

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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OCT 05 2006

STATE OF ILLINOIS
Pollution Control Board

PEORIA DISPOSAL COMPANY

Petitioner,

v.

PEORIA COUNTY BOARD,

Respondent.

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PCB 06-184

(Pollution Control Facility Siting
Appeal)

**RESPONSE TO MOTION FOR PARTIAL
SUMMARY JUDGMENT (Criterion v)**

NOW COMES Respondent, Peoria County Board, (hereinafter the "County Board") by its attorneys, and as and for its Response in opposition to Petitioner's Motion for Partial Summary Judgment (Criterion v), states as follows:

1. Paragraphs 1 through 9 of Petitioner's Motion for Partial Summary Judgment are superfluous and require no response in light of Paragraph 10's statements.

2. Respondent knows full well that the County Board, in formal action, during a properly scheduled and noticed official meeting of the County Board on May 3, 2006, voted to deny PDC's application for local siting approval pursuant to detailed findings of fact which were adopted after the vote.

3. Pursuant to the County Board's detailed findings of fact on Criterion v, it is clear PDC did not unconditionally satisfy Criterion v.

4. The Perpetual Care Fund to which PDC's motion is directed was voluntarily introduced into and proposed during the proceedings before the County Board by PDC and its representatives.

5. If PDC had, or could, unconditionally meet its evidentiary obligations during the proceedings, there would have been no need for PDC to voluntarily offer the Perpetual Care Fund and its associated per ton fee as part of its presentation.

6. While PDC did not specifically agree to the \$5.00 per ton charge eventually approved by the County Board, its initial proposal was \$0.13 per ton and prior to the County Board's vote had stated to the media, in an apparent attempt to sway the County Board's vote, that it would agree to the \$1.50 per ton recommended by County Staff, and later PDC proposed an annual fee of \$281,250 per year over 12 years.

7. To the extent a local siting authority is prohibited from imposing additional fees or financial assurance requires, or care obligations beyond those imposed by Illinois EPA's closure and post-closure care regulations, PDC waived any and all such prohibitions or limitations by voluntarily proposing and agreeing to a special condition creating the Perpetual Care Fund.

8. There was sufficient evidence in the record for the Peoria County Board to find that PDC had not satisfied Criterion v without the imposition of special conditions, and in particular, the imposition of the Perpetual Care Fund and attendant per ton fee.

9. The Peoria County Board's decision was not against the manifest weight of the evidence.

WHEREFORE, Respondent, the Peoria County Board, respectfully prays that this Board deny Petitioner's motion for Partial Summary Judgment.

Respectfully submitted,
PEORIA COUNTY BOARD

By 

David A. Brown
One of its attorneys

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PEORIA DISPOSAL COMPANY

STATE OF ILLINOIS
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Petitioner,

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(Pollution Control Facility Siting

Appeal)

PEORIA COUNTY BOARD,

Respondent.

**MEMORANDUM OF FACTS AND LAW
IN SUPPORT OF RESPONSE TO MOTION
FOR PARTIAL SUMMARY JUDGMENT (Criterion v)**

NOW COMES Respondent, Peoria County Board, (hereinafter "County Board") by and through its attorneys, and as and for its Memorandum in support of its Response to Petitioner's Motion for Partial Summary Judgment on siting Criterion v, states as follows:

INTRODUCTION

According to the opening paragraph of PDC's Motion for Partial Summary Judgment concerning Criterion v, the Motion relates solely to the imposition of the \$5.00 per ton (\$750,000 minimum per year) fee based upon the argument it was against the manifest weight of the evidence. PDC then goes on to make a number of additional arguments concerning why it should not have to pay any fee for perpetual care of the facility. As will be demonstrated herein, the imposition of the special condition was not against the manifest weight of the evidence, and while the \$5.00 per ton (\$750,000 minimum per year) fee was not specifically agreed to by PDC, the "Perpetual Care Fund" was initially proposed by PDC as a special condition during the proceedings, and a per ton fee of \$1.50 (\$225,000 minimum per year) was agreed to by PDC. Subsequently, on April 27, 2006, PDC filed with the County Clerk a "Response to Committee of the Whole Vote" in which it offered to "pay \$281,250 per year over 12 years in twelve annual

installments” into the Perpetual Care Fund. See, “Response to Committee of the Whole Vote (PDC)” (C12461-13522). As such, most, if not all, of PDC’s arguments in its motion should be deemed to have been waived or PDC should be estopped from making them, and the motion should be denied.

While the Board would never know it from PDC’s motion or memorandum of law, the Perpetual Care Fund was first inserted into the proceedings by PDC, not by the County or any other person or participant in the hearings. Why PDC offered to voluntarily create a Perpetual Care Fund and contribute a per ton or annual fee into the fund is readily apparent from the record of the proceedings. During the course of the proceedings, one of the primary arguments and/or concerns raised by opponents and concerned citizens related to the longevity of the hazardous constituents in the wastes PDC was proposing to deposit into an expanded landfill.

The application asked for the siting of a hazardous waste landfill to accept many different types, and large volumes, of wastes consisting largely of heavy metals. As stated by PDC’s own expert during testimony at the hearings, those heavy metals are stable and would be around for another millennia or more. See, Dr. Daniels testimony on February 23, 2006, at page 105 (C7483). In other words, those same hazardous components of the waste that require the waste to be listed as hazardous and to be handled and disposed of in specially designed landfills, would persist for hundreds if not thousands of years after the post-closure care period had expired. However, the plans presented in PDC’s application only provided for care and maintenance of the landfill for 30 years after it closed. Therefore, a very real and serious concern was evolving during the proceedings as to whether the plans of operation in PDC’s application for expansion, in fact, were protective of the health, safety and welfare of the public and the environment.

Furthermore, Peoria County’s siting ordinance requires that all siting applications include planning information for perpetual care of the proposed facility. Peoria County Code at 7.5-38(e), (Exhibit “A” hereto). It is important to note the County’s ordinance does not require an applicant to pay for or set up a program for funding the perpetual care of the facility. Rather, it only requires that plans be included in the application. One purpose of such a provision would be to allow the siting authority to fully understand and

evaluate the proposed plans for the facility, and the potential long-term financial impact on the community after the landfill is closed. PDC spent a significant amount of time during the hearings discussing the economic benefits the community might enjoy if the landfill expansion were approved. However, neither the application nor PDC's presentation provided any information about any costs to the community if the expansion were approved. The County's ordinance requiring information provides that balance of information. Another purpose of the ordinance would be to evaluate the applicant's previous operating experience and ability to manage the proposed facility. PDC's application failed to contain any information relating to the planning for long-term care and maintenance of the facility beyond the regulatory post-closure care.

In an apparent last minute attempt to comply with the County's ordinance and to address the public's growing concerns about what would happen with the landfill after the 30 year post-closure care period ends, on February 27, 2006, on the record during the course of the public hearing on its application, PDC voluntarily offered the Perpetual Care Fund as a special condition. Counsel for PDC stated as follows:

“Mr. Meginnis: I think it would be our 8th proposed voluntary condition by Peoria Disposal Company. But basically based upon some of the testimony and public comments regarding the question of what will happen – I guess it's really 48 years and one day from today, which is the period of time that we would complete our operations at the facility and the 30 year post closure period would expire – what would happen at the facility and what provisions were made, assuming the Illinois EPA released a closure fund to continue certain maintenance and other activities at the facility.

The more we thought about it, we thought that the concern should be addressed. So what we are willing to – what we are proposing as a voluntary condition is that a Perpetual Care Fund be established. And it would be funded by a charge upon a per ton fee on the future disposal at the facility. And that money will be set aside ... [and] would provide funds for perpetual care.
[...]

So we think that goes a long way towards addressing everybody's concern in terms of the long-term care of that facility, in providing funds available to take care of those costs. “

Hearing Transcript from February 27, 2006, Public Hearing, pp 6-8 (C7778).

During the thirty (30) day public comment period following the public hearing, significant amounts of information was provided into the public record for consideration

by the County Board. Part of that documentation included submittals by Dr. G. Fred Lee, an apparent expert in the area of landfill design, maintenance and monitoring. Part of the materials submitted by Dr. Lee included extensive discussions and information about the need for long-term, or perpetual, care of the facility. See Dr. G. Fred Lee Comments on Potential Impacts of the Peoria Disposal Company Landfill Expansion on Public Health, Groundwater Quality and the Environment (C11964-11997).

After the close of the public comment period, Peoria County Staff presented its reports to the subcommittee responsible for holding the public hearings. See, Peoria County Staff Report for Peoria Disposal Company Application for Local Siting Approval (C12093-C12198), and the Supplemental Peoria County Staff Report for Peoria Disposal Company Application for Local Siting Approval (Exhibit “B” hereto). In the Staff Reports, County Staff recommended increasing the per ton fee from \$0.13 per ton, to \$1.50 per ton, with a minimum of \$225,000 per year to be placed into the fund. The reason for County Staff’s recommendation relating to the increased funding is detailed in the Staff Report, and is based upon the projected rates of inflation and rates of return over the course of the proposed fund. PDC stated that it would accept the special conditions proposed in the Staff Reports. See, April 4, 2006, Peoria Journal Star article (Exhibit “C” hereto). In addition, on April 21, 2006, almost a month after the close of the public comment period, PDC took matters one step further, and, as mentioned above, offered to “pay \$281,250 per year over 12 years in twelve annual installments” into its proposed Perpetual Care Fund.

By voluntarily proposing the Perpetual Care Fund to address “testimony” and “public comments” PDC should be deemed to have waived all of the allegations and/or arguments contained in its motion. As demonstrated by PDC counsel’s statement on the record, the reason PDC voluntarily proposed the Perpetual Care Fund condition was the presence of significant testimony and evidence in the record on which the County Board could, and eventually did, conclude PDC’s plans of operation were insufficient, in part, because they failed to take into account the long-term care of the proposed facility. For those reasons, PDC’s motion must be denied.

ARGUMENT

A. PDC Voluntarily Offered Paying Additional Fees as Condition to Approval and Thereby Waived its Arguments.

One, if not the most prominent, of PDC's arguments is that the County lacks the power to impose a fee as a condition for siting approval. In support of its argument, PDC cites the Lake County v. Illinois Pollution Control Board, 120 Ill.App.3d 89 (2nd Dist. 1983). In that case, the local siting authority attempted to unilaterally impose a \$3 million bond requirement on the applicant for post-closure care related to the acceptance of special wastes. The Appellate Court held that the siting authority did not have the express authority to impose a financial responsibility obligation as a special condition to siting approval. It should be noted that the bond in that case was directly related to post-closure care, an area which IEPA already regulates, and for which the applicant would already have to meet regulatory financial assurance obligations. In no way did the Appellate Court state that any and all financial responsibility obligations voluntarily proposed by an applicant as a special condition to siting and accepted by the siting authority, during the course of the application review process would be improper or beyond the authority of the siting authority.

By voluntarily proposing the special condition, PDC effectively waived, or should be estopped from contesting, any limitation on authority to impose the perpetual care fund and a per ton fee. Waiver is a common principal which typically precludes a party from raising on appeal an argument it failed to raise in the original proceedings. See, Fairview Area Citizens Taskforce v. PCB, 198 Ill.App.3d 541, 545, 55 N.E.2d 1178, 1180-81 (3rd Dist. 1990). Not only did PDC fail to object to the Perpetual Care Fund special condition and the imposition of a per ton fee to fund it, PDC was the one that initially introduced the concepts into the proceedings. Any other conclusion other than PDC waived its present argument would allow an applicant, such as PDC did in this case, to volunteer a special condition and then after the siting authority acted on the application in reliance on the voluntary special condition, seek to eliminate the condition as part of an appeal.

Allowing an applicant to play such "games" would significantly undermine the integrity of the local siting process and result in insurmountable prejudice to the local

siting authority and all other participants in the siting process. Once a voluntary condition is offered by the applicant, both the siting authority and any opponents or concerned citizens reasonably assume any issues resolved by the voluntary special condition(s) no longer need to be addressed. As a result, the local siting authority would not need to make special findings of fact or impose any additional special conditions for the issue resolved, or proposed to be resolved, by the voluntarily proposed special condition. Likewise, any opponents would reasonable assume the issue addressed by the voluntarily proposed special condition no longer needs to be addressed, and would likely cease asking questions about that issue or stop presenting evidence concerning the issue.

Another of PDC's arguments is that somehow PDC's voluntarily proposed special condition "usurps" Illinois EPA authority. According to PDC's argument, Illinois EPA has exclusive responsibility for establishing requirements relating to post-closure care, that it is already required to post financial assurance for its post-closure care obligations, and as a result the County cannot require PDC to create a fund for care and maintenance of the facility after the post-closure care period established by IEPA. As clearly demonstrated at the hearings, the regulatory scheme for hazardous waste landfills fails to make any provision for maintenance and care of a facility after the mandatory 30 year post-closure care period. However, the heavy metal wastes which PDC has disposed of at the facility, and proposed to dispose of at the expanded facility, by the testimony of their own expert, Dr. Daniels, will persist for thousands of years. It is hard to imagine how it can be said IEPA has such an extensive regulatory scheme as to preempt all other regulation of what can and should be done with hazardous waste landfills after the close of the regulatory 30 year post-closure care when IEPA has done nothing in that area.

Furthermore, the siting statute authorizes local siting authorities to impose special conditions on siting approval so long as the conditions are not inconsistent with IEPA's regulatory scheme. The Perpetual Care Fund, the per ton fee, and the associated "escrow agreement" voluntarily proposed by PDC at the public hearings, are not inconsistent with IEPA's regulatory scheme. PDC's proposal called for a program whereby the perpetual care would not start until after the end of the regulatory post-closure care period. Therefore, the timing of the care and the use of the funds would not overlap with or conflict with IEPA's closure and/or post-closure care requirements. Likewise, the

voluntarily proposed special condition was not in lieu of, or in replacement of some IEPA requirement, rather it was offered as a supplement to the regulatory scheme.

It cannot be emphasized enough that the concept of a Perpetual Care Fund and associated fees comes from PDC. According to PDC's attorney, the reason they were offering the perpetual care fund was to address "evidence" and "concerns" which were coming out during the public hearing. As a result, PDC should be deemed to have waived, or be estopped from presenting, its arguments concerning usurping agency authority and/or authority of the County Board to impose an additional fee. In no event should PDC be allowed to now withdraw its voluntary proposal create the Perpetual Care Fund and associated fees.

B. Fee Condition Voluntarily Proposed by Applicant is Not an Attempt By County to Require Demonstration of Financial Responsibility

PDC argues that even if the County can impose fees as part of the siting process, it cannot delve into the area of financial responsibility. In support of its argument, once again PDC sites to the Lake County v. Illinois Pollution Control Board decision. As more fully discussed above, that decision is not controlling because it did not deal with special conditions voluntarily imposed by the applicant.

As is clear from the proceedings, the issue of long-term care and maintenance of the facility was not viewed as part of PDC's financial assurance obligations. PDC's financial assurance information is contained in section 2.7.7 of its application which purportedly deals with criterion ii. When the County Board dealt with the concept of long-term care of the facility, it did not view it as part of financial responsibility, but instead placed it rightfully in the context of a plan of operations under Criterion v. PDC's own witness, Ron Edwards, said during cross examination, that PDC would still have to "manage the property" after the post closure care period ended. Hearing Transcript from February 22, 2006, Public Hearing, at p. 159 (C7399). Dr. Daniels testified that the maintenance and monitoring of the facility was extremely important. Hearing Transcript from February 23, 2006, Public Hearing, at pp. 84-85 (C7478). He also said "[t]here is no change in importance of monitoring over time." *Id.*, (7468, 7478).

The application contained no information or plan of operation for how the property would be managed after the regulatory period ended, until PDC volunteered the concept of perpetual care, and provided the County Board with a list of the types of activities which would take place and estimates of the costs. There is little or no dispute that after the post-closure care period ends, PDC would still be responsible for the maintenance and care of the property, assuming PDC still owns the property. The concept of perpetual care and the perpetual care fund goes directly to, as PDC's Ron Edwards said, the "management" of the property, and not the financial assurance obligations for closure and post-closure care. As stated in PDC's "Response to Committee of the Whole Vote":

"... PDC and the County Staff propose a perpetual care fund which will significantly impact the natural processes described above. From a functional perspective, the two most important aspect of the perpetual care fund are the continued removal of leachate and ongoing maintenance of the final cover. The continued removal of leachate means there is nothing to escape from the site. The ongoing maintenance of the final cover is, however, even more important. That final cover guarantees that the waste will remain dry. ... Because a final cover system is at the ground surface and readily accessible for maintenance and repair, the only limitation on maintaining the integrity of a final cover system is the availability of funds with which to pay for the ongoing maintenance and repair. The perpetual care fund proposed at this site remove the limitation permanently"

Response to Committee of the Whole Vote (C13475-13476).

Even if the Board were to accept PDC's argument that the perpetual care fund voluntarily proposed by PDC is some form of financial assurance, the Board should find that PDC has waived that argument, or should be estopped from arguing it. For PDC to argue now that the County Board should not have considered financial responsibility is disingenuous. In the proceedings before the County Board, PDC regularly brought up the issue of financial responsibility. PDC included a section in its application that deals specifically and exclusively with financial responsibility. See section 2.7.7. PDC's witnesses discussed financial responsibility during direct testimony. Hearing Transcripts, February 21, 2006, Public Hearing, Testimony of George Armstrong p.228-229 (C7324) ; Hearing Transcripts, February 22, 2006, Public Hearing, Testimony of George Armstrong p. 12 at line 20 (C7362). If the local siting authority was not permitted to even consider

financial responsibility, why would the applicant include such information in its application and have its witnesses spend time discussing it during their case in chief. PDC encouraged the County Board to consider financial assurance, and should not be allowed now to argue that a special condition which PDC itself proposed is some type of financial assurance which the County Board could not consider.

C. There Were and Are Material Issues of Fact as to Whether PDC Satisfied Criterion v

According to Pollution Control Board Rules, if the record, including pleadings, depositions and admissions on file, together with affidavits, show 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. Title 35, Subtitle A, Chapter I, Section 101.516. According to prior Board decisions:

“When reviewing a local decision on the nine statutory criteria, this Board must determine whether the local decision is against the manifest weight of the evidence. [citations omitted] 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. [citation omitted].

This Board, on review, may not reweigh the evidence on the nine criteria. Where there is conflicting evidence, the Board is not free to reverse merely because the lower tribunal credits one group of witnesses and does not credit the other. Fairview Area Citizens Taskforce v. PCB, 198 Ill.App.3d 541, 550, 555 N.E.2d 1178, 1184 (3rd Dist. 1990); Tate v. PCB, 188 Ill.App.3d 994, 1022, 544 N.E.2d 1176, 1195 (4th Dist. 1989); Waste Management of Illinois, Inc. v. PCB, 187 Ill.App.3d 79, 82, 543 N.E.2d 505, 507 (2nd Dist. 1989). Because the local government could have drawn different inferences and conclusions from conflicting testimony is not a basis for this Board to reverse the local government’s findings. File v. D & L. Landfill, Inc., PCB 90-94 (Aug. 30, 1990), aff’d, 219 Ill.App.3d 897, 579 N.E. 1228 (5th Dist. 1991).”

Rochelle Waste Disposal, L.L.C. v. City Council of the City of Rochelle, PCB 03-218 (April 15, 2004).

PDC’s motion for partial summary judgment does not reference any depositions, admissions on file, or affidavits. Therefore, it must be relying entirely upon the record in these proceedings. The record, taken as a whole, and as argued above, clearly reveals

evidence upon which the County Board could, and did, base its decision. Thus, at a minimum, issues of material fact do exist regarding whether Criterion v was met or not. There is evidence in the record that the leachate removal from the manhole sumps was inadequate, that there was a lack of monitoring of storm water discharges, and that there was a lack of information or adequate planning for coordinating emergency response with local agencies responsible for emergency response activities for both the landfill and residential neighborhoods, some of which were within 300 feet of the landfill property. The County Board's detailed findings of fact, which are set forth in PDC's motion, clearly articulate these deficiencies, and PDC apparently does not contest those findings or those special conditions.

PDC argues that the special condition to approval of Criterion v relating solely to the \$5.00 per ton fee for the perpetual care fund is not appropriate because PDC now believes it has demonstrated compliance with Criterion v without the need for any special conditions. If PDC were correct, and, in fact, it had demonstrated compliance with Criterion v., then PDC could take it's argument one step further and say that no special conditions of any kind to approval of Criterion v were appropriate. The problem with that argument, and no doubt the reason PDC did not make it, is because PDC also offered during the course of the proceedings other voluntary special conditions relating directly to Criterion v. For instance, PDC offered, among others conditions:

1. to not construct a rail spur into the facility to bring waste in by rail;
2. to implement an ambient air monitoring program at the facility;
3. to not ask for any further vertical or horizontal expansions of the facility after the present siting application;
4. to remove the surface impoundment presently used for storage of leachate; and
5. to install secondary containment in the leachate collection sumps.

Hearing Transcripts, February 21, 2006, Public Hearing, pp. 25-29 (C7273-C7274). All of the foregoing special conditions voluntarily offered by PDC relate either directly or indirectly to plans of operations at the facility. And, just like with the Perpetual Care Fund, PDC would have a difficult time arguing against those special conditions because it

either voluntarily proposed those special conditions or agreed to them during the course of the proceedings. Yet, if PDC's argument is correct, no special conditions of any kind to Criterion v would be appropriate.

Furthermore, to allow PDC to offer certain special conditions as part of a siting application process, and then to try to withdraw them or have them thrown out after the close of the proceedings is fundamentally unfair and should not be permitted or tolerated by the Board. If an applicant were allowed to do so, it could offer numerous, voluntary special conditions as the beginning of a siting hearing, such as PDC did, and thereby discourage or avoid testimony and evidence which might otherwise indicate the special conditions were necessary. In other words, the siting authority, opponents and concerned citizens, relying upon the voluntarily offered special conditions by the applicant, would believe it is no longer necessary to ask questions, provide testimony, and submit evidence and/or comment on issues that are apparently resolved by the applicant's voluntarily imposed special conditions. To then allow the applicant to, in essence, pull the rug out from underneath the local siting process, would be unfair and contrary to the purposes of local siting.

As set forth in prior sections of this Response, there was ample evidence in the record at the public hearings concerning the care and management of the facility, and what would take place after the period of post-closure care ended. PDC's own experts raised the issues during their testimony at the public hearing. In addition, the expert reports submitted into the record by opponents after the public hearing during the 30 day comment period, clearly articulated the concerns identified by PDC's counsel concerning the long term care of the facility. It is not for the Board to "reweigh" the evidence or reallocate the County Board's credit of certain witnesses over others. There are clearly facts in the record on which the County Board could reasonably conclude the Perpetual Care Fund voluntarily offered by PDC during the course of the proceedings was reasonable and necessary. Certainly, the decision was not against the manifest weight of the evidence.

At best, PDC's position can be read to mean the voluntarily imposed perpetual care fund special condition is acceptable, but that PDC object to the \$5.00 per ton (minimum \$750,000 per year) which PDC did not agree to but which the County Board

found to be appropriate. If that is the case, at a minimum, the Board should still allow or require imposition of the voluntarily proposed special condition, but at the amount contained in PDC's "Compromise" which was a minimum of \$281,250 per year for twelve (12) years in equal annual installments, or at the \$1.50 per ton with minimum \$225,000 contained in the Staff Report, which PDC stated they would accept.

PDC's argument that the County Board is required to accept uncontradicted and unrebutted expert testimony, while interesting, has no bearing in this motion. As demonstrated in the County Board's findings of fact, as well as PDC's tacit admission by voluntarily proposing special conditions which relate directly to Criterion v, the application did not satisfy Criterion v on its own or with the testimony of its experts. Furthermore, PDC's own expert testimony raised the concerns and issues regarding management of the facility after post-closure care ends, and the longevity of the hazardous constituents in the waste. Finally, there was evidence submitted into the public record from the opposition groups which contradicted some or much of PDC's expert testimony. The opponents to the application pointed out a general lack of coordination of plans with local officials, including schools and County emergency responders. Likewise, the opponents' expert, G. Fred Lee, submitted materials into the record demonstrating the need for long term care and maintenance of the facility.

While many of the concerns raised during the proceedings might not be relevant to a regular solid waste landfill siting application, the siting of a hazardous waste landfill within three hundred feet (300') of high density residential housing increases these types of concerns substantially. Likewise, the fact, as discussed above, that the types of hazardous wastes proposed to be disposed of at the facility would maintain their hazardous constituents for hundred, if not thousands, of years demonstrates the need to long term care and maintenance of the cap so as to prevent spills or accidental releases from the facility which would jeopardize the health and safety of the environment and surrounding residents. PDC's own experts recognized the need for preserving the integrity of the cap for years into the future.

It appears PDC is arguing that if it presents expert testimony, and there is no expert testimony at the public hearing directly rebutting PDC's experts, the County Board must accept the testimony of PDC's experts, even if there is other evidence, albeit non-

expert testimony evidence, in the record contradicting the applicant's expert testimony. If the Board accepts PDC's argument, then many, if not most, concerned citizens will be effectively precluded from having any input into the local siting process. PDC took over two (2) years to develop its application for local siting after entering into a Host Community Agreement with the County, while the local concerned citizens had roughly 90 days to get organized, become informed about hazardous waste landfills and regulation, and attempt to gather evidence, including expert testimony and input. The costs and expenses in terms of time and resources on local concerned citizens are immense. To require them to present expert testimony on every issue in the siting application would effectively eliminate any ability of concerned citizens to participate in the local siting process, and should be rejected by the Board.

D. The Perpetual Care Fund has Everything to Do With Criterion v.

PDC's argument that the Perpetual Care Fund bears no relation, whatsoever to Criterion v is without merit. PDC was required to demonstrate to the County Board that it had plans for operating the facility to minimize the danger to surround area from fire, spills and other operational accidents so as to protect the public. Releases from the facility would most certainly present danger to the surrounding area. PDC's application had no plans for how it would, in Ron Edwards's words, "manage" the facility after the period of post-closure care, until it voluntarily proposed the Perpetual Care Fund. The perpetual care fund is nothing more than a plan of how PDC will operate the facility, albeit some time in the future. That plan is to address real concerns raised by opponents, concerned citizens, County Board members, and even PDC's own witnesses about how the integrity of the final cap would be maintained so as to preserve the so-called "dry tomb" design. Without maintaining the integrity of the cap, the risk of release of hazardous waste constituents into the surrounding area, including the groundwater, would be greatly increased.

The concept that the long term care and maintenance of the facility is not related solely to PDC's financial assurance obligations can be found in Peoria County's Pollution Control Facilities siting ordinance. See, Chapter 7.5 Article II of the Peoria County Code

of Ordinances. Section 7.5-33 requires the application to provide background information relating to the applicant, including subsections 7.5-33(7)(c) and (d) which collectively require details of planning for perpetual care of other hazardous waste disposal facilities the applicant has previously closed. Peoria County Ordinance 7.5-33(7)(c) and (d). According to the heading of this provision of the ordinance, it relates directly to the background of the applicant. Furthermore, section 7.5-38(e) requires the applicant to provide financial planning information and technical information relevant to the perpetual care of the facility after closing. The heading of this section is “contingency plan”, and the section deals primarily with emergency planning and insuring against risk to surrounding properties and persons. Pursuant to Section 39.2 of the Environmental Protection Act, Peoria County is specifically given the authority to consider evidence of previous operating experience when considering Criterion v. 415 ILCS 5/39.2(a). As a result, Peoria County’s siting ordinance clearly shows perpetual care is related directly to Criterion v.

CONCLUSION

PDC, recognizing it had failed to adequately set forth plans for the maintenance and care of the facility, voluntarily proposed numerous special conditions during the public hearings, including a proposed Perpetual Care Fund and associated fee. By voluntarily proposing the special condition, PDC waived its arguments that the County could not impose such a special condition for siting approval. PDC’s voluntary proposal of the perpetual care fund is tacit recognition by PDC that it had failed to meet its burden of proof with regard to Criterion v, and that a special condition was necessary and appropriate. The imposition of the special condition is logically related to Criterion v, and PDC should not now be allowed to change its position in that regard. The motion for partial summary judgment should be denied.

If the Board views PDC’s motion as well taken with regard to the argument there is no evidence to support the need for a charge of \$5.00 per ton, the Board should still, at a minimum, allow the special condition to remain with either the \$281,250 per year

offered by PDC is its "Compromise" or at the Staff recommended, and PDC accepted, \$1.50 per ton fee with a minimum annual amount of \$225,000.

WHEREFORE, Respondent, Peoria County Board, respectfully prays that the Board deny Petitioner's motion for partial summary judgment.

Respectfully submitted,
PEORIA COUNTY BOARD

By: 

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One of its attorneys

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EXHIBIT “A”

**PEORIA COUNTY CODE AT
7.5-38(e)**

Chapter 7.5

ENVIRONMENTAL PROTECTION

- Art. I. In General, §§ 7.5-1–7.5-15
Art. II. Pollution Control Facilities, §§ 7.5-16–7.5-60
Div. 1. Generally, §§ 7.5-16–7.5-30
Div. 2. Site Hearings, §§ 7.5-31–7.5-60
Art. III. Erosion, Sediment and Stormwater Control, §§ 7.5-61–7.5-72

ARTICLE I. IN GENERAL

Secs. 7.5-1–7.5-15. Reserved.

ARTICLE II. POLLUTION CONTROL FACILITIES

DIVISION 1. GENERALLY

Secs. 7.5-16–7.5-30. Reserved.

DIVISION 2. SITE HEARINGS*

Sec. 7.5-31. Definitions.

The terms used in these rules and regulations [this division] shall have the same meanings as the same terms defined in the Environmental Protection Act of the State of Illinois, in effect as of the date hereof and as said act may be amended or modified from time to time. (Res. of 2-14-84, § 1)

Sec. 7.5-32. Application.

(a) Thirty-five (35) copies (plus one each additional copy for municipality within one and one-half (1½) miles of the site location) of the application and all exhibits thereto shall be filed with the county clerk.

***Editor's note**—Res. of Feb. 14, 1984, §§ 1–19, did not specifically amend the Code, hence inclusion herein as Div. 2, §§ 7.5-31–7.5-49, was at the discretion of the editor. Sections 20 and 21, providing the effective date and initial appointments have been omitted from codification.

Cross references—Administration, Ch. 2; garbage and trash, Ch. 11; disposal sites, § 11-1; motor vehicles and traffic, Ch. 15; planning and development, Ch. 17; sewers and sewage disposal systems, Ch. 19; subdivisions, Ch. 20; water supply and water wells, Ch. 23; zoning, Ch. 24.

(b) The application shall be typed on paper eight (8) inches by eleven (11) inches in size and shall be securely bound in the left hand margin with a type of binding which allows the document to lie flat when opened.

(c) The application shall contain the information specified in sections 7.5-31 through 7.5-46 hereof.

(d) The application shall be signed by the applicant or if the application is filed by a corporation, it shall be signed by its principal executive officer.

(e) The face sheet of the application shall contain only the following information:

- (1) A statement that it is an application for approval of a site for a new regional pollution control facility;
- (2) A statement indicating whether it is an application for a waste, hazardous waste or special waste storage site, sanitary landfill, waste, hazardous waste or special waste disposal site, waste, hazardous waste or special waste transfer station or waste, hazardous waste or special waste incinerator, or any combination thereof;
- (3) The name of the applicant;
- (4) The principal business address and telephone number of the applicant; and
- (5) The name, address, telephone number and title of the person designated by the applicant as its agent for service of notices.

(f) The application shall be sworn under oath by the applicant, or if a corporation, the principal executive officer thereof, which shall state that the person signing said application has read the application, that he knows the contents thereof and that each statement made therein is true in substance and in fact.

(g) If any portion of the application or exhibits is prepared by anyone other than the applicant, the name, address and telephone number of any such person should be clearly shown together with an indication of the portion prepared by said person.

(h) The application shall contain a list of the names, addresses and telephone numbers of all persons who will testify in support of the application together with a summary of their proposed testimony unless written testimony is filed.

(i) If the applicant proposes to use written testimony, copies thereof shall be filed with the application.

(j) The application shall contain the names and addresses and a complete list of the qualifications of all persons who conducted tests, borings, surveys, examinations, experiments, or produced any information or rendered any opinion which is included within the application. (Res. of 2-14-84, § 2; Amend. of 3-9-93)

Sec. 7.5-33. Background of applicant.

The application shall contain the following information concerning the applicant:

- (1) Applicant's full name, addresses and telephone number, if a partnership, the names and addresses of all partners and the telephone number of the partnership. If a

corporation, the names and addresses of all officers and directors, and the names and addresses of all shareholders owning seven and one-half (7½) percent or more of the capital stock of said corporation and the telephone number of the corporation.

- (2) If the applicant is a corporation copies of the current articles of incorporation thereof shall accompany the application as an exhibit. If applicant is a corporation and more than seven and one-half (7.5) percent of its capital stock is owned by another corporation, either directly or derivatively, then the requirements of this part shall be applicable to said other corporation or corporations also.
- (3) Unless otherwise agreed between the County of Peoria and the applicant in a host community agreement, attached to the application shall be a copy of the balance sheet of the applicant as of the end of the last five (5) years preceding the filing and a copy of the profit and loss statement of the applicant for each of the five (5) years preceding the filing. Each balance sheet and profit and loss statement shall be certified to by a certified public accountant in the usual form of said certification.
- (4) The application shall contain a listing of any lawsuits or court proceedings or administrative proceedings in which any person or entity named in subsections (1) and (2) of this part has been a party during the five (5) years preceding the filing of this application. With respect to each such listing, the court or agency shall be identified and the number of such case, and a brief summary of the nature of each and the decision thereon shall be provided.
- (5) With respect to each individual named in subsection (1) of this part, the application shall contain a statement of his respective prior employment history for the five (5) years preceding the filing of this application.
- (6) A statement detailing the prior experience of the applicant and of any officer and employee of the applicant in the activity in which the applicant intends to be engaged if the application is approved.
- (7) If the applicant has previously closed any facility defined as a hazardous waste disposal site, a regional pollution control facility, a sanitary landfill, a storage site or a waste disposal site, either voluntarily or involuntarily, the applicant shall provide the following information:
 - (a) The name and location of the facility which was closed;
 - (b) The date on which the process of closing started and ended;
 - (c) The details of the plan for closing such facility. If the applicant had not previously prepared a detailed plan for closing, then such fact should also be supplied in the application;
 - (d) The details mentioned in (7)(c) above should include information as to the financial planning, engineering planning, and those items listed under section 7.5-38 paragraphs (a), (b), and (c) of these rules and regulations, [this division] and the planning for perpetual care;

- (e) If closing of any facility has been completed to any degree, the applicant should indicate whether the stated plan has been followed; describe any deviations from the plan; and discuss any problems encountered. Describe how the problems were handled; and, describe the presently existing arrangements for perpetual care. If the closing has been completed to any degree, and no plan had been prepared prior to the initiation of the closing process, the applicant should describe what procedures have been used to date in the closing process, and any problems encountered. Describe how the problems were handled; and, describe any presently existing plans for continuation of the closing and the presently existing arrangement for perpetual care;
- (f) The terms of this subsection shall apply to facilities which were closed when the applicant was the owner or operator of said facility, and also to facilities which were owned or operated by a corporation or partnership of which the applicant was owner of more than seven and one-half (7½) percent of the ownership interest of said corporation or partnership. If the applicant is a corporation or a partnership, this subsection shall also apply to anyone owning more than a seven and one-half (7½) percent interest in the applicant.

(Res. of 2-14-84, § 3; Amend. of 3-9-93; Ord. of 10-9-03, § 1)

Sec. 7.5-34. Site.

- (a) The application shall contain a legal description of the proposed site.
- (b) The application shall set forth the names, addresses, and telephone numbers of the owners of the site, if other than the applicant. If the site is owned by a trust, the names, addresses and telephone numbers of all of the beneficiaries shall be set forth and a copy of the trust agreement shall be attached to the application as an exhibit. If the site is owned by a corporation or partnership, all of the information required by the paragraphs of section 7.5-33 shall be furnished in the application as to the owning corporation or partnership. If the site is not owned by the applicant, the application shall describe all documents giving the applicant the right to use the site for the purposes listed in the application and the applicant shall attach copies of all said documents to the application as exhibits.
- (c) There shall be filed with the application a map or maps, prepared and certified by a registered land surveyor, or licensed professional engineer, of sufficient size, which shall show:
 - (1) The location of the site;
 - (2) The location and depths of all water wells within one and one-half (1½) miles of the boundaries of the proposed site in each direction;
 - (3) The location of all streams, ponds, rivers and lakes within a five-mile radius of the site;
 - (4) The land use of all lands within a one and one-half-mile radius of the site;
 - (5) The location of all roads and bridges within a five-mile radius of the site; and

- (6) The location of all buildings within fifteen hundred (1,500) feet of the proposed site and the use of each.
- (d) There shall be filed with the application a complete hydrologic study of the site, including:
 - (1) A description of the general geography of the area;
 - (2) A summary of the hydrologic conditions typical of that portion of Illinois;
 - (3) A complete log of each boring made during the exploratory program;
 - (4) If bedrock was encountered during said boring program, the following information should be provided:
 - a. Depth(s) to bedrock;
 - b. Physical character and hydrological characteristics of the bedrock formation;
 - c. Names and ages of the formations encountered during the boring operation and/or which crop out on or adjacent to the site.
 - (5) The following information shall be provided for samples taken during the boring operation:
 - a. Textural classification (USDA system);
 - b. Particle size distribution for representative samples;
 - c. Coefficient of permeability based on field or laboratory determinations;
 - d. Ion-exchange capacity and ability to absorb and "fix" heavy metal ions.
 - (6) The following information regarding the hydrologic flow system shall be provided:
 - a. Depth to water in boreholes at time of boring completion and periodic measurements until the water level has stabilized;
 - b. Rate and direction of groundwater movement.
 - (7) If the facility will be located within a regulated recharge area, the applicant shall confirm that any applicable requirements specified by the Illinois Pollution Control Board for such areas have been met.
- (e) Unless otherwise agreed between the County of Peoria and the applicant in a host community agreement, there shall be filed with the application as exhibits copies of all other applications filed with respect to said site with any state or federal agency and copies of any responses thereto from said agencies.
- (f) The applications shall contain a statement of the estimated volume of waste, hazardous waste and special waste the applicant intends to receive at the site during each of the first five (5) years of its operation expressed in gallons for liquid material and pounds for solid material.
- (g) The application shall state whether any surface or subsurface mining has ever been done on the site or within five (5) miles of the perimeter of the site. If any such mining has ever been done, the type of mining shall be fully described including an identification of the product

removed, the approximate quantity of product and soil removed, the depth from which removal was made, the time when the mining was done and a legal description of the land which was mined.

(h) The application shall state whether any other activity has ever taken place on the site which disturbed the natural condition of the soil, such as grading. If any such activity has ever taken place, the type of activity shall be fully described, including the depth to which soil was disturbed, the purpose of the activity, the time when the activity was done and a legal description of the land which was disturbed from its natural state.

(i) The application shall state the zoning classifications of the proposed site and shall contain a map drawn to scale of all zoning classifications within one mile of the boundary of the site.

(Res. of 2-14-84, § 4; Amend. of 3-9-93; Amend. of 10-11-94; Ord. of 10-9-03, §§ 2, 3)

Sec. 7.5-35. Proposed service area.

(a) The application shall define the geographic area that the proposed facility is intended to serve.

(b) There should be included either in the body of the application or in an exhibit filed therewith a complete listing of all producers of waste within the proposed service area from whom the applicant intends to or may receive waste, identifying in each case the kind of waste produced; and designating in each case whether the waste is hazardous waste, garbage, industrial process waste, municipal waste, pollution control waste, refuse, or potentially infectious medical waste.

(c) The application shall identify the location of each existing regional pollution control facility within the area proposed to be served, and within one hundred (100) miles of the perimeter of said area, and with respect to each such facility, the application shall provide the following:

- (1) The size thereof;
- (2) The owner and operator thereof;
- (3) The kind of pollution control facility;
- (4) The capacity thereof;
- (5) The kinds of waste received at each such facility.

(d) There shall be filed with the application an analysis of the market for the disposal of the types of waste anticipated at the proposed facility. This analysis shall set forth the reasons and facts supporting the applicant's assertion that the proposed facility is necessary to accommodate the waste disposal needs of the area it is intended to serve.

(e) There shall be filed with the application complete plans, drawing, designs and specifications of all improvements, machinery and equipment proposed to be constructed or installed upon the site.

(f) There shall be filed with the application a complete description of the procedures, processes, methods and construction which will be utilized to prevent spills or entry of contaminants into the environment.

(1) If manufactured materials or chemical compounds are to be utilized in any way under this section, those manufactured materials and/or chemical compounds shall be sufficiently described so as to show:

- a. The manufacturer thereof;
- b. The manufacturer's specifications therefore;
- c. If a chemical compound, the effect that the wastes proposed to be received would have thereon, and the combustibility thereof.

(g) There shall be filed with the application an operations manual showing complete and detailed operating procedures.

(h) The application shall contain a list of all wastes to be received on the site and the chemical composition of each. The potential of each waste to interact chemically or otherwise with each of the other listed wastes shall be described. The method to be used to control or prevent such interaction if desirable shall be fully described.

(i) If the application is for approval of the site for waste storage or as a sanitary landfill, the following information shall be provided:

- (1) The period of time during which it is proposed that the site will be used for such purpose;
- (2) A complete description of the procedures which the applicant will follow upon termination to assure that there will be no danger to the public health and safety.

(j) If the application is for a storage site of waste, hazardous waste or special waste, the applicant shall state in detail how each type of stored waste will be disposed of; and,

- (1) How the wastes will be stored;
- (2) If the waste is to be stored in containers, designate the kinds of containers and the manner in which they will be stored.

(k) If the application is for approval of the site as a waste, hazardous waste or special waste transfer station, the application shall state:

- (1) The period of time that the average shipment of waste will be on the site, and the maximum time that any particular waste will be permitted to remain at the site;
- (2) The identity and location of the facility to which it will be transferred from the proposed site;
- (3) If the facility to which the transfer will be made is already in existence, there shall be filed with the application copies of all governmental permits issued for that facility;
- (4) If the facility to which the transfer will be made is not already in existence, the applicant shall so state.

(1) If the site is proposed to be used for incineration, the following exhibits shall be filed with the application:

- (1) Complete designs, specifications and construction plans of the incinerator and auxiliary equipment;
- (2) A statement showing the location of any similar facility within the proposed service area and within one hundred (100) miles of the perimeter of the area;
- (3) A complete statement of operating procedures and maintenance requirements concerning the proposed facility;
- (4) A detailed statement of contingency plans dealing with handling of wastes during periods when the incinerator is nonfunctional;
- (5) The kinds of materials proposed to be incinerated, identifying or designating them by chemical composition.

(Res. of 2-14-84, § 5; Amend. of 3-9-93)

Sec. 7.5-36. Site development plan.

(a) There shall be filed as a part of the application a detailed topographic map of the site as it exists at the time of filing the application, prepared and certified by a registered land surveyor, drawn to a scale of not less than one inch equals two hundred (200) feet. The map shall show:

- (1) Five-foot contour intervals on sites, or portions thereof, where the relief exceeds twenty (20) feet, and two-foot contour intervals on sites, or portions thereof, having less than twenty (20) feet of relief;
- (2) The location of all buildings, ponds, streams, wooded areas, bedrock outcrops, underground and overhead utilities, roads, fences, culverts, drainage ditches, drain tiles, easements, streets, boundaries, areas previously mined or where the soil has been disturbed from its natural condition, the location and elevations of borings made under subsection (c) hereof, and any other item of significance.

(b) There shall also be filed a separate map, prepared and certified by a registered land surveyor, or licensed professional engineer, at the same scale as above, of the site as it is to be developed, which map shall show:

- (1) All changes in topography to be made;
- (2) All surface features specified in section 7.5-36(a)(1), (2) of these regulations as they will exist upon completion of development of the site, including new construction proposed;
- (3) The proposed location of all buildings, equipment and other structures to be constructed on the site;
- (4) The location of and description of all monitoring devices which will be utilized at the site.

(c) If the site is proposed to be utilized as a landfill, a topographic map, prepared and certified by a registered land surveyor, or licensed professional engineer, drawn to the same scale as provided above shall be filed showing the final contours of the closed and covered site.

(d) The applicant shall provide with the application plans for any required leachate collection and treatment system. Said plans shall be drawn to a scale of not less than one inch equals two hundred (200) feet, which shall include cross-sections of the systems and the following information:

- (1) Type, location and construction of the subsurface collection system and attendant devices;
- (2) Location, dimensions, volume and surface elevations of any treatment lagoon;
- (3) Detailed written narrative of the methods and processes of the treatment system;
- (4) Applicant's program for monitoring the performance and effectiveness of the system;
- (5) Discharge points of effluent.

(e) The application shall also include a statement setting forth the reasons and facts supporting applicant's assertion that the proposed facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property.

(Res. of 2-14-84, § 6; Amend. of 3-9-93; Amend. of 10-11-94; Ord. of 10-9-03, §§ 4, 5)

Sec. 7.5-37. Operating procedures.

(a) There shall be filed with the application complete detailed operating procedures for the proposed facility. Emphasis should be placed upon the following areas:

- (1) Personnel requirements, including training and supervision;
- (2) Traffic control on the site;
- (3) The means by which the quantity of waste delivered to the site will be measured;
- (4) Plans for chemical analysis of waste;
- (5) Plans for identification and verification of wastes;
- (6) The application shall include a statement setting forth the applicant's agreement to adhere to the volume reporting requirement of the Peoria County Solid Waste Management Plan;
- (7) The application shall include a statement setting forth the reasons and facts supporting applicant's assertion that the facility is consistent with Peoria County's Integrated Solid Waste Management Plan.

(b) The application shall provide information as to the proposed schedule for required monitoring of the site. This information shall indicate not only the schedule to be used, but also the type of monitoring which will be used on each such date and time. The application shall also provide information as to the applicant's plans for delivering the results of said monitoring

to the County of Peoria, and other governmental agencies. These plans should also indicate what provisions will be made to allow access to the monitoring devices by the Peoria County authorities or any appointed representative.

(Res. of 2-14-84, § 7; Amend. of 3-9-93; Amend. of 10-11-94)

Sec. 7.5-38. Contingency plans.

(a) The application shall list the possible emergency situations which might occur at or near the facility which might affect the activity or operations of the facility, including but not limited to explosion, spills, tornadoes, fire and vandalism.

(b) As to each emergency situation identified, there shall be filed with the application detailed plans for dealing with each such emergency.

(c) If such plans require or suggest the participation therein of any governmental unit, official or department, the application shall in detail describe:

- (1) The current state of preparedness of each such governmental unit, official or department to participate therein;
- (2) The estimated cost to each which would be incurred in achieving a state of readiness to participate in such plan;
- (3) A statement showing that the involved governmental unit, official or department has reviewed said plans and is in agreement therewith; or if not in agreement, a statement defining the areas of disagreement or objection.

(d) If the applicant proposes to insure against the risks of injury to person or property the application shall so state and there shall be filed therewith:

- (1) Copies of all applicable insurance policies; or
- (2) Copies of commitment letters from the insurer who will issue all said policies to which shall be attached copies of the proposed policies.

(e) The applicant shall provide as part of the application detailed information regarding its proposed closing plan which may be required due to a voluntary or involuntary closing of the site. Such plan shall conform to the requirements of both the state and federal Environmental Protection Acts and any applicable rules or regulations adopted by the federal or state Environmental Protection Agencies, and shall provide financial planning information and technical information relevant not only to the actual closing of said site, but also for the perpetual care of said site after closing.

(f) The application shall provide information on the planning which the applicant has made to provide financial reimbursement to the county and any municipality or township whose roads and highways experience unusual and excessive wear due to the increased traffic in and from the applicant's operations. The applicant shall also provide a timetable which it will follow in the initiating and completing of discussions with the appropriate governmental authorities on the issue of compensation for or protection from unusual or excessive wear to the highways or roadways.

(g) If the facility for which application is made is a hazardous waste facility, a copy of the contingency plan required by the Resource Conservation and Recovery Act shall be attached as an exhibit.

(Res. of 2-14-84, § 8; Amend. of 3-9-93)

Sec. 7.5-39. Floodplain.

(a) The application shall include a statement that the facility is within or outside of the boundary of the one-hundred-year floodplain as determined by the Illinois Department of Transportation.

(b) There shall be filed with the application a map prepared and certified by a registered land surveyor showing the one-hundred-year floodplain as aforesaid within a five-mile radius of the site.

(c) If the site is within the one-hundred-year floodplain, there shall be filed with the application:

(1) Evidence that the site is flood-proofed to meet the standards and requirements of the Illinois Department of Transportation; and

(2) Evidence of the approval of the site by said department.

(Res. of 2-14-84, § 9)

Sec. 7.5-40. Traffic patterns.

(a) There shall be filed with the application a map of the county, prepared and certified by a registered land surveyor, showing the roadways which will be used to transport material to and from the site.

(b) There shall be filed with the application a traffic study showing the present traffic flows on said roadways and the impact that the traffic generated by this facility will have thereon.

(c) The application shall state the estimated number of motor vehicles and the types and weights thereof which will be entering and leaving the site via such roadways during each month of a typical year of operation during the first five (5) years.

(d) The application shall contain a statement setting forth the procedures which will be utilized by applicant, if any, to assure that only the roadways specified shall be utilized.

(e) The application shall state the load limitations, if any, on all of the roads and bridges surrounding the site which the applicant proposes to use or may use in the course of operating the facility.

(f) The application shall state what types of vehicles will be used to deliver waste to the site, as well as the empty weight of each of the vehicles proposed to be used, and the gross weight of the vehicles when loaded.

(Res. of 2-14-84, § 10)

Sec. 7.5-41. Date of filing.

(a) No application for site approval shall be deemed to have been filed or accepted for filing unless all of the requirements of this resolution [division] applicable thereto shall have been met and the county clerk shall not give a receipt or other indication of filing until such time as it is determined that the application complies with the requirements of this resolution. Within a reasonable period of time after delivery of an application to him, the county clerk shall advise the applicant:

- (1) Either that the application is complete and that it has been accepted for filing, designating the date of filing; or
- (2) That the application is not complete, specifying wherein it is deficient.

(b) Upon determining the application is complete, the county clerk shall date stamp the same and immediately deliver one copy of the request to the chairman of the county board; one copy to the county planning and zoning administrator; two (2) copies to the county recycling and resource conservation director; two (2) copies to the director of the Peoria City/County Health Department; two (2) copies to the state's attorney; and, two (2) copies to the county engineer. The county clerk, in addition, shall mail one copy of the request to the clerk of each municipality whose geographic political borders are within one and one-half (1½) miles or less of the proposed facility.

(c) At any time prior to completion by the applicant of the presentation of the applicant's factual evidence and an opportunity for cross-questioning by the county board and any hearing participants, the applicant may file not more than one amended application. In the event that an amended application is filed, the time limitation for final action set forth in section 7.5-47(b) shall be extended for an additional period of ninety (90) days.

(Res. of 2-14-84, § 11; Amend. of 3-9-93; Amend. of 7-8-97; Amend. of 8-12-97; Ord. of 10-9-03, § 6)

Sec. 7.5-42. Filing fee.

(a) There shall be paid to the county clerk for delivery to the county treasurer for deposit in a special fund at the time of the filing of an application for site approval a fee of:

- (1) Twenty thousand dollars (\$20,000.00) for an organic waste composting facility; and
- (2) Fifty thousand dollars (\$50,000.00) for all other types of pollution control facilities.

(b) The fee paid hereunder with any application shall be used only to defray the costs incurred by the county in connection with the application for site approval to which the fee is applicable. The county board may use the fee to pay any costs incurred by the county in reviewing the application, employing qualified professional persons to evaluate the information contained in the application, to pay the costs involved in any hearing, including the fees of court reporters and expert witnesses employed by the county to clarify or refute any

information contained in the application, to pay any costs incurred in the appeal of any decision of the county board as to the application and to pay any other costs or expense in any way connected with the application.

(c) The county clerk shall accept no application for filing unless said fee has been paid. (Res. of 2-14-84, § 12; Amend. of 3-9-93; Amend. of 6-13-02)

Sec. 7.5-43. Public comment.

(a) A copy of the request shall be made available for public inspection in the offices of the county clerk and members of the public shall be allowed to obtain a copy of the request or any part thereof upon payment of actual cost of reproduction to the county clerk. All copying requests shall be fulfilled by the county clerk within a reasonable time from the time of the request.

(b) The county clerk shall receive written comment from any person concerning the appropriateness of the proposed site. Upon receipt of any such written comment the county clerk shall date stamp same and file the written comment with the postmarked envelope in which the comment is received.

(c) Copies of the written comments shall be made available for public inspection in the offices of the county clerk, and members of the public shall be allowed to obtain a copy of any written comment upon payment of actual cost of reproduction.

(d) Any written comment received by the county clerk or postmarked not later than thirty (30) days after the date of the last public hearing shall be made part of the record as hereinafter described and the county board shall consider any such timely written comments in making its final determination. In the event that the 30th day falls on a Saturday, Sunday or any holiday when the Peoria County Courthouse is closed, the next day on which mail is received by the Peoria County Clerk shall be considered the 30th day for purposes of this paragraph.

(Res. of 2-14-84, § 13; Amend. of 3-9-93; Amend. of 10-11-94)

Sec. 7.5-44. Staff review.

(a) Upon receipt of a copy of a request for site location approval, the recycling and resource conservation director shall be responsible for coordinating the review of the request with the following:

- (1) City of Peoria/County of Peoria Health Department.
- (2) Peoria County Engineer.
- (3) Peoria County Administrator.
- (4) Peoria County State's Attorney.
- (5) Peoria County Planning and Zoning Administrator.
- (6) Other such persons as may be designated by the site hearing committee chairman.

(b) The solid waste management director is authorized to call interdepartmental meetings and set deadlines for the submittal of reports and recommendations.

(c) A representative of the aforementioned departments/officials shall attend the public hearings and may ask such questions as are needed to assist it in reaching their recommendations.

(d) The aforementioned departments/officials are authorized to prepare and submit reports and recommendations in connection with the application. Interim reports prepared by the staff, summarizing and analyzing the proposed site application, the written comments, reports, studies and exhibits concerning the appropriateness of the proposed site shall be filed with the county clerk no later than ten (10) days in advance of the public hearing. Copies of departmental reports shall be available for public inspection in the office of the county clerk and members of the public shall be allowed to obtain a copy of said documents upon payment of the actual cost of reproduction.

(e) Upon completion of the testimony by the applicant, members of the general public, or intervening parties, and the aforementioned officials and departments, shall have a reasonable time to file their final reports and recommendations with the county clerk. Copies of the final reports shall be available for public inspection in the office of the county clerk for three (3) working days prior to reconvening the hearing and members of the public shall be allowed to obtain a copy of said documents upon payment of the actual cost of reproduction.

(f) The transcript of the public hearings to date shall be typed and a copy filed with the county clerk.

(Res. of 2-14-84, § 14; Amend. of 3-9-93; Amend. of 7-8-97; Ord. of 10-9-03, § 6)

Sec. 7.5-45. Record.

(a) The county clerk shall be responsible for keeping the record.

(b) The record shall consist of the following:

- (1) The request for site location approval as described in sections 7.5-32 through 7.5-40.
- (2) Proof of notice as described in section 7.5-46(b)(3), hereof.
- (3) Proof of notice given by applicant pursuant to section 39.2(b) of said Act (415 ILCS 5/39.2(b)).
- (4) Written comments filed by the public and received by the county clerk or postmarked within thirty (30) days after the date of the last public hearing.
- (5) All reports and recommendations as described in section 7.5-44(d).
- (6) All reports, studies, exhibits or documents admitted into evidence at the public hearing.
- (7) A complete transcript of the public hearing(s).
- (8) The findings of fact and recommendations of the regional pollution control hearing committee.

- (9) A copy of the resolution containing the final decision of the county board.
- (c) The county clerk shall be responsible for certifying all copies of the record.
(Res. of 2-14-84, § 15; Amend. of 3-9-93; Amend. of 10-11-94)

Sec. 7.5-46. Peoria County Regional Pollution Control Site Hearing Committee; public hearing.

(a) *Committee.*

- (1) *Generally.* The Peoria County Pollution Control Site Hearing Committee shall be comprised of one county board member from each district. The Peoria County Pollution Control Site Hearing Committee may create a subcommittee to hold the required public hearings. Such a subcommittee shall consist of seven (7) members of the whole committee and shall be appointed by the chairman of the county board. The chairman of the county board shall designate a chairman of the subcommittee who shall act as the hearing officer. No member of the subcommittee can represent the district in which the proposed site is located. Once the county portion of the hearing process which will include a decision is completed, the site hearing subcommittee shall cease to exist.
- (2) *Reserved.*
- (3) *Quorum.* Ten (10) members of the whole committee shall constitute a quorum for the purpose of holding the public hearing. Four (4) members shall constitute a quorum of the subcommittee, if appointed for the purpose of holding the public hearing. In the event the chairman of the committee or subcommittee is not in attendance at a public hearing, the members present shall select a chairman pro tem from among those members present who shall preside over that hearing session.

(b) *Public hearing.*

- (1) Within ten (10) days of the date upon which a request for site location approval is filed, the county clerk shall notify the members of the regional pollution control hearing committee of the request.
- (2) Within ten (10) days of the date the request for site location is filed, the chairman of the county board shall determine the date, time and location upon which such public hearing shall be held. The initial public hearing must be scheduled no sooner than ninety (90) days but no later than one hundred twenty (120) days of the date the request for site approval was filed with the county clerk.

If, in the chairman's reasonable opinion, the facilities of the Peoria County Courthouse are not sufficient to accommodate the number of persons expected to attend the hearing; the chairman may arrange for the hearing to be conducted at a site other than the Peoria County Courthouse. In such an event, the chairman is authorized to lease an adequate auditorium and sound system for the hearing. Any and all costs associated with such acquisition shall be paid by the applicant.

(3) The chairman of the county board shall promptly notify the county clerk of the date upon which such hearing shall be held and shall request the county clerk to cause notice of such hearing to be made as set forth in "An act relating to the location of sanitary landfills and hazardous waste disposal sites" (415 ILCS 5/39.2(d)). Such notice must be given as follows:

- a. At least once per week for three (3) successive weeks in the legal notice section of a newspaper of general circulation published in the county.
- b. At least once during the week preceding the public hearing, as a display ad in a newspaper of general circulation throughout the county. Such notice shall consist of all items hereinafter described except for item iii "the legal description of the site."
- c. Written notice sent by certified mail to all members of the general assembly from the district in which the proposed site is located.
- d. Written notice sent by certified mail to the Illinois Environmental Protection Agency.

Such notice shall consist of the following:

1. The name and address of the applicant requesting the site approval.
 2. The name of the legal owner(s) of the site property, if ownership is in a land trust, the name(s) of the beneficiaries.
 3. The legal description of the site.
 4. The street address of the property. If there is no street address, a description of the site with reference to location, ownership or occupancy or in some other manner which reasonably identifies the property to the local residents.
 5. The nature and size of the proposed development.
 6. The nature of the activity proposed.
 7. The probable life of the proposed activity.
 8. The time and date of the public hearing.
 9. The location of the public hearing.
 10. A statement that all copies of evidence other than testimony to be submitted at the public hearing must be filed with the county clerk at least ten (10) days before the public hearing.
- (4) The county clerk shall promptly notify the applicant and all municipalities within one and one-half (1½) miles of the proposed facility of the date, time, and location of such hearing.
- (5) The state's attorney shall make the necessary arrangements to have a court reporter present at any public hearing for purposes of establishing a record and a transcript thereof.

- (6) The state's attorney, or an assistant, shall serve as legal advisor for the Peoria County Regional Pollution Control Site Hearing Committee.
- (7) All written reports, studies, exhibits or other evidence or copies thereof, other than testimony, which any person other than the applicant or staff desires to submit for the record at the public hearing must be filed with the county clerk at least ten (10) days before the public hearing and shall be available for public inspection in the office of the county clerk. In the event the 10th day prior to a public hearing falls on a Saturday, Sunday or holiday on which the Peoria County Courthouse is closed, the next working day shall be considered the day the reports, studies and exhibits must be filed. The county clerk shall date stamp any such reports, studies, exhibits or other evidence upon receipt.
- (8) Members of the public shall be allowed to obtain copies of any documents filed upon payment of the actual cost of reproduction.
- (9) All testimony at any public hearing shall be under oath or affirmation.
- (10) The applicant requesting site location approval shall have the burden of going forward with evidence of the suitability of the site location for the proposed use.
- (11) Any person appearing at the public hearing shall have the right to give testimony and comment on the suitability of the proposed use for the site location. Any person testifying shall be required to state their name, address and telephone number where they may be reached during regular business hours.
- (12) The opportunity for any person appearing at the public hearing(s) to cross examine any witness may be limited by the hearing officer. The hearing committee reserves the right to limit questions, comments and cross examination to prevent argumentative comments, personal attacks on other parties, to maintain order and decorum during the hearing process, and to prevent cumulative, repetitive or irrelevant material in the record. The committee reserves the right to ask questions of any party or person testifying in order to clarify an issue, statement or fact.
- (13) Any person shall have the right to be represented by a licensed attorney-at-law at the public hearing(s). Such attorneys shall have the right of reasonable cross examination.
- (14) Upon the completion of all testimony, the chairman of the committee shall announce the evidence gathering and public comment portion of the hearing to be closed. At that time, the department staffs and officials shall prepare their final reports and recommendations. The public hearing shall be reconvened, upon notice to the applicant, to hear the staff reports. Any member of the public who wishes to be notified of the reconvened hearing may leave their names and addresses with the county clerk. Notice of the reconvened hearing will be mailed not less than three (3) days prior to the hearing date.

(Res. of 2-14-84, § 16; Amend. of 3-9-93; Amend. of 10-11-94)

Sec. 7.5-47. Site approval decision.

(a) After the public hearing(s) or any continuation thereof, the Peoria County Regional Pollution Control Site Hearing Committee shall hold a public review meeting for purposes of establishing findings of fact and a recommendation concerning the site approval request. Any findings of fact and recommendation shall be supported by the record and shall be presented by the committee to each county board member at least within one hundred fifty (150) days from the county clerk's filing of the site approval application.

(b) The county board shall consider the record and the findings of fact and the recommendations of the regional pollution control hearing committee and shall make a determination concerning a site approval request not more than one hundred eighty (180) days after the date of the county clerk's filing of the site approval request. The county board may conditionally approve any request for site approval provided such conditions are reasonable and necessary to satisfy the criteria set forth in the Act (415 ILCS 5/39.2(a)) and so long as the conditions are not inconsistent with regulations promulgated by the Illinois Pollution Control Board. Any determination by the county board shall be supported by the record.

(c) No determination by the county board of a site approval request may be reconsidered except as provided in the act. (415 ILCS 5/1 et seq.)

(Res. of 2-14-84, § 17; Amend. of 3-9-93; Amend. of 10-11-94)

Sec. 7.5-48. Administration of fees and costs.

(a) The county administrator, or his designee, shall establish a suitable accounting system for the acceptance, distribution and reconciliation of the fee in accordance with good accounting practices.

(b) The application fee received pursuant to section 7.5-42(a) shall be deposited with the county treasurer. The county treasurer is hereby authorized and directed to receive and hold said application fee until payment is directed as described below.

(c) All expenses incurred by the County of Peoria as a result of the application for site approval and the hearing process set forth herein shall be paid by the applicant from the application fee.

(d) The county administrator must give preliminary approval before an expense chargeable to the application fee is incurred; except notice and publication costs incurred by the county clerk and the court reporter expenses by the state's attorney.

(e) All costs incurred, by the county, its staff officials and departments as a result of administering the hearing process herein shall be reported to the auditor of Peoria County.

The auditor shall submit said bills and expenditure requests to the health and environmental services committee for approval. The committee shall authorize reimbursement for expenditures and payment of all bills upon proper documentation.

Upon termination of the proceedings under the hearing process, the auditor shall prepare a final accounting and summary of all bills and expenses which shall be presented for approval to the committee.

(f) Any portion of an application fee not required for reimbursement to the county for costs or expenses incurred by the county under the hearing process shall be returned to the applicant. If the costs incurred by the county exceed fifty thousand dollars (\$50,000.00) the county administrator shall present a claim to the applicant for the excess. Payment of this excess is due within thirty (30) days of the date the claim is presented to the applicant.

(g) If the county and the applicant do not agree on the final accounting, the applicant may appeal the decision of the county administrator to the management services committee of the county board. In no event shall a dispute over costs delay the decision or influence the decision of the county board on the site application.

(Res. of 2-14-84, § 18; Amend. of 3-9-93; Amend. of 7-8-97; Ord. of 10-9-03, § 7)

EXHIBIT "B"

**SUPPLEMENTAL PEORIA COUNTY
STAFF REPORT
FOR
PEORIA DISPOSAL COMPANY
APPLICATION FOR LOCAL SITING APPROVAL**



**Supplemental
Peoria County Staff Report**

For

**Peoria Disposal Company
Application for Local Siting Approval**

April 3, 2006

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EXECUTIVE SUMMARY

I. Introduction.

County Staff filed their Staff Report on March 27, 2006. The public comment period remained open until March 29, 2006. The County Clerk received a significant number of comments after Staff prepared its report and before the public comment period ended. County Staff reviewed the public comment file and several reports filed in the last week of public comment. County Staff noted the most relevant items or issues, and the following pages highlight those items or issues, along with the County Staff response. The reports reviewed include:

- Peoria Families Against Toxic Waste (PFATW), "Evidentiary Summary", March 27, 2006, filed March 27, 2006;
- Dr. G. Fred Lee and Associates, "Comments on the Potential Impacts of the Peoria Disposal Company Landfill Expansion on Public Health, Groundwater Quality and the Environment", March 24, 2006, filed March 27, 2006;
- Dr. G. Fred Lee and Associates, "Appendix A, Flawed Technology of Subtitle D Landfilling of Municipal Solid Waste", updated March 2006, filed March 27, 2006;
- Charles H. Norris, correspondence, March 27, 2006, filed March 29, 2006.
- Sierra Club, Heart of Illinois Group (SC), Essential Considerations - Key Findings, March 28, 2006, filed March 29, 2006;
- PFATW, "Response to Peoria County Staff Report regarding Peoria Disposal Company Application for Local Siting Approval", March 29, 2006, filed March 29, 2006;
- PFATW, "Supplemental Information", March 29, 2006, filed March 29, 2006;
- Peoria Disposal Company (PDC), "Supplement to the Public Record", March 29, 2006, filed March 29, 2006;
- PDC, "PDC Response to the Comments of Charles Norris as Supplemental Public Comment by Peoria Families Against Toxic Waste and Heart of Illinois Sierra Club", March 29, 2006, filed March 29, 2006
- Dr. Larry Barrows, correspondence, March 29, 2006, filed March 29, 2006.

County Staff is cognizant of the fact that the timing of the release of its original Staff Report before the close of the public comment period has raised many concerns. Therefore, Staff feels it is appropriate to explain, at this time, the reason for the timing of the release. First,

and foremost, County Staff wanted to make its initial report available for review by the applicant, the opponents, and the general public before the close of the public comment period so all concerned would have an opportunity to respond to the Staff's recommendations. Doing so has allowed for this additional comment and information, and has provided Staff with additional information which has resulted in additional refinement of its recommendations, as set forth in this Supplemental Report. Furthermore, County Staff wanted to make sure the Sub-Committee had plenty of time to fully review and digest the information provided in the rather substantial initial Staff Report. Finally, the state siting statute requires disclosure of any Host Community Agreement as part of the record (415 ILCS 5/39.2(e)). In order to comply with that provision, and to make sure the amendments to the Host Community Agreement were made public and were subject to public scrutiny and debate, Staff felt it necessary and appropriate to place the proposed amendments to the Host Community Agreement, which was an integral part of the recommendation, in the public record. Waiting until the close of the public comment period would not have provided that opportunity. At all times, County Staff fully intended to conduct a full and thorough review of all materials and comments submitted into the public record, and has done so.

II. Staff Recommendation.

Based upon its review of the additional information, the County Staff determines that, subject to a few exceptions which are dealt with by special conditions, the Applicant satisfies the nine (9) statutory criteria established by state law. County Staff believes that approval of the landfill expansion with the special conditions is most protective of the health, safety, and welfare of Peoria County. As a result, the County Staff recommends the County Board approve the application, subject to certain special conditions outlined in the March 27, 2006 County Staff Report and this Supplemental County Staff Report.

While the Staff's recommendation is contrary to the position taken by the Peoria Families Against Toxic Waste group, the local chapter of the Sierra Club, and numerous individuals who oppose the proposed expansion, County Staff commends those groups and individuals for bringing to light many of the issues and information upon which many of the special conditions are based. These private citizens have committed substantial amounts of their own resources and

time to research, understand, and advocate against the proposed expansion. Without these very considerable efforts of these private citizens, the record would be less complete regarding information addressing their specific concerns. The siting process has been enhanced and has functioned well with the continued participation of all groups involved.

County Staff has diligently reviewed the significant amount of documents and comments which have been submitted into the public record in the closing days of the public comments period. Based upon that review, County Staff continues to believe that a cautious approach to expansion of the landfill coupled with the establishment of a perpetual care fund to address maintenance, care and monitoring of the site well beyond the regulatory post-closure care period is not only prudent, but is the approach which provides the most protection for the citizens of the County. The additional special conditions included in this report, which are based upon some of the information submitted since the initial Staff Report, plus the special conditions which were listed separately in Section 11 of the original Staff Report provide increased or additional protections for the public, make sure the proposed expansion of the facility is designed, located and proposed to be operated to protect public health, safety and welfare, and minimize incompatibility with surrounding property uses.

This Supplemental Report addresses only those issues and topics raised in the additional materials submitted into the record which County Staff feels are relevant and appropriate and/or which were not directly addressed in the Staff's original report. Later in this Supplemental Report, certain issues and comments are addressed criteria by criteria.

A. Cautious Expansion over Trench C-1.

PDC has demonstrated to the satisfaction of County Staff that the design and operations of existing Trenches C-2 through C-4 and proposed Trench C-5 meet or exceed all regulatory standards for any new landfill being built today. As such, for those areas of the facility, County Staff continues to believe the proposed expansion is designed, located and proposed to be operated that protects public health, safety and welfare. Likewise, County Staff continues to believe Trench C-1's liner and leachate collection system has a different and, in the Staff's view, less protective design than the other areas. This position is supported by much of the commentary recently submitted into the record. While perhaps perfectly acceptable at the time it was permitted and installed, the design of Trench C-1's liner is no longer "state-of-the-art", as

the other areas are or would be. As a result, County Staff continues to recommend that there be no expansion over Trench C-1 unless PDC installs an intermediate double composite liner and separate leachate collection system so as to prevent the migration of leachate from the expanded area of C-1 into the existing waste in C-1. Such an intermediate liner system will minimize the amount of leachate reaching the existing liner and leachate collection system. Ultimately, if the expansion is approved and PDC expands above C-1 in accordance with the special conditions, the additional liners and collection system will further, in essence, provide multiple caps to prevent the migration of liquids into the existing area of C-1, providing more protection than currently exists.

B. Perpetual Care Fund.

At the public hearing, PDC proposed creating a Perpetual Care Fund for the entire facility (not just the proposed landfill expansion) as an additional condition to siting approval. The concept is money would be contributed by PDC to the perpetual care fund during the operation of the expanded landfill. The money and investment earnings would be used in the future for the care and maintenance of the entire site after PDC's obligations with IEPA for post closure care have terminated. County Staff believes that a perpetual care fund, such as that proposed by PDC, is not only appropriate, but is consistent with the County's siting ordinance.

As set forth in the original Staff Report, County Staff's review of PDC's proposal has revealed that the \$0.13 per ton PDC proposed to deposit into the fund would not be sufficient for perpetual care. County Staff, using what it believes are conservative assumptions of rates of return (5.0%) and inflation (4.5%), has determined that \$1.50 per ton for 2.2 million projected tons of waste would adequately provide funding for not only the activities PDC suggested for long-term care, but also groundwater monitoring. Using these figures it is estimated the fund would have approximately \$20,983,794 when it is projected PDC will have concluded its post-closure care period in the year 2054. That amount is estimated to provide sufficient funds to cover the cost of maintaining and monitoring the site for at least 100 years. Therefore, Staff recommends that any County Board approval of the application include a condition that PDC create and fund a Perpetual Care Fund at the rate of \$1.50 for each ton of waste disposed of at the facility.

After considering comments and questions posed by opponents to the application, County Staff believes it is prudent and necessary to amend its original recommendation concerning the funding of the Perpetual Care Fund. The possibility exists that less than 150,000 tons of waste per year or less than the entire approximately 2.2 million tons set forth in the application may be disposed of at the facility. County Staff's calculations regarding levels of funding and future costs were based upon the assumption that at least the full amount of 150,000 tons would be disposed of each year. In order to insure the necessary funding is available, County Staff is recommending that the language of the special condition and the amendment to the Host Community Agreement be modified so that it requires \$1.50 per ton, but not less than \$225,000 per year for at least 15 years following PDC's receipt of the necessary permit to operate the expanded landfill.

Opponents to the application have raised numerous concerns about the fate of the site if the applicant files for bankruptcy and/or dissolves prior to completion of the closure or post-closure care period. County Staff notes that PDC has demonstrated its existing financial assurance fund is funded in excess of the amount IEPA presently requires. However, County Staff also acknowledges the present regulatory requirements do not require PDC to provide financial assurance for potential corrective action of inactive areas of the facility. To further protect against the possibility of PDC not being willing or able to address potential corrective action of the inactive areas of the facility before the Perpetual Care Fund would be available (30 years after closure of the expanded landfill, estimated to be 2054), County Staff is recommending an additional Special Condition which requires PDC to deposit an additional \$1 million into its financial assurance trust fund for the facility within ninety (90) days of receipt of final, non-appealable local siting approval.

C. Amendment of Host Community Agreement

At the public hearing when PDC offered its proposed conditions, PDC indicated it would be willing to amend the Host Community Agreement to incorporate the proposed conditions. Peoria County, as the siting authority, has the ability to impose special conditions on its approval of siting. However, any such conditions must be consistent with IEPA laws and regulations. So long as IEPA believes they are consistent with its regulations, it will typically incorporate those

conditions into the permits for the proposed facility. While none of the conditions outlined in this report are inconsistent with state law or regulations, County Staff believes it is most prudent to include the proposed conditions in an amendment to Host Community Agreement so that Peoria County can directly enforce the terms, instead of relying upon IEPA. Therefore, County Staff is also recommending that the County enter into a First Amendment Host Community Agreement with PDC.

As stated in the initial Staff Report, most, if not all, of additional protections for the public health and the environment which would be provided by the special conditions and the amendment to the Host Community Agreement (including the Perpetual Care Fund), might not be available if the siting application is denied. Opponents dispute this point by stating that Illinois EPA can always add conditions to permit approval. While County Staff agrees IEPA can condition permit approval, Staff does not believe reliance on IEPA to impose conditions beyond those contained in its regulations and/or its typical permit requirements is advisable. At one point in its submittals, opponents to the application encourage the County not to rely on IEPA to monitor PDC's regulatory compliance because the opponents do not feel IEPA is reliable. County Staff feels it is perfectly appropriate to rely upon and expect IEPA to diligently implement and monitor its own rules and regulations, but does not believe it should rely on IEPA to look out for the County's additional concerns. County Staff feels it is the County's responsibility to obtain these additional protections that would not, or likely will not, be available based upon IEPA's typical permitting requirements. For example, to County Staff's knowledge, establishment of a perpetual care fund is not typical of IEPA practice. Therefore, County Staff continues to believe the County may obtain more, perpetual, protection by imposing additional requirements on PDC as amendments to the Host Community Agreement.

CRITERION 1

THE FACILITY IS NECESSARY TO ACCOMMODATE THE WASTE NEEDS OF THE AREA IT IS INTENDED TO SERVE

Issue: **Non-local wastes should be managed closer to their source**

"The expansion of the PDC Hazardous Waste Landfill is not necessary to accommodate the waste needs of the area." (SC, p.1) This finding from Sierra Club is inconsistent with the actual criterion in the Environmental Protection Act, that it "is necessary to accommodate the waste needs of the area it is intended to serve". As stated in the Staff Report, the applicant has the authority to identify the service area, and the service area defined by the applicant is not consistent with that proposed by the Sierra Club.

"PDC did not include hazardous waste facilities in Indiana in their figures determining need. This fact raises questions as to the accuracy of their statement of need, as available landfill space in Indiana was not taken into account." Pursuant to state law, the applicant defines the service areas for the proposed facility. In Ms. Smith's testimony on February 13th, she indicated that PDC has not received much waste from Indiana in the recent past, saying the amount of waste received from Indiana from 2000 to 2004 was around 4,500 tons annually while it was around 100,000 tons annually from Illinois, Iowa and Wisconsin, so they did not include it. However, Ms. Smith did include Indiana in the disposal capacity available to the service area in Table 1-4. The Heritage Environmental facility took in 716 tons from the PDC service area of the waste types that PDC accepts.

"Members of the public are concerned that they are being exposed to the hazards associated with the landfilling of hazardous wastes from other areas of the Midwest that more appropriately should be managed in the areas where the hazardous wastes are generated." (Lee, Comments, p.30) Lee presents no evidence or data, and there is no evidence or data in the record, to establish that the public is being exposed at off site locations to hazards or hazardous waste or hazardous constituents from the PDC landfill. A long standing line of United States Supreme Court cases stands for the proposition that states and local communities cannot restrict or prohibit out of state or out of area wastes under our constitution.

CRITERION 2

THE FACILITY IS SO DESIGNED, LOCATED AND PROPOSED TO BE OPERATED THAT THE PUBLIC HEALTH, SAFETY AND WELFARE WILL BE PROTECTED

While the title to this criterion may seem ambiguous, the volume of material documented and time spent reviewing this section are good indicators that this is the most sensitive of the nine criteria. After reviewing all materials submitted into the record including those documents filed after the Staff's initial Report, Staff has identified four areas that are of most relevance by interested parties. They are:

1. Health Concerns and the Threat of Land Disposal and Air Emissions
2. Landfill Design
3. Groundwater Quality and Trends
4. Older Sections of the Site

Details of these items are highlighted in this section.

ITEM 1- *Health Concerns and the Threat of Land Disposal and Air Emissions.*

Issue: **The Wastes land disposed will be a threat forever**

"The proposed hazardous waste landfill expansion application fails to discuss the fact that many of the waste components that are to be proposed to be deposited in the landfill expansion will be a threat to the public health, groundwater resource quality and the environment forever." (Lee, Comments, p.5) There is no requirement for PDC to discuss this as the existing permits, operation and design, as well as present laws and regulations, allow them to accept these wastes in a landfill designed that meets the existing technology requirements by USEPA and IEPA. The County cannot impose conditions upon approval or make a decision on the application which is inconsistent with applicable laws and regulations. However, the County may impose special conditions consistent with their siting ordinance, including perpetual care. This will be addressed in Criterion 5.

Issue: **Airborne releases of hazardous chemicals**

"This is an area that needs independent, in-depth review to assess whether the public in that area is being exposed to greater concentrations of hazardous chemicals through airborne releases from the landfill than would occur if the landfill operations were terminated." (Lee, Comments, p.27) The USEPA Toxic Release Inventory (TRI) shows both amount of hazardous constituents landfilled as well as permitted air releases from the stack in the waste-treatment processing area, not part of this siting application. PDC testified that ambient monitoring around the landfill showed no releases off site of hazardous constituents, no solvents are disposed of at the landfill in quantities to cause a release as seen in the gas vents, very low-to-non-detectable pressure was recorded in the gas vents, much lower than landfill gas at solid waste facilities. Methane will be required to be addressed and monitored as a special condition and PDC will monitor ambient air around the landfill as special condition.

"Was monitoring done with adequate detection limits during the time when the greatest potential for release was occurring?" (Lee, Comments, p.29) Staff agrees this is a good point. As a result, County Staff recommends the special condition proposed by PDC regarding ambient air monitoring be modified so as to require an ambient air monitoring program during times of most likely emissions during the active phases of operating PDC landfills, and to require PDC to submit an air quality monitoring plan to the County for its review and approval.

"These areas are likely releasing hazardous chemicals to the atmosphere which are trespassing onto adjacent properties." (Lee, Comments, p.14) Lee presents no proof of his claims, and there is no evidence or data in the record which would tend to support Lee's accusation. Due to the characteristics of the major waste disposed of at PDC, which are primarily inorganic wastes consisting of metals not prone to vapor phase transport, County Staff does not consider these remarks as particularly credible. Furthermore, daily cover is required and dust control also is required by PDC's operating permit to prevent particulate emissions.

"The inadequate buffer lands lead to a situation where airborne releases of regulated and currently unregulated hazardous chemicals, through off-gases and volatilization, have limited opportunity for dispersion on PDC property before trespass onto adjacent properties." (Lee, Comments, p.4) No evidence is provided to support this claim, and none is found in the record.

"The County Board and the people of Peoria do not have adequate information regarding air monitoring.... The Federal Environmental Protection Agency Toxic Release Inventory (TRI)

data for PDC shows consistent air emissions for various heavy metals, including ones named by Sandra Steingraber." (SC, p.6) Staff agrees that metals are shown in the TRI report, and emissions of heavy metals should be a concern. However, the point source emissions are from the processing facility, not the landfill. A 2004 IEPA report of an inspection of the processing facilities emissions indicates the facility was emitting less than it is permitted to emit, and was otherwise in compliance with its air permit.

PDC is not required to report air emissions data from their separately permitted hazardous waste processing facility as part of their Application. If they had, the Peoria County Board would surely be alarmed by the data. Thanks only to requests by citizens who exercised the Freedom of Information Act, the County may now consider that PDC reported dangerous PM-10 pollutants in our air, for example in 2002, of 35 times the permitted level established by the Illinois EPA. Likewise, for 2004, it was 43 times the permitted level. Indeed, PDC's recent annual PM-10 emissions have been consistently high, with its highest numbers reported in 2004. This trend is especially concerning given the known risks associated with PM-10.

"PM" stands for particulate matter, which is a complex mixture of extremely small particles and liquid droplets. "10" stands for micrometers. PM-10 particles are of concern to the EPA because, given their tiny size, they can be inhaled and reach deep into our lungs, and some can even get into our bloodstream. Numerous scientific studies have linked particle pollution to a variety of problems including increased respiratory problems, decreased lung function, aggravated asthma, chronic bronchitis, irregular heartbeat, non-fatal heart attacks, and premature death in people with heart or lung disease.

PDC did not disclose this information during the hearing process or, to the best of our knowledge, in the Application. The Peoria County Board should consider this to be a very serious concern. We hope IEPA is working diligently to correct this serious health concern in order to protect Peoria County citizens for the remaining life of the existing landfill. The County Board now has an opportunity, and responsibility, to eliminate this known health and safety threat going forward by denying the PDC expansion. Without the expansion of the hazardous landfill facility, the processing plant emitting the PM-10 would have nothing to do. (PFATW, Evidentiary Summary, p.16)

"It is inaccurate, however, for the PES (PFATW Evidentiary Summary) to state that the reported emission rates exceed those established in our permit since our facility permit, with which we are in full compliance as verified by the IEPA through its 2004 inspection, does not regulate PM-10 emissions....In summary, PDC has authorization to emit 33.8 tons of particulate matter. As there is no limit on PM-10, PM-10 may be emitted up to the total particulate matter

level of 33.8 PDC has been reporting well below that total and is in full compliance." (PDC, Exhibit B, March 29) County Staff has reviewed the various documents submitted by both PDC and opponents, and has concluded that PDC's treatment plant is not part of the application. As such, air emissions from that plant are not directly related to the issues which the County must address as part of the siting. Therefore, County Staff does not find it "alarming" that such information was not included as part of the application. By all indications, the air emissions from the treatment plant are in compliance with the treatment plant's air permit. [Appendix 1] County Staff notes that the distance between the treatment plant and the nearest property line along the eastern side of the landfill is approximately 1,800 feet.

Dr. Michael Vidas followed Dr. Zwicky (Pgs. 296-334) on February 27th. He testified that he did not study the application (Pg. 298, Feb. 27 Transc.), and that he reviewed the 2003 USEPA Toxic Release Inventory and said this shows metals have been released in significant portions (Pg. 308, Feb. 27 Transc.). However, Dr. Vidas has misinterpreted the TRI report, and the material quantities listed in the report are materials that have been treated and disposed, not released in the atmosphere. According to written comments by PDC concerning Dr. Vidas' comments, PDC finds that three out of four of the contiguous zip codes to the site have lower cancer rates than the county average (PDC, March 17). PDC makes an effective argument that no air emissions are being released at the property boundary.

One of Peoria Families Against Toxic Waste (PFATW) submittals into evidence is an article entitled, "Health Effects of Residence Near Hazardous Waste Landfill Sites: A Review of Epidemiologic Literature". This is from Environmental Health Perspectives, Volume 108, March 2000. In the Conclusions section of the article, the following statements are made:

For several reasons, evidence is limited for a causal role of landfill exposures in the health outcomes examined despite the large number of studies. Effects of low-level environmental exposure in the general population are by their nature difficult to establish.

Evidence for a causal relationship between landfill exposures and cancers is still weak. Cancers are difficult to study because of long latency periods, as discussed in previous sections.

Landfill sites may differ enormously in the conditions that render them hazardous, and conditions that determine the exposure to and resulting health risks posed by any waste site are likely to be unique to that particular site.

Much of the existing epidemiological work involves large, old sites, uncontrolled dumps, and sites where heavy off-site migration of chemicals was detected.

On the basis of current evidence, we cannot extrapolate findings for these individual sites to landfill sites in general or conclude which landfill sites are more likely than others to affect the health of nearby human populations.

Staff does not dispute the health risks associated with direct exposure to the heavy metals that are accepted at this facility. Staff concurs with Dr. Vidas (March 28, 2006) and PFATW's citation of the Cassarett & Doull's Toxicology: The Basic Science of Poisons, which summarizes the knowledge of metals that cause cancer in humans and animals. By definition, these materials are hazardous (meaning harmful to one's health) and regulated by IEPA and USEPA. The main issue is that Staff has not seen documentation indicating that this site specifically is responsible for any direct exposure and resulting health risk to the general public. During Dr. Zwicky's testimony, he used the words threat, fear, and potential, but did not offer any factual data that showed this facility is causing any exposures. He also stated that he was not aware of how contaminants are exiting the site or if they ever will exit the site.

ITEM 2- Landfill Design.

Adequacy of Cover Monitoring System

"Since PDC proposes to only maintain the superficial aspects of the cover for the minimum post closure period of 30 years, there will be a need for someone to maintain the cover after that period, after PDC attempts to walk off and leave the responsibility for continuing monitoring, maintenance and eventual remediation for someone else to pick up. Will this be the responsibility of the County? If not, who will provide the funds to accomplish this?" (Lee, Comments, p.11) This comment simply highlights the need for the Perpetual Care Fund.

"The construction and operation of a leak detectable cover on the landfill... provides a means to determine when the plastic sheeting layer in the cover will no longer prevent moisture from penetrating through it and thereby generating leachate." (Lee, Comments, p.21) Dr. Lee does not provide a design of such a cover system. The performance of the cover can be evaluated in terms of leachate production as is noted in the declining leachate quantities in the primary and secondary even from the partially capped landfills C-1 and C-2. Staff agrees with Dr. Lee's point that the cap must be installed and maintained so as to minimize leachate

production. Given the importance of cap permeability, although the design of the cap, according to testimony by PDC, meets the RCRA standards, staff would suggest an additional layer of geonet to further ensure quick drainage off the top of the low permeability layer, and a 2 foot thick recompacted clay low permeability layer underneath the geomembrane as added insurance that further minimize infiltration into the waste.

"Daniel has not discussed the fact that the key element in preventing water from passing through the cover is the plastic sheeting layer in the cover. This plastic sheeting layer will degrade, likely at a faster rate than the bottom liner plastic sheeting, because of the greater exposure conditions that lead to free radical formation." (Lee, Comments, p.24) Dr. Daniel agrees that eventually the HDPE material will lose strength, but has a differing estimate of the timeframe, but further highlights the need for care of the facility after closure. The perpetual care fund will ensure cap maintenance and integrity.

Adequacy of Leachate Collection System

"The PDC leachate collection system may be prone to plugging. The collection systems will need to be maintained far into the future." (SC, p.2) *"It has been known for many years that leachate collections systems are prone to plugging, especially when sand is used in such systems." (Lee, Comments, p. 6)* Dr. David Daniel disagrees and said "I have no reason to believe that this is a particularly clog-prone drainage layer in the leachate collection system, the layer of sand on the bottom, because this is not an organically rich landfill." (Pg.109, Feb 22 Transc.) County Staff agrees that the leachate collection system will need to be maintained into the future, the length of time is at least 30 years after closure already required by the IEPA. USEPA generally concludes that leachate generation from a properly capped facility should be minimized in 8 to 10 years following capping. So the amount of leachate should be minimized well within the 30-year post-closure period if the cap operates as expected. However, the Perpetual Care Fund provides for the continued inspection of the system after the post-closure care period, and further provides for the extraction of any leachate that might be generated sometime in the future.

"When leachate is detected in the leak detection system between the primary and secondary liner systems, it is known that the liner system has failed and that it is only a matter of time until the secondary liner system will fail if it has not already done so." (Lee, Comments,

p.10) According to PDC testimony, the primary liner performed as predicted in "de minimus" levels that USEPA approved according to their consultant's predictions for the specific liner designs. The data from PDC on leachate flow from the primary to the secondary system shows that it is reduced by over ten-fold or greater into the secondary system. The mere fact that leachate is being collected in the secondary system does not mean the primary system has failed. In fact, USEPA has built into the regulations that leachate is collected as soon as it is detected in both primary and secondary systems and removes head (i.e., the potential for fluid to migrate into the liner) from the liners. Also, USEPA approved the calculated leakage rates that are expected from the design, construction and level of QA/QC for Trenches C-2 to C-4. According to testimony by PDC, the calculated leakage rates were not exceeded when operating the primary and secondary leachate collection systems. Therefore, the liner systems appear to be performing as designed.

"A composite liner system can be effective in collecting leachate that penetrates both the primary and the secondary liner systems." (Lee, Comments, p.10) In the Illinois EPA's report to the Legislature (A Study of the Merit and Effectiveness of Alternative Liner Systems, January 2003), Joyce Munie and Dr. Daniel state that there are no known releases to groundwater from a Subtitle D composite lined landfill anywhere in the US to their knowledge.

"The inevitable leachate generation that will occur in post-closure year 31 and beyond will eventually lead to leachate transport of hazardous chemicals to the underlying groundwaters." (Lee, Comments, p.24) There is no evidence provided by Dr. Lee to show why there would be substantial leachate generation in year 31 while EPA's data shows rapidly declining leachate production with 8-10 years after capping when de minimus levels of leachate are generated. There is no evidence to support that RCRA caps have failed after 30 years either. Maintenance of the cap will ensure that perpetual care will not allow leachate to be generated at levels that are a risk to the environment.

Adequacy of Liners

The Sierra Club report attributes Dr. Daniel as saying: *"The PDC hazardous waste landfill liners will deteriorate. At some point in time the liners will fail to provide containment for the heavy metals and other toxic wastes in the landfill."* (SC, p.2)

Dr. Daniel said (paraphrased) that of the studies he has seen, the antioxidants in the liner will degrade in 300 to 500 years, then the HDPE slowly starts to lose strength and deteriorate (Pg. 110. Feb 22 Transc.) He goes on to say the compacted clay will still be in tact and actually be less permeable due to the continued weight and compression. He believes that even if liquids go through the clay, the liquid will also "tend to drive the permeability down", making it more difficult to pass through. He has said also that metals will tend to be attracted to the clay particles, and that clay is a substantial separator between the water table and the waste. He said that statements that say all liners will fail are extremist statements. He agrees that plastic liners will fail if you look at "forever" as the timeframe, but the clay will likely still be there. Therefore, given Dr. Daniel's comments and standing as an expert, County Staff tends to agree with his opinion as he has stated them, and not as perhaps they have been improperly interpreted.

"Contaminants in trace amounts are already showing in test well results. Research done by hydrologist Charles Norris, based on Illinois Environmental Protection Agency Information, concludes that pollution is already reaching the aquifer sands.... Norris adds that operating and monitoring data for leachate production from Area C at the landfill demonstrates that the primary liners of trenches C1 through C4 leak, and that data from trench C1 shows the secondary liner also leaks." (SC, p.4) The ISWS Research Report 124 discusses sources of chloride and sulfate in Peoria from shale and other surface sources. In addition, PDC's March 22, 2006 submittal provides evidence to show the leachate isn't the source in wells downgradient of C-2, C-3 and C-4. Trench C-1 is a concern raised by Staff, and has been adequately addressed by Staff's recommended special conditions.

"Over time the integrity of the plastic sheeting liners will deteriorate to the point where they are no longer effective in preventing leachate from passing through them into the underlying groundwater system." (Lee, Comments, p.7) Although the latest information by USEPA ("Assessment and Recommendations for Improvement for the Performance of Waste Containment Systems, USEPA, December 2002) shows that a HDPE liner could last up to 1000 years, the references by Dr. Lee cite conditions different from those presented at PDC landfill. The cases Dr. Lee cites for liner failure are mostly from solvents (of which are not at levels in leachate to cause a liner interaction) and oxidation, which his references state could happen in a lagoon exposed to air (the lagoon at PDC will be removed). Very little or no oxidation is expected to occur in buried liners (due to anaerobic conditions), and based upon the evidence in

the record, there is no reason to expect interactions between leachate and the HDPE liners or the compacted clay which would cause more rapid degradation of the multiple, redundant liner system. Dr. Lee discusses many generalities, such as differential settling cracks in clay under membrane liner. However, geotechnical review shows foundation materials to be stable. As stated in Dr. Daniel's testimony, even if plastic liners degraded over eons of time, the clay compacted liner would attenuate metals and the low concentrations of organics before they even migrate into the natural clay geology underlying the landfill. The underlying thick glacial clayey deposits also would act as a substantial barrier, according to Dr. Daniel's testimony, to further attenuate metals and organics well before they reached the lower sand aquifer.

"It is not possible to reliably predict when this plastic sheeting will no longer function as an effective base for a leachate collection system." (Lee, Comments, p.8) "There is no reliable information that would demonstrate that HDPE plastic sheeting layers can be expected to function as designed for at least 200 years." (Lee, Comments, p.15) "While the proposed landfill expansion liner and cover description provides for more than the minimum allowed design of a landfill containment system, this enhanced design is also subject to failure and will not prevent leachate from being generated in the landfill that can penetrate through the liner system into the underlying groundwater system during the time that the wastes in the landfill will be a threat." (Lee, Comments, p.16) Staff tends to give more weight to Dr. Daniel's testimony that HDPE liners will start weakening from 300 to 500 years in the future. At that point in time, leachate quantity and quality should be reduced to "de minimus" levels. There is a finite amount of pollutants that would leach from wastes within the landfill that at some future point in time, there would be no release of hazardous pollutants of any kind at this site. Also the perpetual care fund would manage the cap and ensure that leachate is no longer generated.

"I concluded that HDPE-based plastic sheeting liners were the most stable and least likely to be affected by chemicals in municipal solid waste and hazardous waste." (Lee, Comments, p.22) Today's liner formulations are much improved since Dr. Lee was involved in working for a liner company and are even more resistant to degradation.

"The HDPE liners used in the earlier cells of the PDC landfill would be expected to fail more rapidly than the HDPE liners that are proposed for the landfill expansion." (Lee, Comments, p.23) Given Dr. Lee's opinion, he would likely agree with staff that it is imperative

to keep the cap on Trench C-1 or place additional liners on top of the existing cap. The perpetual care fund should be able to maintain the cap and reduce leachate production to "de minimus" levels as shown in "Assessment and Recommendations for Improvement for the Performance of Waste Containment Systems, USEPA (December 2002). The data in this report are from real RCRA capped and lined hazardous and solid waste facilities. The data show that if a landfill is capped with a RCRA cap as proposed at PDC, then no leachate is produced after 8-10 years of final cap installation.

"The bottom line issue with respect to clay liners is that they are not impermeable, and that, in time, leachate can pass through them, leading to the pollution of groundwaters underlying the landfill." (Lee, Comments, p.23) The groundwater under the site may be subject to pollution only if there is sufficient quantity of leachate and high concentration of pollutants that can overcome the natural barriers to groundwater transport. PDC is constructed over a natural clay aquitard (that inhibits the flow of liquids) that protects the underlying aquifer. There are interactions in the compacted clay liner and clayey natural till that will adsorb metals and organics, and diffuse leachate. Furthermore, if ever released, any contaminants in the leachate would be expected to further dilute and disperse once in the aquifer. The perpetual care fund will ensure that leachate is not of sufficient quantity to overcome the engineered and natural barriers that underlay PDC landfill.

"The PFATW says The Peoria County Board is entitled under the law to deny the Application if the Board determines that the proximity of the landfill expansion to the interconnected Sankoty/Shebyville aquifer creates a present or future health concern, even if the application process are otherwise met." (PFATW, Evidentiary Summary, p.3) Due to the relatively low levels of hazardous constituents in the waste disposed of at the landfill, the County Staff is of the opinion is that if a release of leachate were to occur at the landfill site, any hazardous constituents would be in low levels. On the other hand, in order for any affect to be observable or measurable in the Sankoty aquifer or at the Pleasant Valley Public Water District wells, there would need to be a large magnitude release of relatively high concentration of contaminants, due to distance from the site and the nature of the materials of most concern in the waste (i.e., metals, which are normally attenuated naturally in clay).

ITEM 3- Groundwater Quality and Trends

Issue: **Superficial approach to analyzing the groundwater threat**

"This (soil) complexity makes monitoring leakage through the landfill liner system difficult to conduct reliably." (Lee, Comments, p.12) Staff believes this conclusion may conflict with Mr. Norris' testimony. If, as Mr. Norris claims, liquids percolate through the substrate underlying the site very quickly, any leakage would presumably migrate quickly into the groundwater and would be relatively easy to detect. In regard to this, County Staff has recommended a special condition which would require additional wells be installed down gradient of the landfill so as to provide enhanced ability to detect if leakage has occurred.

"There is need for independent expert review of such modeling to evaluate its reliability." (Lee, Comments, p.12) Staff, with the assistance of independent qualified consultant engineers, reviewed the model.

"A far more intensive hydrogeological investigation is needed to properly characterize the complexity of the hydrogeology underlying and near the landfill through which leachate-polluted groundwaters can pass on their way to the domestic water supply aquifer." (Lee, Comments, p.14) The testimony at the public hearing was that this is one of the most, if not the most, extensively studied sites in the State of Illinois. Extensive borings were conducted on site to determine the critical elements of the site geology and hydrogeology. The studies were adequate to obtain hazardous waste permits from USEPA and IEPA in the past, and additional information was developed for the application.

"PDC has not adequately characterized the underlying hydrogeology with respect to predicting when such pollution could be expected." (Lee, Comments, p.15) Dr. Lee does not present any specific recommendations for what additional investigations are needed or criticism of the existing hydrogeologic work other than a general criticism.

"This approach toward estimating groundwater impacts based upon diffusion through the liner system is fundamentally flawed. This approach ignores that the ultimate deterioration of the HDPE liner system and the advective transport of leachate and many of its associated chemicals through the compacted clay layer is the primary mechanism of leachate transport through the liner system that leads to groundwater pollution." (Lee, Comments, p.17) The original GIE model assumed liner degradation and fractures in the clay as discussed by Dr. Barrow.

"The Board should not only disapprove the expansion of this landfill but also work with regulatory agencies to more appropriately evaluate whether the existing PDC landfill is polluting groundwaters and to set up a more adequate monitoring program to determine when each of the sections of the existing landfill starts to pollute groundwaters so that remediation by PDC can be initiated in a timely manner." (Lee, Comments, p.13) "The placing of groundwater monitoring wells at hundreds of feet apart along the downgradient edge of the landfill could readily fail to detect initial plumes of leachate-polluted groundwater passing the monitoring well line (the point of compliance for groundwater monitoring)." (Lee, Comments, p.25) Additional wells are to be installed and Peoria County has the right to sample leachate, groundwater, air, and surface water at any time for any constituents at any time. Furthermore, the perpetual care fund provides the community with the assurance that there will be an adequate monitoring program well into the future to determine if or when areas of the landfill, including inactive sections of the old landfill are causing any problems.

"It is my experience that landfills can pollute groundwaters several miles from the waste deposition area." (Lee, Comments, p.26) No specific case studies are cited or literature cited to show this, and there is certainly nothing in the record which would suggest that this landfill has that potential.

Mr. Charles Norris provided the following comments on March 29, 2006 with the Peoria County Clerk in regard to the PDC Siting Application. County Staff identified and addressed key items from Mr. Norris' comments in the following sections:

Norris Introduction (Page 3).

Mr. Norris states he is no longer confident Sections (Trench) C waste is more isolated than the older disposal areas. While the older disposal areas are a significant concern for many of the commentators, it is not part of the application pending before the County. Staff review has focused particular attention on Trench C-1 because of the older design and Staff concerns regarding chloride downgradient of that area. As a result, the proposed vertical expansion over C-1 is not recommended without an intermediate composite liner system to isolate the existing liner and leachate collection system. Furthermore, the perpetual care fund covers not only the area covered by the application, but also the older closed areas of the PDC landfill. This provides significant additional protections for the community which might not be available

otherwise.

Leaking from liner systems under Section C (Assumed Trench C, Pages 4, 5 and 6)

Mr. Norris states he has reviewed leakage rates and quality data from Trench C since his testimony. He concludes it does not match predicted primary leakage rates and water quality was leachate, especially Trench C-1. Secondary detection system leakage rates fell off after the trench was capped. Mr. Norris' conclusions in this regard are consistent with Staff's conclusions regarding Trench C-1 design and the drop off of leachate generation rates. This is why staff recommends no vertical expansion over Trench C-1 without an intermediate composite liner above the existing waste.

Contamination under the PDC Waste Disposal Complex (Page 6)

Mr. Norris states "Unknown, unproven and speculative off-site sources are rationalized as the cause of all on-site contamination." Staff disagrees with Mr. Norris' characterization of off-site sources. The ISWS Research Report 124 discusses sources of chloride and sulfate in Peoria from the bedrock and other surface sources. The application included data near the site of chlorides present in the shallow bedrock or shale (Pottstown School well). In addition, the March 22, 2006 submittal provides evidence to show the leachate isn't the source in 2 of the 3 downgradient monitoring wells showing increases in non-hazardous indicator parameters. That being said, County Staff has not been able to definitively determine the chloride in one down gradient well is from off-site sources. As a result, staff continues to believe the approach proposed in its initial Staff Report is appropriate.

Mr. Norris states "The multitude of assumptions that are necessary to explain away all the contamination under ... does not conform to the maxim." Staff disagrees. Chloride and sulfate provide good indicator parameters since they are high in leachate, but published reports by the Illinois State Water Survey for the Peoria-Pekin region reports these occur naturally and from other non-landfill man-made sources. The leachate fingerprinting provided in the March 22, 2006 submittal rules out Trench C as a possible sources of the increases, except for the chloride found in well R138. County Staff believes this well could be impacted from man-made offsite sources of chloride, natural increases in chloride, closed PDC landfills and/or Trench C-1. Since County Staff is unable to make a definitive determination of the source, Staff has taken the conservative approach of trying to isolate any area of C-1 which might be contributing chloride

to the groundwater.

Chloride (Pages 6 and 7)

Mr. Norris states “each of these speculative off-site sources can be easily eliminated.” Staff disagrees. Well-documented occurrences of natural variation of these indicator parameters (discussed in item 3 above). This may very well be why they were not evaluated against background in the PDC monitoring network.

Mr. Norris states “The dismissal of leachate as a possible source of chloride contamination on the basis of the lack of correspondence between sulfate and chloride, both of which are in the leachate of at least the C-area trenches, is inappropriate.” Staff agrees. This is why staff asked for the chloride-bromide data and the major cation-anion Piper Diagram Plots be provided.

Mr. Norris states were the chloride from some offsite source from the wells, there would not be a decline in chloride contamination occurring with a drop in precipitation. This point is not applicable to the proposed expansion since the wells Mr. Norris appears to be referring to (R132, R133, and R122) are located over 1,000 feet upgradient from the proposed expansion. If these wells were impacted by onsite sources, it would have to be from closed units that are not proposed for expansion in the application.

Chloride/Bromide Ratios (Pages 8).

Mr. Norris states “It was not reported whether these 8 wells and single source of leachate constituted the entirety of the “special” sampling event or a subset.” Staff agrees with this comment. Staff did not have the opportunity to review the sampling approach, data or calculations used to prepare the geochemical plots and tables.

Mr. Norris states the analyses of the leachate from several areas of this old unit would allow testing of this conclusion and could shed considerable light on the other contaminant concentrations and distributions related to the PDC waste disposal complex as a whole. Staff agrees with this comment. Staff points out that other closed areas are not proposed for vertical expansion, so they are not as critical as Trench C. In addition, the perpetual care fund will provide additional protection for these older closed areas of the PDC landfill not proposed for vertical expansion.

Tritium (Page 9)

As performed, the tritium analyses are largely meaningless. Staff agrees with this comment. Tritium enrichment should have been used in the leachate and groundwater analyses to provide lower detection limits.

General Contamination Patterns (Page 10)

Mr. Norris states the biochemical alterations of chlorinated and non-chlorinated organic compounds is one of the reasons why the indicator parameters TOX and TOC are so valuable. Staff disagrees with this comment. TOX and TOC are of little value if you analyze for specific inorganic compounds and are subject to frequent false positives (increases over background not attributable to the landfill).

Piper Diagrams (Page 11)

Mr. Norris states that PDC did not choose to include analyses of the leachate from the older units, including the municipal solid waste units, leachate as likely or more likely to be impacting site water quality. Staff agrees with this comment. However, since Trench C is proposed for vertical expansion and not the closed PDC units, the study was useful to determine impact of Trench C on downgradient groundwater quality.

Groundwater Assessment Modeling

Staff believes that the type of groundwater model used by Dr. Barrows is appropriate for this type of application for evaluating future potential impacts to groundwater quality as required by IEPA for the permit application. The IEPA requires that the applicant model impacts up to 100 years after closure, but PDC decided to model out to 500 years after closure. Staff had concerns over the assumptions and parameters used for the original model regarding the appropriate hydraulic conductivity of the clayey till (based on lab permeability tests). Also, there is evidence that portions of the till may be saturated, as seen in numerous borings and in sand lenses, not unsaturated as assumed by Dr. Barrows.

Dr. Barrows, however, recently submitted a supplemental report stating that the most sensitive parameter for the model used in the application was not hydraulic conductivity. He admitted that this was in error and that the model is actually more sensitive to liner leakage rates, not hydraulic conductivity. In regard to Staff concerns over the effects of saturation, he stated

that that modeling the till as saturated or saturated is neither conservative or less conservative because soil pore pressure is the more important parameter. Also the lab tests for permeability were correct since vertical permeability was a concern, not horizontal permeability as would have been gained from field tests.

Regarding the PFTAW concern about flow rates calculated by Harza in 1989 may be almost 10 times higher than the flow rates calculated by PDC for the present groundwater conditions, it is concluded that this discrepancy would not have had a significant impact to the original GIE model for the aquifer transport results in Dr. Barrows results and conclusions. As a result, the difference in flow rates also would not cause Staff's opinion regarding the recommendations and Special Conditions for the PDC expansion siting application.

Since Staff has not had an opportunity to independently verify the change in sensitivity (i.e. liner leakage rates) analysis of the model set forth in PDC's Supplemental Report, Staff is unwilling to rely solely on modeling conclusions to eliminate the possibility that the increasing historical trends in chloride concentrations at downgradient monitoring well R138 are not due to leakage from C-1. Although it is possible that elevated chloride levels are coming from other sources, to be conservative, Staff has determined it prudent to continue to include C-1 as a possible source. Therefore, Special Conditions relative to C-1 vertical expansion are recommended and necessary.

Supplemental Comments (Page 12)

Norris states "the monitoring wells at the site tell us that organic contaminants do reach the aquifer and do migrate to monitoring wells at levels that are not only detectable, but are of regulatory concern". Staff acknowledges these organic compounds have been detected; however the IEPA has acknowledged that they are not from this facility.

Issue: Connection to Sankoty Aquifer

The Sierra Club report says *The PDC hazardous Waste Landfill is not located to protect public health, safety and welfare because it is located over part of the Sankoty Aquifer system sands*. The Act is specific that the facility not be located in the regulated recharge area, and it is not.

If PDC were 1/10 mile closer to the Pleasant Valley Water District, state regulations would not allow a new pollution control source to proceed (SC, p.10). Staff is unaware of the requirement to be 1 mile away from the regulated recharge area. The three pumping wells shown in the state regulations for the Pleasant Valley Public Water District already have the 1000-foot buffer, and the outer edge of the buffer is over 1.1 mile away from the landfill. We will seek clarification of this, however, it still remains that the site is well outside the regulated recharge area. The regulations (615.105 (A) 5) b) that are established for Pleasant Valley Public Water District also exempt facilities that may be considered a new pollution control source that are located over 2500 feet from the boundary of the facility to the well head.

ITEM 4- Older Sections of the Site.

"Older parts of the landfill have not been brought up to best available technology and current day standards." (SC, p.5). Although the County Staff agrees that the old parts of the site should be monitored closely, PDC is already responsible for those areas to the satisfaction of the IEPA. Since the older units are not part of this siting request, staff must focus on the actual siting request as required by the Act. The perpetual care fund will provide long term care and monitoring of not just the expanded area, but the inactive areas of the larger facility as well.

"There is need for the County to work with the public and the regulatory agencies to investigate this situation. This investigation will likely involve constructing additional monitoring wells and monitoring the groundwaters that are potentially impacted by the former landfill section, to determine if pollution is occurring in that part of the landfill. This investigation should be paid for by PDC and would include involvement of independent experts who could provide reliable information to the public on the development of the investigation, its implementation and results. If there is an indication that this part of the landfill is polluting groundwaters, then PDC should be required to start a comprehensive groundwater investigation/remediation program to define the extent of the pollution, to control its further spread and to remediate the polluted groundwaters to the maximum extent possible." (Lee, Comments, p.26) This should be covered by Peoria County's perpetual care fund as cap maintenance, monitoring and leachate management will be required. Also, the barrel trench is monitored and regulated by the IEPA and any evidence of contamination by hazardous constituents that originate from the barrel trench over groundwater quality standards will trigger

corrective action required to be performed by PDC. The US EPA would have required the facility to prepare RCRA Facility Investigation (RFI) prior to the Part B permit for the existing permit. This would have included all the old units.

"The County Board may also consider the previous operating experience and past record of convictions or admissions of violations of the Applicant and any subsidiary or parent corporation in the field of solid waste management when considering criteria two and five." (SC, p.11) The report cites references documents from the 70's to mid 80's. The Sierra Club is correct in that the Board may also consider past experience, often referred to as the 10th criterion. Although Staff has concern over the old units and their potential to leak, Staff has focused on the siting application as required by the Act. At this juncture, we rely on the IEPA to monitor and address the old units. However, if the Board feels that additional scrutiny should be placed on those units, County Staff would work with IEPA to require PDC to investigate them further. The compliance record of the last 12 consecutive years appears impressive. The proposed expansion of the landfill is proposed to be operated in substantially the same manner as the present operating portions of the facility have been operated over the past 12 years. Therefore, Staff believes the more recent operating record is more indicative of how PDC is likely to operate the proposed expanded landfill as opposed to compliance records from the distant past before the present hazardous waste landfill regulatory regime was in place.

CRITERION 3

THE FACILITY IS SO LOCATED SO AS TO MINIMIZE INCOMPATIBILITY WITH THE CHARACTER OF THE SURROUNDING AREA AND TO MINIMIZE THE EFFECT ON THE VALUE OF SURROUNDING PROPERTY

Issue: Compatibility with the Character of the Surrounding Area

"The landfill is located too close to a major residential area. Dr. Fred Lee states that several miles of buffer lands should be located between such a landfill and adjacent property owners. (SC, p. 4) Neither Illinois nor federal regulations require such large buffer zones. The landfill is buffered by properties owned by PDC, and varies in length and width. The minimum distance from the landfill to the PDC property line is estimated at over 300 feet.

"The proposed expansion will not be compatible with the character of the surrounding area. PDC proposes to build a 45-foot vertical expansion (mound) over 32 acres of their existing landfill, and for 15 years this mound will be under construction." (SC, p.7) County Staff has reviewed the report by Lannert and believes it accurately reflects the present situation, but Staff is also concerned of the proximity of the vertical expansion over C-1 to the residents to the east of the landfill. The landfill has been in existence for over thirty (30) years. During that period of time, residential land uses have expanded out to within the distances now being discussed. Presumably, this encroachment would not have taken place if the land uses were, in fact, incompatible. Since the proposed expansion of the landfill is proposed to be operated in substantially the same fashion as the existing landfill, it would seem logical to conclude that continued landfilling operations would not be incompatible. That being said, the proposed expansion would increase the height of the landfill, and that increased height and the continuing landfilling activities could potentially create visual and/or noise impacts on the surrounding residential uses. This is the rationale for the special condition to install a screening berm to block the view of active landfill operations, as well as to help block potential noise that could emanate from the site. If C-1 is not vertically expanded, then the impact of the expansion should largely be mitigated. If C-1 is not vertically expanded, the approximate amount of waste entering the site would likely be about between 25% and 30% less than proposed, thus the potential length of time the site is open could be reduced.

An Applicant cannot satisfy criteria #3 merely by pointing out that a landfill presently exists at the location. Even with an existing facility, an applicant is required to demonstrate the proposed expansion is so designed and located as to "minimize" incompatibility with surrounding land use. However, an applicant is not required to prove as part of its application, that it has or will eliminate or prevent all conflict with or impact on surrounding land use. The applicant has to prove it has taken or will take reasonably feasible steps to do what it can to minimize the impact of the facility on surrounding land uses. The reasonable efforts to minimize impact, however, are required only if there has been shown that there is some incompatibility with the surrounding area. County Staff believes the special condition of a berm would be a reasonable effort to minimize potential impacts.

"The application must be treated as if it is a new pollution control facility, and compatibility standards must be applied as strictly to an expanded facility as to one not yet in existence." (PFATW, Evidentiary Summary, p.20) County staff acknowledges this concept, and refers to its response to the prior point.

Issue: **Effect on the Value of Surrounding Property**

"It remains to be seen what effect PDC will have on the value of surrounding property." (SC, p.8) It is true that no one knows what future land values will be, be they near a landfill or near a shopping mall, in elsewhere. County Staff has reviewed DeClark's report and found it to be properly prepared. That report concludes proximity to the landfill has not caused an appreciable affect on property values as compared to other residential property in similar areas. There is no evidence in the record to contradict Mr. DeClark's report. Since the existing landfilling operations have apparently had no impact on property values, and the proposed expansion is to be operated in substantially the same manner as the existing facility, it is logical to assume continued landfilling operations during any proposed expansion would likewise have little or no impact on property values. It is true that if a drinking water source is not useable due to contamination, property values could be impacted. However, since the majority of residences east of the property are on water supplied by the water district, they are not at risk unless the Sankoty is affected. Staff believes the risk to the Sankoty at the pumping wells to impact by the landfill is very small.

"The publicity of the dump has caused a recent increase in requests to the Assessor's Office by Peoria-area home owners to decrease their property taxes given their proximity to a hazardous landfill." (PFATW, Evidentiary Summary, p.22) While this concern raises an interesting question, there is nothing in the record upon which the County can conclude that this specific site will cause a decrease in property values. County staff has received no direct communication requesting reductions in assessments due to proximity to the landfill. In communication with the City of Peoria Township Assessor, there have been a couple of requests for reduction. As with any complaint if there is evidence to support an individuals claim for a reduction in assessed value, it will be reviewed by the Township Assessor, County Assessment staff or the Peoria County Board of Review.

CRITERION 5

THE PLAN OF OPERATIONS OF THE FACILITY IS DESIGNED TO MINIMIZE THE DANGER TO THE SURROUNDING AREA FROM FIRE, SPILLS OR OTHER OPERATIONAL ACCIDENTS

Issue: **Perpetual Care Fund**

"One of the major issues with respect to landfilling of hazardous wastes is establishing adequate funding for post-closure monitoring and maintenance of the landfill for as long as the wastes in the landfill will be a threat. Peoria County should be complimented for including the "perpetual care" requirement in it Site Hearing section of the Peoria County Code. It wisely added the requirement of perpetual care to the siting application process. It is my understanding that this is above and beyond the requirements of Section 39.2 of the Illinois Environmental Protection Act, found at 415 ILCS 5/39.2. "Perpetual" is defined to mean "lasting for eternity." Peoria County has clearly adopted a "forever" standard of care, a standard that PDC fails to meet." (Lee, Comments, p.6)

"Perpetual care should be defined based on the period of time that the wastes are a threat to be released from the landfill into the environment, not some arbitrarily developed 30-year minimum post-closure care period, which was originally adopted as part of the Resource Conservation and Recovery Act (RCRA) by the US Congress." (Lee, Comments, p.20)

"There will be a need for adequate post closure care, forever, if there is to be any hope of minimizing adverse impacts of the PDC hazardous waste landfill on water supply, water quality, public health and the environment." (Lee, Comments, p.19). "Who is going to provide for the post-closure activities from year 31 on, to hundreds to a thousand or more years that the wastes in the PDC landfill will be a threat? It is apparent that PDC proposes a "turn-key" transfer for the perpetual care obligations related to the site to the County of Peoria sometime after the post closure release of the site by the Illinois EPA. The Flawed Technology review discusses the types of post-closure activities that will be needed, effectively, forever." (Lee, Comments, p.20)

"PFATW is elated the Staff is recommending a true Perpetual Care Fund, as opposed to the one offered by the Applicant, to be expanded not only in dollar amounts contributed to the escrow fund, but also the expansion of the scope to include all areas of PDC #1, open or closed" (PFATW Response, p.4)

Much of the submission into the public record following the release of the County Staff report pertained to the need to care for the site into perpetuity. Many communities do not have perpetual care requirements in their ordinances pertaining to solid waste management. Peoria County does. County Staff believes the perpetual care fund proposed in the staff report is sufficient to protect this site into perpetuity. However, the Peoria Families Against Toxic Waste raised the issue of adequate funding in the perpetual care fund should the County Board determine that no expansion over C-1 should occur. According to Staff estimates, no expansion over C-1 would reduce the potential air space available for expansion by 25-30%. With the possibility that less than 150,000 tons of waste per year or less than the entire approximately 2.2 million tons set forth in the application may be disposed of at the facility, County Staff agrees and recommends a minimum annual contribution into the perpetual care fund be established. County Staff's calculations regarding levels of funding and future costs are based upon the assumption that at least the full amount of 150,000 tons would be disposed of each year. In order to insure the necessary funding is available, County Staff recommends that the language of the special condition and the amendment to the Host Community Agreement be modified so that it requires \$1.50 per ton, but not less than \$225,000 per year for at least 15 years following PDC's receipt of the necessary permit to operate the expanded landfill.

"All of these issues should be reviewed and defined by Peoria County, with respect to the potential long term cost to the County, as part of its review of the PDC hazardous waste landfill expansion application. These same issues need to be defined with respect to the closure of the existing hazardous waste landfill, should the County determine that an expansion of this landfill should not be allowed because of the increase magnitude of the threat to the public health, groundwater resources and the environment that already exists for the currently operating PDC hazardous waste landfill." (Lee, Comments, p.21) County Staff recommends a perpetual care fund to be established as a special condition. This fund will be more than adequate by the time PDC operates and closes the facility and after the 30 years of Post-closure care have been conducted. This will allow for continued cap maintenance, monitoring, corrective action, leachate management (if any required), and compliance on the new expansion and the older sections of the hazardous waste landfill. It will also provide additional protection for the "barrel trench" and older sections of the landfill. Should the landfill expansion not be approved, none of the perpetual care provisions would be in place to provide additional protection to Peoria

County. In fact, if the opponents of the expansion are correct, and the threat of this site is forever, then the County will at some point be exposed to the existing threat. Thus the only way to provide additional protections over and above the State and Federal requirements is with an established perpetual care fund paid by the Applicant, not the future taxpayers of Peoria County. The following table reflects Dr. Lee's recommended perpetual care requirements, the Illinois Environmental Protection Agency post closure care requirements (415 ILCS 5/22.3), and the perpetual care activities outlined by County Staff, enforceable through the Host Agreement. The table also identifies the period of time the IEPA or the County would have oversight over the site and could compel PDC towards corrective action:

Table SSR-1: Comparison of Post-Closure Care Activities With or Without Expansion

Post-Closure Care Activity	G. Fred Lee's Comments on PDC	Expansion with Special Conditions		No Expansion	
		IEPA Monitoring	Peoria County Monitoring	IEPA Monitoring	????
	Perpetual	2006-2054	2055- ∞	2006 - 2039	2040 - ∞
Gas Migration	✓	✓	✓	✓	
Drainage Problems	✓	✓	✓	✓	
Erosion	✓	✓	✓	✓	
Settling	✓	✓	✓	✓	
Groundwater Pollution	✓	✓	✓	✓	
Surface Water Pollution	✓	✓	✓	✓	
Other Environmental and Safety Problems		✓	✓	✓	
Remedial Action of Problems (during period of responsibility)	✓		✓		
Monitoring Groundwater Wells	✓		✓		
Removing Leachate	✓		✓		
Cleaning out Leachate Collection System	✓		✓		
Replacing Domestic Water Supply	✓		✓		
Funding the Liability (incl. Insurance)			✓		
Facility Inspections			✓		
Data Evaluation			✓		
Natural Resource Damage Costs			✓		
Legal Costs			✓		
Professional Engineering Costs			✓		

Opponents to the application have raised numerous concerns about the fate of the site if the applicant files for bankruptcy and/or dissolves prior to completion of the closure or post-closure care period. County Staff notes that PDC has demonstrated its existing financial assurance fund is funded in excess of the amount IEPA presently requires. However, County Staff also acknowledges the present regulatory requirements do not require PDC to provide financial assurance for potential corrective action of inactive areas of the facility. To further protect against the possibility of PDC not being willing or able to address potential corrective action of the inactive areas of the facility before the perpetual care fund would be available (30 years after closure of the expanded landfill, estimated to be 2054), County Staff is recommending an additional Special Condition which requires PDC to deposit an additional \$1 million into its financial assurance trust fund for the facility within ninety (90) days of receipt of final, non-appealable local siting approval.

Lastly, it appears to County Staff that this site was permitted prior to the adoption of Chapter 7.5 (Site Hearing Procedures) of the Peoria County Code, thus this RCRA permit was not subject to the local siting process. On September 10, 1985, the Peoria County Board adopted a statement of policy opposing the "disposal of toxic or hazardous waste over a known aquifer in Peoria County." [Attachment 1] While staff cannot from the record conclude the intent of prior County Boards, it appears that this resolution may have been in response Peoria County's inability to subject the expansion of this permit to the local siting provisions established under the Peoria County Code.

CRITERION 7

IF THE FACILITY WILL BE TREATING, STORING, OR DISPOSING OF HAZARDOUS WASTE, AN EMERGENCY RESPONSE PLAN EXISTS FOR THE FACILITY WHICH INCLUDES NOTIFICATION, CONTAINMENT AND EVACUATION PROCEDURES TO BE USED IN CASE OF AN ACCIDENTAL RELEASE

Issue: **Emergency Plans**

"No guidelines or brochures appear to exist to inform residents near PDC what to do in the event of an air pollution emergency or toxic spill event." (SC, p.7) Staff agrees, although the emergency plans are in place to handle spills and emergencies, more information should be available to the public and other emergency management organizations in the county to coordinate in case of some unforeseen hazard release. Given the nature of the regulated operations and the placement methods, Staff believes the risk level of a major catastrophe to impact surrounding areas is minimal. However, to address these concerns, County Staff has recommended annual review of the emergency preparedness with appropriate agencies.

"While PDC has safety plans for their own employees, what drills or specific plans are in place to help nearby residents in case of fire, spill or other operation accidents?" (SC, p.9) The most logical location for an operational accident is the processing building. Given the buffer between the processing building and the edge of the PDC property boundary, the risk of fire, or other emergencies impacting properties off-site is considered remote. However, County Staff has added a special condition to deal with concerns such as these. PDC shall host an annual tabletop exercise with appropriate emergency responders from Peoria County to ensure such issues are prepared for.

"There was no testimony regarding coordination with the City of Peoria in the event of an emergency." (PFATW, Evidentiary Summary, p.29) County Staff agrees and is one reason for the proposed special condition.

ADDITIONAL SPECIAL CONDITIONS

The County should appoint an advisory panel that would periodically meet to discuss current operations and proposed changes in operations of the PDC hazardous waste landfill (Lee, p.30) This comment, and others, has highlighted the fact that PDC, throughout its presentation, has referred to the types of wastes it accepts at the facility as a method of resolving or eliminating certain concerns of the opponents and the County Staff. County Staff's review has been largely based upon the types of wastes which PDC has accepted and continues to accept. If those types of wastes were to change, that may change some of the Staff's analysis. Therefore, County Staff is recommending a new provision be added to the Host Community Agreement to create a Waste Review Committee.

County Staff recommends the following special conditions to the County Board for consideration in addition to those set forth in the initial Staff Report.

1. Waste Review Committee.

"The Company shall not accept any new waste codes at the Facility unless said new waste code has previously been approved by the Waste Review Committee established herein. A "new waste code" shall mean any type of new waste represented by a waste code set forth in Illinois EPA or U.S. EPA regulations which the facility is not presently accepting or which has not been accepted in the past. A review Committee shall be established by the County Board, which shall consist of seven (7) members. The County Board Chair, with the advice and consent of County Board, shall appoint the following to serve on the committee: One (1) County Health Department representative, three (3) residents of the County who have demonstrated an interest in the facility, and three (3) members from the Company's waste stream review committee. If the Company desires to accept any new waste code, then it shall make a request in writing to the Review Committee, by giving notice as provided in this Agreement. The Review Committee shall review the request promptly, but in no case later than sixty (60) days after receipt by the County. The review shall take into account factors such as the capacity of the facility and EPA regulations. Recommendation of approval or disapproval of the request by the Review Committee shall be by majority vote. The recommendation shall go to the County Board, and the Board shall act on the recommendation at the next regularly scheduled Board meeting more than five (5) days after receipt of the recommendation. The Company shall have the opportunity to address the Board at such meeting. The Board may not unreasonably deny approval of the request. Failure by the Board to act on the request at said meeting shall constitute approval, unless a continuance is requested by the Company."

2. Minimum Annual Contribution to Perpetual Care Fund.

As discussed in the body of this Supplemental Report, the issue of PDC not disposing of the full 150,000 tons in a year or the full 2.2 million tons during the course of any approved expansion raised the concern about proper funding of the Perpetual Care Fund. As a result, County Staff is recommending the language proposed for the perpetual care fund be modified so as to require PDC to contribute to the fund at the rate of \$1.50 per ton of waste, but not less than \$225,000 per year for fifteen (15) years.

3. Ambient Air Monitoring

As discussed in the body of this Supplemental Report, opponents have raised the question about how and when the ambient air monitoring will be conducted. County Staff agrees that if monitoring is going to be done, it needs to be done in a meaningful manner. Therefore, County Staff recommends the Ambient Air Monitoring condition be modified so as to require PDC to submit to the County, for review and approval, a plan for ambient air monitoring that would provide, at a minimum, for the monitoring at such times and under such conditions as would be expected to create the greatest potential for detection of airborne releases from the facility.

4. Additional \$1 Million Post Closure Trust Fund Contribution

PDC shall, within ninety (90) days of receipt of final, non-appealable local siting approval, deposit an additional \$1 million into its financial assurance trust fund for the facility. The \$1 million, and the earnings thereon, shall be in addition to any and all other funds which IPEA may require pursuant to applicable financial assurance requirements.

APPENDIX 1

The first attachments in Appendix 1 include the June 17, 2004 Inspection of the PDC site for compliance with the IEPA Regulations. This includes the entire site permitted under the RCRA part B permit (current hazardous waste landfill, older sections of the site, and the waste processing facility). The report states that PDC is below permitted standards for NMOC emissions, VOM emissions, particulate emissions, and BTU/hour boiler burning fuel oil. The document concludes with the statement, "No problems were observed during this inspection."

The second attachment includes the September 10, 1985 County Board statement of policy opposing the disposal of hazardous materials over a known aquifer, correspondence from County Administration in 1987 and the Illinois Environmental Protection Agency regarding the issuance of the RCRA permit for the site. It appears to County Staff that the site was permitted prior to the adoption of Chapter 7.5 (Site Hearing Procedures) of the Peoria County Code, thus this RCRA permit was not subject to the local siting process. While staff cannot from the record conclude the intent of prior County Boards, it appears that this resolution may have been in response to not being able to subject the expansion of this permit to the local siting process.



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. Box 19276, SPRINGFIELD, ILLINOIS 62794-9276, 217-782-3397
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601, 312-814-6026

ROD R. BLAGOJEVICH, GOVERNOR

RENEE CIPRIANO, DIRECTOR

309 693 5461

FAX: 309 693 5467

Mr. Ron Welk
Peoria Disposal Company
4349 Southport Road
Peoria, IL 61615

JOANNA THOMAS
PEORIA COUNTY CLERK

Re: Peoria Facility
ID: 143 808 AAN

Dear Mr. Welk

On June 17, 2004, an inspection of Peoria Disposal Company was conducted by Wayne Kahila representing the Illinois Environmental Protection Agency. The purpose of the visit was to review facility operations with regard to applicable state and federal air pollution control laws and regulations.

A copy of the inspection report is enclosed for your information.

Please contact Wayne Kahila at 309 693 5461 if you have any questions regarding this inspection.

Sincerely,

Dean Hayden
Regional Manager
Field Operations Section
Peoria Regional Office

Enclosure

RECEIVED

AUG 10 2004

IEPA - DAPC - SPFLD

Rockford - 4302 North Main Street, Rockford, IL 61103 - (815) 987-7760 • Des Plaines - 9511 W. Harrison St., Des Plaines, IL 60016 - (647) 294-6000
Evanston - 155 South State, Evanston, IL 60123 - (847) 608-2131 • Peoria - 5415 N. University St., Peoria, IL 61614 - (309) 693-5463
Bureau of Land - Peoria - 7620 N. University St., Peoria, IL 61614 - (309) 693-5462 • Champaign - 2125 South First Street, Champaign, IL 61820 - (217) 274-5909
Springfield - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 706-6892 • Collinsville - 2000 Main Street, Collinsville, IL 62424 - (618) 445-1100
Marion - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200

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EXHIBIT "B"



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276

JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601

ROD R. BLAGOTJEVICH, GOVERNOR

RENEE CIPRIANO, DIRECTOR

ID: 143 808 AAN

Peoria Disposal Company

Field Inspection Report

Tier II Inspection Memorandum

Date: July 7, 2004

Date of Inspection: June 17, 2004

To: Ed Bakowski

Last Inspection Date: September 2, 1993

From: W. Kahila *WK*

ID: 143 808 AAN

R/D: 201

County: Peoria

SIC: 4953

Source: Peoria Disposal Company
Address: 4349 Southport Road, Peoria, IL 61616
Contact/Title: Ron Welk, Facility Manager
Phone/FAX: 309 676 4893

Description:

This facility is a hazardous waste landfill. Most of the received material is a solid that is classed as hazardous because of heavy metal content. A typical example of such material is the dust collected from a steel mill arc furnace. Lifetime Permit No. 8202 0021 covers a solidification and stabilization process for this material so that it can be properly landfilled.

Another process under the permit is an oily wastewater treatment process where oil and grease is separated from the wastewater. Leachate from the landfill is also treated in this process.

The permit also covers a boiler and a gas collection system in the landfill.

Findings:

Jeffrey Paul and Rachel Rose, GEC Interns, were with me on this inspection. We met Ron Welk and reviewed the required records. After checking the records, we toured the air emission sources.

Since this landfill is not a municipal solid waste landfill it is not subject to Section 220 or 40CFR60 Subpart WWW. It does have a gas collection system consisting of 16 gas vents that exhaust to the air. The permit requires a calculation of the NMOC emissions based on several parameters of the landfill. The calculated amount is significantly less than the

P. Hays
8-12-04

Rockford - 402 North Main Street, Rockford, IL 61103 - (815) 967-7760 • Disposal - 9511 W. Harrison St., Oak Park, IL 60454 - (847) 294-1000
Evanston - 595 South State, Evanston, IL 60123 - (847) 608-3131 • Peoria - 5415 N. University St., Peoria, IL 61614 - (309) 693-5463
Bureau of Land - 7020 N. University St., Peoria, IL 61614 - (309) 693-5463 • Champaign - 2125 South First Street, Champaign, IL 61820 - (217) 278-5000
Springfield - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 786-6593 • Carbondale - 2009 Main Street, Carbondale, IL 62214 - (618) 146-5120
Mazon - 2109 W. Main St., Suite 116, Mazon, IL 62959 - (618) 993-7200

EXHIBIT "B"

permitted 6.4 tons/year.

The permit limits emissions of VOM from the wastewater treatment process to 28.3 tons/year and includes a formula for calculating the VOM emissions. The calculated actual emissions for 2003 were 4.7 tons/year. Up to 21,000,000 gallons of wastewater are allowed to be processed in a year, and in 2003 only 1,149,638 gallons were processed.

Particulate emissions from the waste solidification process are limited to 33.8 tons/year. The actual emissions for 2003 based on amount processed and operating time were 20.3 tons. This process was operating at the time of this inspection and there were no visible emissions.

The 20 million BTU/hour boiler, which is allowed to burn up to 60,000 gallons/year of No.2 fuel oil, actually burned only 5,446 gallons in 2003.

No problems were observed during this inspection.

cc: W.Kahila
ID 143 808 AAN

FILED

MAR 29 2006

JOANN THOMAS
PEORIA COUNTY CLERK

Illinois Environmental Protection Agency
Division of Air Pollution Control
EAPC - ANNUAL EMISSIONS REPORT - 2004

Page: 01
Date: 03-22-2006

143808AAN - Peoria Disposal Co

- SOURCE DATA -

SOURCE
ID# AND
LOCATION

AIRID: 17-143-0143	IEPA USE ONLY	SIC 1: 4252	NAICS 1: 562211
PINUS: ILD000805812	IEPA USE ONLY	SIC 2:	NAICS 2:
FEIN:		SIC 3:	NAICS 3:
D&B:		SIC 4:	NAICS 4:
LATITUDE: 40:43:28.9200		SIC 5:	NAICS 5:
LONGITUDE: 89:39:28.0800		SIC 6:	NAICS 6:

SOURCE
ADDRESS

Peoria Disposal Co

4349 Southport Rd
Peoria, IL 61615
CONTACT: Ronald J Weik
PHONE: 309-676-4893 EXT: 201
FAX: 309-672-2726
E-MAIL: rweik@pdcare.com

ANNUAL
EMISSION
REPORT
MAILING
ADDRESS

Peoria Disposal Co

4349 Southport Rd
Peoria, IL 61615
CONTACT: Ronald J Weik
PHONE: 309-676-4893 EXT: 201
FAX: 309-672-2726
E-MAIL: rweik@pdcare.com

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete.

AUTHORIZED SIGNATURE

DATE

TYPED OR PRINTED NAME AND TITLE

TELEPHONE NUMBER

EXHIBIT "B"

Illinois Environmental Protection Agency
Division of Air Pollution Control
DAFC - ANNUAL EMISSIONS REPORT - 2004

143808AAN - Peoria Disposal Co

- ANNUAL SOURCE EMISSIONS -

POLLUTANT CODE	ALLOWABLE EMISSIONS (TONS/YEAR)	EMISSIONS REPORTED FOR 2003 (TONS/YEAR)	IEPA 2004 ESTIMATED EMISSIONS (TONS/YEAR)	SOURCE REPORTED EMISSIONS FOR 2004 (TONS/YEAR)
CO	0.150696	0.013600	0.150696	
LEAD	0.000039	0.000003	0.000039	
NH3	0.024111	0.024111	0.024111	
NOX	0.602784	0.054500	0.602784	
PART	34.567478	20.475300	34.567478	
PM10	0.442478	16.374800	0.442478	
PM2.5	0.007535	0.000700	0.007535	
SO2	1.301664	0.106400	1.198335	
VOM	39.077788	4.725000	37.989148	

FILED

MAR 29 2006

JOANN THOMAS
PEORIA COUNTY CLERK

EXHIBIT "B"

Illinois Environmental Protection Agency
Division of Air Pollution Control
DAPC - ANNUAL EMISSIONS REPORT - 2004Page: 03
Date: 03-22-2006

141808AAN - Peoria Disposal Co

- PERMIT LISTING -

PERMIT NUMBER	TYPE OF PERMIT	OPERATION NAME	STATUS	STATUS DATE	EXPIRES
82020021	LIFETIME	LANDFILL OPERATIONS	GRANTED	04-24-2002	
94050091	CONSTRUCTION	BAGHOUSE DUST COLLECTOR	GRANTED	08-18-1994	

Illinois Environmental Protection Agency
Division of Air Pollution Control
DAPC - ANNUAL EMISSIONS REPORT - 2004

Page: 04
Date: 03-22-2006

43806AAN - Peoria Disposal Co

- Equipment Listing -

Emission Points

0004 BOILER
0006 WASTE SOLIDIFICATION BUILDING
0016 LEACHATE COLLECTION SYSTEM
0019 LANDFILL GAS COLLECTION SYSTEM
0020 WASTE WATER TREATMENT FACILITY
0021 2 REAGENT STORAGE SILOS

Control Devices

0005 FARR DUST COLLECTOR
0008 BELGRADE SPLIT-BIN SILO BAGHOUSE (2)

Stacks

0004 BOILER EXHAUST
0009 FARR CARTRIDGE DUST COLLECTOR
0018 STACK
0019 STACK
0020 CREATED STACK
0021 CREATED STACK

FILED
MAR 29 2006
JOANN THOMAS
PEORIA COUNTY CLERK

EXHIBIT "B"

TO THE HONORABLE COUNTY BOARD)
)
COUNTY OF PEORIA, ILLINOIS)

FILED

Your Land Use and Executive Committees do hereby
recommend passage of the following Resolution:

SEP 05 1985

R E S O L U T I O N

MARY E. HARKRADER
COUNTY CLERK

WHEREAS, the County Board of Peoria County has the power
to adopt statements of general policy; and

WHEREAS, the County Board of Peoria County believes it
is in the best interest of its citizens to protect its water
sources.

NOW, THEREFORE BE IT RESOLVED this 10th day of
September, 1985 the County Board of Peoria County does
hereby declare that as a matter of general policy it opposes
the disposal of toxic or hazardous materials over a known
aquifer in Peoria County.

LAND USE AND
TRANSPORTATION COMMITTEE

RESPECTFULLY SUBMITTED

EXECUTIVE COMMITTEE

John Stevens
John Stevens, Chairman
James E. Christopher
Bill Whitmore
Christopher J. Quinn

Betty A. Menold
Betty Menold, Chairman

C. R. McDonald
Bill Whitmore
Bob Brown
John Stevens
Charles W. Kueh
Robert A. Bunker
Lois G. McNamee
William R. Platter

(19)

Reviewed: RLS pls
Dated: September 5, 1985
adopted: September 10, 1985
vvv


EXHIBIT "B"



County Board County of Peoria

Room 101 • Peoria County Courthouse • Peoria, Illinois 61602
Phone (309) 672-6056

June 2, 1987

TO: All Board Members
FROM: Virginia Pearl 
Office Manager
SUBJECT: Hazardous Waste
Peoria Disposal Company

Dave asked that the attached information from the Illinois Environmental Protection Agency be forwarded to your attention. It refers to a notice of intent from IEPA and U.S. EPA to issue a joint permit (Resource Conservation & Recovery/Hazardous & Solid Waste) to the Peoria Disposal Company. The attached sheets are only an overview. The entire document is quite lengthy; however, it has been filed in the County Clerk office for your reference.

Thank you.

vp

cc: D. J. Krings



IEPA NO.: 1438120003
ILD NO.: 000805812
NOTICE NO.: PB01-87

DATE: Friday, May 15, 1987

PUBLIC NOTICE

The Illinois Environmental Protection Agency (IEPA) and the United States Environmental Protection Agency (U.S. EPA) hereby jointly give notice of intent to issue a joint Resource Conservation and Recovery Act (RCRA) permit and a Hazardous and Solid Waste Amendments (HSWA) permit to the Peoria Disposal Company at 4349 Southport Road, Peoria. The facility's mailing address is 4700 N. Sterling, Peoria 61615. The Peoria Disposal Company is currently operating under interim status as provided for in Section 3005 of RCRA. This joint permit would allow the Peoria Disposal Company to continue to operate a hazardous waste storage, treatment and landfill operation. IEPA has the authorization to issue RCRA permits although specific 1984 HSWA provisions (amending RCRA) are addressed by U.S. EPA.

The permit application, draft permits, related information and all data submitted by applicant, as part of the Administrative Record, are now available for public inspection Monday through Friday between 8:30 AM and 5:00 PM at the following locations:

Illinois EPA
Government & Community Affairs
Attn: RCRA Public Notice Clerk
2200 Churchill Road
P.O. Box 19276
Springfield, IL 62794-9276
217/782-5562

U.S. EPA, Region V
Solid Waste Branch, 13th Floor
230 South Dearborn Street
Chicago, Illinois 60604
312/353-2197

Please telephone ahead for an appointment to view the documents.

Interested citizens are invited to review copies of the permit application, draft permits and related fact sheets at the following locations:

Peoria Public Library
Main Branch
Business, Science and
Technology Section
107 NE Monroe
Peoria, Illinois

Peoria Public Library
Lakeview Branch
1137 West Lake
Peoria, Illinois

IEPA
5415 N. University
Peoria, Illinois

A public hearing to address the proposed issuance of this joint permit has been scheduled for July 16, 1987 at 7:00 PM at Holiday Inn, 4400 N. Brandywine Dr., Peoria. The hearing will be held in accordance with Illinois EPA's Procedures for Permit Hearings (35 Ill. Adm. Code 166) and 35 Ill. Adm. Code, Subtitle G, Section 705.182. Written comments will be accepted from the public for 45 days before and 30 days after the hearing (postmarked by August 15, 1987) and will become part of the Administrative Record. Comments should be sent to: Illinois EPA, Agency Hearing Officer, 2200 Churchill Road, P.O. Box 19276, Springfield, Illinois 62794-9276.

All comments submitted will become part of the Administrative Record and will be evaluated by IEPA and U.S. EPA in making the final permit decisions. The two agencies will respond to comments on the draft permits, specify which provisions, if any, of the final permits may have been changed and indicate whether additional documents have been included in the Administrative Record. Anyone who submits written comments will be notified of the final permit decisions.

KL:cla

EXHIBIT "C"

**PEORIA COUNTY JOURNAL STAR
ARTICLE FROM
APRIL 4, 2006**

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD OCT 05 2006

STATE OF ILLINOIS
Pollution Control Board

PEORIA DISPOSAL COMPANY

Petitioner,

v.

PEORIA COUNTY BOARD,

Respondent.

COPY

PCB 06-184

(Pollution Control Facility Siting
Appeal)

AFFIDAVIT OF SERVICE

The undersigned, a non-attorney, being duly sworn upon oath, states that a copy of the attached Response to Motion for Partial Summary Judgment (Criterion v) and Memorandum of Facts and Law in Support of Response to Motion for Partial Summary Judgment (Criterion v), of Respondent Peoria County Board, was served upon the following persons by enclosing such documents in separate envelopes, addressed as follows, and depositing said envelopes in the U.S. Postal Service mail box at Morton, Illinois on the 4th day of October, 2006, before 5:00 p.m., with all fees thereon fully prepaid and addressed as follows:

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274

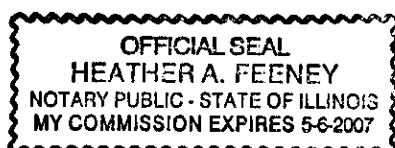
George Mueller, P.C.
Attorney at Law
628 Columbus Street, Suite 204
Ottawa, IL 61350

Brian J. Meginnes
Elias, Meginnes, Riffle & Seghetti, P.C.
416 Main Street, Suite 1400
Peoria, IL 61602

Dated: October 4, 2006.


David A. Brown

Subscribed and sworn to before me, a Notary Public, in the County and State as aforesaid, this 4 day of October, 2006.




Notary Public