

NOV 30 2006

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD** STATE OF ILLINOIS  
Pollution Control Board

**PEORIA DISPOSAL COMPANY**

Petitioner,

v.

**PEORIA COUNTY BOARD,**

Respondent.

**COPY**

PCB 06-184

(Pollution Control Facility Siting  
Appeal)

**MOTION FOR LEAVE TO FILE  
REPLY TO RESPONSE TO MOTION  
FOR LEAVE TO SUPPLEMENT RECORD ON APPEAL  
AND FILE SECOND AMENDED INDEX**

**NOW COMES** Respondent, the Peoria County Board, (hereinafter "County") by and through one of its attorneys, David A. Brown, and as and for its Motion for Leave to File the attached Reply to Response To Motion for Leave to Supplement Record on Appeal and File Second Amend Index, and in support of its Motion states as follows:

1. On or about November 6, 2006, the County filed its Motion for Leave to Supplement Record on Appeal and File Second Amended Index ("Motion").
2. On or about November 15, 2006, Peoria Disposal Company ("PDC") filed a Response to the Motion.
3. In its Response, PDC misrepresented numerous items as more fully set forth in the Attached Reply.
4. The County respectfully requests leave to file the attached Reply with the Pollution Control Board for consideration.

**WHEREFORE**, Respondent, the Peoria County Board, respectfully prays that this

Board grant the County's Motion to file the attached Reply, instanter.

Respectfully submitted,  
PEORIA COUNTY BOARD

By: 

David A. Brown  
One of its Attorneys

Black, Black & Brown  
Attorneys at Law  
101 S. Main Street  
P.O. Box 381  
Morton, IL 61550  
Phone: (309) 266-9680  
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

**RECEIVED**  
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Pollution Control Board

PEORIA DISPOSAL COMPANY

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FOR LEAVE TO SUPPLEMENT RECORD ON APPEAL  
AND FILE SECOND AMENDED INDEX**

**NOW COMES** Respondent, the Peoria County Board, (hereinafter "County") by and through one of its attorneys, David A. Brown, and as and for its Reply to PDC's Response to Motion for Leave to Supplement Record on Appeal and File Second Amended Index, and in support of its Motion states as follows:

**INTRODUCTION**

The County filed its Motion for Leave to Supplement Record on Appeal and File Second Amended Index because PDC brought to the County's attention during the course of discovery the fact that certain items were not included in the Record on Appeal. For PDC to now claim that they were previously totally unaware of these items and that allowing them to be included in the Record on Appeal would be prejudicial and delay the proceedings appears to be disingenuous at best.

**ARGUMENT**

**A. There will be no material delay or prejudice.**

At paragraph 3 on page 2 of PDC's Response, PDC alleges that it will be forced to depose some County Board members and County Staff members, and possibly depose additional

persons regarding the April 6 Proposed Findings and the Findings Page. However, what PDC fails to state is that it was fully aware that the April 6 Proposed Findings and the other documents, were not included in the Record on Appeal at the very beginning of discovery in this appeal, if not sooner. In fact, PDC did question Karen Raithel, the Peoria County Recycling and Resource Conservation Director, about the April 6 Proposed Findings during her deposition. Attached hereto as Exhibit "A" are portions of the transcripts from that deposition. PDC was fully aware of these documents throughout the proceedings and has had ample opportunity to question any and all deponents about these documents, and for the most part has declined to do so. There will be no delay caused by including the documents as part of the Record.

**B. The April 6 Proposed Findings Were Made Available to PDC**

PDC claims throughout its Response that the April 6 Proposed Findings were never available to PDC or the Public at any time prior to PDC's filing of its Petition for Review. Copies of the April 6 Proposed Findings which the committee considered at the April 6<sup>th</sup> meeting were handed out to the public at the door prior to the start of the April 6 committee meeting. Although the version handed out at the committee meeting was not on colored paper and was condensed, it was otherwise identical. See Affidavit of Karen Raithel, attached hereto as Exhibit "B".

In fact, PDC must have received a copy of the April 6 Proposed Findings at the time of the April 6 meeting or shortly thereafter because the April 6 Proposed Findings were referenced at least twice in PDC's Response to Committee of the Whole Vote which it filed with the County Clerk on April 27, 2006, and which is included in the Record on Appeal at C13461 through C13488.

At the bottom of page 9 of PDC's Response to the Committee of the Whole Vote (C13469), PDC states:

"A good example appears in the alternative proposed Findings of Fact which were prepared by the County Staff to support either an affirmative or a negative vote.

The first proposed finding under a “no” vote on criterion ii is that “there is evidence that the existing landfill may already be leaking into the aquifer.”

Likewise, at page 22 of its Response to the Committee of the Whole Vote (C13482), PDC states:

“All of the conditions proposed by PDC and County Staff were incorporated into the Proposed Findings of Fact prepared by the County Staff and discussed by the County Board Members at the April 6<sup>th</sup> meeting.”

PDC’s Response to Committee of the Whole Vote was file stamp by the County Clerk’s office dated April 27, 2006. It is hard to believe PDC would have been able to accurately quote a document that was “never available to PDC”, or if the document was in fact some “[s]ecret, internal documents used by the County Board, never shared with or made available to any participant” (see p. 6 of PDC’s Response), or if “they saw the light of day for the first time during this appeal” (see page 6 of PDC’s Respopnse). For PDC to claim that “[a]t no time prior to filing its appeal did PDC or the public have access to the April 6 Proposed Findings ....” (see bottom of p. 6 onto top of p. 7 of PDC’s Response) is disingenuous at best and simply factually incorrect.

The April 6 Proposed Findings were presented, discussed and made available to the public, including PDC and its counsel, at the April 6 meeting of the committee. The document was used and considered by the County Board Members as is clearly demonstrated by the transcripts of the April 6<sup>th</sup> meeting. Furthermore, the April 6 Proposed Findings were in fact located in the Peoria County Clerk’s office, albeit in the Clerk’s County Board files as opposed to the repository specifically relating to the application.

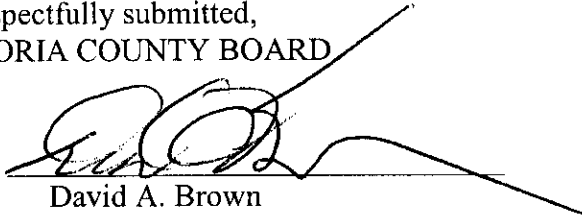
PDC has long been aware of the April 6 Proposed Findings of Fact, and therefore there will be no prejudice or delay caused by including the document in the Record at this time.

**WHEREFORE**, Respondent, the Peoria County Board, respectfully prays that this

Board grant the County's Motion to Supplement the Record.

Respectfully submitted,  
PEORIA COUNTY BOARD

By:

A handwritten signature in black ink, appearing to read 'David A. Brown', is written over a horizontal line. A long, thin diagonal line extends from the top right of the signature area across the page.

David A. Brown  
One of its Attorneys

Black, Black & Brown  
Attorneys at Law  
101 S. Main Street  
P.O. Box 381  
Morton, IL 61550  
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Fax: (309) 266-8301

**EXHIBIT “A”**

**PORTIONS OF TRANSCRIPTS FROM  
KAREN RAITHEL DEPOSITION**

**COPY**

KAREN RAITHEL

9-28-2006

Page 1

BEFORE THE ILLINOIS POLLUTION

CONTROL BOARD

PEORIA DISPOSAL COMPANY,	)
	)
Petitioner,	)
	)
-vs-	) NO. PCB 06-184
	)
PEORIA COUNTY BOARD,	)
	)
Respondent.	)

The deposition of KAREN RAITHEL, a material witness herein, called for examination pursuant to notice and the Supreme Court Rules as they pertain to the taking of discovery depositions before Aana M. Giftos, CSR, RPR, and Notary Public in and for the County of Peoria, and State of Illinois, on Thursday, September 28th, 2006, at 416 Main Street, Suite 1400, Peoria, Illinois, commencing at the hour of 2:00 p.m.

APPEARANCES:

GEORGE MUELLER, ESQUIRE  
528 Columbus Street, Suite 204  
Ottawa, Illinois 61350  
and

JANAKI NAIR, ESQUIRE  
BRIAN J. MEGINNES, ESQUIRE  
Elias, Meginnnes, Riffle & Seghetti, P.C.  
416 Main Street, Suite 1400  
Peoria, Illinois 61602  
on behalf of the Petitioner;

DAVID A. BROWN, ESQUIRE  
Black, Black & Brown  
101 South Main Street  
Morton, Illinois 61550  
on behalf of the Respondent;



Page 31

1 A A process server, yes.  
2 Q That's still a cop.  
3 A Yes.  
4 Q Why did you do it in that fashion?  
5 A Expediency. They would be delivered that  
6 day.  
7 Q Time was of the essence as far as you were  
8 concerned?  
9 A Yes.  
10 Q The supplemental staff report, was it also  
11 hand delivered to county board members?  
12 A I think so.  
13 Q Whose decision, by the way, was it to issue  
14 the first staff report before the end of the 30-day  
15 post-hearing period thereby inviting response from  
16 the participants?  
17 A I don't know.  
18 Q Was the supplemental staff report also  
19 filed in the clerk's office?  
20 A I don't know.  
21 Q If it wasn't filed, was it the result of  
22 inadvertence or because you didn't think it should  
23 be part of the record?  
24 A Probably inadvertence.

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1 Q Moving forward then to April 6th, we've  
2 learned that there were floating around or at  
3 least -- that's a bad term, they were in the hands  
4 of board members on April 6th some alternative  
5 findings of fact on color coded sheets. Do you  
6 recall that?  
7 A Color coded, yes.  
8 Q We have the pink, purple and the yellow  
9 sheets?  
10 A Correct.  
11 Q The way that I remember it is that purple  
12 stands for royalty. So, of course, that would have  
13 meant approval for Royal Coulter.  
14 A No comment.  
15 Q You guys didn't happen to pick purple based  
16 upon the same reasoning, did you, for the approval  
17 sheets?  
18 A With Royal Coulter, I don't think that was  
19 the reason why we picked purple.  
20 Q Okay. So I'm the only one that made that  
21 connection.  
22 A I believe those were the colors in our  
23 supply.  
24 Q I knew there would be a more mundane

Page 33

1 reason.  
2 Who physically authored the alternative  
3 sets of findings that were used on the color coded  
4 sheets on April 6th?  
5 A I believe it was a collection of Dave  
6 Brown, Chris Burger, Patrick Ulrich, myself.  
7 Q Then once again, did it fall to you to  
8 actually run them off and get them on the proper  
9 color coded sheets and get them in the proper  
10 number of copies?  
11 A I myself and a helper.  
12 Q How and when did those color coded sheets  
13 get into the hands of county board members?  
14 A I don't remember.  
15 Q Well, the reason I'm asking is because  
16 board member Mayer showed up at the  
17 April 6th meeting with his own set of color coded  
18 sheets with regard to criterion 1. Do you recall  
19 that?  
20 A Yes.  
21 Q I think he had, like, an alternative set of  
22 pink, disapproval findings for criterion 1. Does  
23 that ring a bell?  
24 A I believe so, yes.

Page 34

1 Q So what we're trying to understand is how  
2 did he get your version of the pink criterion 1  
3 findings and when did he get them in relationship  
4 to the April 6th meeting?  
5 A I don't know.  
6 Q Did he ever participate with any of you in  
7 the drafting of proposed findings?  
8 A Not in my presence.  
9 Q Did he ever ask for advanced copies of  
10 anything to be E-mailed or delivered to him for his  
11 review?  
12 A Not from me.  
13 Q Did you ever provide anything to him in  
14 advance of it being provided to any other board  
15 members?  
16 A Not from me, no.  
17 Q You say "not from me." Does that mean it  
18 might have been provided with your knowledge from  
19 other people?  
20 A I wouldn't know.  
21 Q So your answer is you have no knowledge  
22 about Allen Mayer ever getting anything ahead of  
23 time?  
24 A Correct.

Pages 31 to 34

**EXHIBIT “B”**

**AFFIDAVIT OF KAREN RAITHEL**

**AFFIDAVIT OF KAREN RAITHEL**

**STATE OF ILLINOIS**                     )  
  )  
**COUNTY OF PEORIA**                    )       **ss.**

I, **Karen Raithel**, having been first duly sworn upon oath, deposes and states as follows:

1.       My name is Karen Raithel. I am the Peoria County Recycling and Conservation Resource Director.
2.       As part of my duties for Peoria County, I was involved with working on the Peoria Disposal Company application for site location approval filed with the Peoria County Clerk.
3.       One of my duties was to assist with the preparation, production and copying of certain Proposed Findings of Fact which utilized at the April 6, 2006, meeting of the Peoria County Regional Pollution Control Site Hearing Committee.
4.       At the April 6, 2006, committee meeting, the committee had before it a set of Proposed Findings of Fact which were on colored sheets of paper, with the colors representing approval (purple), approval with conditions (yellow), and denial (pink).
5.       At the April 6, 2006, committee meeting, an identical set of Proposed Findings of Fact, except not on colored paper and in condensed form, was handed out to the public. A copy of the version handed out to the public at the April 6, 2006, committee meeting is attached hereto and incorporated herein as Exhibit A to this affidavit.

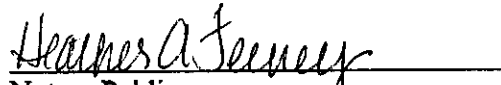
6. Mr. Brian McGinnis, attorney for Peoria Disposal Company and other representatives of PDC were present at that meeting, and would have had the opportunity to obtain and review the Proposed Findings of Fact which were distributed to the public.

7. 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.

  
Karen Raithel

Subscribed and sworn to before me  
this 28 day of November, 2006.

  
Notary Public



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NOV 30 2006

STATE OF ILLINOIS  
Pollution Control Board

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

**PEORIA DISPOSAL COMPANY,**

**Petitioner,**

**v.**

**PEORIA COUNTY BOARD,**

**Respondent.**

**COPY**

**PCB 06-184**

**(Pollution Control Facility Siting  
Appeal)**

**RESPONDENT'S**  
**MOTION FOR EXTENSION OF TIME TO RESPOND**  
**TO PETITIONER'S MOTION FOR SUMMARY JUDGMENT**

**NOW COMES**, Respondent, the Peoria County Board, by and through its attorneys, and for this Motion for Extension of Time to Respond, states as follows:

1. On or about November 20, Petitioner filed a Motion for Summary Judgment (415 ILCS §5/39.2(e)) by U.S. mail.
2. The Motion was served on Respondent by regular U.S. mail, and pursuant to the Affidavit of Service attached to the Motion was placed in the mail on November 17, 2006.
3. Pursuant to Board rules, Respondent may file a Response to the Motion, and the Peoria County Board fully intends to file such a Response.
4. According to Board rules, a Response is to be filed within fourteen (14) days after service of the motion, which according to Board rules would be deemed to have been received four (4) days after placement in the U.S. Mail, or on November 21, 2006.
5. The deadline for filing a Response would therefore December 5, 2006.
6. The Motion and its attachments are considerable and the arguments of Petitioner are complex, and as a result Respondent, the Peoria County Board, requires more time than the fourteen (14) days granted by Board rules to adequately formulate a Response to the Motion.

7. During the period of time given to respond to the Motion, Peoria County is also working diligently to finalize responses to Petitioner's voluminous Requests to Admit, which are due November 30, 2006.

8. An extension of two (2) additional weeks is reasonable, necessary and appropriate to allow the County time to fully, accurately and thoroughly respond to the Motion.

9. An extension to December 18, 2006, would provide the County with adequate time to fully respond to the Motion, and will not cause undue delay, prejudice or hardship to the Board, any of the parties, or the public.

**WHEREFORE**, the Respondent, the Peoria County Board, respectfully requests the Board grant the County an extension until December 18, 2006, to respond to the Petitioner's Motion for Summary Judgment.

DATED: November 28, 2006.

Respectfully submitted,

By 

David A. Brown, One of the Attorneys  
for Peoria County

### **AFFIDAVIT OF SERVICE**

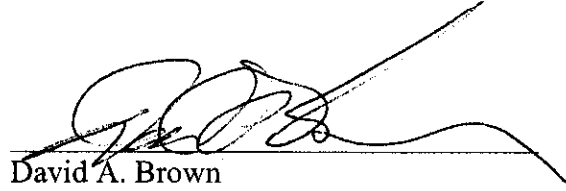
The undersigned, being duly sworn upon oath, states that a copy of the attached Respondent's Motion For Extension of Time To Respond to Petitioner's Motion For Summary Judgment was served upon the following persons by enclosing such documents in separate envelopes, addressed as follows, and depositing said envelopes in the U.S. Postal Service mail box at Morton, Illinois on the 28<sup>th</sup> day of November, 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: November 28, 2006.

  
David A. Brown

Subscribed and sworn to before me, a Notary Public, in the County and State as  
aforesaid, this 28<sup>th</sup> day of November, 2006.



  
Notary Public

Black, Black & Brown  
Attorneys at Law  
101 S. Main Street  
P.O. Box 381  
Morton, IL 61550  
Phone: (309) 266-9680  
Fax: (309) 266-8301

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STATE OF ILLINOIS  
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEORIA DISPOSAL COMPANY

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PCB 06-184

(Pollution Control Facility Siting  
Appeal)

**AFFIDAVIT OF SERVICE**

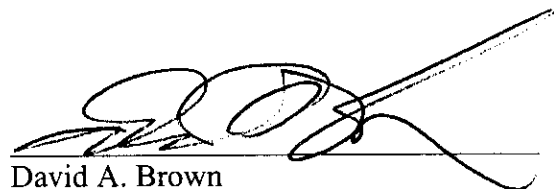
The undersigned, being duly sworn upon oath, states that a copy of the attached Motion For Leave To File Reply To Response To Motion For Leave To Supplement Record On Appeal and File Second Amended Index and Reply To Response To Motion For Leave To Supplement Record On Appeal And File Second Amended Index, 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 28<sup>th</sup> day of November, 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

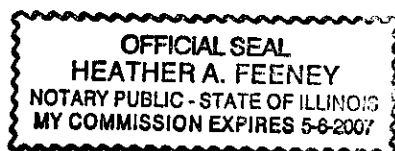
George Mueller, P.C.  
Attorney at Law  
628 Columbus Street, Suite 204  
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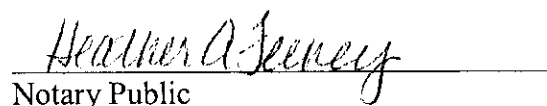
Brian J. Meginnes  
Elias, Meginnes, Riffle & Seghetti, P.C.  
416 Main Street, Suite 1400  
Peoria, IL 61602

Dated: November 28, 2006.

  
David A. Brown

Subscribed and sworn to before me, a Notary Public, in the County and State as aforesaid, this 28<sup>th</sup> day of November, 2006.



  
Notary Public