regards to any decision 16 made tonight, it is simply a recommendation. You 17 are not finally deciding any issues tonight, so 18 anything that you decide tonight can be revisited.</p> <p>19 In fact, it will be necessary in May for you 20 to review everything that you have done. You might 21 not take a vote on each separate condition again 22 but you will be reviewing everything that you have 23 decided tonight at the May meeting.</p> <p>24 CHAIRMAN WILLIAMS: Any more questions?</p>
<p style="text-align: right;">59</p> <p>1 The only alternative I am aware of -- I know 2 there is public water supply that could be run out, 3 which would be an alternative, or hauled water. 4 Otherwise, I really don't have any other 5 explanation.</p> <p>6 CHAIRMAN WILLIAMS: Any more questions?</p> <p>7 MS. KENNEDY: Dave, in answer to that, we 8 actually had a situation about 18 or 20 years ago 9 on Farmington Road on a street that had several 10 residences with private wells, and those wells were 11 contaminated by a locally owned company that also 12 sat along Farmington Road. And I worked with those 13 people to get the EPA to come in and do all of the 14 testing and that. And when it was determined that 15 their wells had been contaminated and what it was 16 and all of that, I wasn't real happy with the 17 responses that I got from the EPA in the way of 18 jumping right on this. But once that was 19 determined, they did pay for all of those 20 residences to have bottled water for drinking and 21 huge storage tanks full of water for bathing, 22 whatever else they needed to do, for a period of 23 about eight or nine months until those people could 24 then be connected to the Pleasant Valley Water</p>	<p style="text-align: right;">61</p> <p>1 MR. THOMAS: Procedurally here, did we 2 ever get a second on Tim's motion?</p> <p>3 CHAIRMAN WILLIAMS: It was Pat's motion 4 and Tim was the second.</p> <p>5 MR. THOMAS: The amendment is on the 6 floor?</p> <p>7 CHAIRMAN WILLIAMS: Yes, as amended with 8 special conditions, Criterion 5.</p> <p>9 MR. ATKINS: I think to clarify what we 10 are doing here, if the maker of the motion and the 11 second would agree to include all of the amendments 12 discussed as part of the motion, then I think that 13 as a matter of parliamentary procedure we wouldn't 14 have to vote on the amendments, we could simply 15 vote on the motion.</p> <p>16 You are both shaking your head, so I am 17 going to ask the Chairman to recognize that you are 18 amending your motion. You are including, rather, 19 all of the amendments discussed in your motion.</p> <p>20 CHAIRMAN WILLIAMS: I am glad you didn't 21 put words in my mouth.</p> <p>22 Brian, go ahead.</p> <p>23 MR. ELSASSER: If someone wanted to vote 24 against the amendment though and vote for the</p>

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1 Number 5 criterion, that wouldn't be possible,
 2 right?
 3 MR. ATKINS: Right.
 4 CHAIRMAN WILLIAMS: Okay. Madam Clerk,
 5 roll call.
 6 COUNTY CLERK THOMAS: Baietto?
 7 MR. BAIETTO: Before I vote, I want the
 8 record to show that I want this revisited at the
 9 May meeting in relationship to some more accurate
 10 figures.
 11 Aye.
 12 COUNTY CLERK THOMAS: Elsasser?
 13 MR. ELSASSER: Aye.
 14 COUNTY CLERK THOMAS: Hidden?
 15 MS. HIDDEN: Yes.
 16 COUNTY CLERK THOMAS: Joyce?
 17 MR. JOYCE: Aye.
 18 COUNTY CLERK THOMAS: Kennedy?
 19 MS. KENNEDY: Aye.
 20 COUNTY CLERK THOMAS: Mayer?
 21 MR. MAYER: Aye.
 22 COUNTY CLERK THOMAS: O'Neill?
 23 MR. O'NEILL: Aye.
 24 COUNTY CLERK THOMAS: Pearson?

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1 MS. PEARSON: Aye, and ditto Bob.
 2 COUNTY CLERK THOMAS: Phelan?
 3 MR. PHELAN: Aye.
 4 COUNTY CLERK THOMAS: Prather?
 5 MR. PRATHER: Aye.
 6 COUNTY CLERK THOMAS: Riggenschach?
 7 MR. RIGGENBACH: Aye.
 8 COUNTY CLERK THOMAS: Salzer?
 9 MR. SALZER: Aye.
 10 COUNTY CLERK THOMAS: Thomas?
 11 MR. THOMAS: Aye.
 12 COUNTY CLERK THOMAS: Trumpe?
 13 MS. TRUMPE: Aye.
 14 COUNTY CLERK THOMAS: Watkins?
 15 MR. WATKINS: Aye.
 16 COUNTY CLERK THOMAS: Widmer?
 17 MR. WIDMER: Aye.
 18 COUNTY CLERK THOMAS: Williams?
 19 CHAIRMAN WILLIAMS: Yes.
 20 COUNTY CLERK THOMAS: The vote is 17 ayes.
 21 CHAIRMAN WILLIAMS: Thank you. Criterion
 22 4.
 23 COUNTY CLERK THOMAS: Criterion 4 reads:
 24 The proposed facility is located outside the 100

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1 year floodplain.
 2 CHAIRMAN WILLIAMS: Any discussion?
 3 Mr. Prather?
 4 MR. PRATHER: Move for approval.
 5 MR. JOYCE: Second.
 6 CHAIRMAN WILLIAMS: Second by Mr. Joyce.
 7 Any questions? No special conditions in this
 8 one.
 9 Roll call, Madam Clerk.
 10 COUNTY CLERK THOMAS: Baietto?
 11 MR. BAIETTO: Aye.
 12 COUNTY CLERK THOMAS: Elsasser?
 13 MR. ELSASSER: Aye.
 14 COUNTY CLERK THOMAS: Hidden?
 15 MS. HIDDEN: Aye.
 16 COUNTY CLERK THOMAS: Joyce?
 17 MR. JOYCE: Aye.
 18 COUNTY CLERK THOMAS: Kennedy?
 19 MS. KENNEDY: Aye.
 20 COUNTY CLERK THOMAS: Mayer?
 21 MR. MAYER: Aye.
 22 COUNTY CLERK THOMAS: O'Neill?
 23 MR. O'NEILL: Aye.
 24 COUNTY CLERK THOMAS: Pearson?

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1 MS. PEARSON: Aye.
 2 COUNTY CLERK THOMAS: Phelan?
 3 MR. PHELAN: Aye.
 4 COUNTY CLERK THOMAS: Prather?
 5 MR. PRATHER: Aye.
 6 COUNTY CLERK THOMAS: Riggenschach?
 7 MR. RIGGENBACH: Aye.
 8 COUNTY CLERK THOMAS: Salzer?
 9 MR. SALZER: Aye.
 10 COUNTY CLERK THOMAS: Thomas?
 11 MR. THOMAS: Aye.
 12 COUNTY CLERK THOMAS: Trumpe?
 13 MS. TRUMPE: Aye
 14 COUNTY CLERK THOMAS: Watkins?
 15 MR. WATKINS: Aye.
 16 COUNTY CLERK THOMAS: Widmer?
 17 MR. WIDMER: Aye.
 18 COUNTY CLERK THOMAS: Williams?
 19 CHAIRMAN WILLIAMS: Yes.
 20 COUNTY CLERK THOMAS: The vote is 17 ayes.
 21 CHAIRMAN WILLIAMS: Thank you.
 22 Criterion Number 3.
 23 COUNTY CLERK THOMAS: Criterion 3, the
 24 proposed facility is located so as to minimize

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Criterion 5

The plan of operations for the facility is designed to minimize the danger to the surrounding areas from fire, spills, and other operations accidents, if certain special conditions are met.

- Applicant presented expert reports and testimony concerning its plan of operations and its fire, spill, and operational accident plans;
- The plans set forth details of hours of operation, waste screening and acceptance procedures, waste handling procedures, daily waste placement and cover operations, leachate management, air quality controls, dust managements, mud tracking, noise control, access control, hazard prevent and emergency response plans;
- The testimony and documents submitted by Applicant demonstrate it is fully in compliance with its regulatory requirements for financial assurance for closure and post-closure care, and in fact has more funding in its trust than is presently required by IEPA;
- The testimony and documents submitted both in support of and against the application suggest that long term care and maintenance of the facility is necessary to fully and adequately protect the public health, safety and welfare;
- The County ordinance requires the applicant to present calculations of perpetual care costs for the proposed facility;
- The Applicant presented perpetual care cost estimates during the public hearing, and offered to implement and fund a perpetual care fund for the proposed expansion as well as inactive waste management areas of the larger facility;
- Applicant's plans do not adequately provide for the perpetual care of the facility after the termination of the post-closure care period;
- Applicant's plans do not adequately provide for the proper removal of leachate from the leachate manholes;
- Applicant's plans do not adequately provide for the monitoring of stormwater discharges to make sure stormwater has not come into contact with either the waste and/or leachate;
- Questions and concerns were raised about coordination with fire departments and emergency service providers, and the proximity to schools;
- There was no evidence presented which demonstrated Applicant's plans for fires, spills or accidents were insufficient;

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APR 27 2006

JOANN THOMAS
PEORIA COUNTY CLERK

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FILED

APR 27 2006

JOANN THOMAS
PEORIA COUNTY CLERK

- There was no evidence presented which demonstrated there was a lack of coordination with local fire departments and emergency service providers;
- There was no evidence presented which demonstrated there was any risk to schools from potential fires, spills, or accidents at the facility;
- The facility is located close to residential houses, and a fire, spill or other operations accidents, could present a danger for residents.

Special Conditions - Criterion 5:

1. Leachate will be automatically removed from all leachate manholes to maintain a *minimal risk* of leachate on the manhole liner. This is intended to minimize risk of leachate leakage through liner components.
2. The south stormwater detention basin shall be tested on a schedule identical to the existing permit requirements for groundwater monitoring wells and for the following indicator constituents: TDS (total dissolved solids), chloride, calcium, bromide, sulfate, and sodium. Although stormwater typically has less stringent water quality parameters, the records shall be kept and analyzed to verify that trends do not increase to levels of concern that would indicate leachate has been accidentally released to stormwater as long as the active landfill operations occur. PDC shall notify the County of any statistically significant upward trend in stormwater concentrations.
3. Effective upon PDC's receipt of a permit from Illinois EPA to operate the proposed expanded landfill, PDC shall pay additional sums into a perpetual care fund, on at least a quarterly basis equal to \$5.00 per ton of the Expanded Volume of Waste deposited in the PDC Landfill, but if the volume of waste disposed of at the landfill facility in any calendar year is less than 150,000 tons, PDC shall pay into the fund a minimum of \$750,000 for 15 years. Said payments shall be calculated based upon the same information and figures used to calculate the Host Benefit Fee pursuant to Section 9 of the Host Community Agreement, and shall be subject to the same documentation and verification requirement of the Host Benefit Fee. Said Perpetual Care Fund shall be used exclusively for the care and maintenance of the entire PDC site after the period of post-closure care for the expanded landfill has been terminated by IEPA.

AFFIDAVIT OF SERVICE

The undersigned, a non-attorney, being first duly sworn upon oath, states that a copy of the foregoing Motion for Partial Summary Judgment of Petitioner, Peoria Disposal Company, was served upon the following persons via **facsimile transmission** and by enclosing a copy of same in separate envelopes, addressed as follows, and depositing said envelopes in a U.S. Postal Service mail box at Ottawa, Illinois, on the _____ day of August, 2006, before 5:00 p.m., with all fees thereon fully prepaid and addressed as follows:

Illinois Pollution Control Board
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601
(312) 814-3620 - Telephone
(312) 814-3669 - Facsimile

Ms. Carol Webb, Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
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Legal Assistant

Subscribed and sworn to before me, a Notary Public, in the County and State as aforesaid, this _____ day of _____, 2006.

Notary Public

George Mueller
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEORIA DISPOSAL COMPANY,)	
)	
Petitioner,)	
)	
v.)	(Pollution Control Facility Siting Appeal)
)	
PEORIA COUNTY BOARD,)	
)	
Respondent.)	

CERTIFICATE OF SERVICE

PLEASE TAKE NOTICE THAT on the 8th day of September, 2006, Brian J. Meginnes, one of the attorneys for Petitioner, Peoria Disposal Company, forwarded to the following persons, a copy of the Motion for Partial Summary Judgment and Memorandum of Law In Support of Motion for Partial Summary Judgment, as well as a copy hereof, by depositing the same in a mailbox in Ottawa, Illinois, addressed as follows and with proper first-class postage affixed thereon:

Respectfully submitted,
PEORIA DISPOSAL COMPANY

BY: _____
GEORGE MUELLER,
One of its attorneys

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GEORGE MUELLER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEORIA DISPOSAL COMPANY,)	
)	
Petitioner,)	
)	
v.)	(Pollution Control Facility Siting Appeal)
)	
PEORIA COUNTY BOARD,)	
)	
Respondent.)	

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