BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

MEMORANDUM OF FACTS AND LAW
IN SUPPORT OF RESPONSE TO MOTION
FOR PARTIAL SUMMARY JUDGMENT (415 ILCS §5/39.2(e))

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 Summary Judgment on 415 ILCS § 5/39.2(e), states as follows:

INTRODUCTION

Peoria Disposal Company's ("PDC") Motion for Summary Judgment concerning 415 ILCS §5/39.2(e) is merely an attempt to create confusion where none exists. After an extensive and exhaustive public hearing where everyone, PDC and concerned citizens alike, had a full and fair opportunity to present all of their evidence, their witnesses and their arguments and comments, and after the thirty (30) day public comment period following the hearings, the County Board met and voted overwhelmingly against PDC's application.

There is no dispute that the May 3, 2006, County Board meeting at which the final vote on PDC's application occurred, took place within the statutory 180 days. The vote to deny approval of the application was the "final action" required by the statute. There also is no dispute that at the same May 3, 2006, meeting, the County Board adopted detailed, written findings of fact regarding each of the nine (9) statutory criteria. Those findings of fact are in the Record on this appeal and clearly satisfy the decision in writing requirement of 39.2(e). In addition, there is no dispute that a court reporter

transcribed the May 3, 2006, County Board meeting, and a transcript of the meeting was prepared, posted on the County website and included in the Peoria County Clerk's files. The transcript and the detailed, written findings of fact leave no doubt that the application was denied, and that the denial took place within the 180 day deadline. In other words, PDC's motion is without merit and should be denied.

STATEMENT OF FACTS

Many of the facts associated with PDC's motion do not appear to be in dispute. However, there do appear to be disputes regarding some of the facts and certain legal consequences relating to the facts.

A. Submission of the Application.

The County contests PDC's position that the application filing date was November 9, 2006. The County does not dispute the basic recitation of facts set forth in this section of PDC's memorandum that it delivered the application to the County Clerk's office on November 9, 2006. However, as set forth in PDC's brief, the County Clerk did not accept the application for filing until November 14, 2005. At various times during the application review proceedings, the County referred the filing date as November 14, 2005. At no point during the proceedings before the County Board did PDC ever contest, dispute or object to the County's reference to the filing date as November 14, 2005. In fact, throughout the proceedings before the County Board, PDC filed documents which contained the caption: "Application deemed filed: November 14, 2005." The failure to contest, dispute or object to the County's use of the November 14, 2005, date as the date of filing constitutes a waiver by PDC of its argument that the actual filing date was November 9, 2005, or PDC should now be estopped from arguing the point.

B. April 6, 2006 Meeting.

PDC's motion spends approximately 10 pages reviewing portions of the transcripts of the April 6, 2006, committee meeting. While the discussion and analysis is

interesting, the transcript of the April 6, 2006, meeting speaks for itself, and requires no characterization by PDC. To the extent PDC characterizes the transcripts, the County objects to those characterizations.

One thing is clear and not subject to dispute. The April 6, 2006, meeting was a committee meeting, and not a meeting of the Peoria County Board. PDC does not appear to dispute this fact, and in facts states the same. Any actions taken at the April 6, 2006, committee meeting, at best, were recommendations to the County Board, were not binding on the County Board, and as a result have no real significance to PDC's motion. Pursuant to state statute, the decision regarding the application had to be made by the County Board, not a committee of the County Board.

C. Filings Subsequent to the April 6, 2006, Meeting.

As set forth in the County's Reply relating to the Motion to Supplement the Record, the proposed findings of fact were, in fact, made available to the public during the course of the proceedings, although not in the colored paper versions which the County Board members used. Whether the colored paper version was made available to PDC or the public is really irrelevant to the motion before the Board, as the County Board did not take action on or adopt the colored paper versions discussed at the April 6th committee meeting. The County Board did, however, take action on and adopted the findings of fact that were before it at the May 3, 2006, County Board meeting. As set forth in Peoria County Clerk, JoAnn Thomas' affidavit, attached hereto as Exhibit "1" and incorporated herein, the Recommended Findings of Fact filed with the County Clerk on April 27, 2006, were the findings of fact that the County Board Members had before them at the May 3, 2006, County Board Meetings. Whether those Recommended Findings of fact accurately set forth what was discussed and/or decided for purposes of the committee's recommendation is not important. The record of the May 3, 2006, County Board meeting makes clear the motion was for the Findings of Fact they had before them at that time, and not some other version previously discussed or recommended.

D. May 3, 2006 Meeting of the County Board.

At the County Board meeting, the County Board took two (2) separate and distinct actions. First, it voted on a resolution to approve PDC's application. Before the vote on that resolution, the Peoria County States Attorney's Office advised the County Board, on the record, that:

> "If you vote [the motion to approve] down, that will be the end of the motion to approve. You would not have to have a second motion to deny the application. You either vote it up or down based on the motion to approve."

May 3, 2006, County Board Meeting Transcript, p. 17; C13715. After receiving that advice, a motion to approve the application with special conditions was made, voted on, and failed. The motion failed by a vote of 12 against to 6 in favor. Pursuant to the advice of counsel, the Board took no further action on that motion or resolution.

Despite PDC's claims and arguments to the contrary, all of the documents relating to the May 3, 2006, County Board meeting were located in the Clerk's office and were available for inspection by the public. See Affidavit of JoAnn Thomas' at paragraphs 14 and 15. The County admits the documents were not kept with the other landfill related documents. However, there is no requirement in the statute or otherwise that requires the County to maintain the record of documents in one specific place or location. Even if there were such a requirement, the County Clerk's failure to maintain the records as such was at worst inadvertent, and certainly caused no prejudice to any party to the proceedings before the County Board, and did not hinder PDC's ability to articulate its contentions in this appeal.

As cited in PDC's brief, Board Member Mayer at the May 3, 2006, County Board meeting made a motion to adopt "the findings of fact as presented this evening." May 3, 2006, County Board Meeting Transcript, p. 42; C13722. The County Clerk's affidavit makes it clear the only "findings of fact" before the Board Members at the May 3, 2006, County Board meeting were the Recommended Findings of Fact which had been filed with the Clerk's office on April 27, 2006, and which were kept with the landfill application related documents, and which are found at C 13627 through C 13640.

The findings of fact "presented" at the May 3, 2006, County Board meeting were detailed and in writing. Each criterion was addressed individually and in detail. For instance, the findings for Criterion 1 start off by stating, "The facility is not necessary to accommodate the waste needs of the area it is intended to serve." (C13627) The findings under Criterion 1 then go into detail as to why the Board found that criterion had not been met. Likewise, the findings for Criterion 2 start off by stating, "The facility is not so designed, located and proposed to be operated that the public health, safety and welfare will be protected." (C13629) The findings under Criterion 2 then go into detail as to why the Board found that criterions had not been met. Each criterion is addressed in the same fashion. While the pages of the Findings of Fact which are in the Record on appeal are out of order, they nonetheless are detailed and in writing.

During the meeting, one change was made to the Findings of Fact which were filed in the record on April 27, 2006, and that change was reflected in the one (1) page contained in the Clerk's files and which was clearly set forth in the transcript of the May 3, 2006, County Board meeting. See, Affidavit of JoAnn Thomas, at paragraphs 12-13.

D. Documents in the Record after May 3, 2006.

As set forth in the affidavit of JoAnn Thomas, the Peoria County Clerk, in lieu of minutes of the meeting, the County Clerk utilized the services of a court reporter to provide a transcript of the entire May 3, 2006, County Board meeting. The transcript of the May 3, 2006, meeting was included in the County Board records in the County Clerk's office, and those documents were available for inspection by the public. In addition, the transcripts were posted on the Peoria County website for inspection and copying by the public, including PDC, for no charge.

PDC complains that there were no "minutes" of the meeting because the County Clerk did not create some type of summary of the events at the May 3, 2006, County Board meeting. In other words, PDC wants to argue instead of using the exact transcript of the County Board meeting, the County should have prepared and relied upon some summary of the meeting. Presumably, had the County Clerk produced summary minutes of the meeting, PDC would be complaining that they were not accurate or complete, similar to its arguments about the April 27, 2006, Recommended Findings of Fact. In

any event, in lieu of some type of summary of the May 3, 2006, Board meeting, the County Clerk elected to have the meeting transcribed by a court reporter so there would be no confusion or argument about what took place at the meeting. There can be little argument that an exact transcript of the meeting is better for the Board than a summary.

All of the documents filed with the Peoria County Clerk throughout the application review process were made available to PDC and the public through the County's website, starting with PDC's application and continuing on to the transcripts of the May 3, 2006, County Board meeting at which the application was denied. The proceedings before the Peoria County Board were perhaps the most open and accessible of any siting applications proceedings in the state. The application filed with the County Clerk, the transcripts of the public hearing along with the exhibits, handouts and PowerPoint presentations presented at the public hearing, the filings by counsel for the parties, the factual submittals of the parties after the public hearing, the transcripts of the public hearings, the Peoria County Staff Report and the Supplemental Staff report, the transcripts of the April 3, 2006, reconvened meeting, and the April 6, 2006, committee meeting, and all of the letters and e-mails received by the County Clerk as public comment prior to the cutoff 30 days after the close of the public hearing, were posted to the County's website and available to everyone, PDC included, on-line and at no charge.

The availability on-line no doubt facilitated all parties in keep appraised of the filings and the course of the proceedings. It was Peoria County's intent to provide the most open, fair, and transparent siting application proceedings ever conducted, and the County believes it accomplished that goal.

ARGUMENT

A. PDC's Application Was Denied Within the 180-Day Deadline.

PDC first argues the County Board did not take "final action" on its application because, in PDC's words, the County Board did not "affirmatively deny the Application." PDC admits that the motion for approval was voted on and failed to pass on a vote of twelve (12) members voting against the motion and only six (6) in favor of the motion. However, PDC claims the County Board was somehow required, after already having voted against approval of the application, to pass another motion specifically denying the

application. PDC's claims are contrary to the advice of the Peoria County States Attorney's office on the record at the May 3, 2006, County Board meeting. The County Board admits that pursuant to the advice of counsel, after first overwhelmingly denying the motion to approve the application, it took no subsequent motion to then deny the application, and therefore no vote on such a motion was taken. However, the County Board contends that no such motion and vote was necessary.

The cases cited by PDC do not support its position that an affirmative vote to deny the application was required. In Hoesman, et al. v. City Council of the City of Urbana, Illinois, et al. PCB 84-162, 1985 WL 21156, the first case PDC cites for its argument, the issue related to the Pollution Control Board's rule requiring an affirmative vote of at least four (4) members in order for the Board to take action. In that case, two (2) motions were offered. The first motion was to reverse the determination of the City Council. That motion failed to garner the necessary four (4) votes and by a vote of 2 to 3. The second motion to uphold the City Council's decision also failed to receive the necessary four (4) votes, but this time by a vote of 3 to 2. As a result of the failure of any motion to garner at least the four (4) required votes under the Board's rules, there was no formal action taken by the Board within the statutorily mandated deadline.

Two (2) points make the Hoesman case inapplicable to the facts and circumstances in the case before the Board. First, the Hoesman case dealt with different rules and a different statutory provision than are implicated by this case. Hoesman dealt only with the Pollution Control Board's internal rules which require an affirmative vote of four (4) members. Without four (4) members voting for a motion, the Board was unable to take any action. No such rule is applicable to the Peoria County Board. In addition, the Hoesman case dealt with a different statutory "final action" deadline (i.e., the Board's own deadline, not the siting authority's deadline). Finally, it must be noted that in the instant case, the Peoria County Board had a full quorum at the meeting, and an overwhelming majority of the County Board voted against the application.

The one thing that can be taken from Hoesman is that in order to determine whether a "final action" was taken by the appropriate authority, the Board or the courts look to the rules of procedure for that specific decision making body. In the instant case, the authority on the County Board's rules and procedures is the Peoria County States

Attorney's office. The States Attorney's authority concerning the procedures for the County Board derives from the 2005-2006 Rules of Order of the Peoria County Board, Art. III, Sec. 4, which provides that the State's Attorney or an Assistant State's Attorney selected by the State's Attorney is the Parliamentarian of the County Board. See, Exhibit "2" attached hereto and incorporated herein. That section further provides that the Parliamentarian "shall render opinion and advise on questions of parliamentary law and procedures applicable to matters arising before the Board." Acting as Parliamentarian, Chief Civil Assistant State's Attorney William Atkins specifically stated on the record that if the County Board voted against the motion to approve the application, that would be considered a denial, and there would be no need to make a subsequent motion to deny and to vote on such a motion.

In the second case cited by PDC, Smith et al. v. City of Champaign, et al., PCB 92-55, 1992 WL 207560, the issue, once again, revolved around the decision maker's rules and procedures. In that case, the City Council's rules of order required an affirmative vote of no less than five (5) members in order for the council to take action. At the council meeting at which the application was to be acted upon, the vote was one (1) vote in favor and two (2) votes against, and six (6) members abstained. As a result of the six (6) abstentions, the Mayor declared a temporary loss of quorum. Pursuant to the City Council's rules, a temporary lack of quorum resulted in postponement of the mater under consideration until the next regular meeting. The next meeting was after the 180 day deadline had expired. Under the City Council's rules, due to a lack of quorum, there was no "action" on the application within the statutorily mandated timeframe, and as a result, there could be no "final action".

Once again, the case does not stand for the proposition that an affirmative vote to deny is required by the statute. The case merely stands for the proposition that the City Council, pursuant to its own rules, failed to take any action, let alone "final action", because it lacked a quorum at the meeting at which the application was voted upon.

There is no dispute that a quorum of the Peoria County Board was present and voted at the May 3, 2006, meeting. In fact, every member of the County Board, all eighteen (18), was present and all voted on the motion, and the motion overwhelmingly failed. The instant case is not one of the lack of a quorum or the lack of a statutorily

required number of votes. The requisite quorum was present and the requisite number of members voted against the application. There was clearly a final action by the County Board at the May 3, 2006, meeting.

The Board has previously addressed the issue raised by PDC regarding whether a vote to deny is required, and concluded, in a concurring opinion, that a vote denying a motion to approve is equivalent to a vote approving denial. See, Guerrattaz, et al. v. Jasper County, et al., PCB 8-76. In the Guerrattaz case, the Jasper County Board met to consider their action. At that meeting, a motion to deny the application was made and seconded, and the vote resulted in a tie. At a subsequent County Board meeting, the application was again considered, but the county board elected not to vote again, and let the first vote stand. On appeal, one of the parties argued that the vote was a "final action" under the statute, and it should be deemed a denial. The Board resolved the matter on a jurisdictional issue, and therefore did not address the "final action" issue raised during the appeal. However, a concurring opinion was submitted addressing the "final action" issue. While the analysis is clearly and admittedly dicta, is informative nonetheless. The two (2) Board members who authored the concurring opinion thought it was appropriate to comment on the "final action" issue so as to provide guidance for future similar situations.

The opinion states, in part, as follows:

> "It is clear that the Jasper County Board's action on April 28, and May 13, : (1) were within the statutory deadlines for action, (2) concluded the County Board's adjudicative process such that an appeal would not be disruptive, and (3) that legal consequences would result. Therefore, the County Board took "final action" within the statutorily mandated timeframe and the landfill approval does not issue by operation of law.
>
> Simply because the County Board took final action, does not mean the County Board reached a decision."

P. 4 of concurring opinion. The opinion went on to state as follows:

> " ... the landfill applicant has the burden of convincing a statutorily determined majority of the county board members that its application should be granted. Where, as a result of a timely and proper vote, the applicant fails to convince a statutorily established majority of the county board that it is entitled to approval, its application is denied. It would make no difference whether the motion before

> the county board was a motion to grant approval or a motion to deny approval. The statute places the burden of proof upon the applicant and the county board cannot change that statutorily established burden no matter how the "motion" is phrased."

p. 7 of concurring opinion. Finally, the opinion reads, in part, as follows:

> "In summary, the [sic] we believe that a timely and proper vote on a Section 39.2 landfill approval application, that does not secure a statutorily established majority, constitutes a denial of the application."

p. 10 of concurring opinion. The concurring opinion is well reasoned, and is not in conflict with the opinions cited by PDC or any other decisions of the Board, and should be followed in this case.

Admittedly, in some cases, there may be some confusion whether a vote by a majority of a county board against a motion to approve a siting application was intended as a denial. In the instant case, there can be no confusion. As set forth in PDC's brief, the Peoria County Board, before it voted, was advised by counsel, on the record at the public meeting, that a "no" vote on the motion to approve the application constituted a denial of the application, and no further or subsequent motion to deny was necessary. At the May 3, 2006, County Board meeting, Chief Civil Assistant States Attorney, William Atkins stated as follows:

> " ... we have two items on the agenda tonight. One of them is a motion for approval of the PDC Application. The reason that is up for a motion for approval, there was no recommendation made for approval or denial by the Site Hearing Committee. There was certainly a recommendation made with regards to finding of fact and those findings of fact do certainly recommend or support a recommendation of denial, but there was no actual recommendation of denial. So the only action being sought tonight is on the part of PDC, which has filed an Application seeking approval. So this should come before you on a motion to approve. If you vote it down, that will be the end of the motion to approve. You would not have to have a second motion to deny the application. You either vote it up or down based on the motion to approve.
>
> Because of the fact that the findings of fact that have been recommended to you support a denial, if you vote down that motion, the motion to approve, then in your second motion you could simply accept the findings of fact that have been presented to you by the Site Hearing Committee, ...
>
> So if there is a denial, you do not need to amend the findings of fact for the most part. ..."

May 3, 2006, Peoria County Board Meeting transcript at p. 16-17, C13715.

The advice of counsel was clear. A failure of the motion to approve the application was in effect a denial of the application. Therefore, it is clear that the County Board members understood and intended their "no" vote to be a denial of PDC's application. Counsel's statement that "the only action that is being sought tonight is on the part of PDC" is actually a referenced to the fact that the Board could not consider a motion to deny because no party, and no committee, had brought forward a motion to deny the application. At the meeting, the application being reviewed was a request by PDC for approval of the proposed expansion of the landfill, not a request for denial. Pursuant to state law, the burden was on PDC to demonstrate to the County Board that it was entitled approval. To make the burden of persuasion clear, the motion needed to be addressed by a motion to approve. The failure by PDC to meet the burden of persuasion resulted in denial of the application due to the failure of the motion to approve.

If the Board were to accept PDC's contention that after vote against the motion to approve the County Board should have then voted on a motion to deny, such a ruling would open a whole series of issues. Would siting authorities have to take a roll call for all those absent, after first having taken one for those present? Would the siting authority have to take votes not to find facts after having voted on findings of fact? After having voted affirmatively to deny an application, would the siting authority have to then bring a motion to approve the application and vote that down? At what point would a local siting authority have to stop? One clear cut vote should be enough.

Finally, as a result of the advice of counsel, the County Board understood there was no need for any further motion or motions after it had denied the motion to approve the application. Therefore, there can be no confusion as to what the County Board intended as a result of its vote on the motion to approve. Although PDC apparently does not agree with the advice of the Peoria County States Attorney's office, that does not change what the Peoria County Board thought it was doing or what it intended to do at the May 3, 2006, meeting. Even if, with hindsight, the advice is found to be incorrect, the intent of the County Board is clear, and as a result, the County Board's action was final for purposes of the statute.

Finally, this is not a case where the purpose of the 180 day deadline is implicated. The Board set forth the purpose of the 180 day "final action" deadline in Casner Township, PCB 84-175 & PCB 84-176 Consolidated, Order, January 10, 1985, pp. 6-7, wherein in it stated:

> "Without a deadline, the local body could frustrate the entire permitting process by simply not acting, and the legislative history shows that the General Assembly believed that many local bodies would be under pressure to do just that. The "deemed approved" mechanism functions to move the case along without penalizing any of the parties to the process ...."

Casner Township Order at pp. 6-7. In the instant case, there can be no dispute that the County Board took action. There is no indication the County Board was attempting to frustrate the permitting process by not acting. In fact, the Record clearly demonstrates an incredible amount of time, energy and action on behalf of the County and the County Board to directly address PDC's application. The County Board took a vote on the application, and everybody understood that vote to be a denial.

II. The Decision Was In Writing.

PDC's motion argues that the County Board's decision must be in writing within the 180-day statutorily mandated deadline. In order to make this argument, PDC attempts to combine that statutory language relating to the deadline with administrative rules relating to appeals. Not surprisingly, PDC is unable to cite any case law to support its position. In fact, PDC's arguments under section II of its brief are contrary to the clear language of the statute, as well as controlling Board case law. Even so, the County Board's decision was rendered in writing within the statutorily mandated 180-day deadline when it adopted the detailed, written findings of fact at the May 3, 2006, County Board meeting.

The governing statutory provision is cited in PDC's brief (with extraneous emphasis), and will not be repeated. When reviewing the statute, it is important to note that the legislature used two (2) different and distinct phrases or terms in Section 39.2(e). In the first sentence of the section references "decisions" of the county board, and

requires that they be in writing. The last sentence, and the only one that imposes the 180-day deadline, references "final action" of the county board. The use of two (2) separate terms suggests or implies that the legislature made and intended a distinction between a "final action," and a "decision." See, Guerretaz concurring opinion at p. 5. To read Section 39.2(e) as proposed by PDC would effectively eliminate the first two sentences of that section.

The distinction between "final action" and "decision" was made very clear by the Board in its Opinion and Order Clean Quality Resources, Inc. v. Marion County Board, PCB 91-72 dated August 26, 1991. In Clean Quality Resources, the Marion County Board voted to deny the siting application two (2) days before the expiration of the 180 day statutory deadline. Then, sixteen days after the deadline for "final action" expired, the county board issued a written "Notice of Decision". The applicant appealed the denial contending the application was approved by operation of law because the county board did not issue its decision in written form within the statutory 180-day deadline. The Board rejected the applicant's argument that a written decision had to be rendered within the 180-day statutorily mandated deadline for a "final action." The Board's Opinion and Order clearly articulated the distinction between the 180-day deadline for final action and the requirement that the decision be in writing when it stated:

> "The Board does not agree with the interpretation of Section 39.2(e) proposed by CQR. CQR has combined two separate and distinct phrases which are used in this section; "decision in writing" and "final action". The distinction denotes two related but different functions. The separation is further deemphasized by the placement of these functions into different sentences. Only a "final action" is required to fulfill the statutory time limit. The language of Section 39.2(e) allows a county board 180 days after the filing of an application to consider the completeness of the application, conduct the necessary hearings and to consider the merits and evidence of the record. Final action, whether approval, disapproval or inaction, must be taken within that 180-day period and can be made in the final hour of that time period. The Act does not require the circulation of the written decision of the county board specifying the reasons for the decision be accomplished within the 180 days."

Clean Quality Resources, at p. 8 of Opinion and Order. The Board's decision is Clean Quality Resources is consistent with the Illinois Supreme Court's opinion in Waste

Management of Illinois v. Illinois Pollution Control Board (1991 as modified on Denial of Rehearing) 145 Ill.2d 345, 585 NE.2d 606, 165 Ill.Dec. 875 ("Waste Management").

In the Waste Management case, the Board issued an order within the statutorily mandated time frame for a Board decision on an appeal, but issued its written opinion after the close of the time frame. The applicant took the position that the failure to issue the written opinion within the statutorily mandated time period resulted in the application being deemed approved because there was no "final action." The Illinois Supreme Court rejected that position finding the use of the term "final action" and "written opinion" were two (2) separate and distinct items. The Supreme Court notes that there may be a "final action" as contemplated by the legislature that is not final and appealable for purposes of review. Waste Management, 145 Ill.2d at 352.

PDC's reference to the administrative rule relating to the filing of an appeal of the decision on the siting application is similar to, if not identical to, the argument raised in the Waste Management case. The Supreme Court stated in that case:

> "Although we find that the Board's ... order was "final action" as contemplated by the legislature, we do not necessarily conclude that it was final and appealable for purposes of review. However, a conclusion that the order was not final and appealable would not invalidate the action taken by the Board."

Waste Management at 145 Ill.2d at 352. Applying that analysis to the instant case, if the Peoria County Board's decision at its May 3, 2006, meeting was not supported and/or accompanied by detailed, written findings of fact (which it was), the decision would still have been "final action." As stated by the Illinois Supreme Court, the mere fact an administrative agency's decision is not in writing does not render it void. Id. Rather, it might not have been appealable until the decision was rendered in writing. In which case, the proper remedy would be to remand the matter back to the County Board to make proper findings so the Board could properly review the action. In this case, remand is unnecessary since the Board has before it the detailed, written findings of fact, as well as the transcript of the May 3, 2006, County Board meeting. Therefore, remand would serve no purpose.

The purpose of the requirement that a decision be in writing is so that a party unhappy with the "final action" of the County Board knows why the County Board ruled against it, and is thereby able to effectively formulate its appeal. It is therefore logical for the administrative rule to require the notice of appeal to be filed within 35 days after the written decision. As mentioned above, and highlighted in the Waste Management case, a final action which has not yet been rendered in writing, might not be appealable, and might not start the 35 day period for filing an appeal. However, that issue is not implicated in this case.

As in the Clean Quality Resources case and the Waste Management case, there is no dispute the Peoria County Board voted on the motion at the May 3, 2006, County Board meeting within the 180-day statutory deadline. Likewise, there is little or no question the Peoria County Board voted against the application. PDC and the public clearly understood PDC's application was denied. Therefore, there was "final action" on the application within the statutorily mandated 180-day deadline.

Furthermore, at the May 3, 2006, County Board meeting at which the vote was taken, the County Board approved detailed, written Recommended Findings of Fact which had previously been filed in the record with the County Clerk. The detailed, written findings of fact addressed each one of the nine (9) statutory criteria, and clearly indicated whether each individual criterion had been met. The detailed, written findings of fact communicated the reasoning for the Peoria County Board's decision. To further demonstrate the County Board's diligence, within days after the May 3, 2006, County Board meeting, the actual transcripts of the County Board meeting were posted on the County's website for PDC and the entire public to view, download, copy, etc. Therefore, the instant case is even more compelling than the arguments articulated by Clean Quality Resources in its appeal.

Part of PDC's argument that the decision was not in writing appears to be based upon or related to its contention that the items that were in writing were not located in the landfill application related files. As set forth in the County's Motion to Supplement Record on Appeal, and in its Reply relating to that motion, as well as set forth in the affidavit of Peoria County Clerk JoAnn Thomas, attached hereto, and in the County's Responses to Requests to Admit, the April 6, 2006, committee meeting documents and

the May 3, 2006, County Board meeting documents were located in the County Clerk's office. However, the documents were kept with the County Board files, and not also in the boxes of documents relating to the landfill expansion application. While the documents were not all kept in one place within the Clerk's office, all the documents were located in the Clerk's office and were available for inspection and copying by the public, including PDC. Furthermore, as PDC readily admits in its motion, the transcript of the May 3, 2006, County Board meeting was posted to the County's website, and was therefore available to the public, including PDC, for viewing, downloading, printing, and copying, at no charge.

There is no requirement in the statute, or elsewhere, that all the documents be kept in one repository or location. Even if there was such a requirement, the failure to do so by the County Clerk was lessened by the fact that the documents were made available on the County's website. Furthermore, the documents were all kept in the same office in the same building. Any error in the physical location of the documents within the Clerk's office was inadvertent and harmless. As stated by the Second District Court of Appeals in McHenry County Landfill, Inc. v. IEPA:

> " ... the supreme court has recognized the legislature's intent "to place decisions regarding the sites for landfills with local authorities. [citation omitted]. We conclude that the legislature could not have intended the ... inadvertent and apparently harmless error to result in a deemed site approval. Such a rule would both eliminate any consideration of the site's suitability for a landfill and deprive local authorities of the power given them by the statute."

McHenry County Landfill, Inc. v. IEPA, et al. (2nd Dist., 1987), 154 Ill.App.3d 89, 96-97, 506 N.E.2d 372, 106 Ill.Dec. 665. In that case, the Board failed to give the 21 day notice required by statute. Here, the error, if any, is even less significant as there is no statutory requirement that the documents be kept in one specific location.

III. The Decision in Writing was Timely.

In the third section of PDC's brief, it contends the application should be deemed approved because the written decision was not rendered within the 180-day statutorily

mandated deadline. For all the reasons articulate by the County in section II of this brief, that argument should fail. In the alternative, PDC should be deemed to have either waived the argument concerning the filing date, or be deemed to have amended its application, and the County Board had an additional 90 days to render its decision.

The County does not dispute that PDC presented its application on November 9, 2005. However, as set forth in PDC's brief, the local ordinance requires a review of the application for completeness before the County Clerk may accept the application for filing. The application was accepted for filing on November 14, 2005.

The County Board acknowledges the Board's decision in McLean County Disposal Company, Inc. v. County of McLean, PC 87-133, which is cited in PDC's brief. However, the County contends PDC should be deemed to have waived the 180 day decision deadline because it acquiesced to the filing date of November 14, 2005. Throughout the proceedings before the County Board, PDC filed documents stating "Application deemed filed: November 14, 2005." See, e.g., PDC's Response to Committee of the Whole Vote (C 13461). At no time during the proceedings before the County Board did PDC ever object to the filing date of November 14, 2005. At no time during the proceedings before the County Board did PDC ever contend that the actual filing date was November 9, 2005. It was not until well after the final vote on the application by the County Board did PDC ever contend the actual filing date, and as part of this appeal, was some date other than November 14, 2005. Even so, as demonstrated above, the County Board clearly took final action within the 180-day statutorily mandated deadline, regardless of which date is utilized.

If the Board somehow rules the County failed to take final action within the 180 day deadline based upon PDC's arguments about the transcript of the hearing being posted on the web-site after the deadline, the County argues, in the alternative, argues that PDC's proposed "restrictions" be deemed an amendment of the application thereby giving the County Board an additional period of 90 days to take its final action.

Section 39.2(e), provides in relevant part, as follows:

> "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 participants, the applicant may file not more than one

amended application ...; in which case the time limitation for final action set forth in this subsection (e) shall be extended for an additional period of 90 days."

On the first day of the public hearing, before PDC presented its witnesses, Brian Meginnes, an attorney representing PDC at the Public Hearing and in these proceedings, proposed, on the record, certain restrictions or conditions be placed on the approval of the application. The proposals including the following:

- Prohibition on sale of the landfill without the County Board's consent;
- No construction of a rail spur to the facility;
- Implementation of ambient air monitoring;
- No further expansions;
- Elimination of the surface impoundment;
- Secondary containment in leachate collection sumps; and
- Guarantee of capacity for Peoria County waste for 15 years.

See, February 21, 2006, Public Hearing transcript at pages 25 through 29 (C7273-C7274). None of the proposed "restrictions" or "conditions" were contained in PDC's application. Many, if not all of them, relate to or are details of the proposed facility and how it will be designed and/or operated, and should be considered amendments to the application. The "restrictions" or "conditions" were presented by PDC to the County Board, in writing, prior to the close of PDC's presentation. Thus, the amendment was timely under Section 39.2(e). Pursuant to the terms of Section 39.2(e), the County Board was given an additional ninety (90) days to take "final action" before the application would be deemed approved. Assuming PDC's claim that the filing date was November 9, 2005, and that the original 180 day period would expire on May 8, 2006, the amendment of the application extends the "final action" deadline 90 days to August 6, 2006. As previously demonstrated in this Response, all of the documentation of the County Board's decision was in place well before August 6, 2006.

CONCLUSION

The Peoria County Board took "final action" at the May 3, 2006, when it voted overwhelmingly to deny the motion to approve PDC's application for local siting

approval. The vote took place within the 180-day deadline regardless of whether the filing date was November 9, 2005, or November 14, 2005. The 180-day statutorily mandated deadline relates only to "final action." There is no requirement that a written decision be made within the 180 days.

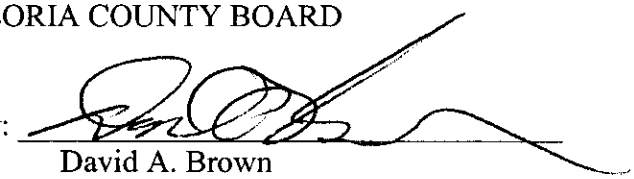
Even though a written decision was not required within the statutorily mandated 180-day deadline, at that same May 3, 2006, County Board meeting at which the "final action" was taken, the Peoria County Board also adopted detailed, written findings of fact which Peoria County Clerk kept in the County Board files. The detailed, written findings of fact adopted by the Peoria County Board at the May 3, 2006, meeting were the very ones previously filed with the County Clerk on April 27, 2006, with one change which was made during the May 3, 2006, meeting. The only change to the Recommended Findings of Fact was correctly reflected in the single page of findings of fact which the County Clerk kept in her County Board files. The detailed, written findings of fact alone constitute a writing which specified the reasons for the Board's decision, and therefore satisfied the statutory requirement. Nonetheless, in addition to the written findings of fact, a court reported created a written transcript of the May 3, 2006, County Board meeting. At no time has PDC contested or complained that the transcript was or is inaccurate. In fact, the transcript provides an exact record of the May 3, 2006, County Board meeting, including the vote of each Board Member and the one change to the previously filed April 27, 2006, Recommended Findings of Fact. The transcript was, and continues to be, kept in the Peoria County Clerk's office, and was posted on the Peoria County website for everyone, PDC included, to see, download and copy.

In other words, the Peoria County Board did take "final action" within the statutorily mandated 180-day deadline, and the Board's decision was in writing and specified the reasons for the Board's decision.

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

Board deny Petitioner's motion for partial summary judgment.

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
Fax: (309) 266-8301

EXHIBIT "1"

AFFIDAVIT OF JOANN THOMAS

AFFIDAVIT OF JOANN THOMAS

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

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

1. My name is JoAnn Thomas. I presently am the Peoria County Clerk, and was so at the time of the May 3, 2006, County Board meeting at which the Peoria Disposal Company application for site location approval was denied.

2. As part of my duties as Peoria County Clerk, I personally attended the May 3, 2006, County Board meeting at which PDC's application was denied.

3. As part of my duties as Peoria County Clerk, I am/was responsible for maintaining County Board files and records.

4. In lieu of creating minutes of the May 3, 2006, County Board meeting, I elected to use the court reporter transcripts of the meeting as the minutes and official record of the meeting since the transcripts represent the exact record of what took place, while any minutes would simply be a summary of what took place.

5. During the May 3, 2006, County Board meeting, County Board Members had in front of them copies of the "Recommended Findings of Fact" which were filed on April 27, 2006, with the application related records with my office, a copy of the "Recommended Findings of Fact" are attached hereto as exhibit "A" to this affidavit.

6. No other findings of fact or other documents purporting to be findings of fact where before any Members of the County Board at the time they voted during the May 3, 2006, County Board meeting.

EXHIBIT "1"

7. The Recommended Findings of Fact attached hereto as exhibit "A" are the findings of fact referred to by Member Mayer when he made his motion "to adopt the findings of fact as presented this evening" during the May 3, 2006, County Board meeting, which quote is found at page 42, line 12 through 15 of the transcript of the May 3, 2006, County Board meeting.

8. During the May 3, 2006, County Board meeting, Karen Raithel, the Peoria County Recycling and Conservation Resource director, had a computer set up behind the County Board table so that she could modify the Recommended Findings of Fact in the event the Board voted to amend, modify or delete any of the findings contained in the Recommended Findings of Fact during the course of the meeting.

9. At the May 3, 2006, County Board meeting, there was one change to the Recommended Findings of Fact which change was proposed by Member Mayer as part of his motion to approve the Recommended Findings of Fact.

10. The one change to the Recommended Findings of Fact was to include the following statement under criterion ii:

> "County Staff indicated upon questioning at the April 3, 2006, hearing that it was their opinion that the Application as submitted did not satisfy criterion two. County Staff indicated it was their opinion that only with the imposition of numerous special conditions could criterion two be satisfied."

11. County Board Member Mayer's motion to approve the Recommended Findings of Fact with the single addition of the above referenced finding under criterion ii was passed by the County Board at the May 3, 2006, meeting by a vote of 12 in favor of the motion and 6 against the motion.

12. After the vote on the Recommended Findings of Fact at the May 3, 2006, County Board meeting but while we were still at the site of the meeting, Karen Raithel

added the additional finding to criterion ii pursuant to approved motion, printed out the last page of the criterion ii findings, and presented the single page to me for my review.

13. I reviewed the single printed page showing the added finding of fact under criterion ii, confirmed that it was consistent with the motion made by Board Member Mayer, and included it in my County Board file for the May 3, 2006, meeting as part of the record of that meeting. A copy of the single page is attached hereto as Exhibit "B" to this affidavit.

14. Since the date of the May 3, 2006, County Board meeting, the Recommended Findings of Fact, the single page containing the additional finding under criterion ii, as well as the agenda, briefings and other files relating to the May 3, 2006, County Board meeting have been kept and maintained in the County Board files in the Peoria County Clerk's Office.

15. The County Board file relating to the May 3, 2006, County Board meeting is available for inspection by the public, and has been since the date of the May 3, 2006, County Board meeting.

16. 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.

JoAnn Thomas

JoAnn Thomas, Peoria County Clerk

Subscribed and sworn to before me
this 29th day of November, 2006.

Megan Fulara

Notary Public

"OFFICIAL SEAL"
MEGAN FULARA
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 08-02-2009

EXHIBIT "1"

C 13,627

RECOMMENDED FINDINGS OF FACT

Criterion 1

The facility is not necessary to accommodate the waste needs of the area it is intended to serve.

- Applicant failed to use the most recent U.S. EPA data on hazardous waste generation;
- U.S. EPA data from 2003, reported in 2005, shows a significant decline in hazardous waste generation rates in the hazardous waste service area;
- During cross-examination by County staff, applicant's expert Smith testified that there was a reduction in hazardous waste generated in the service area from 2001 to 2003;
- Applicant's expert Smith testified that there are a decreasing number of hazardous waste landfills in both the service area and the nation;
- Applicant's employee and expert Ron Edwards is quoted in a newspaper article, included in the public record, as saying that applicant's tipping fees have decreased from an average of $100 per ton to an average of $80 to $85 per ton;
- While not subject to cross-examination, applicant's statement about price is deemed reliable as a statement against interest;
- A decreasing price during a time period when the number of hazardous waste landfills is decreasing suggests decreasing demand for disposal capacity;
- On cross-examination applicant's expert Dr. David Daniel testified that over the last two decades there has been a gradual reduction in the amount of hazardous waste generated;
- Daniel was qualified by applicant as a national expert on hazardous waste and landfill design and technology;
- In her report applicant's expert Smith assumed a constant rate of hazardous waste generation in the service area from 2001 until 2029;
- However, the evidence provided by U.S. EPA data, applicant's public statement about prices and the testimony of the applicant's own experts indicates a reduction in the amount of hazardous waste generated in the service area;
- An annual reduction in hazardous waste generation in the service area of between one and two percent, and therefore consistent with the U.S. EPA data,

C 13628

ILLINOIS ENVIRONMENTAL PROTECTION ACT 415 ILCS 5/39.2 LOCAL SITING APPROVAL CRITERIA

(i) The facility is necessary to accommodate the waste needs of the area it is intended to serve;

(ii) The facility is designed, located and proposed to be operated such that public health, safety and welfare will be protected;

(iii) The 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;

(iv) The facility is located outside the boundary of the 100 year flood plain or the site is flood-proofed;

(v) The plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills or other operational accidents;

(vi) The traffic patterns to or from the facility are designed to minimize the impact on existing traffic flows;

(vii) 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;

(viii) The facility is consistent with the County Solid Waste Management plan; and

(ix) If the facility will be located within a regulated recharge area, any applicable requirements specified by the Board for such areas have been met.

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 (ii) and (v) under the Section. The County Board may also impose conditions on its siting approval.

C 13629

Criterion 2

The facility is not so designed, located and proposed to be operated that the public health, safety and welfare will be protected.

- There is evidence that the existing landfill may already be leaking into the aquifer;
- If the existing landfill is already leaking, the facility and the proposed facility which relies upon the existing liners and leachate collection systems is not designed to be protective of the public health, safety and welfare;
- The liner systems presently in use at the facility and proposed to be used in the vertical expansion, by the applicant's own experts' testimony, will fail at some time in the future;
- When those liners fail, leachate will begin migrating through the site, and will eventually reach the groundwater under the site;
- The groundwater aquifer located under the site is, by the applicant's own experts' testimony, hydraulically connected to the Sankoty aquifer which is the primary drinking water aquifer for the area;
- If the drinking water wells for the area are contaminated, the costs of replacing the water supply will be enormous;
- The risk of contaminating of the area's drinking water is not worth the short term economic benefits of allowing the expansion of the landfill;
- The old areas of the site are not constructed to modern regulatory standards and present unreasonable risks to the public;
- The location of a hazardous waste disposal site over the aquifer is against the stated policy of the Peoria County Board;
- The design of trench C-1 is inferior to present "state-of-the-art" technology in the waste field, and allowing the Applicant to remove the existing cover from that trench presents an unreasonable risk to the public and the aquifer under the site;
- The testimony of opponents' expert, Charles Norris, was that fissures in the clayey till, weathering of the till, and continuous sand seams all contribute to the rapid transport of liquids through the glacial till underlying the site, and will, and have, resulted in leachate releases and other contaminants migrating into the groundwater from the glacial till;

EXHIBIT "1-A"

would reduce the capacity shortfall applicant's expert Smith estimated in her report for hazardous waste by hundreds of thousands or even millions of tons;

- In estimating disposal capacity applicant's expert Smith assumed that hazardous waste landfills outside the service area would not utilize a greater percentage of their capacity for hazardous waste generated within the service area than they did in 2001, but supplied no evidence or data to support this assumption;

- Applicant's expert Smith failed to fully consider potential substitutes for a new hazardous waste landfill in the service area, including increased recycling of the type of waste codes accepted by applicant, continued waste reduction in the service area and increased disposal of hazardous waste generated in the service area in landfills outside the service area.

C 13631

Criterion 3

The proposed facility is not 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.

A. **Compatibility**

- Surrounding land uses are a mix of open space, agriculture, industrial and residential;
- The testimony and report in the record state the site is separated from surrounding land uses by natural buffers, vegetative screening, and natural topography, but with an expansion the natural buffers are not as effective;
- A significant portion of the residential property is in relative close proximity to the proposed facility;
- A 45 foot increase in vertical height of this landfill will have a noticeable and demonstrable effect on surrounding residential properties;
- The County did note that during the Applicant's presentation certain before and after images of what the proposed facility will look like from various positions in the neighboring residential areas showed that in a few locations the top of the proposed facility will be visible to neighboring residential properties.

B. **Property Values**

- Numerous individuals commented during the public comment period that they were totally unaware of the facility until the siting process started, but are aware now;
- A 45 foot increase in vertical height of this landfill will have a noticeable visual impact on surrounding residential properties.

C 13632

Criterion 4

The proposed facility is located outside the 100-year floodplain.

- Applicant presented expert testimony to this effect;
- County Staff confirmed the location of the facility outside of the 100-year flood plain;
- There was no evidence presented that the facility was located in the 100-year flood plain.

EXHIBIT "1-A"

C 13633

- The testimony concerning the organic contaminant found in a shallow monitoring well located in the upper till in the northeast corner of the facility, and the subsequent discovery of the same contaminant in a monitoring well located in the lower sand aquifer in the same area suggests the rapid migration of contaminants at the site, in directly conflict with the testimony of applicant's experts, and in support of Mr. Norris' testimony;

- The increased levels of chlorides in the monitoring well downgradient of trench C-1 also suggest the same conclusions;

- The close proximity of residential neighborhoods to the east of the proposed facilities raises numerous questions concerning whether the location of the proposed facility is protective of the public health, safety and welfare;

- The facility, at its closest location, is a mere 300 feet from the nearest residential property;

- The close proximity of the residences raises serious concerns regarding the potential adverse health effects the proposed landfill may cause to these residents;

- The medical community has spoken out against the proposed expansion due to the potential health risks posed by place large volumes of hazardous waste so close to the residents of the County;

- The Applicant did not present any data, studies, or reports concerning the potential health affects on the citizens, or any risk assessments or epidemiological studies or data concerning the proposed facility;

- Due to the close proximity and the hazardous nature of the materials being disposed of and proposed to be disposed of at the facility, the proposed facility presents an unwarranted risk to the public;

- Opponents primary comments were that the liner systems would fail at some point in the future, and this commentary was largely supported by the testimony of Applicant's witnesses, the major difference being when the liner systems would begin to degrade;

- Applicant and opponents agree that protection of the groundwater is the primary concern at the proposed facility;

- However, there is considerable difference of opinion between the parties as to the magnitude and likelihood of a risk to the groundwater presented by the proposed facility;

- One area of concern for the County Staff was the groundwater impact

assessment conducted by PDC's experts Dr. Barrows and Ken Liss;

- The type of groundwater modeling done by Dr. Barrows is appropriate for this type of application and for determining future potential impacts to groundwater as required by IEPA for permit applications;

- IEPA requires this type of modeling to determine impacts up to 100 years after closure, but the Applicant did the modeling for 500 years after closure;

- At the public hearing, Dr. Barrows was asked about his modeling and his sensitivity analysis, and he stated in his testimony that the report on his sensitivity analysis was incorrect, and that the most sensitive parameter was flux through the liners as opposed to the hydraulic conductivity of the clayey till underlying the liners;

- After the public hearing, and before the close of the public comment period, Dr. Barrows submitted a supplemental report detailing his corrected findings regarding the sensitivity analysis, but County Staff was not able to independently verify his corrected conclusions;

- Because County Staff was not able to independently verify his corrected conclusions, the County is unwilling to accept the results of the modeling as a method for ruling out the possibility that the C trenches are or have released contaminants at the site;

- Mr. Liss testified for the Applicant that the groundwater monitoring data demonstrates the existing facility is not contributing contamination to the groundwater at the site;

- Mr. Norris disputed that conclusion by pointing to TOX sampling data;

- The County finds the surface impoundment presently located at the facility and used for the collection and storage of leachate is less protective of the public health than other areas of the facility because it is only double lined, and has no effective means of leak detection;

- A number of the opponents and their witnesses call into question the safety of the inactive portions of the site.

C 13635

Criterion 5

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

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

EXHIBIT "1-A"

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

Special Conditions - Criterion 5:

1. Leachate will be automatically removed from all leachate manholes to maintain a minimal risk of leachate on the manhole liner. This is intended to minimize risk of leachate leakage through liner components.

2. The south stormwater detention basin shall be tested on a schedule identical to the existing permit requirements for groundwater monitoring wells and for the following indicator constituents: TDS (total dissolved solids), chloride, calcium, bromide, sulfate, and sodium. Although stormwater typically has less stringent water quality parameters, the records shall be kept and analyzed to verify that trends do not increase to levels of concern that would indicate leachate has been accidentally released to stormwater as long as the active landfill operations occur. PDC shall notify the County of any statistically significant upward trend in stormwater concentrations.

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

C 13637

Criterion 6

Traffic patterns to and from the facility are so designed as to minimize the impact on existing traffic flows provided certain special conditions are met.

- Applicant presented expert testimony and a report establishing that the facility will have minimal or no impact on existing traffic flows;
- No expert testimony, report or other evidence was submitted into the record that contradicts the conclusions of Applicant's expert;
- The expanded facility is proposed to be operated in substantially the same fashion as the existing facility, and the existing facility is not causing traffic flow problems according to local and state transportation agencies;
- Some concerns regarding the possibility of transportation related accidents were raised; however, those concerns were better addressed under other criteria;
- Applicant's expert report recommends coordinating efforts with the Illinois Department of Transportation to install advance warning signs along State Route 8 to warn motorists of possible truck turning movements;
- Applicant's report indicates it has designated two (2) main haul routes for trucks coming to and leaving the facility, but does not specify whether or how those routes are communicated to haulers who are not affiliated with Applicant;

Special Conditions - Criterion 6:

1. PDC shall work with IDOT to install an advance warning sign along State Route 8 at this location to alert motorists of possible truck turning movements.
2. PDC shall inform all haulers to and from the facility of the designated truck routes in writing and PDC shall cooperate with local law enforcement agencies to enforce the truck routing requirements on the surrounding roads.

Criterion 7

C 13638

The Applicant has an emergency response plan that sufficiently includes notification, containment and evacuation procedures to be used in case of an accidental release at the facility, provided special conditions are met.

- The application includes Spill Prevention Control and Countermeasure Plan, a Stormwater Pollution Prevent Plan, and a RCRA Contingency Plan;
- Applicant presented testimony of its operational expert concerning the foregoing plans;
- There was no evidence or testimony submitted into the record indicating there were no plans or that any plans were lacking;
- Some questions were raised regarding the degree of emergency preparedness and coordination with applicable emergency response agencies, but no facts or evidence was presented to support or validate such questions or concerns;
- While the plans generally meet this criterion, additional measures are necessary to fully coordinate emergency procedures and activities with applicable emergency responders in the County to adequately prepare for a potential emergency;

Special Conditions - Criterion 7:

1. PDC shall annually host a table-top meeting with appropriate emergency responders from Peoria County as approved by the Peoria County Administrator. This may include, but not be limited to, the Peoria County Emergency Services and Disaster Agency, Peoria County Highway Department, Peoria County Sheriff's Office, Limestone Township Fire Protection District, with invitations to attend forwarded to the City of Peoria Fire Department and the Illinois Emergency Management Agency for their input.

2. PDC shall annually have a mock disaster drill, with appropriate emergency responders from Peoria County as approved by the Peoria County Administrator. This may include, but not be limited to, the Peoria County Emergency Services and Disaster Agency, Peoria County Highway Department, Peoria County Sheriff's Office, Limestone Township Fire Protection District, with invitations to attend forwarded to the City of Peoria Fire Department and the Illinois Emergency Management Agency for their input.

3. PDC shall coordinate with E-911 in order to utilize the reverse 911 system and is responsible for contacting 911 if and when an emergency happens.

EXHIBIT "1-A"

C 13639

Criterion 8

The proposed expansion of the landfill is consistent with the County's integrated solid waste management plan and the 1996 and 2001 five-year plan updates.

- Applicant presented a report and testimony by its expert, Sheryl Smith, who concluded the proposed facility is consistent with the County's solid waste management plan and the updates thereto;
- There was no evidence or testimony that was contrary to the Applicant's expert testimony or report;
- County Staff concluded the proposed facility is consistent with the County's solid waste management plan;
- County Staff is responsible for implementing the County's solid waste management plan, and is in the best position to make a determination as to whether the facility is consistent with the plan or not.

EXHIBIT "1-A"

Criterion 9

C 13640

The proposed facility is located outside any regulated recharge area.

- Applicant presented the testimony of its expert, George Armstrong, that the proposed facility is not located within a regulated recharge area;
- Comments or concerns were raised concerning the proposed facility being located above an aquifer and that the aquifer is hydraulically connected to a regulated recharge area;
- However, no testimony or evidence was provided that contradicted the Applicant's witness regarding the location of the recharge area and the location of the proposed facility;
- County Staff independently confirmed the proposed facility is not located within the regulated recharge area for the Pleasant Valley Public Water District or any other regulated recharge area.

assessment conducted by PDC's experts Dr. Barrows and Ken Liss;

- The type of groundwater modeling done by Dr. Barrows is appropriate for this type of application and for determining future potential impacts to groundwater as required by IEPA for permit applications;

- IEPA requires this type of modeling to determine impacts up to 100 years after closure, but the Applicant did the modeling for 500 years after closure;

- At the public hearing, Dr. Barrows was asked about his modeling and his sensitivity analysis, and he stated in his testimony that the report on his sensitivity analysis was incorrect, and that the most sensitive parameter was flux through the liners as opposed to the hydraulic conductivity of the clayey till underlying the liners;

- After the public hearing, and before the close of the public comment period, Dr. Barrows submitted a supplemental report detailing his corrected findings regarding the sensitivity analysis, but County Staff was not able to independently verify his corrected conclusions;

- Because County Staff was not able to independently verify his corrected conclusions, the County is unwilling to accept the results of the modeling as a method for ruling out the possibility that the C trenches are or have released contaminants at the site;

- Mr. Liss testified for the Applicant that the groundwater monitoring data demonstrates the existing facility is not contributing contamination to the groundwater at the site;

- Mr. Norris disputed that conclusion by pointing to TOX sampling data;

- The County finds the surface impoundment presently located at the facility and used for the collection and storage of leachate is less protective of the public health than other areas of the facility because it is only double lined, and has no effective means of leak detection;

- A number of the opponents and their witnesses call into question the safety of the inactive portions of the site;

- County Staff indicated, upon questioning at the April 3, 2006 hearing, that it was their opinion that the application as submitted did not satisfy Criterion 2. County staff indicated it was their opinion that only with the imposition of numerous special conditions could Criterion 2 be satisfied.

EXHIBIT "2"

2005-2006 RULES OF ORDER OF THE PEORIA COUNTY BOARD

RULES OF ORDER

COUNTY BOARD
COUNTY OF PEORIA, ILLINOIS

DAVID T. WILLIAMS SR.
CHAIRPERSON

JOANN THOMAS
COUNTY CLERK

•

2005-2006

EXHIBIT "2"

CONTENTS

EXHIBIT "2"

Section 2: Vice-Chairperson

A. Selection –

1) The Vice-Chairperson shall be nominated and selected in the same manner as the Chairperson.

B. Duties –

1) The Vice-Chairperson shall act as Chairperson pro-tempore in the absence or temporary inability of the Chairperson to preside at a meeting.

Section 3: The County Clerk of Peoria County, or a deputy selected by the County Clerk, shall be the Clerk of the Board, shall be the keeper of the records and the minutes of the Board and shall be in attendance at all meetings of the Board.

Section 4: The State's Attorney of Peoria County, or an Assistant State's Attorney selected by the State's Attorney, shall be Parliamentarian of the Board and upon request of the Chairperson shall render opinion and advise on questions of parliamentary law and procedure applicable to matters arising before the Board. The rules of parliamentary practice, as set forth in the latest published edition of Robert's "Rules of Order, Revised", govern the proceedings of the Board to the extent the same are not inconsistent with the Rules of Order of the Board.

Section 5:, The Sheriff of Peoria County, or a deputy selected by the Sheriff, shall, at the request of the Chairperson, be Master-at-Arms during all meetings of the Board and shall preserve and maintain order and decorum in the meeting room of the Board.

Article IV. ORDER OF BUSINESS

Section 1: The order of business presented before the Board shall be as follows, unless otherwise determined upon by action of the Board.

EXHIBIT "2"

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

RESPONSE TO MOTION FOR PARTIAL SUMMARY JUDGMENT (415 ILCS §5/39.2(e))

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 (415 ILCS §5/39.2(e)), states as follows:

1. Section 39.2(e) of the Act provides, in pertinent part, that "[i]f there is no final action by the county board ... within 180 days after the filing of the request for site approval the applicant may deem the request approved."

2. On May 3, 2006, within the 180 day time period (regardless of whether the Board uses the date Peoria Disposal Company submitted the application or the date the County accepted the application for filing), the Peoria County Board took final action on the application voting against approval of the application by a vote of 12 against and 6 for the application.

3. Section 39.2(e) of the Act also provides, in pertinent part, that the "decisions of the county board ... are to be in writing, specifying the reasons for the decision, ..."

4. At the May 3, 2006, the Peoria County Board approved detailed written findings of fact regarding setting forth the County Board's decision on each of the nine (9) statutory criteria.

5. In addition to the detail written findings of fact approved by the Peoria County Board, the County also had a court reporter transcribe the May 3, 2006, Peoria County Board so there is a precise record of the proceedings on that date.

6. The Act requires only that the local siting authority take "final action" within the 180 day deadline.

7. The vote by the Peoria County Board at the May 3, 2006, Board meeting rejecting the motion to approve the application was "final action" under the statute.

8. The Act does not require the local siting authority to have its decision in writing within the 180 day deadline.

9. Even though a written decision was not required within the 180 day deadline, the Peoria County Board's approval of the detailed written findings of fact at the May 3, 2006, is most certainly in writing and specifies the reasons for its decision on each of the statutory criteria.

10. Both the detailed written findings of fact and the court reporter's transcript of the May 3, 2006, County Board meeting were kept in the Peoria County Clerk's office and files, and were available to the public for inspection, copying, and otherwise.

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

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

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

AFFIDAVIT OF SERVICE

The undersigned, being duly sworn upon oath, states that a copy of the attached Memorandum of Facts and Law In Support of Response To Motion For Partial Summary Judgment (415 ILCS §5/39.2(e)) and Response to Motion For Partial Summary Judgment (415 ILCS §5/39.2(e)), 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 12th day of December, 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: December 12, 2006.

David A. Brown

Subscribed and sworn to before me, a Notary Public, in the County and State as aforesaid, this 12 day of December 12, 2006.

OFFICIAL SEAL
HEATHER A. FEENEY
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES 5-6-2007

Heather A Feeney
Notary Public