

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

TO: See attached service list

PLEASE TAKE NOTICE THAT on the 6th day of December, 2006, George Mueller, one of the attorneys for Petitioner, Peoria Disposal Company, filed the original Response of Peoria Disposal Company in Opposition to Peoria County Board's Motion for Leave to File Reply to Response to Motion for Leave to Supplement Record on Appeal and File Second-Amended Index and also filed the Affidavit of Brian J. Meginnes, with the Clerk of the Illinois Pollution Control Board, via electronic filing as authorized by the Clerk of the Illinois Pollution Control Board.

Respectfully submitted,
PEORIA DISPOSAL COMPANY

BY: / s / George Mueller
One of its attorneys

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**RESPONSE OF PEORIA DISPOSAL COMPANY IN OPPOSITION TO
PEORIA COUNTY BOARD'S MOTION FOR LEAVE TO FILE REPLY TO
RESPONSE TO MOTION FOR LEAVE TO SUPPLEMENT RECORD ON APPEAL
AND FILE SECOND AMENDED INDEX**

NOW COMES Peoria Disposal Company ("PDC"), by its attorneys, Brian J. Meghinnes and George Mueller, and as and for its Response in Opposition to the Motion for Leave to File Reply to Response to the Motion for Leave to Supplement Record on Appeal and File Second Amended Index, filed by the Peoria County Board (the "County Board"), states as follows:

On or about November 6, 2006, the County Board filed its Motion for Leave to Supplement Record on Appeal and File Second Amended Index (the "Motion"), seeking to supplement the Record with the Supplemental Staff Report (to which filing PDC does not object), the "April 6 Proposed Findings" and the "Findings Page (as defined in the Response). On November 16, 2006, PDC filed its Response to the Motion (the "Response"). On or about November 30, 2006, the County Board filed its Motion for Leave to File Reply, and attached thereto the Reply it proposes to file (the "Proposed Reply"). PDC hereby objects to the County Board's Motion for Leave to File Reply, because the Proposed Reply contains several misstatements of fact.

In the Proposed Reply, the County Board concerns itself only with the “April 6 Proposed Findings”, and does not address the “Findings Page”. Regarding the “April 6 Proposed Findings”, the County Board submitted an Affidavit of Karen Raithel with the Proposed Reply, stating, in pertinent part, as follows:

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. [The referenced document is not attached to the Affidavit.]

6. Mr. Brian Meginnes, 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.

(Proposed Reply, Exhibit B: Affidavit of Karen Raithel).

Essentially, the County Board’s claim is that the “April 6 Proposed Findings” attached with the Motion, *i.e.* that specific document which the County Board seeks to place in the Record, was previously disclosed, in a different format, to PDC.

In fact, PDC admits that it received a copy of some Proposed Findings of Fact on April 6, 2006. (*See* Affidavit of Brian J. Meginnes, Exhibit 1 hereto, ¶3). PDC denies that the packet presented to it on April 6, 2006 is “identical” to the document the County Board now seeks to file. PDC affirmatively states that the document the County Board seeks to file differs from the document distributed to the public on April 6, 2006, in at least the following substantive respects:

1. The document the County Board seeks to file includes numerous hand-written notations, which did not appear in the handout distributed to the public (Exhibit 1, ¶7);
2. The document the County Board seeks to file includes the page stamped "C139649", which did not appear in the handout distributed to the public and was, on information and belief, tendered only to the members of the Peoria County Pollution Control Site Hearing Committee (the "Committee") by Board member G. Allen Mayer at the meeting (Exhibit 1, ¶8)¹; and
3. The document the County Board seeks to file includes the pages stamped "C139653" through "C139658", which did not appear in the handout distributed to the public (Exhibit 1, ¶9).

In addition, the handout was in 8- or 10-point font, was condensed, and was arranged differently (by position ("yes", "no", "yes with conditions") rather than by criterion). (Exhibit 1, ¶¶4-6).

Also, it is PDC's belief that the document the County Board seeks to file differs from the Proposed Findings of Fact actually distributed to and considered by the Committee in at least the following respects:

1. The document the County Board seeks to file includes numerous hand-written notations, which most likely did not appear in the Proposed Findings of Fact actually distributed to and considered by the Committee;

¹ Board member Mayer at the April 6, 2006 Committee meeting acknowledged that his alternative pages ("pink sheets") were not distributed to the public. *See* Transcript of April 6, 2006 meeting, pg. 130, lines 21-23; C13443. Moreover, the excerpt from the deposition of Karen Raithel attached as Exhibit A to the Motion for Leave to File Reply includes the following relevant exchange:

Q [by Mr. Mueller] How and when did those color coded sheets get into the hands of county board members?

A I don't remember.

Q Well, the reason I'm asking is because board member Mayer showed up at the April 6th meeting with his own set of color coded sheets with regard to criterion 1. Do you recall that?

A Yes.

Q I think he had, like, an alternative set of pink, disapproval findings for criterion 1. Does that ring a bell?

A I believe so, yes.

(Exhibit A to Motion for Leave to File Reply, pg. 33, lines 12 through 24).

2. The document the County Board seeks to file includes the page stamped "C139649", which Proposed Findings of Fact actually distributed to and considered by the Committee and was, on information and belief, separately tendered to the Committee members by Board member G. Allen Mayer during the meeting²; and
3. The document the County Board seeks to file includes the pages stamped "C139653" through "C139658", which may or may not have been included with the Proposed Findings of Fact actually distributed to and considered by the Committee.

In summary, the document the County Board seeks to file differs from (a) the handout distributed to the public at the April 6, 2006 meeting, and (b) the Proposed Findings of Fact actually distributed to and considered by the Committee, in at least the following respects:

Document attached to the Motion for Leave to Supplement	Proposed Findings of Fact distributed to the public at the April 6, 2006 meeting	Proposed Findings of Fact presented to the Committee at the April 6, 2006 meeting
12 point font, black-and-white	8-10 point font, condensed, black-and-white	12 point font, colored
Arranged by criterion	Arranged by position ("yes", "no", "yes with conditions")	Arranged by criterion (presumably)
Handwritten notations	No handwritten notations	No handwritten notations (presumably)
Includes C139649: page possibly prepared by Board member Mayer	Did not include C139649	May have received C139649 from Board member Mayer separately
Includes C139653-58: charts pertaining to perpetual care	Did not include C139653-58	May have included C139653-58 (unknown)

Because the document sought to be filed by the County Board as the "April 6 Proposed Findings" is not the document distributed to the public or the document considered by the Committee, the document is not properly filed by the County Board in the Record. One set of Proposed Findings of Fact is not just as good as any other set. PDC has not deposed County

² See footnote 1, *supra*.

Staff concerning the handwritten notations, page C139649, or the charts at C139653-58 in the document sought to be filed.

The County Board's spurious accusation in the Proposed Reply that PDC was given a copy of the document the County Board seeks to file is false. The document the County Board seeks to file was not tendered to PDC prior to the filing of the Petition for Review in this case on June 7, 2006. (Exhibit 1, ¶10).

For all the foregoing reasons, the Motion for Leave to File Reply to Response to Motion for Leave to Supplement Record on Appeal and File Second Amended Index should be denied.

WHEREFORE, Peoria Disposal Company prays that the Motion for Leave to File Reply to Response to Motion for Leave to Supplement Record on Appeal and File Second Amended Index, filed by the Peoria County Board be denied.

Respectfully submitted,
PEORIA DISPOSAL COMPANY

By: /s/ George Mueller
One of its attorneys

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AFFIDAVIT OF BRIAN J. MEGINNES

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 is Brian J. Meginnes. I am one of the attorneys representing the Peoria Disposal Company ("PDC") in their Application for Site Location Approval filed with the Peoria County Clerk on November 9, 2006 (the "Application"), and in this appeal.

2. I attended the April 6, 2006 meeting of the Peoria County Pollution Control Site Hearing Committee (the "Committee").

3. At the April 6, 2006 meeting of the Committee, a packet of Proposed Findings of Fact was handed out to the public (including myself).

4. The handout was in 8- or 10-point font.

5. The handout was printed in black ink on white paper.

6. The handout listed proposed findings of fact by position on the Application, namely, "yes", "no" and "yes with conditions".

7. The handout did not contain any handwritten notations.

8. The handout did not contain the page stamped "C139649" included in the document sought to be filed by the Peoria County Board in its Motion for Leave to Supplement Record on Appeal and File Second Amended Index filed on November 6, 2006, or all the proposed findings on the page stamped "C139649".

9. The handout did not contain the pages stamped "C139653" through "C139658" included in the document sought to be filed by the Peoria County Board in its Motion for Leave to Supplement Record on Appeal and File Second Amended Index filed on November 6, 2006.

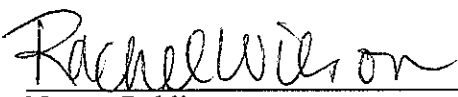
10. Prior to the filing of the Petition for Review on June 7, 2006, I had never viewed the document sought to be filed by the Peoria County Board in its Motion for Leave to Supplement Record on Appeal and File Second Amended Index filed on November 6, 2006, nor had any representative of PDC, to my knowledge.

11. 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.

Subscribed and sworn to before me
this 5th day of December, 2006.


Brian J. Meginnis, Esq.


Notary Public
906-1534

