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STATE OF ILLINOIS  
Pollution Control Board

PCB 06-184

(Pollution Control Facility Siting Appeal)

**Respondent.**

PDC served its First Set of Requests to Admit (the "Requests to Admit") on the County Board on September 21, 2006, which document consists of 1,976 separate

Requests to Admit facts in this appeal. Requests 1 through 67 concern documents included in a binder used during the depositions in the case. Requests 68 through 81 concern three documents attached to the Requests to Admit. The largest portion of the Requests to Admit, namely, Requests 82 through 1,976, concern a binder of 379 documents sent directly to some or all of the County Board members by opponents of PDC's Application for siting approval (the "Application"). All 379 documents in the binder (the "*Ex Parte* Documents") were transmitted to the County Board members *ex parte* and were not filed in the Peoria County Clerk's office or with the Pollution Control Board.

As to each of the *Ex Parte* Documents, the following five Requests to Admit are propounded to the County Board:

\_. Document [#], enclosed in the binder produced herewith, is a true and accurate copy of a communication received by one or more members of the County Board.

\_. Document [#], was not tendered to Peoria Disposal Company by the author and/or the sender.

\_. Document [#], was not filed with the Peoria County Clerk prior to May 3, 2006.

\_. Document [#], was not tendered to Peoria Disposal Company by the County Board or any representative thereof prior to the hearing in this matter on May 3, 2006.

\_. Document [#], has not been filed in the Record submitted to the Pollution Control Board in this appeal.

These same five questions are posed as to each of the 379 *Ex Parte* Documents, for a total of 1,895 Requests to Admit regarding the *Ex Parte* Documents.

At the request of counsel for the County Board, on or about September 27, 2006, counsel for PDC caused a copy of the Requests to Admit to be transmitted

electronically to counsel for the County Board. (See the Affidavit of Counsel attached herewith as Exhibit A and incorporated herein by this reference, ¶¶3-4). Subsequently, counsel for the County Board demanded to know from what sources PDC had obtained the *Ex Parte* Documents. (Exhibit A, ¶5). Counsel for PDC stated affirmatively that all the *Ex Parte* Documents had been received from members of the County Board, either in discovery or through other means. (Exhibit A, ¶6). Counsel for the County Board insisted that he be informed as to the specific members of the County Board who provided PDC the *Ex Parte* Documents. (Exhibit A, ¶7). In order to facilitate the County Board's responses to the Requests to Admit, counsel for PDC generated a chart listing the known, actual recipient(s) of each and every *Ex Parte* Document, and faxed the chart to counsel for the County Board. (Exhibit A, ¶8).

On October 13, 2006, the County Board filed its Objection. In this Response, PDC sets forth the foundation of the Requests to Admit, facts regarding the County Board's malfeasance as to *ex parte* communications in general, and PDC's agreement to extend the deadline to respond to certain Requests to Admit on reasonable terms.

### **ARGUMENT**

PDC carefully and laboriously reviewed and cataloged the *Ex Parte* Documents from the boxes of documents produced by the County Board and from its own investigations, and prepared requests to admit that specifically seek only those admissions directly relevant to this appeal. While PDC could have asked each County Board member PDC deposed about each of the 379 *Ex Parte* Documents, as is suggested by counsel for the County Board in the Objection, PDC elected to take a less hostile and more efficient approach. PDC created a binder, arranged chronologically, of the 379 *Ex Parte* Documents, and posed only five Requests to Admit as to each *Ex*

*Parte* Document. Moreover, after serving the Requests to Admit, PDC accommodated the demands of counsel for the County Board in order to facilitate the County Board's responses to the Requests to Admit.

Contrary to the assertion in the County's Objection that certain of the Requests to Admit seek information about what third parties might have done, the specific requests seek only answers and information exclusively available to the County.

The sad fact of the matter is that the volume of Requests to Admit directly correlates with the enormous volume of *ex parte* communications from opponents that occurred during the siting process in this case, contacts that were in some cases invited by County Board members and that were seldom, if ever, rejected or discouraged. In fact, the majority of the County Board members deposed believed it was appropriate to receive *ex parte* communications from opponents. For example, County Board member Michael Phelan testified as follows:

Q [by George Mueller] During the course of your being on the county board while the Peoria Disposal Company application was pending, what was your understanding of the correct procedures or rules to be followed by board members in connection with communications with members of the public?

A That communication was allowed but discussion was not.

Q Can you distinguish for me the difference between communication and discussion?

A Discussing how we would vote or how we felt about the case or any of the facts. We were not to discuss that with the public but that we could take phone calls and listen to their concerns.

Q Was your understanding that the same rules applied to your communications with representatives of the actual participants at the hearing?

A Can you repeat that?

Q Let me ask it a different way. It was your understanding that you could listen to members of the public and get their input and opinions on the siting application?

A I don't believe I had an understanding that I was to take their testimony into account on the facts, but I do -- the way I understood the process that the public was allowed to weigh in on this.

Q That they were allowed to weigh in only at the hearing or privately to you as well?

A Both.

(Deposition of Michael Phelan, September 12, 2006, pg. 7, line 3 – pg. 8, line 7).

County Board member James Thomas also believed it was appropriate to entertain the opinions and comments of the opponents:

Q [by George Mueller] As a result of that conversation or advice from the State's Attorney's office, did you believe that you were not supposed to talk to representatives of PDC about the application?

A Yes.

Q Did you have a similar belief about not talking to representatives of the opposition groups?

A Yes, with exceptions.

Q What's the exception?

A I'm an elected representative. I have to listen to my constituents. If you mean by talking, did I give opinions or did anything other than listen to their point of view, then I didn't do any of that.

(Deposition of James Thomas, September 12, 2006, pg. 17, line 13 – pg. 18, line 3).

A We were instructed that while we could not discuss in the sense of giving opinions that it was all right to listen to constituents.

There's obviously nothing we can do to stop them sending a letter but that they were to be -- what did I say, set aside in the sense that while it's - - you know, it's constituent opinion, it's simply opinion, and that the decision could not have anything to do with these opinions.

You -- we were not to express any preferences one way or another until we had heard all of the facts and made a formal vote.

(Deposition of James Thomas, September 12, 2006, pg. 21, lines 4-15).

County Board member Carol Trumpe believed she could receive *ex parte* communications from opponents, regardless of whether or not such opponents were registered participants in the public hearing, and could not receive *ex parte* communications from PDC:

Q [by George Mueller] Now, during the hearing process and the decision-making process after the hearing, what was your understanding of the County Board's role and responsibility with regard to receiving communications outside the hearing context?

A We were told we were not to communicate with people about it.

Q And did you also have an understanding with regard to receiving communications about the proposal?

A I think we were to hold onto them and turn them in.

\* \* \*

Q Was it your understanding that while you weren't supposed to communicate your opinions about the proposal, it was appropriate for you to receive opinions from the public?

A Yes. I could receive them.

(Deposition of Carol Trumpe, September 13, 2006, pg. 9, line 7 – pg. 10, line 4).

Q [by George Mueller] Was it your understanding that the litigants, meaning the actual parties in the hearing, were not supposed to be contacting board members outside of the hearing process?

A You mean the proponents and the opponents? Clarify that.

Q Yeah. That's correct.

A I'm not sure.

Q Well, was it your understanding that the proponents were not supposed to be contacting County Board members outside of the hearing?

A Yes, because they were really the litigants. I did not see these other people who were in opposition here as individuals as litigants.

Q Well, you were aware that the Sierra Club was actually a registered objector at the hearing?

A I didn't know they were registered.

Q Well, you're saying you're not aware that the Sierra Club signed up as an objector and had an attorney who cross-examined witnesses?

A Yes.

Q And that the Peoria Families Against Toxic Waste group did the same thing?

A Yes. I did know that.

Q But your position is you did not perceive either the Sierra Club or the Peoria Families Against Toxic Waste as being litigants?

A At that time, they were opposing it; but I guess I didn't.

Q Am I also correct then that, while you understood the prohibition against proponents contacting board members outside the hearing, you did not understand that it applied to opponents?

A Well, the opponents had been sending all of this material to us through the mail and even forwarded e-mails from the County. So we were getting things from them all the time sent out by the County Board to us.

Q It never occurred to you that that was against the rules?

A Why would they -- I guess no.

Q Did it ever seem to you that it was strange that the applicant couldn't talk to you but that the opponents could?

A I was listening to the applicant talk to me every time they testified at the hearing.

Q Well, but the applicant didn't talk to you outside the hearing?

A No.

Q You never got any e-mails from PDC, did you?

A No.

Q You never got any letters from PDC, did you?

A No.

Q You did get e-mails, letters, and fliers from the Sierra Club, though, didn't you?

A Yes.

Q And you did get e-mails, letters, and fliers from Peoria Families Against Toxic Waste?

A Yes.

Q And the same would be true for River Rescue?

A Yes.

(Deposition of Carol Trumpe, September 13, 2006, pg. 38, line 16 – pg. 41, line 6).

County Board members Phil Salzer and Brian Elsasser also entertained *ex parte* communications:

Q [by George Mueller] Right. So it was your understanding that you should not from that point [prior to filing of the Application] on have any communication with Peoria Disposal Company or its people including members of the Coulter family?

A We were instructed not to discuss it with anyone and to take an attitude of listen. You can listen to people, but you cannot give opinions and so forth.

(Deposition of Phillip Salzer, September 14, 2006, pg. 11, lines 16-24).

Q [by George Mueller] At the time that you started this process of deciding on the Peoria Disposal application for landfill expansion, we understand there was a meeting where ground rules for board members to follow were basically handed down.

What was your impression after that point in time as to what communications you could have with participants and the public outside the hearing process?



A You know what, I don't recall exactly. Maybe I should, but I don't recall what all the rules were.

Q Well, did you believe that it was appropriate or inappropriate for you to be contacted by representatives of Peoria Disposal Company about the application outside the hearing process?

A I'm not sure. That would be -- I mean, I welcome anybody's phone calls at any time if they have something they want to say to me.

Q So it was not your impression that outside contacts to you about the subject matter of the application was inappropriate, is that correct?

A They may have mentioned that that might, but I don't remember. That meeting was a long time ago.

Q I don't want to get into what they mentioned because that might actually get into the attorney-client privilege.

What I want to understand is your belief about how the procedures were going to work in terms of outside contacts.

A That would be correct. I was assuming that I would get telephone calls from the opponents and proponents both.

Q And that would be okay, is that right?

A I don't remember what they said that night, but to me, I would assume that would be okay because how else can people air their views one way or the other.

(Deposition of Brian Elsasser, September 14, 2006, pg. 11, line 4 – pg. 12, line 19).

The understanding of the foregoing County Board members mirrors that of the County Board Chairman, Dave Williams:

A Well, we was told, you know, to limit conversation among ourselves and to the citizens, just to listen and not make a commitment or get into -- add on to the discussion.

Q [by George Mueller] You were told to listen, though?

A Yes.

Q Was that listening to everybody or only listen to the public?

A Listen to everybody. We don't have a choice whether he calls, you call. We've got to -- you know, we're going to take the call. We'll tell you the same thing. We can't discuss this. I can't tell you how I'm going to vote because I haven't heard the case yet.

Q But if let's say -- do you know Chris Coulter?

A I met him once, I think, yes.

Q Let's say if Chris Coulter had called you back in March of this year to give you some what he thought was inside information about something, you would have listened to him? You wouldn't have told him you're not supposed to be talking to me?

A I would have told him if he's adding information to the stuff that's not on the record I can't listen to that. If he wants to give me his opinion that he thinks it's a good thing to do, then that's different.

Generic statement is one thing. If he's trying to add information to that's not part of the record, then I would have to cut him off. I can't worry about anything else. I can't listen to this.

Q Did you actually ever have to apply that kind of rule to any of the communications that you received while this hearing was going on?

A Yes. \* \* \*.

(Deposition of David Williams, September 15, 2006, pg.13, line 3 – pg. 14, line 13).

The particular *Ex Parte* Documents included with the Requests to Admit are only a fraction of the total received by County Board members. The *Ex Parte* Documents are those *ex parte* documents produced in discovery by the County Board and uncovered by PDC in its investigations, that PDC believes were not even filed in the Peoria County Clerk's office or included in the Record before the Pollution Control Board. It appears that many of the County Board members never filed any of the *ex parte* communications they received from opponents of the Application. County Board member James Thomas testified that he "stacked up" correspondence received from

opponents, never making any of the correspondence available to PDC or to the public generally:

Q [by George Mueller] When you received correspondence from members of the public including representatives of the opposition groups, what did you do with it?

A I stacked them up on my desk.

Q Were they then ultimately discarded intentionally or inadvertently as part of your move?

A Intentionally.

Q What was the purpose of discarding them as opposed to turning them over to the State's Attorney or the county clerk?

A I wasn't aware that was necessary.

(Deposition of James Thomas, September 12, 2006, pg. 32, line 18 – pg. 33, line 5).

Q [by George Mueller] When you stacked up these communications, did you ever make any copies of any of them?

A No.

Q You never gave any of them to your wife [the Peoria County Clerk]?

A No.

(Deposition of James Thomas, September 12, 2006, pg. 34, lines 3-7).

Similarly, County Board member Michael Phelan testified that he filed none of the hundred-plus *ex parte* communications he received from opponents of the Application:

Q [by George Mueller] How many letters would you say you received?

A Literally dozens.

Q More or less than 100, if you know?

A I don't know specifically, but I would say it could have been more than 100.

Q So it's up there in that 100 range?

A Yes. Some might have been from the same person on several different days.

(Deposition of Michael Phelan, September 12, 2006, pg. 10, line 22 – page 11, line 6).

Q [by George Mueller] You said you also get E-mails?

A Yes.

Q Approximately, how many E-mails would you say you got?

A There again, I'd say dozens, not maybe nearly as many letters but quite a few.

(Deposition of Michael Phelan, September 2, 2006, pg. 13, lines 6-11).

Q [by George Mueller] \* \* \*. Now, with regard to all of these E-mails and letters that you got, what did you physically do with them?

A I think shortly after the vote was concluded like I do with most of my county things I get rid of it, just throw it out.

Q Did it ever occur to you while you were receiving that material that you should be turning it in to the county clerk?

A No. I don't recall that.

Q As a matter of fact, you did not turn stuff over as you got it, is that correct?

A No.

Q No, it's not correct or --

A No, you are correct. I did not turn it over.

(Deposition of Michael Phelan, September 12, 2006, pg. 22, line 21 – page 23, line 12).

County Board member Eldon Polhemus also retained all the *ex parte* communications he received, failing to file same:

A \* \* \*. I'd read enough of each letter to see whether they were for or against it. That's all I'd do. I stacked them up and kept track of them.

Q [by Janaki Nair] What was your general understanding as to overall what people thought for and against?

A Well, the letter count I had and the phone call count it was very high against it.

Q You reference these letters that you got. Can you take a guess as to how many letters you received?

A There were over 100, between 100 and 125.

Q Did these letters come to your home?

A Yes.

Q What did you do with the letters when you got them? I know you mentioned stacking them up.

A After the final vote on the county board, I threw everything away.

Q When you received them, did you keep the only copies you had or did you give them to the county clerk or anything?

A I kept everything.

(Deposition of Eldon Polhemus, September 15, 2006, pg. 10, line 12 – pg. 11, line 9).

County Board member Brian Elsasser also failed to file any *ex parte* communications:

Q [by George Mueller] Now, with regard to the communications that you received outside of the hearing process, and I'm interested really in the period from November 9th, 2005 until May 3rd, 2006, did you receive any E-mails?

A Yes.

Q Can you tell us approximately how many E-mails you received?

A I'm not sure I turned in X number. You have those. I mean, I didn't count them.

Q Did you keep all of the E-mails that you got?

A No. \* \* \*.

(Deposition of Brian Elsasser, September 14, 2006, pg. 13, lines 9-21).

Q [by George Mueller] Did you also get letters in paper form?

A Yes. I saved -- I know I saved all the letters. I turned those in.

Q So whatever you got was saved and turned in?

A Yes.

(Deposition of Brian Elsasser, September 14, 2006, pg. 16 lines 1-6).

Q [by George Mueller] When did you turn over all of the things that you kept?

A Probably a month ago, was it, that I mailed them to you? Maybe a month ago or so, a month and a half. I don't recall the exact date.

Q So sometime after the decision was made?

A Yes. It was, like, somewhere between 30 days ago and 45 days ago, my guess.

Q Okay. It was your belief that from the beginning that you should keep the stuff that you got?

A Yes. They said to try to save the E-mails and the letters.

(Deposition of Brian Elsasser, September 14, 2006, pg. 16, line 24 – pg. 17, line 13).

Additionally, PDC hopes to prove that it was deprived of a fair hearing by opponents who knowingly and intentionally disregarded the rules regarding *ex parte* communications in landfill siting hearings. These opponents were represented by counsel; they had a full opportunity to participate in the public hearing; they were in some cases like that of the Sierra Club well experienced in siting procedures and rules; and they nonetheless systematically engaged in and encouraged others to engage in a pattern of *ex parte* communication, intended to deluge the County Board and politically overwhelm its ability to make a fair decision based on the evidence. In fact, certain County Board members admitted at their discovery depositions that they considered

and took into account in the decision making process the substance of some of the *ex parte* communications received. See, for example, the testimony of County Board members Lynn Scott Pearson, Michael Phelan, Phil Salzer, Brian Elsasser and Eldon Polhemus, below:

Q [by George Mueller] And you also said that you waited to make up your mind until you had read everything that you could get your hands on; is that right?

A Everything that was presented to me, yes.

Q And that would include all of the e-mails that you got?

A Oh, yes.

Q [by George Mueller] Now, did you have an understanding when this hearing process started of whether you could or couldn't have communications with the various factions outside of the hearing process?

A Say that again, please.

Q I knew that I asked that in a bad way. What was your understanding or belief at the start of the hearing process about whether people with opinions on the application could communicate with you and whether you could communicate with them?

A That I was not supposed to communicate with them.

Q How about their communicating with you?

A Yes. They could communicate with me. I'm a public servant.

Q Does that mean then that you never discouraged anyone from delivering their opinions to you?

A No.

Q No, you didn't; or no --

A No, I didn't.

Q Okay. And in that regard, you took all of those communications into account as well; is that right?

A I am not sure how to answer that because I read them, as we spoke of the e-mail; but as far as remembering every one and pulling everything together, I don't think so. I think that it was my duty to read them.

Q I'm not asking if you remembered every specific one.

A Oh, no. Thank you.

Q And I'm sure that you gave more weight to some than to others because, you know, you get something from Tom Edwards, you may not consider it as much as something from the Sierra Club, right?

A It's about 50/50 there.

(Deposition of Lynn Scott Pearson, September 13, 2006, pg. 24, line 3 – pg. 25, line 22).

Q [by George Mueller] Now, was it your understanding that your decision was to be based only on the evidence that came in at the public hearing?

A The evidence and the facts, yes.

Q Well, what's the difference between the evidence and the facts?

A I don't know. I can't answer that. That was -- the facts were the term that Mr. Atkins used when explaining the rules of the Peoria County Board. We used facts. I guess you're using evidence.

Q Could you gather facts from sources other than the public hearing?

A I don't recall that, that part of what could be used and what couldn't be used coming up. I don't recall Mr. Atkins and the State's Attorney's office advising us on that particular item.

Q Well, was it your belief that you could gather facts from sources other than the public hearing?

A Yes. In general, yes.

Q Did you receive communications from members of the public including representatives of opposition groups during the hearing process?

A Yes, I did.

(Deposition of Michael Phelan, September 12, 2006, pg. 8, line 23 – pg. 9, line 24).



Q [by George Mueller] In fact, you did listen to a lot of different input from different people outside of the hearing process on this application, didn't you?

A Yes.

Q Is it your belief that you were -- while you weren't supposed to talk to anyone and express your views, it was useful to get the views of everyone including your constituents?

A Not really.

Q How so not really?

A It was a waste of time in some cases.

Q I couldn't agree with you more. In other cases, though, you did receive useful information from constituents and members of the public outside the hearing process, right?

A I can't say that I absolutely did.

Q Well, can you say that you absolutely didn't?

A I tried to be very open-minded and listen and not make any commitments of any type to anyone.

(Deposition of Phillip Salzer, September 14, 2006, pg. 12, lines 4-24).

Q [by George Mueller] Going back for a second to what you said that you understood that you -- it was appropriate for all sides on the issue to contact you privately.

Is it then fair that you understood that you should take the content of all of those communications into consideration in making your decision?

A I didn't think I could take them all in, if I didn't have time to read them all.

Q But the ones that you read and you were aware of, did you -- obviously, you must have felt it was appropriate to take all of those -- all of those for what they were worth into consideration in reaching your final decision?

A That's difficult to answer.

Q What's difficult about that question that makes it hard to answer?

A Because some crackpot letters, you know, I just discarded those.

Q But the ones that weren't crackpot letters that offered substantive information which wasn't at the hearing those you felt you were free to consider?

A Yes, but I didn't consider everything.

(Deposition of Phillip Salzer, September 14, 2006, pg. 17, line 1 – pg. 18, line 1).

Q [by George Mueller] What was your impression as to what you should do with the information that you gathered by E-mails, telephone calls and letters from both proponents and opponents?

A We were supposed to maintain the E-mails or at least try to and the letters.

Q Was it your belief that you should consider that information along with all other information including information gathered at the hearing in making your decision?

A Yes. I think the information that I gathered at the hearing should have been the most important information.

(Deposition of Brian Elsasser, September 14, 2006, pg. 12, line 20 – pg. 13, line 8).

Q [by Janaki Nair] What was your understanding for what information you should gather to come up with that decision, your independent reasons for denial?

A I will tell you I make a lot of my decisions yes and no on important votes like that by the, what do you say, the information I acquire from these letters and things like that because I don't go out and go to parties and stuff like that.

Q So by those letters, do you mean the letters that you were getting at your home from members of the public?

A Yes.

Q So it was your -- so you considered the information that you received at your home?

A No. I -- the only way I considered the letters and that I got was I used it like a tally sheet. If I got 100 letters and 80 or 90 of them were against it,

I felt that's the way the public felt, that's the way -- I was supposed to represent the public, too.

We've had many decisions on different things, and my decision hasn't been wholly on letter count, but I consider that a good part of my reasoning.

(Deposition of Eldon Polhemus, September 15, 2006, pg. 37, line 2 – pg. 28, line 1).

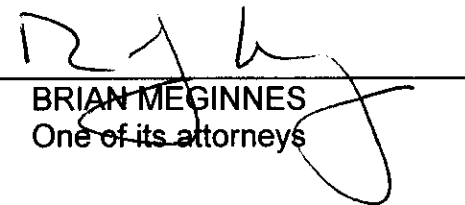
It is the County Board's fault that there are so many Requests to Admit. If the County Board had used proper procedures to prevent *ex parte* communications during the siting process, PDC would not have three hundred seventy-nine (379) Ex Parte Documents to authenticate on appeal.

### CONCLUSION

In light of the volume of *ex parte* communications in this case, the Requests to Admit are entirely reasonable. This being said, PDC understands that it will be difficult for the County Board to prepare responses to the Requests to Admit. The current deadline for responding to the Requests to Admit is Thursday, October 19, 2006. PDC agrees to extend the deadline for the County Board to respond to Requests to Admit 1 through 81 (*i.e.*, the Requests to Admit that do not pertain to the *Ex Parte* Documents) for two (2) weeks, to Thursday, November 2, 2006. PDC does require responses to these Requests to Admit in a timely fashion, as PDC has begun drafting a motion that will include such Requests. PDC further agrees to a four (4) week extension of the County Board's time to respond to Requests to Admit 82 through 1,976 (*i.e.*, the Requests to Admit pertaining to the *Ex Parte* Documents), to Thursday, November 16, 2006.

**WHEREFORE**, Petitioner, Peoria Disposal Company, prays that the Hearing Officer deny the County Board's request to strike the Requests to Admit, and that the Hearing Officer grants, at most, the extensions described above.

Respectfully submitted,  
PEORIA DISPOSAL COMPANY

BY:   
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One of its attorneys

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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

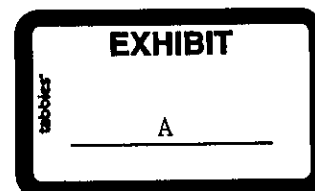
PEORIA DISPOSAL COMPANY,	)	
	)	
Petitioner,	)	
	)	PCB 06-184
v.	)	(Pollution Control Facility Siting Appeal)
	)	
PEORIA COUNTY BOARD,	)	
	)	
Respondent.	)	

**AFFIDAVIT OF COUNSEL**

STATE OF ILLINOIS	)	
	)	ss.
COUNTY OF PEORIA	)	

Brian J. Meginnes, having been first been duly sworn upon his oath, deposes and states as follows:

1. My name Brian J. Meginnes. I am one of the attorneys representing the Petitioner, PEORIA DISPOSAL COMPANY ("PDC"), in the above-captioned matter.
2. PDC served its First Set of Requests to Admit (the "Requests to Admit") on the Peoria County Board in the above-captioned matter on September 21, 2006
3. On or about September 27, 2006, Dave Brown, counsel for the Peoria County Board herein, asked me for an electronic copy of the Requests to Admit.
4. I had my associate, Janaki Nair, email an electronic copy of the Requests to Admit in "Word" format to Dave Brown on September 27, 2006.
5. Subsequently, in a telephone conversation, Dave Brown demanded to know from what sources PDC had obtained the *Ex Parte* Documents (as defined in PDC's Response to the "Objection to Petitioner's First Set of Requests to Admit or in the alternative Motion for Extension of Time to Respond" filed by the Peoria County Board).



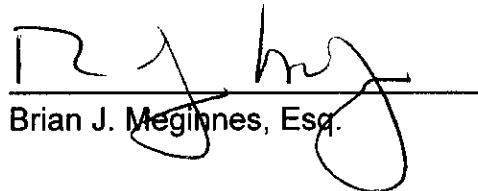
6. I told Dave Brown that all the *Ex Parte* Documents had been received from members of the County Board, either in discovery or through other means.

7. Dave Brown insisted that he be informed as to the specific members of the County Board who provided PDC the *Ex Parte* Documents.

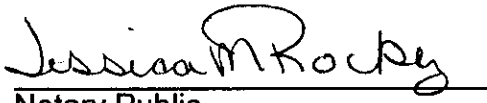
8. Finally, in order to facilitate the County Board's responses to the Requests to Admit, I had my associate, Janaki Nair, generate a chart listing the known, actual recipient(s) of each and every *Ex Parte* Document, and I faxed the chart to Dave Brown.

9. I am an adult and if called upon to testify in this matter, I could competently testify to the facts stated herein.

FURTHER AFFIANT SAYETH NOT.

  
Brian J. Meginnes, Esq.

Subscribed and sworn to before me  
this 19th day of October, 2006.

  
Notary Public

906-1378



STATE OF ILLINOIS     )  
                                  )  
COUNTY OF PEORIA     )     SS

**AFFIDAVIT OF SERVICE & FILING**

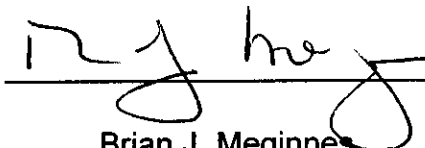
The undersigned being first duly sworn on oath, states that the foregoing RESPONSE TO THE "OBJECTION TO PETITIONER'S FIRST SET OF REQUESTS TO ADMIT OR IN THE ALTERNATIVE MOTION FOR EXTENSION OF TIME TO RESPOND" was served upon the following persons by enclosing copies of same in separate envelopes, addressed as set forth below, and sending/delivering said envelopes as follows, on the 19th day of October, 2006, before 5:00 p.m., with all fees thereon fully prepaid.

Illinois Pollution Control Board  
100 W. Randolph, Suite 11-500  
Chicago, Illinois 60601  
[ORIGINAL + TEN (10) COPIES]  
**via Federal Express** from Peoria, Illinois


Ms. Carol Webb, Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
P.O. Box 19274  
Springfield, Illinois 62794-9274  
**via Federal Express** from Peoria, Illinois

Mr. David A. Brown  
Black, Black & Brown  
101 South Main Street  
P.O. Box 381  
Morton, Illinois 61550  
**via Federal Express** from Peoria, Illinois

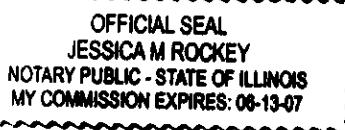
Mr. Kevin Lyons  
Peoria County State's Attorney  
324 Main Street, Room #111  
Peoria, Illinois 61602  
**via hand delivery**

  
\_\_\_\_\_  
Brian J. Meginnis  
(print name)

Subscribed and sworn to before me this 19th day of October, 2006.

  
\_\_\_\_\_  
Notary Public

George Mueller  
GEORGE MUELLER, P.C.  
Attorney at Law  
628 Columbus Street, Suite #204  
Ottawa, Illinois 61350  
(815) 431-1500 - Telephone  
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